



Center for Clinical Standards and Quality/Quality, Safety & Oversight Group

DATE: June 16, 2023

TO: Accreditation Association for Ambulatory Health Care (AAAHC)
American Association for Accreditation of Ambulatory Surgery Facilities (Quad A)
Accreditation Commission for Health Care, Inc. (ACHC)
Community Health Accreditation Partners (CHAP)
Center for Improvement in Healthcare Quality (CIHQ)
DNV Healthcare
National Dialysis Accreditation Commission (NDAC)
The Compliance Team (TCT)
The Joint Commission (TJC)

FROM: David Wright, Director, Quality, Safety & Oversight Group
Scott Cooper, Director, Division of Continuing and Acute Care Providers

SUBJECT: Guidance on Unannounced Surveys, Blackout Dates, and Complaint Investigations

The Centers for Medicare & Medicaid Services (CMS), specifically our Quality, Safety & Oversight Group, has identified inconsistencies related to the comparability of survey processes by several Accrediting Organizations (AOs) versus the State Agencies (SAs). As part of our continued efforts to bring greater consistency to the survey process to improve patient health and safety, we are providing the following guidance:

1. Unannounced Surveys

CMS is aware that some Accrediting Organizations (AOs) are notifying facilities of the AO survey team arrival prior to arriving onsite. These notifications or announcements are usually being done via email or electronic portal and are preceding a survey team's arrival onsite at the facility by 15 to 60 minutes. In accordance with both §488.5(a)(4)(i), which requires unannounced surveys, as well as our long-standing instructions in Chapter 2 of the State Operations Manual (SOM), Section 2700A, we are reiterating that all surveys of providers and suppliers (other than clinical laboratories) must be **unannounced**. No contact should occur with the facility prior to the surveyor or survey team's entrance into the facility. This expectation was reinforced in [QSO Policy Memorandum 09-41](#). Any prior notice of a survey, via email, electronic portals, phone calls, or other means of communication, is considered a violation of CMS regulations.

An unannounced survey provides an opportunity to assess how the provider or supplier typically operates. If a provider or supplier knows the exact time a surveyor will be onsite, even shortly before their arrival, it may temporarily adjust its potentially noncompliant and typical practices (e.g., those regarding staffing). This might then provide a picture of the facility to surveyors that is not representative of the quality and the safety of the care typically provided to the facility's patients.

CMS understands some administrative business practices (such as gathering relevant information on the facility’s demographics, operating hours, etc.) require AOs to communicate with facilities prior to conducting a survey. However, CMS expects that these practices shall cease at least six months prior to the end of the facility’s survey cycle and that dates and times of a pending survey are not provided to the facility as part of these administrative communications.

2. Blackout Dates

CMS is aware that some AOs allow facilities to request “blackout dates,” which are dates the facility requests or prefers not to be surveyed. Allowing facilities to request dates when they wish not to be surveyed is not consistent with CMS’ survey expectations. Furthermore, some AO blackout date policies provide the caveat that the wishes of the facility may not be guaranteed, CMS believes this practice is also inconsistent with the policies of unannounced surveys and the expectation that a provider/supplier must be “survey-ready” at all times.

3. Offsite/Administrative Complaint Investigations

SOM Chapter 5, Section 5075.5 states, “for non-long term care facilities, both deemed and non-deemed, administrative review or offsite investigation is generally not permitted.” In accordance with Chapter 5, Table in Section 5075.9, if a complaint is triaged at non-immediate jeopardy (IJ) medium or non-IJ low, the SA must investigate no later than when the next onsite survey occurs.

In reviewing multiple AO applications for deeming authority, CMS has found that many AOs contact facilities prior to onsite investigations, or conduct offsite complaint investigations, both of which are inconsistent with the regulations and SOM. While contact with the complainant to receive additional input to determine if an onsite survey should be expedited is appropriate, contacting the facility is not. AOs should closely review their process for complaints, including intake (e.g., receipt of the complaint) and information gathered from the complainant, to determine the level of triage for conducting a survey. If an AO triages a complaint at non-IJ medium or low, the AO should investigate when the next onsite survey is scheduled or earlier, if appropriate. **Administrative reviews or offsite complaint investigations and contacting facilities in advance of a complaint survey are inconsistent with CMS’s survey processes for SAs and, therefore, not comparable with or equivalent to CMS as required at §488.5(a)(4)(ii).**

Additionally, the AO’s closure letters to the complainant must provide information that is comparable to the SA’s written report to the complainant of the investigation findings under SOM Chapter 5, Section 5080.1, “Report to the Complainant.” Among other things, the closure letter must provide the complainant with information regarding whether or not noncompliance was identified during the complaint investigation; identify where the complainant may find the Statement of Deficiencies and Plan of Correction; and, describe how the complainant may request a copy of the investigation report, subject to Federal and State disclosure requirements (e.g., see 42 CFR §488.325 and FOIA requirements at 45 CFR Part 5).

Any previously issued communications CMS has provided to AOs allowing for flexibilities or deviations is superseded by this notice.

AOs with survey practices identified above are expected to submit to CMS revisions to their corresponding policies and survey processes, in accordance with §488.8(b), no later than July 14, 2023.

Should CMS find further evidence of these practices occurring, CMS will take appropriate action, which may include placing the AO under a performance review immediately or revoking the AO's deeming authority as per 42 CFR §488.8.

If you have any questions regarding this letter, please do not hesitate to contact the CMS Accreditation Team at AO_Applications@cms.hhs.gov.

Sincerely,

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David R. Wright

cc: Survey Operations Group