DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop C2-21-16
Baltimore, Maryland 21244-1850

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

Ref: QSO-23-10-NH

DATE: March 30, 2023

TO: State Survey Agency Directors

FROM: Directors, Quality, Safety & Oversight Group (QSOG) and Survey & Operations Group (SOG)

SUBJECT: Strengthened Enhanced Enforcement for Infection Control Deficiencies and Quality Improvement Activities in Nursing Homes

Memorandum Summary

- **CMS has rescinded** memorandum QSO-20-31-ALL, the Enhanced Enforcement for Infection Control Deficiencies, and replaced it with memorandum QSO-23-10-NH, revised guidance for Strengthened Enhanced Enforcement for Infection Control Deficiencies. This revised guidance strengthens enforcement efforts for noncompliance with infection control deficiencies. The enhanced enforcement actions are more stringent for infection control deficiencies that result in actual harm or immediate jeopardy to residents. In addition, the criteria for enhanced enforcement on infection control deficiencies that result in no resident harm has been expanded to include enforcement on noncompliance with Infection Prevention and Control (F880) combined with COVID-19 Vaccine Immunization Requirements for Residents and Staff (F887).
- **CMS is providing guidance** to the State Survey Agencies and CMS locations on handling enforcement cases before and after the revisions of Enhanced Enforcement for Infection Control Deficiencies.
- **Quality Improvement Organizations** have been strategically refocused to assist nursing homes in combating COVID-19 through such efforts as education and training, creating action plans based on infection control problem areas, and recommending steps to establish a strong infection control and surveillance program.

Background

On June 1, 2020, CMS issued a memorandum QSO-20-31-ALL, which implemented enhanced enforcement remedies for noncompliance with Infection Control to provide greater accountability and consequence for failure to meet Federal nursing home requirements at 42 CFR §483.80, Infection Prevention and Control (F880) during the height of the COVID-19 pandemic. This was done to reinforce the importance of implementing the appropriate

infection control actions based on the national standards for reducing the spread of infection, particularly COVID-19. Standard infection prevention and control practices apply to all nursing home residents, regardless of the presence of COVID-19 suspected or confirmed cases. These routine practices help protect the health and safety of the residents by preventing and stopping the spread of infections.

On May 11, 2021, CMS issued a memorandum QSO-21-19-NH that noted an interim final rule that established long-term care facility vaccine immunization requirements for educating residents or resident representatives and staff regarding the benefits and potential side effects associated with the COVID-19 vaccine and for offering the vaccine at 42 CFR §483.80(d)(3). Facilities' compliance with this requirement ensures residents or resident representatives and their staff are appropriately educated on how COVID-19 vaccinations help protect against severe illness or death. We believe a facility's failure to educate about and offer the COVID-19 vaccine to vulnerable, high-risk nursing home residents or resident representatives and staff, combined with improper infection control and prevention practices, increases a resident's risk for poorer outcomes.

The enhanced enforcement policy was implemented relatively early in the COVID-19 public health emergency (PHE) and before the availability of COVID-19 vaccines, which remain the strongest tool against COVID-19. Recognizing this, CMS has continued to reelevate guidance to ensure it reflects the current COVID-19 landscape. Therefore, CMS is strengthening the enhanced enforcement for infection control policy to target facilities with or at risk for the most significant negative resident health outcomes by taking more aggressive enforcement actions. These changes include increased civil money penalties, a shortened time period for facilities to demonstrate compliance prior to the effectuation of discretionary denial of payment for new admissions remedy, and stronger directed plans of correction. Enhanced enforcement will be applied to higher-level infection control deficiencies that cause harm, serious harm, or the likelihood of serious harm. Additionally, enforcement actions will be imposed on facilities when they are concurrently cited for noncompliance with Infection Control (F880) and COVID-19 Vaccine Immunization Requirements for Residents and Staff (F887) at a level that causes no actual harm, but with the potential for more than minimal harm to residents.

Guidance

Revised Enhanced Enforcement for Infection Control Deficiencies

Non-compliance with deficiencies associated with Infection Control requirements will lead to the following enforcement remedies:

Non-compliance with both Infection Prevention and Control (F880) concurrent with COVID-19 Vaccine Immunization Requirements for Residents Staff (F887) requirements cited at Scope and Severity (S/S) Level 2 – i.e., D, E, F (No Actual Harm with Potential for More Than Minimal Harm):

- Directed Plan of Correction that includes Root Cause Analyses and working with a Quality Improvement Organization or another qualified consultant; and
- Discretionary Denial of Payment for New Admissions with a 30-day notice period to achieve substantial compliance.
- Enhanced Enforcement of F880 at S/S Level 2 is applicable when F887 is also cited at any level. Additional remedies may apply if F887 is cited at S/S Level 3 or 4, as per normal enforcement policy outlined in Chapter 7 of the State Operations Manual.

