



STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
Aging and Long-Term Support Administration
PO Box 45600, Olympia, Washington 98504-5600

August 28, 2020

ALTSA: NH #2020-061

**QSO-20-35-ALL - ENFORCEMENT CASES HELD DURING THE PRIORITIZATION PERIOD
AND REVISED SURVEY PRIORITIZATION**

Dear Nursing Facility/Home Administrator:

Because of the COVID-19 related national health emergency, in March 2020, the Centers for Medicare and Medicaid Services (CMS) prioritized surveys by authorizing modification of timetables and deadlines for performing certain required survey and enforcement activities. With [QSO-20-35-ALL](#), released on August 17, 2020, CMS is revising their survey guidance to expand the number of survey activities and giving state agencies direction on resuming enforcement activities suspended during the pandemic.

Expansion of Survey Activities

In March 2020, CMS issued two memoranda, [QSO-20-12-ALL](#) and [QSO 20-20-ALL](#), which limited survey activity to focused infection control surveys, investigation of complaints and facility reported incidents alleging immediate jeopardy (IJ) to patient and resident health and safety, and revisit surveys necessary to verify removal of previously identified IJ deficiencies.

On June 1, 2020, CMS issued [QSO 20-31-ALL](#), which provided survey re-prioritization guidance to transition states to more routine oversight and survey activities. Specifically, once a State has entered the federal Phase 3 of the Nursing Homes Reopening guidance found in [QSO 20-30-NH](#), or earlier at the state's discretion, states were authorized to expand survey prioritization (Immediate Jeopardy, Focused Infection Control, and Initial Certification surveys) to perform the following surveys:

- Complaint investigations that are triaged as Non-Immediate Jeopardy-High;
- Revisit surveys of any facility with removed Immediate Jeopardy (but still out of compliance);
- Special Focus Facility and Special Focus Facility Candidate recertification surveys; and
- Nursing home recertification surveys in facilities where it has been over 15 months since the last standard survey.

CMS is now expanding this guidance under QSO-20-35-ALL to authorize additional onsite surveys. In addition to the surveys listed above, state agencies are directed to perform the following surveys as soon as they have the resources (e.g., staff and/or Personal Protective Equipment) to do so:

- Onsite revisits for surveys with end dates on, or after June 1, 2020;
- Complaint investigations that are triaged as Non-Immediate Jeopardy Medium; and
- Annual recertification surveys required to be conducted within 15 months from a provider's last recertification survey.

Enforcement Guidance

Due to the inability to perform revisit surveys to verify substantial compliance, QSO 20-20-ALL directed state agencies to suspend open enforcement actions pending as of March 23, 2020, except for enforcement actions for unremoved IJ deficiencies.

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CMS memo QSO-20-35-ALL gives guidance for state agencies to resolve the suspended enforcement cases, and for managing enforcement going forward. The guidance includes plans of correction, enforcement, and collection of penalties.

Plans of Correction (POC) and Expanded Desk Review policy. Beginning on March 23, 2020, providers were permitted to delay the submission of a POC. For enforcement cases started from March 23, 2020 through May 31, 2020:

- All open surveys with cited deficiencies (unless the deficiencies are at scope/severity (S/S) = A) must have an acceptable POC. Providers will have 10 calendar days to submit their POC.
- If providers cannot allocate resources to develop and implement a POC due to a current outbreak, they may contact the state agency to request an extension.
- State surveyors can perform desk reviews to determine compliance for all open surveys cited at any level of noncompliance, except for unremoved IJ. The expanded desk review applies only to cases held from March 23, 2020 to May 31, 2020.

Beginning June 1, 2020, all onsite re-visits are authorized and should resume as appropriate.

- **Processing Enforcement Cases that were started before March 23, 2020.** CMS has developed a process with two scenarios.
 - If the initial notice of remedies was sent, but not finalized, and
 - If the initial notice of remedies was not sent.

The QSO memo has detailed information on how and when remedies will be applied. *If you have open enforcement during this time, please review the QSO memo carefully.*

- **Processing enforcement cases that were started on March 23, 2020, through May 31, 2020.** CMS will impose Civil Money Penalties (CMP) for noncompliance cited at harm (S/S = G or higher). CMS will not impose CMPs for noncompliance cited at S/S = D, E, or F. *More information is in the QSO memo.*
- **Processing enforcement cases that were started on or after June 1, 2020.** Enforcement cycles beginning with noncompliance cited on surveys exiting on or after June 1, 2020 will be subject to regular enforcement processes in the State Operations Manual and to the enhanced enforcement for infection control deficiencies outlined in QSO 20-31-ALL. For imposition of Per Day CMPs, if a survey finds that the first day of noncompliance started prior to the survey entrance, or during the survey prioritization period (March 23, 2020 through May 31, 2020), or both, **CMS should start the PD CMP effective beginning the date of the survey entrance.**

CMP Collections

For CMPs that were imposed and became due and payable **during** the prioritization period (March 23, 2020 through May 31, 2020), but were not paid:

- CMS will re-issue the CMP Due and Payable notice with a new due date that is 15 days from the date of the notice, per §488.442.
- If a facility fails to pay due CMPs following the new due and payable notice, CMS will send the CMP to the Medicare Administrative Contractor to offset and assess interest beginning on the new due date.
- CMS will reduce a CMP by 35% for facilities whose 60-day time to appeal has passed during the prioritization period, but were unable to notify CMS that they are waiving their right to a hearing. If a facility files or has filed an appeal, CMS will not reduce the CMP by 35%. *Please see the QSO memo for detailed information and information on appeals.*

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Thank you for your continued commitment to resident health and safety. If you have questions specific to the QSO memorandum, please contact [DNH Enforcement@cms.hhs.gov](mailto:DNH_Enforcement@cms.hhs.gov). If you have other questions, please contact Lisa Herke, Nursing Home Policy Unit Manager at (509) 209-3088 or lisa.herke@dshs.wa.gov.

Sincerely,



Candace Goehring, Director
Residential Care Services

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