

# **THE FEDERAL NURSING HOME SURVEY AND REGULATION PROCESS**

**Prepared for the U.S. Senate Special Committee on-Aging**

**July 28, 1998**

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In response to a request by Congress, the Institute of Medicine completed a study entitled Improving the Quality of Care in Nursing Homes in 1986. The Institute of Medicine report recommended major changes in the resident assessment process, the federal standards and the survey process for nursing homes certified by Medicare and Medicaid, and in the federal enforcement process. The recommendations were the basis for the formation of a broad coalition of consumer advocates and industry representatives that supported the Nursing Home Reform Act, which was passed by Congress in OBRA 1987. The Nursing Home Reform Act had five major components: (1) resident rights, quality of life, and quality of care; (2) staffing and services; (3) resident assessment, (4) federal standards and survey procedures, and (5) enforcement procedures.

The Act placed a new focus on resident rights. These include, such areas as: being free from physical and mental abuse; being free from physical and chemical restraints; and right to privacy; and a right to voice grievances. The Act also placed a new focus on quality of life and quality of care. It specified that facilities must care for residents in a manner and an environment that promotes the maintenance and enhancement of quality of life. Facilities also must provide services so that each resident will attain or maintain the highest practicable physical, mental, and psychosocial well-being.

The Act also recognized the importance of staff and services. The Act increased the RN minimum staffing requirements to 1 RN Director of Nursing, 1 RN 8 hours per day seven days a week (who could also be the Director of Nursing), and 1 licensed nurse (RN or LVN/LPN) on 24 hours per day. Overall, facilities were required to provide sufficient staff to provide adequate care. The Act specifies the minimum services that nursing homes must provide. These include: nursing services and specialized rehabilitation, social services, pharmaceutical services, dietary services, an on-going activities program, and dental services. The Act also made a major step forward in setting minimum training standards for nursing assistants. These include not less than 75 hours of training and nursing assistants must pass a competency evaluation before they can become a regular employee and they must attend regular in-service education.

One of the most important components of the Act was the new Resident Assessment requirements. The Act required that facilities must complete a resident assessment on each resident. Such assessments were to be comprehensive and follow a standardized and uniform format, and they had to be completed and signed by RN. The facilities were also required to complete and implement an individualized care plan for each resident. After the Act was passed, HCFA contracted with the Research Triangle Institute to develop a resident assessment system that used a Minimum Data Set (MDS) in 1990. The MDS was developed an eight page form for the resident assessment, along with detailed guidelines for completing the assessment and special guidelines for special resident problems that were identified. The components of the MDS include: background information, cognitive patterns, communication and hearing, mood and behavior, physical functioning, and other components. Facilities must complete the MDS for each resident within 14 days of admission and annually. In addition they are required to review the MDS for every resident each quarter and to complete a new MDS whenever there is any significant change in the resident's condition.

The MDS has been tested and found to have high reliability and validity and it generally is recognized has having made a major contribution to improving the resident assessments and care provided by

nursing facilities. Congress required facilities to submit the resident assessment data to the state survey agencies in an electronic form after July 1988.

HCFA developed a contract with the University of Wisconsin to develop and test Quality Indicators using the MDS data. A set of 30 Quality Indicators have been developed which include: accidents, behavioral/emotional problems, clinical problems, cognitive problems, elimination and continence problems, infection, nutrition, physical functioning, psychotropic drugs, quality of life, sensory/communication problems, and skin care. These QIs can be used by facilities to monitor quality of care and by state survey agencies to: (1) identify residents that should be reviewed during the survey process and (2) to identify potential problem facilities.

The Nursing Home Reform Act also made major changes in the survey process. This includes conducting regular surveys of facilities about every 9-15 months and after any change of ownership. In addition, state agencies must investigate complaints about facilities and monitor facility compliance with the regulations. Surveys must be unannounced and must include registered nurses as surveyors. The state surveyors must not have conflicts of interest with the facilities they survey and they must have comprehensive training. The findings from the survey process must be made available to the public and posted in the facility.

HCFA established detailed survey procedures which are published as transmittal letters. There are two types surveys: (1) standard surveys that include a casemix stratified sample of residents to examine indicators of medical, nursing, rehabilitative care, dietary, activities, sanitation, infection control and physical environment. There are about 185 separate standards that facilities must meet (excluding the life safety requirements). The extended surveys are those facilities are found to be providing substandard care under the standard survey. The extended survey uses an expanded sample of residents in the facility to identify the causes of substandard care.

The survey process is detailed by HCFA and includes: (1) offsite survey preparation; (2) an entrance conference and on-site preparation; (3) a tour of the facility; (4) the sample selection; (5) information gathering which includes observation, interviews of residents and family members, record reviews, and interviews of the resident council; (6) the deficiency determination process; (7) exit conference; (8) writing the statement of deficiencies; (9) categorizing the deficiencies; and (10) the post survey process and follow-up.

HCFA also released detailed enforcement regulations and procedures that were effective in July 1995. These procedures require surveyors to categorize deficiencies by severity at four levels: (1) no actual harm with a potential for minimal harm; (2) no actual harm but a potential for more than minimal harm; (3) actual harm that is not immediate jeopardy; and (4) immediate jeopardy to resident health and safety. The scope of deficiencies are categorized as: (1) isolated, (2) a consistent pattern; and (3) widespread.

