



Center for Clinical Standards and Quality/ Survey Operations Group

Admin Info: 21-07-ALL

DATE: September 3, 2021
TO: CMS Locations and State Agencies
FROM: Karen Tritz, Director of Survey Operations Group
SUBJECT: Guidance for Federal Monitoring Surveys (FMS)

Memorandum Summary

- To provide guidance on how the CMS Location staff will conduct Federal Monitoring Surveys (FMS) in FY2021.

Background

Long Term Care (LTC) Federal Monitoring Surveys (FMS) must be performed by each CMS Location during each fiscal year in order to meet the statutory requirement of Section 1819(g)(3)(B) of the Social Security Act, which requires FMS' of "...at least 5 percent of the number of skilled nursing facilities surveyed by the State in the year, but in no case less than 5 skilled nursing facilities in the State." Medicare's definition of "State" includes Puerto Rico and the Virgin Islands. Section 1919(g)(3)(B) of the Act requires similar performance of validation surveys for nursing facilities. Nursing home validation surveys include both health and life safety code (LSC, including emergency preparedness) parts of the survey.

Health LTC FMS' comprise of three survey processes aimed at advising and evaluating state agency surveyors. Resource and Support Surveys (RSS) are surveys where the Federal Surveyor(s) accompany State Surveyors on focused infection control (FIC), initial, recertification, revisit and/or complaint surveys to observe and assess State surveyor team performance. The Federal surveyor(s) may provide training and/or technical assistance to address identified performance needs while on-site as a result of the evaluation of outcomes.

Focused Concern Surveys (FCS) are one of the evaluative components of the FMS process. FCS' are completed by one Federal Surveyor conducting an independent investigation of the identified concern areas. FCS health surveys occur within approximately 30 working days, after a State recertification, FIC or complaint survey. The Federal surveyor follows all investigative protocols and pathways for the concern areas and assess the effectiveness of State survey performance.

A LTC Health Comparative (*Validation*) is a survey conducted within 30 working days following a standard survey, but no more than 60 calendar days for the purpose of monitoring State survey agency performance. In FY2021, Health Comparative Surveys will be based on when a state resumes its recertification surveys.

LSC FMS' consist of a FOSS or comparative survey. An EP survey will be conducted with all LSC FMS surveys. A LSC FOSS will be a LSC RSS for FY2021 where the Federal Surveyor will observe and assess the State Surveyor team performance. The Federal Surveyor may provide training and/or technical assistance to address identified performance needs while on-site as a result of the evaluation of outcomes.

LSC comparative surveys will occur within 60 calendar days after a State recertification survey. The Federal Surveyor will follow all investigative protocols and assess the effectiveness of State survey performance.

The information below provides guidance to the CMS Locations on how to conduct and provide feedback to the SAs on LTC FMS' for FY2021. The guidance is specific to how the two types of FMS surveys, the RSS and the FCS, are conducted, such as concern identification, survey selection, and enforcement.

Discussion

For FY2021, there are a total of three concern areas, plus an optional fourth concern area. The areas selected are national concerns that were identified based on the impact of the pandemic on residents' physical and psychosocial needs. The concern areas selected are both specific F-Tags and Long Term Care Regulatory Groupings. For some concern areas, the inclusion of the broader regulatory groupings avoids narrowing the scope to one F tag because the Federal Surveyors may find the need to address more than one F tag per concern area on the FCS.

The four required FMS concerns for FY2021 are as follows:

1. Infection Control (F880, F882, F885 and F886)
2. Nutrition/Hydration – Weight Loss (F692 and F693)
3. Resident's Rights - Visitation Rights (F563 and F564)
4. Optional
 - A. Based on observation while onsite or
 - B. If CMS identifies a specific focus concern area for that particular state (e.g. abuse)

Expectation for Focused Infection Control Surveys to include investigation of Visitation

State Agency's (SAs) should be using the Infection Prevention, Control & Immunizations Pathway to conduct FIC surveys. This Pathway indicates, "Review for compliance... Visitation is conducted according to residents' rights for visitation and in a manner that does not lead to transmission of COVID-19..." Therefore, CMS expects SAs to review visitation and CMS guidance at QSO Memo QSO-20-39-NH during FIC surveys and/or any other applicable QSO or Admin Info Memos, and CMS will evaluate this in FCS surveys of FIC as well as recertification surveys effective immediately with the release of this memo.

