CMS Manual System

Department of Health & Human Services (DHHS)

Pub. 100-07 State Operations Provider Certification

Centers for Medicare & Medicaid Services (CMS)

Transmittal 154 **Date: June 10, 2016**

SUBJECT: Revisions to the State Operations Manual (SOM) – Chapter 2

I. SUMMARY OF CHANGES: This instruction revises the instructions to surveyors in Chapter 2 to clarify guidance to surveyors regarding the procedures for conducting the Exit Conference in the review of compliance with Medicare or Medicaid Conditions of Participation, Conditions for Coverage, and Requirements for Participation.

NEW/REVISED MATERIAL - EFFECTIVE DATE: June 10, 2016
IMPLEMENTATION DATE: June 10, 2016

Disclaimer for manual changes only: The revision date and transmittal number apply to the red italicized material only. Any other material was previously published and remains unchanged. However, if this revision contains a table of contents, you will receive the new/revised information only, and not the entire table of contents.

II. CHANGES IN MANUAL INSTRUCTIONS: (*N/A if manual not updated.*)
(R = REVISED, N = NEW, D = DELETED) – (*Only One Per Row.*)

R/N/D	CHAPTER/SECTION/SUBSECTION/TITLE
R	2/2724 Exit Conference
R	2/2724A Introductory Remarks
R	2/2724B Ground Rules
R	2/2724C Presentation of Findings
R	2/2724D Closure
R	2/2727 Limitations on Technical Assistance Afforded by Surveyors

III. FUNDING: No additional funding will be provided by CMS; contractor activities are to be carried out within their operating budgets.

IV. ATTACHMENTS:

	Business Requirements
X	**Manual Instruction**
	Confidential Requirements
	One-Time Notification
	One-Time Notification -Confidential
	Recurring Update Notification

***Unless otherwise specified, the effective date is the date of service.**

2724 - Exit Conference

(Rev. 154, Issued: 06-10-16, Effective: 06-10-16, Implementation: 06-10-16)

Subsequent to the pre-exit conference held to allow team members to exchange and formulate survey findings, the surveyors conduct an exit conference ("an exit") with the entity's administrator, designee, and other invited staff. The purpose of the exit conference is to informally communicate preliminary survey team findings and provide an opportunity for the interchange of information, especially if there are differences of opinion. Although it is CMS' general policy to conduct an exit conference *as a courtesy to the provider and to promote timely remediation of quality of care or safety problems*, be aware of situations that would justify refusal to continue an exit conference. For example:

- If the provider is represented by counsel (all participants in the exit conference should identify themselves), surveyors may refuse to continue the conference if the entity's attorney attempts to turn it into a evidentiary hearing; or

- Any time the provider creates an environment that is hostile, overly intimidating, or inconsistent with the informal and preliminary nature of an exit conference, surveyors may refuse to conduct or continue the conference.

Additionally, as discussed in §2714, if the entity wishes to audio tape the conference, it must tape the entire meeting and provide the surveyors with a copy of the tape at the conclusion of the conference. Videotaping is also permitted if it is not disruptive to the conference, if a copy is provided at the conclusion of the conference. It is at the sole discretion of the surveyor(s) to determine if videotaping is permitted.

It is critical that the surveyors establish and maintain control throughout the exit conference. Surveyors should present their findings but refrain from arguing with the provider. Be mindful that providers are likely to react defensively to surveyor findings. The provider has a right to disagree with the findings and present arguments to refute them. Surveyors should be receptive to such disagreements. If the provider presents information to negate any of the findings, surveyors should indicate their willingness to reevaluate the findings before leaving the facility. The survey team's reasonableness demonstrates their fairness and professionalism. The degree of receptivity displayed by providers during the exit conference often depends upon the attitudes and survey style of the survey team.

If the LSC survey is conducted independently of the health survey, the fire authority conducts a separate exit conference.

The following guidelines are helpful to surveyors in performing an exit conference:

2724A - Introductory Remarks

(Rev. 154, Issued: 06-10-16, Effective: 06-10-16, Implementation: 06-10-16)

Introduce yourself to those present. Restate why the survey was conducted. Express the team's appreciation for anything the provider has done to facilitate the survey. Explain that the exit

conference is an informal meeting *given as a courtesy to the provider* to discuss preliminary survey findings and thereby assist the provider or supplier in developing an acceptable PoC, if appropriate and required. *The tone of the exit conference should be professional and constructive. It is important to communicate that the findings are preliminary and could change following State and CMS supervisory review.* Indicate that official findings are presented in writing on Form CMS-2567 and will be forwarded to the provider within 10 working days. Indicate that the provider will, in turn, have 10 calendar days to submit a PoC. (See §2728.)

2724B - Ground Rules

(Rev. 154, Issued: 06-10-16, Effective: 06-10-16, Implementation: 06-10-16)

Explain how you will conduct the exit conference and how the team's findings will be presented; for example, each surveyor may present a portion of the total findings. Inform the provider that where there are disagreements between the team and the provider about the findings that cannot be resolved during the conference or before the team leaves the facility, the provider will have the opportunity to submit additional evidence to the State, and/or the RO *through the Plan of Correction process*. (See §2728.B. concerning provider attempts to refute survey findings on the Form CMS-2567.)

