



Center for Clinical Standards and Quality /Survey & Certification

Ref: S&C: 14-02-ALL

DATE: October 1, 2013

TO: State Survey Agency Directors

FROM: Director
Survey and Certification Group

SUBJECT: Contingency Plans – State Survey & Certification Activities in the Event of Federal Government Shutdown

Memorandum Summary

Pursuant to the federal government shutdown, we are doing our utmost to:

- Protect Medicare and Medicaid beneficiaries against immediate dangers to life and health, and
- Prevent providers and suppliers from experiencing harm that would threaten their ability to provide healthcare services that are vital to Medicare and Medicaid beneficiaries.

In this memorandum we identify functions that (a) are not affected by a shutdown, (b) essential functions that are to be continued in the event of a shutdown, and (c) other functions that are directly affected and therefore should not be operational during a shutdown.

The following guidance is intended to enable certain essential survey & certification functions by State survey agencies (SAs) during the federal government shutdown.

A. Medicare S&C Programs Not Affected by a Federal Government Shutdown

1. ***CLIA - Clinical Laboratory Improvement Amendments:*** CLIA survey & certification functions are provided through user fees and are not affected by the federal government shutdown.
2. ***Background Check National Program:*** Neither federal nor State background check program activities are affected by the federal government shutdown, as these functions have been funded separately from the annual appropriations process.
3. ***CMS Vendor Contracts Awarded Prior to October 1, 2013:*** CMS contracts with vendors for a variety of functions, such as critical communications infrastructure and performance of onsite nursing home or organ transplant center surveys. Performance under contracts awarded prior to October 1, 2013 with FY2013 funds, including any

commitments for an option year to an existing contract, will not be impacted by the shutdown even though work will be done in FY2014. However, if a contractor's current contract funding expires and/or the option period is not exercised, the contractor should stop work in accordance with their contract terms and conditions. Should this situation change, a CMS Contracting Officer will advise the contractor as soon as possible. Due to the furlough status of government personnel, the Contracting Officer may be different from the individual assigned to the respective contract(s).

B. Essential Medicare Contingency Plans

We consider the following State S&C Medicare activities to be essential and should be continued during a federal government shutdown to ensure basic public protections, subject to the terms outlined below. CMS has been authorized to incur obligations up to an aggregate \$8.6 million in Medicare funds covering initial S&C activities up to the first 3-4 weeks of the fiscal year. Specific amounts under this authorization for each State are listed in the Appendix to this memorandum.

1. ***Complaint Investigations Alleging Harm:*** Complaints that are triaged as credible allegations of immediate jeopardy (IJ) or harm to an individual should continue to be assessed and investigated according to standard CMS protocols except that, for the duration of any federal government shutdown, it is not necessary for State survey agencies to obtain prior CMS Regional Office approval to conduct a complaint investigation for a deemed hospital (RO approval is normally required only for complaint investigations in deemed hospitals).
2. ***Certain Federal Enforcement Actions:*** Enforcement actions that result from complaint investigations noted in the above paragraph should continue to be performed if the complaints are substantiated with a finding of immediate jeopardy or actual harm, including continued action by the infrastructure necessary to communicate and complete the enforcement, such as placement of a temporary manager or onsite monitor in a nursing home. Requests for federal approval necessary for federal Medicare enforcement actions should be directed to the federal contact noted at the end of this memorandum.
3. ***Revisit Surveys Approved by Exception and Necessary to Prevent Termination:*** State survey agencies may request approval to conduct a revisit when:
 - (a) A provider or supplier has alleged compliance with CMS requirements (pursuant to a prior determination of noncompliance) and
 - (b) The revisit survey is necessary to determine compliance and prevent the scheduled Medicare termination of a provider or supplier, and
 - (c) The Medicare termination is likely to threaten the safety of human life, such as by creating access to care or other serious, immediate, and negative consequences for Medicare beneficiaries.

Requests for any such exception should be sent to the federal contact noted at the end of this memorandum, except that CLIA revisits should follow normal CMS protocols.