In addition to the three areas identified, the Federal Surveyor will have the option of selecting a fourth area of concern that is unique to that survey and does not fall within the three areas identified above. This concern area can be selected when the Federal Surveyor is onsite and observes obvious issues with surveyors' performance in investigating compliance for an area that was not otherwise selected. For example, if a Federal Surveyors' three concern areas are infection control, nutrition, and visitation, but while onsite the surveyor observes several accidents or potential accidents that appear to be IJ or actual harm, the surveyor should add F689, Free of Accident Hazards/Supervision/Devices as a fourth concern area.

Furthermore, there may be instances when CMS identifies a specific area of concern for a particular state (e.g. abuse). In these cases, the Federal Surveyor should take the opportunity to investigate the identified concern via the optional fourth area of concern.

	1st	2nd	3rd	4th
FCS Concern	Infection Control F880 F882 F885 F886	Nutrition F692 F693	Visitation F563 F564	Optional Based on observations made onsite or if CMS identifies a specific focus concern area for that particular state (e.g. abuse)

Resource and Support Survey

Due to the Public Health Emergency (PHE), for FY2021, Resource and Support Surveys (RSS) can be conducted throughout the fiscal year. The purpose of the RSS is to provide education, instruction and guidance to state surveyors to assist them in conducting thorough investigations for the identified concerns.

During the RSS, the Federal Surveyor will join the State team and provide active guidance and instruction for the concern areas. The Federal Surveyor will accompany the state surveyors when making observations and conducting interviews related to the areas of concern. The Federal Surveyor should discuss the findings and assist in applying the given facts to the regulatory requirements. The Federal Surveyor will base the guidance and instruction provided in the regulations, interpretive guidance found in Appendix PP of the State Operations Manual (SOM), the critical element pathways, and the FIC survey protocol for the applicable concern areas. All of these documents can be found in the survey resource folder on CMS.gov using the following link: <https://www.cms.gov/medicare/provider-enrollment-and-certification/guidanceforlawsandregulations/nursing-homes>.

In addition to providing specific guidance related to the areas of concern, the Federal Surveyor will provide support for any other survey topic that may arise. To ensure both the effectiveness and efficiency of the survey, the Federal Surveyor will ensure the SA follows the guidance in the LTCSP Procedure Guide. The Federal Surveyor will be present for as much of the State survey as necessary and should remain on site to assist with decision making.

Following the state's compliance decisions, the Federal Surveyor should recap the significant learning opportunities that were discussed with team members during the survey. The RSS will heavily focus on specific concern areas, but are not solely limited to these topics. The Federal Surveyor will serve as an advisor for any survey topic that may arise, but will focus their RSS activities on the identified areas of concern as well as how the SA followed the LTCSP Procedure Guide and/or the FIC survey protocol (see link above). The RSS and FCS, along with FICs and complaints, will comprise approximately 80% of the CMS Locations' FMS survey activities for FY2021.

A LSC Emergency Preparedness RSS will occur in one of two situations: in states where the State LSC surveyor is responsible for completing the LSC and EP portions of the survey or when the Federal LSC surveyor is on site at the time the State Health surveyor is completing the EP portion of the survey. Generally, in states where the State Health surveyors conduct the EP survey, the Federal Health surveyor will provide guidance and support for the EP process to the state during the RSS. If the Federal LSC Surveyor is onsite at the same time as a SA Health Surveyor evaluating the E tags, the Federal LSC Surveyor will accompany the SA Health Surveyor for that portion only. During the LSC RSS, if there are multiple State Surveyors conducting the LSC and EP surveys, the Federal Surveyor will accompany different members of the SA LSC team when new K and E tags are being evaluated. The Federal Surveyor should discuss the findings and assist in applying the given facts to the regulatory requirements. The Federal Surveyor will base the guidance and instruction provided in the regulations, interpretive guidance found in Appendix I and Appendix Z of the State Operations Manual (SOM). All of these documents can be found in the survey resource folder on CMS.gov using the following link: <https://www.cms.gov/medicare/provider-enrollment-and-certification/guidanceforlawsandregulations/LSC>.

Feedback to the SA

Following completion of the survey, the Federal Surveyor will complete the FMS health RSS worksheet or LSC RSS worksheet to document the survey findings and guidance provided during the survey. This document is intended to be a learning tool to communicate survey related guidance to all surveyors within the state and should be completed and sent to the state within 20 working days of the survey end date. There is no scoring of survey teams nor evaluations of survey performance that will be provided during the RSS. Each CMS location is responsible for storing these reports and ensuring they are easily accessible if requested.