2724C - Presentation of Findings

(Rev. 154, Issued: 06-10-16, Effective: 06-10-16, Implementation: 06-10-16)

In presenting *preliminary* findings, avoid reading your findings or *only* referring to them by their data tag number. Explain why the findings are a violation of Medicare *or Medicaid* requirements *in enough detail to assist the provider in expediting the provider's correction of any deficiencies ahead of the formal receipt of the Form CMS-2567.*

Non-Long Term Care Providers/Suppliers
For non-long term care, if the provider/supplier asks for the specific regulatory basis for a finding of noncompliance, the surveyors should generally provide the regulatory grouping *to the extent that the team is not still deliberating which part of the regulation is most pertinent. However, the survey team should avoid identifying the specific tags, as the tag codes often identify the Condition- or Standard-level classification for most non-LTC deficiencies. Additionally, such specific details should wait for supervisory review.*

Long Term Care Providers
For long term care providers (nursing homes and ICF-IIDs), CMS has invested considerable effort to add to the SOM more explanations and resource material under many deficiency tag codes that can be of particular use to a facility in understanding relevant deficiencies and preparing remedial action. If the provider asks for the specific regulatory basis or the specific tag code, the surveyors should generally provide this information (except as noted below), but must always caution the facility that such coding classifications are preliminary and are provided only to help the provider gain more insight into the issues through the information provided in the interpretive guidance. If the facility does not specifically ask for the regulatory basis or tag, the survey team may use its own judgment in determining whether this additional information would provide additional insight for the facility.

However, if the survey team is still deliberating as to which tags will be most pertinent, the survey team must not speculate at the exit conference as to the specific tag coding that will be applied. For example, the team may still be deliberating as to whether the finding was a care planning deficiency or staff training deficiency. Similarly, the team may believe that additional consultation should occur with other State personnel (e.g., a pharmacist) before a specific tag number is assigned to the deficiency finding. In these cases the survey team should describe the general area of non-compliance without identifying a specific tag code. This is a judgement to be made by the survey team onsite, so in preparation for the exit conference the team should deliberate as to the degree of detail that will be appropriate to describe at the exit. This is a survey-specific decision based on the evidence gathered. As described below, states must follow the federal process. State licensure laws do not override the procedures outlined in the federal survey process. States are not permitted to have blanket policies that require surveyors to always provide certain information during the Exit conference that differs from the policy described in this section.

Under no circumstances, however, would the surveyors provide the Scope and Severity of a given deficiency finding (unless there has been a finding of Immediate Jeopardy), as such finer degree of possible detail should await supervisory review. Instead, survey teams may describe the general seriousness (e.g., harm) or urgency that, in the preliminary view of the survey team, a particular deficiency may pose to the well-being of residents. If a provider asks whether the noncompliance is isolated, pattern, or widespread, the surveyor should respond with the facts (i.e., noncompliance was found affecting X number of residents).

Clinical Laboratories (CLIA)
For laboratories, given the complexity of the regulations and nature of the survey, the surveyors must d indicate to the laboratory that the specific regulatory reference will be found in the CMS-2567 report that will be issued. The laboratory is informed that the information discussed in the exit interview is preliminary and the lab management will have an opportunity at the exit interview to talk, in general, about the issues that were found.

Life Safety Code
For life safety code surveys, the survey team may follow the procedures for either non-LTC or LTC, depending on the degree to which, in the judgement of the team, the tag codes are important in helping the provider/supplier to understand the nature and location of the deficiency, and the corrective actions that would be necessary. Facility representatives are typically invited to accompany life safety surveyors during building tours, to improve familiarity with preliminary findings and exit conference proceedings.

For all provider types, under no circumstances should you make general statements such as, "Overall the facility is very good." Stick to the facts. Do not rank requirements. Treat requirements as equally as possible. Cite problems that clearly violate regulatory requirements. *The surveyors must not make statements such as*, "The condition was not met," or "The standard was not met."

2724D - Closure

(Rev. 154, Issued: 06-10-16, Effective: 06-10-16, Implementation: 06-10-16)

When you have completed the exit conference, explain the process to the provider. Inform the provider that *the State and/or RO* will send a formal statement of deficiencies. Explain the due date for submitting a PoC and how the rest of the certification process works. If you have identified an immediate and serious threat to patient health and safety, explain the significance of that finding and the need for immediate corrective action. In this or any other instance when adverse action is anticipated, explain the implications. Make it clear that only compliance will stop the adverse action.

In an initial survey, the surveyor tells the provider or supplier to expect notification of initial approval or denial of Medicare participation from the RO, and notification by the SMA concerning Medicaid participation, if appropriate. The surveyor explains that the RO establishes the effective date of participation and notifies the provider or supplier in writing and that Medicare payment will not be made before the effective date.

Notices of Medicare recertification from the RO are not necessarily sent unless there are changes in approved services or in sizes of distinct parts certified. Notices of reapproval of NFs and ICFs/IID are made according to State policy.

2727 - Limitations on Technical Assistance Afforded by Surveyors

(Rev. 154, Issued: 06-10-16, Effective: 06-10-16, Implementation: 06-10-16)

SAs are encouraged to communicate with providers and their associations. Discussions of program requirements and the survey process can result in a better understanding of the process by all parties involved. Further, §§1819(g)(1)(B) and 1919(g)(1)(B) of the Act mandate that the State conduct periodic educational programs for staff and residents (and their representatives) of SNFs and NFs in order to present current regulations, procedures, and policies. (See §1010.D.)

When deficiencies are found during the survey process, the surveyor provides an explanation to the provider concerning the deficiency in specific terms *as described in §2724C* to help the provider understand why the requirement is not met. Frequently, the explanation will embody the action needed to correct the problem. In situations where there may be several possible causes for the deficiency, it is not the surveyor's responsibility to delve into the facility's policies and procedures to determine the root cause of the deficiency or to sift through various alternatives to suggest an acceptable remedy. For example, if a provider was cited for maintaining incomplete clinical records, specify what is missing - not why it is missing or what process is best for ensuring that the records will be complete in the future.