



September 30, 2020

Sent Electronically

Ms. Seema Verma
Administrator
Center for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

Dear Administrator Verma:

We write to you today to address an important matter over which our members are expressing increasing concern: the testing of state and federal surveyors. We have previously voiced this concern to our colleagues in the Division of Nursing Homes throughout the public health emergency (PHE) but as we near the end of the seventh month under this PHE, we felt it important to address this matter with you directly. Sharing CMS's concern over infection rates in nursing homes, we are confounded by what seems to be an inconsistency in testing policy and approach.

In the interim final rule released September 2, 2020, CMS mandated the testing of all staff in nursing homes. This rule makes no distinction between those who provide hands-on care and spend significant portions of their time in close proximity to residents, such as certified nurse aides, and those who provide services to the nursing home but might never come in contact with a resident or enter a resident area at any point during their shift, such as an accounts payable representative in the billing office or a line cook in the kitchen. CMS mandates the testing of all of these individuals on a regular basis due to their presence in the nursing home and based on the prevalence of COVID-19 in the community, since nursing home staff may be exposed to COVID-19 outside the nursing home and unknowingly carry the virus into the nursing home under asymptomatic or pre-symptomatic circumstances.

CMS further "strongly encourages" the testing of any visitors who may seek entry into the nursing home to visit a loved one. In addition to testing, these visitors must be screened and their movement within the nursing home is strictly limited. Visitors are permitted to go directly to and from their loved one's room or the designated visiting space and are discouraged from moving about elsewhere in the nursing home to decrease transmission risk.

State and federal surveyors, by requirement, are on-site in nursing homes to conduct surveys on a regular basis. Normal survey activity resumed in August, increasing the number of surveyors entering nursing homes. It seems that this resumption of activity would also likely increase the number of nursing homes a surveyor would enter in a month as they continue to conduct infection control surveys at a rate of at least 20% of all nursing homes in the state in fiscal year 2021 while also catching up on standard surveys that were suspended during the prioritization period from March through June, not to mention any complaint surveys, initial certifications, and special focus facility program surveys.

While on-site, surveyors move about resident care areas, including between resident rooms. They spend time in close proximity of residents and staff for interviews and to observe care such as wound care, medication administration, dining assistance, and, per the guidance on the new testing rule, to observe testing for SARS-CoV-2. Further, like nursing home staff and visitors, surveyors are living in communities where positivity rates may climb over 10%. Surveyors are equally at risk for contracting the virus and carrying it into the nursing home in an asymptomatic or pre-symptomatic state as compared to nursing home staff.

Despite all of this, no mandate exists to require the testing of state and federal surveyors. One cannot deny that state and federal surveyors are at equal risk for contracting the virus in their communities as any other individual. And while surveyors are generally not providing hands-on care, they are in resident areas and in close proximity to residents and staff at sometimes greater rates than staff working at the nursing home who are subject to regular testing by federal mandate. Knowing that 40% of healthcare workers who have tested positive for COVID-19 have been asymptomatic and that nursing home deaths account for 41% of COVID-19-related deaths in the United States, we cannot afford to take chances. We urge you to reconsider CMS testing policies and mandate testing of state and federal surveyors, to be provided by CMS and the state survey agencies, in order assist our nursing homes in protecting this most vulnerable population.

If you have questions or would like to discuss, please reach out to Ruth Katz, LeadingAge Senior Vice President for Policy.

Respectfully,

A handwritten signature in black ink that reads "Katie Smith Sloan". The signature is written in a cursive, flowing style.

Katie Smith Sloan
President and CEO