Focused Concern Surveys

Due to the Public Health Emergency (PHE), CMS and the State Agencies have been focused primarily on Federal Infection Control Surveys since March 2020. As a result, FCS' can be conducted throughout FY2021. These surveys still need to be conducted within 30 working days of the state survey end dates, but no more than 60 calendar days for the purpose of monitoring State survey agency performance. Note: If there are not enough facilities in the last 30 days that meet the criteria for survey selection, Federal Surveyors may select facilities that have been surveyed within the last 60 days to expand the pool of facilities to potentially select).

The surveys selected for FCS can be focused infection control surveys, annual recertification surveys or complaint surveys. Federal Surveyors should strive to complete two surveys during a survey week, when possible. We recognize that some CMS Locations will not be able to conduct two FCS in a week due to the distance between facility locations. When and if, States have

transitioned to more routine oversight and survey activities beyond the current survey prioritization (Immediate Jeopardy, Focused Infection Control, and Initial Certification surveys), each FCS must include at least two of the three identified concern areas for a given state. Moreover, while it may not be feasible, every effort should be made so that each of the three concern areas are investigated on at least 50% of the surveys conducted.

During these surveys, the Federal Surveyor will independently investigate the areas of concern by following the investigative protocols in Appendix PP of the State Operations Manual (SOM), FIC survey protocol and the critical element pathways for the applicable concern areas. The survey sample used will be 60% of the state survey sample of residents who were investigated for the concern area (or LTCSP Care Area), but will not exceed five residents per care area. The Federal Surveyor will look at the state findings in ASPEN Regional Office (ARO) that identify the residents and concerns for those residents. These reports are available in ARO in the alpha tab. Following completion of the investigation, the surveyor will then make compliance decisions related to these areas of focus and exit with the facility administrator and other staff that the facility wishes to include. The evidence supporting non-compliance will be shared with the facility. The facility will be notified at exit if any of the Federal findings have been determined to be Substandard Quality of Care (SQC), Harm, Immediate Jeopardy (IJ) and/or severity Level 2 at F880, F882, F885, and F886.

Per QSOG-20-31, due to the heightened threat to resident health and safety for even low-level, isolated infection control citations (such as proper hand-washing and use of personal protective equipment (PPE)), substantial noncompliance (D or above) with any deficiency associated with Infection Control requirements will be surveys of record and a Form CMS 2567 will need to be created.

For Nutrition/Hydration – Weight Loss (F692 and F693) and Resident’s Rights - Visitation Rights (F563 and F564), a 2567 will only be drafted if noncompliance was identified by the Federal Surveyor at the IJ, Harm or SQC level and was not identified by the state agency at that level of severity and scope. Independent, but associated, tags that are not at the SQC or higher level may be included if required to address the full breadth of facility noncompliance at the discretion of the Federal Surveyor. While no Form CMS 2567 will be issued for non-SQC or lower findings for these areas, sufficient information will be provided to the facility so that they can correct the deficiencies. The Federal Surveyor will follow the guidance in Appendix Q for any situations of suspected IJ.

Identify Noncompliance	Draft 2567
Noncompliance at non-SQC for Nutrition/Hydration – Weight Loss and Resident’s Rights - Visitation Rights	No
Noncompliance (D or above) at F880, F882, F885, and F886	Yes
Noncompliance cited at level 4 and SA cited at level 3	Yes
Noncompliance cited at Level 3 and SA cited at level 2	Yes

If SQC is discovered while conducting an FCS, the Federal surveyor will notify the NH administrator of the SQC and next steps during the exit conference. In addition, the Federal surveyor will immediately notify the SA that it needs to complete a partial extended survey and any revisits needed for the FCS. The partial extended survey should be conducted immediately

after the survey, but, if delayed, no later than 14 calendar days after completion of the abbreviated FCS survey which found that the facility had SQC. The CMS Location will inform the SA of the survey shell event ID. The SA surveyor conducting the partial extended survey will then need to be added to the survey shell as a team member by the SA in order to initiate the partial extended survey.

In addition to writing the Form CMS 2567 for any SQC, Harm, IJ or Noncompliance (D or above) at F880, F882, F885, and F886 not identified by the SA, the Federal surveyor will complete a survey scoring sheet following each FCS survey that gives a rating of “Met”, “Partially Met” or “Not Met” for each of the concern areas investigated. This scoring sheet should be sent to the SA within 30 working days of the survey end date. A score of “Met” will be given when the state properly identifies noncompliance and the associated harm level, noncompliance at F880, F882, F885, and F886 (level two) or the noncompliance that was missed by the state was “No actual harm with a potential for minimal harm” (level one).