HCFA has states that if a facilities immediately jeopardizes the health or safety of residents, the Secretary shall take immediate action to remove the jeopardy and correct the deficiencies through specified remedies such as temporary management or terminate the facility's participation in Medicare and Medicaid. If the facility does not jeopardize the health and safety of residents, then other remedies may be imposed. These include: denial of Medicare and Medicaid payments for all residents or newly admitted residents, civil money penalties (up to \$10,000), transfer of residents, state monitoring, a directed plan of correction and other remedies.

In addition, HCFA imposed an informal dispute resolution process where facilities have the opportunity to meet with state officials regarding the deficiencies but this is not to delay the imposition of remedies.

This process is not a requirement of OBRA 1987. HCFA has a formal hearing process which allows for hearing for civil money penalties.

In summary, Congress made a major step forward in enacting the Nursing Home Reform Act. It includes many important new protections for consumers and established a sound basis for improving the (1) standards for nursing facilities, (2) the survey process, and (3) the enforcement process.

## **OBRA 1987 - NURSING HOME REFORM ACT**

### **NEW FOCUS ON RESIDENT RIGHTS**

- Choice of physician and treatment
- Free from physical and mental abuse
- Right to privacy and treatment with dignity
- Right to have confidential records
- Right to have needs and preferences met
- Right to voice grievances
- Right to appropriate transfer and discharge

### **NEW FOCUS ON QUALITY OF LIFE**

**Facilities must care for residents in a manner and an environment that promotes, maintains, or enhances quality of life.**

### **NEW FOCUS ON QUALITY OF CARE**

**Facilities must provide services so that each resident will attain or maintain the highest practicable physical, mental, and psychosocial well-being**

### **REQUIREMENTS FOR BASIC SERVICES AND ACTIVITIES**

- Nursing services
  - 1 RN Director of Nursing
  - 1 RN 8 hours per day 7 days per week (maybe the same as the DON)
  - 1 Licensed nurse 24 hours per day
  - Nursing assistants must have 75 hours of training and pass a competency exam
  - Staffing must be sufficient to provide adequate care
- Specialized rehabilitation
- Social services
- Pharmaceutical services
- Dietary services
- On-going activities program
- Dental services

## **OBRA 1987 -- RESIDENT ASSESSMENT REQUIREMENTS**

### **FACILITIES MUST COMPLETE RESIDENTS ASSESSMENTS FOR EACH RESIDENT THAT ARE**

- Must be comprehensive and accurate

- Must use a standardized format
- Must be conducted by a RN

## **HCFA REQUIREMENTS FOR A MINIMUM DATA SET (MDS) FOR EACH RESIDENT**

Completed within 14 days of admission Reviewed every quarter Completed when any significant change occurs Completed annually Use of a multi-disciplinary team Completion of resident assessment protocols (RAPS) for special problems

## **THE MINIMUM DATA SET INCLUDES**

- Background information
- Oral and nutritional status
- Cognitive patterns
- Skin Conditions
- Communication and hearing
- Activity patterns
- Mood and Behavior
- Medications
- Physical functioning
- Treatments and procedures
- Continence Disease diagnosis
- Discharge potential
- Health conditions

## **QUALITY INDICATORS DEVELOPED FROM MDS DATA**

- Accidents
- Nutrition
- Behavioral and emotional
- Physical functioning
- Clinical
- Psychotropic drugs
- Cognitive
- Quality of life
- Elimination and continen
- Sensory and communication
- Infection
- Skin care

## **USES OF QUALITY INDICATORS**

- Facilities can monitor & improve their own care
- Surveyors can identify residents to review during the survey process
- Surveyors can identify potential problem facilities for targeted surveys

## **OBRA 1987 -- STATE AGENCY SURVEY PROCESS FREQUENCY AND BASIC REQUIREMENTS FOR SURVEYS**

- Be conducted between 9 months to 15 months

- Be conducted within 2 months of any change in ownership, administration or management
- Must be unannounced in advance
- Must use teams with registered nurses
- Surveyors must not have conflicts of interest and must have comprehensive training
- Must investigate complaints and monitor facility compliance
- Must disclose survey findings to the public

**TYPES OF FACILITY SURVEYS** **Standard Survey** Includes a casemix stratified sample of residents to examine indicators of medical, nursing, rehabilitative care, dietary, nutrition, activities, sanitation, infection control and physical environment.

Extended Survey

Uses an expanded sample of residents in facilities which were found to have substandard care under the standard survey and is designed to review and identify the casemix of substandard care.

## **STATE SURVEY PROCESS FOR FACILITIES**

### **Task 1: Offsite Survey Preparation**

- Identify areas of concern
- Identify residents for sample
- Identify special survey team needs

### **Task 2: Entrance Conference/ On-Site Preparation**

- Confirm special resident populations
- Asks for information about the facility

### **Task 3: Initial tour of the facility**

### **Task 4: Sample Selection of Residents**

(about 12 residents for each 100 beds) Should include:

- Heavy care and light care residents
- Interviewable and non-interviewable
- Special problems
- New admissions
- Under age 55
- Other

### **Task 5: Information Gathering**

- Observations of the facility and residents
- Informal and formal interviews of residents
- Resident record reviews
- Group interviews of resident council members

- Interviews of family members and friends

**Task 6: Information Analysis for Deficiency Determination**

- Review and analyze all information to determine whether the facility has failed to meet 1 or more requirements
- Determine whether to conduct an extended survey

**Task 7: Exit Conference**

**Task 8: Writing the Statement of Deficiencies**

**Task 9: Deficiency Categorization**

**Task 10: Post Survey Revisit and/or Follow-up**