
October 17, 2024

Toby S. Edelman
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Dear Toby Edelman:

Thank you for your letter to Administrator Brooks-LaSure regarding the Risk-Based Survey (RBS) process, which is intended to be used to conduct standard recertification surveys in the higher performing nursing homes. I am responding on the Administrator's behalf. We appreciate hearing from you about this important issue.

We believe it is important to prioritize limited resources toward those areas that pose an increased risk to individuals' health and safety which is why we developed the RBS approach.¹ The Centers for Medicare & Medicaid Services (CMS) has been working hard to address the backlog of surveys caused by the COVID-19 pandemic while funding has not kept up with the demand. For over nine years, annual funding for survey and certification programs to conduct health and safety inspections has not changed, even as the volume of complaints about nursing homes has risen.

The Social Security Act² requires CMS to develop a standard survey for nursing homes, and specifies the structure and contents of the standard survey to include:

- (1) a survey of the quality of care furnished, as measured by indicators of medical, nursing, and rehabilitative care, dietary and nutrition services, activities and social participation, and sanitation, infection control, and the physical environment;
- (2) review of written plans of care and an audit of the residents' assessments to determine the accuracy of such assessments and the adequacy of such plans of care; and
- (3) a review of compliance with residents' rights.

¹ <https://www.cms.gov/medicare/provider-enrollment-and-certification/guidanceforlawsandregulations/nursing-homes>.

² Sections 1819(g)(2)(A)(ii) and 1919(g)(2)(A)(ii) of the Act.

The RBS is consistent with these and all statutory requirements for surveys, such as the contents and frequency of surveys. The RBS is similar to previous revisions to the survey process for improving the effectiveness and efficiency of our nursing home oversight, such as most recently in 2017 following the implementation of the revised requirements for long-term care facilities.

Regarding your question on the process used to develop the RBS, we reconfigured the components of the existing long-term care survey process (LTCSP) to better prioritize limited resources based on the risk to individuals' health and safety. As you know, the development of the LTCSP was a much larger initiative to overhaul the entire survey process, where the RBS is mainly a reconfiguration of how to use the existing components of the LTCSP.

Our primary objective is to test the RBS in as many states needed to ensure the survey is tested in facilities and among surveyors that are a general representation of facilities and surveyors across the country. States will be selected in collaboration with state agencies based on the availability of surveyors cross-referenced by nursing homes that qualify for an RBS. We anticipate that the RBS will be tested in at least 20 states. We also will ensure that any tests would not impact a state's ability to conduct its oversight tasks, such as investigating complaints where the allegation of noncompliance may place residents in immediate jeopardy of serious harm.

You also asked if the same process with the same types of surveyors is being used consistently in all of the RBS surveys and how we will evaluate the RBS. Health surveyors from states and CMS are testing the RBS, and the same process is generally being used; however, there are slight changes with the process based on lessons learned from previous tests. We are validating the tests using a few methods, such as comparing the results of the test to the results of a full LTCSP, or including additional surveyors on the tests to investigate if there were any concerns that were not captured by the RBS. We also conduct comprehensive debriefing sessions after each round of testing to obtain feedback to inform future potential changes to the process. Our review of the RBS will consider how the process worked when validated in both ways.

Thank you for your comments and questions related to the criteria for facilities to qualify for an RBS, and we will consider them in our work. We note that regardless of the criteria or RBS process, if there are any concerns related to resident care that are identified, surveyors will expand the survey and will not exit the facility until all concerns related to resident safety are addressed. Resident safety will always be prioritized, regardless of the type of survey process. As we do with the current survey process, CMS will continue to monitor the RBS process once in place.

We appreciate your comments and suggestions related to conducting surveys in light of the flatlined budget and acknowledging that the President's budget for fiscal year 2025 includes a proposed increase in federal funding for survey activities. The President's budget also proposes to shift the funding for nursing home surveys from discretionary to mandatory, which would greatly enhance our ability to conduct our oversight activities. Also, related to your suggestion that states could prioritize facilities within the nine-to-15 month timeframe for surveys, many states are already doing this.

Thank you again for your letter. We appreciate you sharing your concerns related to the RBS and suggesting ways to make nursing home enforcement practices more effective. We share your commitment to improving the quality of care in nursing homes, and look forward to continued discussions on the Risk-Based Survey process. Please share this response with the co-signers of your letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Dora L. Hughes", enclosed in a thin red rectangular border.

Dora L. Hughes, M.D., M.P.H.
Acting Director,
Center for Clinical Standards and Quality
Chief Medical Officer
Centers for Medicare & Medicaid Services