A score of “Partially Met” will be given when the state fails to identify noncompliance or misidentifies the level of harm for noncompliance for “No actual harm with a potential for more than minimal harm, but not immediate jeopardy” (level two). A score of “Not Met” will be given when a state fails to identify “Actual Harm that is not immediate jeopardy” (level three), “immediate jeopardy (level four) or Substandard Quality of Care.

A score of “Partially Met” will be given when the SA identifies noncompliance but determines a level of harm that is not supported by the evidence available. After receipt of the Focused Concern Survey report, the State will have 30 working days to appeal findings of “Not Met” or “Partially Met.” The CMS Location that conducted the survey will address these appeals.

Met	Partially Met	Not Met
<p>SA properly ID noncompliance and severity Level</p> <p>Or</p> <p>SA missed noncompliance at Level 1</p> <p>Or</p> <p>SA properly ID noncompliance at F880, F882, F885, and F886 (Level 2)</p>	<p>SA failed to ID accurate severity Level</p> <p>Or</p> <p>SA failed to provide evidence to support a Level of harm</p>	<p>SA failed to ID noncompliance at:</p> <ul style="list-style-type: none"> • SQC • F880, F882, F885, and F886 (Level 2) • Level 3 • Level 4

Survey selection

When determining survey selection for both RSS and FCS’, States should prioritize providers based on those with a history of noncompliance, or allegations of noncompliance (e.g. Infection control; Nutrition/Hydration; Resident’s Rights; or Other quality of care issues (e.g., falls, pressure ulcers, etc.)). Surveys selected may also be based on complaints related to one or more of the selected concern areas, media attention, or other justification. **For RSS’ only**, the Federal Health Surveyor will work collaboratively with the SA to identify surveys and surveyors that will provide good training opportunities.

The Federal LSC Surveyor will work collaboratively with the SA to identify surveys and surveyors that will provide good training opportunities when choosing for a LSC RSS.

Enforcement

If a Form CMS-2567 is required, the CMS Location will take appropriate enforcement action based on the survey findings. The CMS Location will evaluate the findings and impose federal remedies according to current enforcement protocols. Additionally, loss of the Nurse Aide Training and Competence Evaluation Program (NATCEP) will occur when SQC is identified during a FCS.

Contact: Please contact your CMS Location Management team with any questions.

Effective Date: Immediately. This policy should be communicated with all Survey Operations Group (SOG) staff, their managers and the State/CMS Location Office.

/s/
Karen L. Tritz

Attachment - FY2021 FMS REVISED CMS Location Numbers Only

cc: Survey Operations Group – CMS Locations
Quality, Safety & Oversight Group- Division of Nursing Homes

Nursing Home Statutory Background:

LTC FMS' to be performed by each CMS Location during fiscal year in order to meet the statutory requirement of Section 1819(g)(3)(B) of the Social Security Act, requires FMS' of **"...at least 5 percent of the number of skilled nursing facilities surveyed by the State in the year, but in no case less than 5..."**

as Medicare's definition of "State" includes Puerto Rico and the Virgin Islands. Section 1919(g)(3)(B) of the Act requires similar performance of validation surveys for nursing facilities. Nursing home validation surveys include health, life safety code (LSC), and emergency preparedness (EP) surveys.

Eligible Nursing Home Health FMS Surveys Include

Continuing to follow Resource Support Survey (RSS) and Focused Concern Survey (FCS) Processes

Focus Areas: Infection Control, Visitation, Weight Loss

Due to the Public Health Emergency (PHE), CMS and the State Agencies have been focused primarily on Focused Infection Control Surveys since March 2020. Therefore, given all of the training and support for infection control, for FY2021, Resource and Support Surveys (RSS) and Focused Concern Surveys (FCS) can be conducted throughout the fiscal year.

Following each FMS Survey, Complete Worksheet and save. Each CMS location is responsible for storing and ensuring they are easily accessible if requested.

Additional info: <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Admin-Info-18-06.pdf>

Eligible LTC Comparative Surveys

These include 60-Day Look behind surveys of recertification surveys. This will be based on when a state is resuming its recertification surveys. Any exceptions to the 20% target for comparative surveys due to a state not resuming recertifications would be handled on a case-by-case basis.

