Strategies For Surviving Surveys and Improving Five Star Ratings

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CMS 5 Star Ratings

- **Survey History**
  - Annual *and* complaint surveys past 3 years

- **Staffing**
  - Self-reported CMS Forms 671 & 672
  - New Payroll-Based Journal (PBJ) reporting

- **Quality Measures**
# CMS Quality Measures

<table>
<thead>
<tr>
<th>LONG-STAY PREVALENCE</th>
<th>SHORT STAY PREVALENCE</th>
</tr>
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<tbody>
<tr>
<td>ADL change</td>
<td>Delirium</td>
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<tr>
<td>Mobility change</td>
<td>Pain</td>
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<tr>
<td>High-risk pressure ulcers</td>
<td>Pressure Ulcers</td>
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<tr>
<td>Long-term catheters</td>
<td></td>
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<tr>
<td>Physical restraints</td>
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<tr>
<td>Urinary Tract Infection (UTIs)</td>
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<tr>
<td>Pain</td>
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## Six New Quality Measures

<table>
<thead>
<tr>
<th>Measure</th>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td>SHORT-STAY RE-HOSPITALIZATION</td>
<td>Percent of short-stay residents who entered or reentered SNF from a hospital and were re-admitted to hospital for an unplanned inpatient stay or observation stay within 30 days of the start of the nursing home stay</td>
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<tr>
<td>SHORT-STAY OUTPATIENT ED VISIT</td>
<td>Percent of short-stay residents who entered or reentered SNF from hospital, visited an emergency department within 30 days of the start of the stay, and visit did not result in an inpatient or observation stay</td>
</tr>
<tr>
<td>SHORT-STAY SUCCESSFUL COMMUNITY DISCHARGE</td>
<td>Percent of short-stay residents admitted SNF from a hospital who were discharged to the community with 100 calendar days of the start of the episode, and who remained in the community for 30 consecutive days following discharge to the community</td>
</tr>
<tr>
<td>SHORT-STAY IMPROVEMENTS IN PHYSICAL FUNCTION AND LOCOMOTION</td>
<td>Percent of short-stay SNF residents who made functional improvements on mid-loss ADLs during their complete episode of care.</td>
</tr>
<tr>
<td>LONG-STAY ABILITY TO MOVE INDEPENDENTLY WORSENED</td>
<td>Percent of long-stay SNF residents who experienced a decline in independence in locomotion</td>
</tr>
<tr>
<td>LONG-STAY ANTIANXIETY OR HYPNOTIC MEDICATION USE</td>
<td>Percent of long-stay SNF residents who receive antianxiety or hypnotic medications</td>
</tr>
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</table>
Changing Enforcement Environment

• Department of Justice (DOJ) launches 10 Elder Justice Task Forces including Eastern District of PA, March 30, 2016
  ▪ Pursue nursing homes that provide grossly substandard care

• Centers for Medicare and Medicaid Services (CMS) releases new Civil Money Penalty (CMP) Analytic Tool
Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015

- Requires certain agencies with CMP authority to update penalties based on their value in the last update prior to 1996 and the change in the CPI between that date and October 2015
  - Increase in penalties from this “catch up” calculation would be capped at 150% (CMP of $10,000/per day could increase to $20,626)

- Requires agencies to adjust their CMPs annually based on changes in the CPI, using data from October of each year
Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015

- Allows Secretary of covered agency to increase one or more penalties covered by these provisions by *less* than the new formula through a rulemaking only if:
  - Secretary finds that increasing penalty by required amount will have a negative economic impact or that the social costs outweigh the benefits *and*
  - Director of the Office of Management and Budget (OMB) concurs with this analysis
New CMS CMP Analytic Tool

- New approach to federal per day (PD) CMPs

- Begin CMP on 1\textsuperscript{st} day noncompliance is documented, \textit{even if that date precedes the first day of the current survey}
  - Unless facility can demonstrate that it corrected the noncompliance prior to the current survey (past noncompliance)

Starting the PD CMP

- Calculate the start date for the proposed CMP with the “first supportable date of noncompliance, as determined by the evidence documented by surveyors in the statement of deficiencies (CMS form 2567)”

- Surveyors instructed to “determine the earliest date for which supportable evidence shows that the non-compliant practice began”
Ambiguity About Start of Deficient Practice

- CMS analysts will contact state agency if start date is ambiguous or not clearly identified and supportable, to see if start date can be determined

- CMS analysts required to document their discussions and conclusion with the state agency
If Start Date Not Determinable

- If start date cannot be determined, then PD CMP would start on 1st day during the survey on which the survey team identified the noncompliant practice.