Non-compliance for Infection Prevention and Control (F880) cited at S/S Level 3 – i.e., G, H, I (Actual Harm):

- Directed Plan of Correction that includes Root Cause Analyses and working with a Quality Improvement Organization or hiring an Infection Control Consultant to develop and implement a corrective action plan; and
- Discretionary Denial of Payment for New Admissions with a 15-day notice period to achieve substantial compliance; and
- Civil Money Penalty imposed according to the CMP Analytic Tool with a ten percent increase adjustment.

Non-compliance for Infection Prevention and Control (F880) at S/S Level 4 – i.e., J, K, L (Immediate Jeopardy):

- Directed Plan of Correction that includes Root Cause Analyses and working with a Quality Improvement Organization or hiring an Infection Control Consultant to develop and implement a corrective action plan; and
- Discretionary Denial of Payment for New Admissions with a 15-day notice period to achieve substantial compliance; and
- Civil Money Penalty imposed according to the CMP Analytic Tool with a twenty percent increase adjustment.

Enforcement Cases

Enforcement cases with a survey cycle start date before the effective date of this memo with deficiencies associated with Infection Prevention and Control requirements at F880 will be subject to the enforcement remedies as previously outlined in QSO-20-31-All. In addition, enforcement cases with a survey cycle start date before the effective date of this memo, with pending enforcement action(s) as a result of enhanced enforcement at F880, will continue to be subject to the enforcement remedies previously outlined in QSO-20-31-All.

The strengthened Enhanced Enforcement for Infection Control deficiencies guidance outlined above will apply to any enforcement cases with a survey cycle start date on or after the effective date of this memo.

Quality Improvement Organization Support

While we have taken these important actions at a regulatory level, we have also strategically refocused the Quality Improvement Organizations (QIO) approach to assist in combating commutable disease infections within these facilities.

In November 2019, CMS took a major step toward improving quality for Medicare beneficiaries in nursing homes as well as rural and underserved communities by awarding contracts to 12 experienced, community-based organizations to serve as QIOs and focus on areas of immediate need as well as urgent healthcare priorities. With varying degrees of intensity, QIOs provide education and training to every nursing home in the country. All nursing homes across the country can take advantage of weekly National Infection Control Training that focuses on all aspects of infection control, prevention, and management to help nursing homes prevent infections in facilities and keep residents safe. Additionally, as part of their ongoing work, the QIOs provide more direct assistance to around 6,000 small, rural nursing homes and those serving vulnerable populations in areas where access to care is limited by helping them understand and comply with CMS and CDC reporting requirements, sharing best practices related to infection control, testing, and patient transfers.

Lastly, the QIOs are being deployed to provide technical assistance to nursing homes, including a targeted focus on approximately 3,000 low-performing nursing homes with a history of infection control challenges. Further, States may request QIO technical assistance specifically targeted to nursing homes that have experienced an outbreak. These requests are managed by the division responsible for the QIO program and should be sent to Colleen Frey, Acting Division Director, at colleen.frey@cms.hhs.gov. The QIOs help nursing homes identify their greatest infection control challenges, create action plans, and implement specific steps to establish a strong infection control and surveillance program in the nursing home. For instance, they train staff on the proper use of personal protective equipment (PPE), cohorting residents appropriately, and transferring residents safely. They monitor compliance with infection control standards and practices in the nursing home.

Nursing homes can locate the QIO responsible for their state here: http://www.qioprogram.org/locate-your-qio.

Contact:
Questions about Long-term care facility enforcement should be addressed to: DNH_Enforcement@cms.hhs.gov.

Effective Date: Effective immediately. This policy should be communicated to all CMS locations, State Survey Agency survey and certification staff, their managers, and the State/Regional Office training coordinators immediately.

/s/

Karen L. Tritz
Director, Survey & Operations Group

David R. Wright
Director, Quality, Safety & Oversight Group

CC: Survey and Operations Group Management
Centers for Clinical Standards and Quality (CCSQ)