

§ 488.310

- (iv) Director of nursing.
- (2) The survey agency must review all complaint allegations and conduct a standard or an abbreviated standard survey to investigate complaints of violations of requirements by SNFs and NFs if its review of the allegation concludes that—
 - (i) A deficiency in one or more of the requirements may have occurred; and
 - (ii) Only a survey can determine whether a deficiency or deficiencies exist.
- (3) The survey agency does not conduct a survey if the complaint raises issues that are outside the purview of Federal participation requirements.

§ 488.310 Extended survey.

- (a) *Purpose of survey.* The purpose of an extended survey is to identify the policies and procedures that caused the facility to furnish substandard quality of care.
- (b) *Scope of extended survey.* An extended survey includes all of the following:
 - (1) Review of a larger sample of resident assessments than the sample used in a standard survey.
 - (2) Review of the staffing and in-service training.
 - (3) If appropriate, examination of the contracts with consultants.
 - (4) A review of the policies and procedures related to the requirements for which deficiencies exist.
 - (5) Investigation of any participation requirement at the discretion of the survey agency.
- (c) *Timing and basis for survey.* The survey agency must conduct an extended survey not later than 14 calendar days after completion of a standard survey which found that the facility had furnished substandard quality of care.

§ 488.312 Consistency of survey results.

CMS does and the survey agency must implement programs to measure accuracy and improve consistency in the application of survey results and enforcement remedies.

§ 488.314 Survey teams.

- (a) *Team composition.* (1) Surveys must be conducted by a multidisciplinary

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- plinary team of professionals, which must include a registered nurse.
- (2) Examples of professionals include, but are not limited to, physicians, physician assistants, nurse practitioners, physical, speech, or occupational therapists, registered professional nurses, dietitians, sanitarians, engineers, licensed practical nurses, or social workers.
- (3) The State determines what constitutes a professional, subject to CMS approval.
- (4) Any of the following circumstances disqualifies a surveyor for surveying a particular facility:
 - (i) The surveyor currently works, or, within the past two years, has worked as an employee, as employment agency staff at the facility, or as an officer, consultant, or agent for the facility to be surveyed.
 - (ii) The surveyor has any financial interest or any ownership interest in the facility.
 - (iii) The surveyor has an immediate family member who has a relationship with a facility described in paragraphs (a)(4)(i) or paragraph (a)(4)(ii) of this section.
 - (iv) The surveyor has an immediate family member who is a resident in the facility to be surveyed. For purposes of this section, an immediate family member is defined at § 488.301 of this part.
- (b) *CMS training.* CMS provides comprehensive training to surveyors, including at least the following:
 - (1) Application and interpretation of regulations for SNFs and NFs.
 - (2) Techniques and survey procedures for conducting standard and extended surveys.
 - (3) Techniques for auditing resident assessments and plans of care.
- (c) *Required surveyor training.* (1) Except as specified in paragraph (c)(3) of this section, the survey agency may not permit an individual to serve as a member of a survey team unless the individual has successfully completed a training and testing program prescribed by the Secretary.
- (2) The survey agency must have a mechanism to identify and respond to in-service training needs of the surveyors.

(3) The survey agency may permit an individual who has not completed a training program to participate in a survey as a trainee if accompanied on-site by a surveyor who has successfully completed the required training and testing program.

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§ 488.318 Inadequate survey performance.

(a) CMS considers survey performance to be inadequate if the State survey agency—

(1) Indicates a pattern of failure to—

- (i) Identify deficiencies and the failure cannot be explained by changed conditions in the facility or other case specific factors;
- (ii) Cite only valid deficiencies;
- (iii) Conduct surveys in accordance with the requirements of this subpart;

or

- (iv) Use Federal standards, protocols, and the forms, methods and procedures specified by CMS in manual instructions; or

(2) Fails to identify an immediate jeopardy situation.

(b) Inadequate survey performance does not—

(1) Relieve a SNF or NF of its obligation to meet all requirements for program participation; or

(2) Invalidate adequately documented deficiencies.

§ 488.320 Sanctions for inadequate survey performance.

(a) *Annual assessment of survey performance.* CMS assesses the performance of the State's survey and certification program annually.

(b) *Sanctions for inadequate survey performance.* When a State demonstrates inadequate survey performance, as specified in § 488.318, CMS notifies the survey agency of the inadequacy and takes action in accordance with paragraphs (c) and (d) of this section.

(c) *Medicaid facilities.* (1) For a pattern of failure to identify deficiencies in Medicaid facilities, CMS—

(i) Reduces FFP, as specified in paragraph (e) of this section, and if appropriate;

(ii) Provides for training of survey teams.

(2) For other survey inadequacies in Medicaid facilities, CMS provides for training of survey teams.

(d) *Medicare facilities.* For all survey inadequacies in Medicare facilities, CMS—

(1) Requires that the State survey agency submit a plan of correction;

(2) Provides for training of survey teams;

(3) Provides technical assistance on scheduling and procedural policies;

(4) Provides CMS-directed scheduling; or

(5) Initiates action to terminate the agreement between the Secretary and the State under section 1864 of the Act, either in whole or in part.

(e) *Reduction of FFP.* In reducing FFP for inadequate survey performance, CMS uses the formula specified in section 1919(g)(3)(C) of the Act, that is 33 percent multiplied by a fraction—

(1) The numerator of which is equal to the total number of residents in the NFs that CMS found to be noncompliant during validation surveys for that quarter; and

(2) The denominator of which is equal to the total number of residents in the NFs in which CMS conducted validation surveys during that quarter.

(f) *Appeal of FFP reduction.* When a State is dissatisfied with CMS's determination to reduce FFP, the State may appeal the determination to the Departmental Appeals Board, using the procedures specified in 45 CFR part 16.

§ 488.325 Disclosure of results of surveys and activities.

(a) *Information which must be provided to public.* As provided in sections 1819(g)(5) and 1919(g)(5) of the Act, the following information must be made available to the public, upon the public's request, by the State or CMS for all surveys and certifications of SNFs and NFs:

(1) Statements of deficiencies and providers' comments.

(2) A list of isolated deficiencies that constitute no actual harm, with the potential for minimal harm.

(3) Approved plans of correction.

(4) Statements that the facility did not submit an acceptable plan of correction or failed to comply with the conditions of imposed remedies.