- If the team cannot document the first day of noncompliance, then the CMP should start on the day the noncompliance was observed and documented at the time of the current survey.
Mandatory Referrals

• CMS refers all CMPs to DOJ pursuant to a Memorandum of Understanding

• DOH is statutorily required to report immediately to the Pennsylvania Attorney General (AG) or local law enforcement whenever it has “reasonable cause to believe” that a care dependent adult has suffered bodily injury or been unlawfully restrained” See, Act 28 of 1995, Neglect of Care-Dependent Person, 18 Pa.C.S. § 2713
  ▪ Referrals to state licensing boards
What Happened in PA?

- Community Legal Services of Philadelphia (CLS) report – “CARELESS: How the Pennsylvania Department of Health has Risked the Lives of Elderly and Disabled Nursing Home Residents” (June 2015)

- Kaiser Family Foundation: about 40 percent of PA nursing homes have relatively low 5-star ratings, of 1 or 2-stars (May 2015)
  - See also: http://www.newsweek.com/you-dont-want-be-old-these-states-333052
CLS Recommendations to Gov. Wolf

• Conduct thorough investigation into why DOH has failed to properly investigate nursing homes and enforce regulations

• Implement system-wide changes within DOH to ensure enforcement of regulations

• Require all DOH nursing home investigators be retrained on an ongoing basis to ensure patient safety
CLS Recommendations to Gov. Wolf

• Require DOH to provide better transparency to the public regarding investigations and characterization of harm

• Provide better information to the public about nursing homes so prospective nursing home residents and their families can make informed decisions about care
PA Attorney General (AG) Staffing Investigations

- 7 companies targeted in contingency fee contract between AG and private law firm (Cohen Milstein)

- Court challenge to AG’s authority to:
  - Hire contingency fee counsel; and
  - Investigate staffing using Unfair Trade Practice and Consumer Protection laws

- AG files lawsuit against Golden Living July 2015
DOH Response

• Accelerate efforts to evaluate regulatory process to determine what additional measures can be taken to ensure enhance quality

• Engage Auditor General to audit DOH policies and procedures to recommend ways to improve how DOH enforces its statutory enforcement authority

• Form task force charged with identifying ways DOH can advance quality improvement
Increased Enforcement a Reality

- Marked increase in DOH sanctions
  - 43 in 2015
  - 17 in 2014
  - 13 in 2013

- Marked increase in CMS civil money penalties
  - At least 3 federal CMPs in Region 3 >$1 million
Most Frequently Cited F Tags

- F309: Quality of care
- F441: Infection control
- F514: Clinical records
- F323: Accident environment
- F371: Food sanitation
New Complaint Procedures

- Higher number of complaint surveys and citations
- DOH now taking anonymous complaints
- Most frequent complaints
  - Care or Services 66.77%
  - Resident Rights 14.73%
  - Environment 9.32%
- *What can you do?*
Survey Overview

• Receive statement of deficiencies (2567)

• 10 days to file plan of correction
  ▪ Include disclaimer language

• 10 days to file state informal dispute resolution (IDR) or state independent IDR (IIDR)
Know Your Regulators

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
Philadelphia Regional Office
Suite 216, The Public Ledger Building
150 S. Independence Mall, West
Philadelphia, PA  19106-3413

Northeast Division of Survey & Certification

Pennsylvania
DEPARTMENT OF HEALTH

Phone: 717-783-3790
Fax: 717-772-3641
Sanction Letters

• DOH imposes state sanctions against license and recommends federal sanctions to CMS

• CMS imposes sanctions against certification, often after time for state IDR has passed
  ▪ CMS not required to follow DOH recommendation

• Challenges to federal CMP must include escrow of CMP
Sanction Letters

- Ability to file federal IIDR within 10 days of receipt of CMS CMP letter (often sent by certified or regular mail—keep envelope)

- Federal IIDR will include contact of affected residents

- Waiver of appeal rights gets 35% reduction of CMP
  - File notice within 60 days
How to Read the 2567

- What are the deficiencies?
- What are the regulatory violations?
  - Federal
  - State
- What is the best way to respond?
POC Disclaimer Language

- Preparation and submission of this POC is required by state and federal law. This POC does not constitute an admission for purposes of general liability, professional malpractice or any other court proceeding.
“Required” POC Elements

- What corrective action(s) will be accomplished for residents affected by the deficient practice?