4. ***Immediate Threats to Life or Safety***: State SAs should take action to prevent or mitigate any other immediate threats to the life or safety of a beneficiary even if the situation does not fit into any of the preceding categories, such as survey & certification activities that may be necessary during a declared public health emergency to prevent injury or harm to beneficiaries.
5. ***Orderly Shutdown of Other Tasks***: State SAs may complete other tasks begun prior to October 1, 2013 if such completion is necessary to ensure an orderly shutdown, provided that the tasks can be accomplished within four hours of CMS notification to the State SA of a federal shutdown (such as completing the upload of completed surveys to the ASPEN information system). Note that surveys completed before the federal shutdown that do not fit into the above categories, for which the written survey report (CMS Form 2567) has not been completed prior to the orderly shutdown, will generally remain valid if completed after the shutdown. We plan to issue special instructions for completion of such reporting.

States should maintain the infrastructure capability to support the complaint investigations, enforcement, and survey information system entries for Medicare activities authorized in this communication. This must include ability to receive all complaints and respond to those complaints that allege immediate jeopardy or actual harm to individuals, and to enter information into the ASPEN information system.

C. Activities Not Supported During a Federal Government Shutdown

Survey & certification functions normally conducted on behalf of CMS that do not fall into one of the above categories should not be performed during the period of a federal government shutdown. Examples of Medicare activities that should not be continued during such time include:

1. ***Standard Surveys***: No Medicare recertification surveys should be performed.
2. ***Certain Revisit Surveys***: Revisits, including both onsite and desk revisits, that are not required to prevent termination of Medicare participation should not be conducted. Among those that should not be conducted are revisits (related to establishing regulatory compliance) that would end a per-day civil monetary penalty or denial of payment for new admissions. Subsequent to a government shutdown we plan to issue instructions as to the manner in which those situations would be handled.
3. ***Initial Surveys***: No Medicare initial surveys should be performed.
4. ***Initial Certification via Deemed Status***: States should not take any action on initial certification kits (e.g., compiling the documentation for an initial certification kit) for

applicants to participate in Medicare who seek to demonstrate compliance via accreditation under a CMS-approved Medicare accreditation program.

5. ***Validation Surveys:*** No Medicare surveys designed to validate performance of a CMS-approved accrediting organization should be performed. If you have been assigned a validation survey and have not yet conducted the validation survey, we will communicate with you at the end of any federal government shutdown whether the survey should be conducted or whether a substitute provider will be selected.
6. ***Certain Complaint Investigations:*** No Medicare complaint investigations should be performed, except those alleging immediate jeopardy or actual harm to individuals, as noted in this memorandum.
7. ***Patient Safety Initiative (PSI) Pilot Surveys:*** No hospital PSI surveys using the QAPI, infection control and discharge planning tools should be performed.
8. ***MDS or OASIS:*** No minimum data set (MDS) or OASIS activities should be conducted except those necessary to maintain provider reporting.
9. ***Informal Dispute Resolutions (IDRs):*** No IDRs or Independent IDRs should be conducted unless they are pursuant to the excepted complaint investigations noted in section B of this memorandum for which there is adverse action taken against the facility or provider.
10. ***New CMP-Funded Improvement Projects:*** No new improvement projects funded by collected civil monetary penalty funds should be implemented unless approval has already been granted by the CMS Regional Office. Projects already approved by CMS are not affected and may continue, since such projects require no further federal action.

In the event of a federal government shutdown that persists for more than a few weeks, CMS will communicate further instructions with regard to any special provisions that are appropriate for survey & certification activities.

F. CMS Contact Information for Survey & Certification

CMS has designated a limited number of individuals who will maintain communications with State Survey Agencies and will be able to take authoritative action with regard to Federal survey & certification activities. CMS Regional Consortium Administrator Dr. Randy Farris (James.Farris@cms.hhs.gov) is the contact point to whom all revisit exception requests and enforcement action requests (B.3 above) should be directed. Thomas E. Hamilton, Director of the Survey & Certification Group, will also be available as a back-up to Dr. Farris and for policy matters (Thomas.Hamilton@cms.hhs.gov).

We deeply regret the necessity to curtail Federal survey & certification functions. State licensure functions and State enforcement activities under State law are, of course, not constrained by any Federal government shutdown.

Thank you for your patience during this time of uncertainty, and for your daily diligence in offering Medicare and Medicaid beneficiaries the protections and quality assurance upon which they rely.

Questions regarding this communication should be sent to Thomas Hamilton.

Effective Date: 12:00 am October 1, 2013, and enduring only so long as the federal government is in shutdown status. This policy should be communicated to all survey and certification staff, their managers and the State/Regional Office training coordinators immediately.

/s/

Thomas E. Hamilton

cc: Survey and Certification Regional Office Management