

State Operations Manual

Chapter 5 - Complaint Procedures

(Rev. XXX, XX-XX-XXXX)

Table of Contents

5080.2 - Survey Exit Conference and Report to the Provider/Supplier

(Rev. XX, Issued: XX-XX-XX, Effective: XX-XX-XX, Implementation: XX-XX-XX)

Generally, the SA conducts an exit conference with the provider/supplier at the completion of the on-site portion of the complaint investigation survey. The SA informs the provider/supplier of the survey findings, including a general description of any deficiencies found. The description should be detailed enough to inform the provider/supplier of the types of activities that require the provider's/supplier's corrective action. However, the SA must not comment on the scope and severity of the deficiencies identified for long term care facilities. For non-long term care providers/suppliers, the SA must not comment on manner and degree, that is, whether the deficiencies identified were condition- or standard-level. Surveyors must also not make reference to any "Tags" related to deficiencies identified *in non-long term care as this identifies condition- or standard-level. Instead identify the regulatory grouping where concerns exist. See Section 2724 for additional information about presenting findings during the Exit Conference.*

For non-long term care providers/suppliers, the SA must not provide a list of patients interviewed, observed, or whose medical records were reviewed, and does not identify specific patients whose cases are associated with specific deficiencies. (The provider/supplier has the right to request a copy of any documentation the surveyors copy to support deficiency findings; therefore the provider/supplier should have enough information after the exit conference to begin corrective actions.)

The SA informs the provider/supplier that survey findings will be documented on Form CMS 2567, which will be sent to the provider/supplier and subsequently will be made available to the public under the disclosure of survey information provisions. For deemed providers/suppliers, the SA informs the provider/supplier that the RO will be consulted and (depending on RO practice), either the RO or the SA will inform the facility of the results of the survey investigation via the Form CMS 2567.

The SA/RO sends to the provider/supplier a written report of the investigation findings as a summary record of the investigation. At a minimum, this would include the Form CMS 2567 and applicable notices. For surveys of deemed providers/suppliers (not including EMTALA surveys), the RO sends a copy of the written report to the applicable accrediting organization(s), following the procedures specified in Section 5110. At the RO's or SA's discretion, the materials may be sent to the accrediting organization via e-mail.

(See Section 5300.5 for guidance on the exit conference for long term care facilities, Section 5440.5 for EMTALA investigations, as well as the provider/supplier-specific appendices of the SOM, and Appendix V of the SOM concerning EMTALA.)

NOTE: Sections 5300 to 5390 relate to nursing homes.

5300 - Investigation of Complaints for Nursing Homes (Rev. 18, Issued: 03-17-06; Effective/Implementation Dates: 03-17-06)

Section 42 CFR 488.332 provides the Federal regulatory basis for the investigation of complaints about nursing homes.

The survey agency must review all complaint allegations and conduct a standard or an abbreviated standard survey to investigate complaints of violations of requirements if its review of the allegation concludes that:

- A deficiency in one or more of the requirements may have occurred; and
- Only a survey can determine whether a deficiency or deficiencies exist.

The survey agency does not conduct a survey if the complaint raises issues that are outside the purview of Federal participation requirements.

Complaint investigations follow, as appropriate, the pertinent survey tasks, and information gathered is recorded on the appropriate survey worksheets. However, if the documentation required is minimal, use Form CMS-807 to record information during the complaint investigation. Record deficiencies on Form CMS-2567 and/or, the “Statement of Isolated Deficiencies Which Cause No Harm with Only a Potential for Minimal Harm for SNFs and NFs” . The completed Form CMS-2567 must be made a part of the complaint record.

If necessary, a specialized team may be used to investigate complaints. Team members may include, but are not limited to, an attorney, auditor, and appropriate health professionals. The specialized team is not necessarily composed of qualified surveyors. However, specialized team members provide unique talents and expertise that assist at least one qualified surveyor in identifying, gathering, and preserving documented evidence. Further information regarding the composition of the survey team is provided in [Chapter 7](#).

The timing, scope, duration and conduct of a complaint investigation are at the discretion of the SA, except when a determination is made that immediate jeopardy may be present and ongoing or a higher level of actual harm may be present. If the complaint concerns conditions on a certain day (e.g., on weekends), or on a certain shift (e.g., 11 p.m. - 7 a.m.), the SA should make

an attempt to investigate it at the relevant time. In most cases, the following tasks, or portion of tasks, should be performed during a complaint investigation.

5300.1 - Task 1: Offsite Survey Preparation

(Rev. 18, Issued: 03-17-06; Effective/Implementation Dates: 03-17-06)

Review any information about the facility that would be helpful to know in planning the investigation. Contact the ombudsman to discuss the nature of the complaint and whether there have been any similar complaints reported to and substantiated by the ombudsman.

