



Center for Clinical Standards and Quality

Admin Info: 24-13-ALL

DATE: April 5, 2024

TO: State Survey Agency Directors

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

SUBJECT: Reminder of State Survey Agencies' Responsibility to Oversee Contract Surveyors

Memorandum Summary

- State Survey Agencies (SAs) are responsible for carrying out the functions outlined in the 1864 Agreement, including survey activities that may be performed by personnel utilized by the SA as contractors.
- SAs should take into account the following considerations, if they elect to use contract surveyors: public trust, conflict of interest, data use agreements, quality assurance, and training.
- CMS holds the SAs responsible for meeting the duties and requirements under the 1864 Agreement, whether the SA uses its own employees or contractors.

Background:

The 1864 Agreements between the Secretary and the various States, territories, and the District of Columbia stipulate that SAs, as designated by the state Governors, are responsible for the performance of the certification functions created by sections 1864, 1874 and related provisions of the Social Security Act. Given challenges in hiring and retaining qualified surveyor staff, some state survey agencies have executed subcontracts with private entities to assist in carrying out their survey functions under the 1864 Agreement. While CMS does not have the authority to direct a state's contracting actions or manage a state contractor's scope of work or functions, under the 1864 agreement and laws, SAs are responsible for meeting the requirements, whether the SA uses its own employees or contractors.

Discussion:

Consistent with the 1864 Agreements, CMS holds the state survey agencies responsible for assuring that any surveys for Medicare/Medicaid certification that are conducted by contractors meet all Federal requirements, as outlined in the Social Security Act, Federal regulations, and the

State Operations Manual and policy memoranda. SAs should consider the following in their contracting practices:

- **Public Trust**
 - CMS expects SAs to exercise the utmost care in ensuring that public trust is upheld when selecting and monitoring vendors who carry out the state's survey functions. Surveyors are entrusted by the public to evaluate whether health care providers/suppliers meet Medicare/Medicaid requirements; the public relies on surveyors to ensure the quality of care and services provided. In addition, in carrying out their responsibilities, surveyors have access to protected health information and contact with recipients of health care services who are in a vulnerable position.
- **Conflict of Interest**
 - The SA must ensure that contract surveyors are free from all potential and apparent conflicts of interest (see Sections 4008 and 4008A of the SOM).
 - Section 42 CFR 488.314(a)(4) describes specific circumstances that would disqualify a surveyor from surveying a particular skilled nursing facility or nursing facility (see also Section 7202.2 of the SOM).
 - When there appears to be Medicare/Medicaid program involvement, the SA immediately reports a case of impropriety involving conflicts of interest to CMS (see also Sections 4008B and 7202.3 of the SOM).
- **Data Use Agreements**
 - The SA must ensure that its contractors have a data use agreement with CMS if accessing CMS records that are protected under the Privacy Act of 1974. This would include the Minimum Data Set (MDS) (when the contractor uses the Long Term Care Survey Protocol tool), OASIS (for HHA surveys), and ASPEN Complaints/Incidents Tracking System (ACTS). Please note that this would not apply to releases of data to law enforcement agencies, Medicaid Fraud Control Units, or other agencies that administer, or have the authority to investigate potential fraud or abuse in a health benefits program funded in whole or in part by Federal funds. The SA may contact its CMS Location with any questions about the process.
- **Quality Assurance**
 - The SA is responsible for assuring that the contractor's investigation and survey documentation are consistent with CMS requirements (e.g., Interpretive Guidance in the State Operations Manual).
- **Training**
 - CMS is responsible for providing comprehensive training to state and federal surveyors to assure an adequately trained, effective surveyor workforce (see: Article IV (B)(2) of the 1864 Agreement and 42 CFR 488.314(b)). This training is available through the Quality, Safety & Education Portal (QSEP), a self-directed online education platform that provides training and guidance on healthcare facility regulations. QSEP is available to surveyors, providers/suppliers, and the public.
 - While CMS is responsible for providing training, the SAs ensure personnel employed or utilized by the SA have completed training requirements; this

includes contractors performing survey and certification functions on behalf of a state. Each SA is responsible for ensuring personnel employed or utilized by the SA to conduct survey or certification functions have successfully participated in training designed to develop and maintain staff proficiency. SA personnel includes surveyors contracted to perform survey or certification functions on behalf of the state.

- Additionally, the SAs are required to monitor and track the completion of training.
- **Training requirements:**
All surveyors contracted with the SAs **must complete the same training** as their SA surveyor counterparts prior to surveying independently onsite, which includes:
 - Completion of pre-requisite and Basic Training requirements
 - Surveyor Skills Review assessment (as eligible)
 - Foundational Refreshers (as eligible)
 - Post-Basics Training (Mandatory)

Please notify your CMS Location of any contracts that your SA executes to carry out survey and certification functions.

Contact:

For questions or concerns relating to this memorandum, the SAs may contact their respective CMS Location offices.

Effective Date:

Immediately. Please communicate to all appropriate staff within 30 days.

/s/

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Resources to Improve Quality of Care:

Check out CMS's new Quality in Focus interactive video series. The series of 10–15 minute videos are tailored to specific provider types and intended to reduce the deficiencies most commonly cited during the CMS survey process, like infection control and accident prevention. Reducing these common deficiencies increases the quality of care for people with Medicare and Medicaid.

Learn to:

- *Understand surveyor evaluation criteria*
- *Recognize deficiencies*
- *Incorporate solutions into your facility's standards of care*

See the [Quality, Safety, & Education Portal Training Catalog](#), and select Quality in Focus.