

PRELIMINARY IMPACT OF GOVERNMENT SHUTDOWN ON LTC PROVIDERS-UPDATE

The Centers for Medicare & Medicaid Services ("CMS") issued a Survey & Certification Memo ("S&C Letter") to state agencies detailing the result of the governmental shutdown on long-term care providers as it relates to surveys. As of this writing, the S&C Letter has not been published or otherwise made publicly available, and the below information has not been independently confirmed. This information should not be relied upon until verification is available and is being provided for informational purposes only. Please see the update below.

SURVEYS

- Revisit surveys will only be conducted if approved by CMS in order to prevent provider termination/decertification.
- No other revisit surveys will be conducted.
- Survey cycles will remain open. This may lead to facilities facing denial of payment or be subject to civil money penalties ("CMPs") for extended periods of failing to maintain substantial compliance.
- State agencies may not conduct desk reviews for revisits.

REIMBURSEMENT

The below statement has been provided by the American Health Care Association ("AHCA"):

"AHCA staff has been in contact with CMS to discuss the potential implications of a possible government shutdown. While there is not much information available at this point in time, we hope that you will find the below insight and resources helpful.

"Historically, federal government shutdowns only have impacted discretionary programs (e.g., Older Americans Act, Social Services Block Grant, etc.). Entitlement programs such as Medicare, Medicaid and Social Security have not traditionally been affected. However, governmental business processes could be impacted. For example, federal workers process beneficiary checks and applications, such as SSI and SSDI as well as for Medicare, and the scope and scale of shutdown impacts on SSA would be at the discretion of the SSA Administrator, as would be true for all federal Departments such as CMS.

"Specifically, CMS staff are required to move funds to the states for Medicaid, and, in the case of Medicare, to plans and providers. In the past, the federal government has exempted these sorts of workers from furlough. Less clear is how CMS would handle the question of workers engaged in policy or program development efforts such as processing Medicaid State Plan Amendments and waiver submissions, Medicare-Medicaid Coordination activities and Center for Medicare and Medicaid Innovations demonstrations. Finally, details are not yet available on how a lengthy shutdown (i.e., a month or more) would impact government contractors such as Medicare Administrative Contractors ("MACs"). However, historical guidance has made clear that information systems that are critical to essential services should be maintained."

This information will be updated if and when further details related to the shutdown are released.

UPDATE:

The S&C Letter (S&C: 14-02-ALL) has been published by CMS and largely confirms the original information above.

The following programs are not affected by the shutdown:

- CLIA survey and certification functions;
- Background Check National Program; and
- CMS Vendor contracts awarded prior to October 1, 2013.

The following are determined by CMS to be essential Medicare activities and will be continued:

- Complaint investigations alleging harm. Complaints that are triaged as credible allegations of immediate jeopardy ("IJ"), or harm to an

individual will continue to be assessed and investigated according to standard CMS protocols.

- Certain federal enforcement actions. Enforcement actions that result from complaint investigations noted in the above will continue to be performed if the complaints are substantiated with a finding of IJ or actual harm.
- Revisiting surveys approved by exception and necessary to prevent termination. State survey agencies may request approval to conduct a revisit when:
 - A provider or supplier has alleged compliance with CMS requirements, AND
 - The revisit survey is necessary to determine compliance and prevent the scheduled Medicare termination of a provider or supplier, AND
 - The Medicare termination is likely to threaten the safety of human life, such as by creating access to care or other serious, immediate and negative consequences for Medicare beneficiaries.
- Immediate threats to life or safety. State survey agencies should take action to mitigate any other immediate threats to the life or safety of a beneficiary, even if the situation does not fit into any of the preceding categories.
- Orderly shutdown of other tasks. State survey agencies may complete other tasks begun prior to October 1, 2013 if such completion is necessary to ensure an orderly shutdown, provided the task can be accomplished within four hours of CMS notification.

The following activities are not supported during the shutdown:

- Standard surveys;
- Certain revisit surveys, including onsite and desk revisits that are not required to prevent termination of Medicare participation;
- Initial surveys;
- Initial certification via deemed status;
- Validation surveys;
- Certain complaint investigations (unless of the nature discussed above);
- Patient Safety Initiative ("PSI") pilot surveys;
- MDS or OASIS activities except those necessary to maintain provider reporting;
- Informal Dispute Resolutions ("IDRs"); and
- New CMP-funded improvement projects.

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