FY 2021 FMS REVISED CMS Location Numbers Only

STATE	TOTAL Nursing Home FMS 5%	RSS and FCS (80% of FMS)	Comparatives (20%)
CT	10	8	2
ME	5	4	1
MA	18	14	4
NH	5	4	1
RI	5	4	1
VT	5	4	1
<u>Boston</u>	48	38	10
NJ	18	14	4
NY	23	18	5
RQ	5	4	1
VI	0	0	0
<u>New York</u>	46	36	10
DE	5	4	1
DC	5	4	1
MD	8	6	2
PA	35	28	7
VA	11	9	2
WV	5	4	1
<u>Philadelphia</u>	69	55	14

Key

Increase
Decrease

STATE	TOTAL Nursing Home FMS 5%	RSS and FCS (80% of FMS)	Comparatives (20%)
AL	10	8	2
FL	31	25	6
GA	12	10	2
KY	13	10	3
MS	10	8	2
NC	21	17	4
SC	8	6	2
TN	17	14	3
Atlanta	122	98	24
IL	37	30	7
IN	28	22	6
MI	22	18	4
MN	19	15	4
OH	44	35	9
WI	17	14	3
Chicago	167	134	33
AR	12	10	2
LA	14	11	3
NM	5	4	1
OK	13	10	3
TX	63	50	13
Dallas	107	85	22

Key

Increase

Decrease

STATE	TOTAL Nursing Home FMS 5%	RSS and FCS (80% of FMS)	Comparatives (20%)
IA	18	14	4
KS	17	14	3
MO	27	22	5
NE	7	6	1
<u>Kansas City</u>	<u>69</u>	<u>56</u>	<u>13</u>
CO	11	9	2
MT	5	4	1
ND	5	4	1
SD	5	4	1
UT	5	4	1
WY	5	4	1
<u>Denver</u>	<u>36</u>	<u>29</u>	<u>7</u>
AZ	6	5	1
CA	61	49	12
HI	5	4	1
NV	5	4	1
<u>San Francisco</u>	<u>77</u>	<u>62</u>	<u>15</u>
AK	5	4	1
ID	5	4	1
OR	5	4	1
WA	10	8	2
<u>Seattle</u>	<u>25</u>	<u>20</u>	<u>5</u>
TOTAL	<u>766</u>	<u>613</u>	<u>153</u>

Key

Increase
Decrease

STATE	TOTAL Nursing Home FMS 5%	FOSS (40% of FMS)	Comparative (60%)
CT	10	4	6
ME	5	2	3
MA	18	7	11
NH	5	2	3
RI	5	2	3
VT	5	2	3
<u>Boston</u>	<u>48</u>	<u>19</u>	<u>29</u>
NJ	18	7	11
NY	23	9	14
RQ	5	2	3
VI	0	0	0
<u>New York</u>	<u>46</u>	<u>18</u>	<u>28</u>
DE	5	2	3
DC	5	2	3
MD	8	3	5
PA	35	14	21
VA	11	4	7
WV	5	2	3
<u>Philadelphia</u>	<u>69</u>	<u>27</u>	<u>42</u>
AL	10	4	6
FL	31	12	19
GA	12	5	7
KY	13	5	8

Key

Increase

Decrease

STATE	TOTAL Nursing Home FMS 5%	FOSS (40% of FMS)	Comparative (60%)
MS	10	4	6
NC	21	8	13
SC	8	3	5
TN	17	7	10
<u>Atlanta</u>	<u>122</u>	<u>48</u>	<u>74</u>
IL	37	15	22
IN	28	11	17
MI	22	9	13
MN	19	8	11
OH	44	17	27
WI	17	7	10
<u>Chicago</u>	<u>167</u>	<u>67</u>	<u>100</u>
AR	12	5	7
LA	14	6	8
NM	5	2	3
OK	13	5	8
TX	63	25	38
<u>Dallas</u>	<u>107</u>	<u>43</u>	<u>64</u>
IA	18	7	11
KS	17	7	10
MO	27	11	16
NE	7	3	4
<u>Kansas City</u>	<u>69</u>	<u>28</u>	<u>41</u>
CO	11	4	7
MT	5	2	3

Key

Increase
Decrease

STATE	TOTAL Nursing Home FMS 5%	FOSS (40% of FMS)	Comparative (60%)
ND	5	2	3
SD	5	2	3
UT	5	2	3
WY	5	2	3
<u>Denver</u>	<u>36</u>	<u>14</u>	<u>22</u>
AZ	6	2	4
CA	61	24	37
HI	5	2	3
NV	5	2	3
<u>San Francisco</u>	<u>77</u>	<u>30</u>	<u>47</u>
AK	5	2	3
ID	5	2	3
OR	5	2	3
WA	10	4	6
<u>Seattle</u>	<u>25</u>	<u>10</u>	<u>15</u>
TOTAL	<u>766</u>	<u>304</u>	<u>462</u>

Key
 Increase
 Decrease