- How will you identify other residents having the potential to be affected by the same deficient practice and corrective actions?

- What measures will be put in place or system changes will you make to ensure that the deficient practice does not recur?
“Required” POC Elements

• How will the corrective action be monitored to ensure the deficient practice will not recur, i.e., what quality assurance programs will be established?

• Dates when the corrective action will be completed.
Strategies for Preparing Effective POCs

- Less is more
- Read the F Tags and the state tags
- Don’t be afraid to have your POC rejected
- Be responsive and responsible
  - Don’t overpromise
  - Don’t admit liability
Strategies for Preparing Effective POCs

- Don’t go overboard with policies, procedures and plans of correction

- Keep your date of compliance as short as possible
  - Begin implementing corrective action during the survey and document corrections (e.g., re-inservicing of staff)
CMS Proposed Compliance Program Regulations (July 16, 2015)

- CMS proposed compliance regulations will make compliance effectiveness part of the federal survey process
  - Effective compliance will be a requirement of participation
  - Failure will result in deficiency citations
    - Scope and severity unclear at this time
    - 5 star rating could be at risk!
Use Compliance to Help Identify Risk Areas

- Review OIG Annual Work Plan
- Recent Corporate Integrity Agreements (CIAs and settlements)
- OIG Reports
- CMS Medicare Learning Network
Change Your Mock Survey Process

- Interview residents
- Interview families
- Interview staff
  - Prepare direct care staff for better surveyor interaction
    - *What do you say when you are not sure of the answer?*
Change Your Mock Survey Process

- Use CMS QIS Critical Element Pathways

- A Critical Element (CE) Pathway corresponds to an associated Care Area identified in Stage I and provides information to guide Stage II QIS process investigation

Examples of CE Pathways

- CMS-20048 Census Record - Updated 7-13-2015
- CMS-20049 Family Interview - Updated 7-28-201
- CMS-20050 Resident Interview & Observation -
- CMS-20051 Staff Interview - Updated 7-13-2015
- CMS-20052 Liability Notice - Updated 7-13-2015
- CMS-20053 Dining - Updated 9-08-2015 [PDF, 3]
- CMS-20054 Infection Control - Updated 7-13-201
- CMS-20055 Kitchen - Updated 7-13-2015 [PDF,
- CMS-20056 Medication Administration - Updated
- CMS-20057 Resident Council - Updated 7-13-201
- CMS-20058 Quality Assessment and Assurance
- CMS-20059 Abuse Prohibition - Updated 7-13-201
- CMS-20060 Admit Transfer and Discharge - Upd
- CMS-20061 Environment - Updated 7-13-2015 [P
- CMS-20062 Sufficient Staff - Updated 7-13-201
- CMS-20063 Personal Funds - Updated 7-13-2011
- CMS-20065 Activities - Updated 7-13-2015 [IPDF
- CMS-20066 Activities of Daily Living - Updated 7
- CMS-20067 Behavioral and Emotional - Updated
- CMS-20068 Urinary Catheter, UTI - Updated 7-1;
- CMS-20069 Communication and Sensory - Upda
QA and QAPI

- Make better use of your Quality Assurance (QA) and/or Quality Assurance & Process Improvement (QAPI) committee

- DOH wants to see evidence of investigations
  - Multiple issues should be documented separately

- Make certain EMR reports part of QAPI if they are used such purposes
Get Credit for Correcting Past Noncompliance

- Treat any incident that results in reporting to DOH as you would if it was on your 2567

- Develop corrective action and document monitoring and auditing for ongoing compliance

- Give evidence to surveyors at the time of the survey that a QAPI plan was implemented and maintained to assure continued compliance.
Survey Strategy

• Reevaluate how you approach survey
  ▪ Surveyors may reject any documents not provided at time of survey
  ▪ Where are your critical documents
  ▪ What do your medical records look like
  ▪ How up to date is your filing

• Review 2567 carefully and prepare IDR\text{s} for any factual inaccuracies
Prepare Now

- Ongoing review of MDS accuracy with heightened attention to ADLs
- Engage your medical director and attending physicians
- Reevaluate wound care protocol and scope of practice issues
- Review MDS RAI Manual
Collateral Issues

- Potential repayment
  - Obligation to repay within 60 days of identification of known overpayment

- PA Preventable Serious Adverse Events (PSAE) Act
  - DOH has been filing reports with Department of Human Services (DHS, formerly Department of Public Welfare)
Questions?

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