Review the related regulatory requirements or standards that pertain to the complaint. For example, if it is a complaint about abuse, review the requirements at [42 CFR 483.13](#).

Plan the investigation. Before going to the nursing home, plan what information to obtain during the complaint investigation based on the information already acquired. Consider practical methods to obtain that information.

5300.2 - Task 2: Entrance Conference/Onsite Preparatory Activities

(Rev. 18, Issued: 03-17-06; Effective/Implementation Dates: 03-17-06)

Onsite complaint investigations should always be unannounced. Upon entrance, advise the facility's Administrator of the general purpose of the visit. The SA explains the reason for the survey and avoids any impression that a predetermination has been made as to the validity of the allegation. It is important to let the facility know why you are there, but protect the confidentiality of those involved in the complaint. Do not release information that will cause opportunities to be lost for pertinent observations, interviews, and record reviews required for a thorough investigation. For example, if the complaint is that food that is intended to be served hot is always served cold, do not tell the facility the exact complaint. Rather, tell them it is a situation related to dietary requirements.

5300.3 - Task 5: Information Gathering

(Rev. 18, Issued: 03-17-06; Effective/Implementation Dates: 03-17-06)

The order and manner in which information is gathered depends on the type of complaint that is being investigated. Conduct comprehensive, focused, and/or closed record reviews as appropriate for the type of complaint. Generally, it is not necessary to review records and information from more than one year ago. However, the SA is not precluded from doing so if concerns identified during the investigation indicate it is necessary in order to determine current compliance. It is very important to remember that the determination of whether the complaint happened is not enough. The surveyor needs to determine noncompliant facility practices related to the complaint situation and which, if any, requirements are not met by the facility.

Perform information gathering in order of priorities, i.e., obtain the most critical information first. Based on this critical information about the incident, determine what other information to obtain in the investigation.

Observations, record review and interviews can be done in any order necessary. As information is obtained, use what has been learned to determine what needs to be clarified or verified as the investigation continues.

Observe the physical environment, situations, procedures, patterns of care, delivery of services to residents, and interactions related to the complaint. Also, if necessary, observe other residents with the same care need. After determining what occurred, i.e., what happened to the resident and the outcome, investigate what facility practice(s) or procedures affected the occurrence of the incident.

EXAMPLE

It was verified through the investigation that a resident developed a pressure sore/ulcer which progressed to a Stage IV, became infected and resulted in the resident requiring hospitalization for aggressive antibiotic therapy. Observe as appropriate: dressing changes, especially to any other residents with Stage III or IV pressure sores; infection control techniques such as hand washing, linen handling, and care of residents with infections; care given to prevent development of pressure sores (e.g., turning and repositioning, use of specialized bedding when appropriate, treatments done when ordered, keeping residents dry, and provision of adequate nutritional support for wound healing).

Record Review: If a specific resident is involved, focus on the condition of the resident before and after the incident. If there are care issues, determine whether the appropriate assessments, care planning, implementation of care, and evaluations of the outcome of care have been done as specified by the regulatory requirements.

EXAMPLE

For a complaint of verbal and physical abuse, review the record to determine the resident's mood and demeanor before and after the alleged abuse. Determine if there are any other reasons for the change in the resident's demeanor and behavior. Determine whether an assessment has been done to determine the reason for the change in mood and behavior. Does the record document any unexplained bruises and/or complaints of pain, and whether they occurred in relation to the alleged incident?

Interviews: Interview the person who made the complaint. If the complainant is not at the facility at the time of the survey, he/she should be interviewed by telephone, if possible. Also, interview the person the complaint is about. Then, interview any other witnesses or staff involved. In order to maintain the confidentiality of witnesses, change the order of interviews if necessary. It may not always be desirable to interview the person who made the complaint first, as that may identify the person as the complainant to the facility. Interview residents with similar care needs at their convenience.

As interviews proceed, prepare outlines needed for other identified witnesses and revise outlines as new information is obtained.

During information gathering to investigate a complaint about the care and services provided to residents in a nursing home, findings of past noncompliance may be identified. Before considering a citation of past noncompliance with a specific regulatory tag, surveyors must determine if current compliance with the specific regulatory tag exists. Similar to verifying correction of current noncompliance on a revisit, surveyors should use a variety of methods to determine whether correction of the past noncompliance occurred and continues. This may include, but is not limited to, the following:

- Interviews with facility staff, such as the administrator, nursing staff, social services staff, medical director, quality assessment and assurance committee members, and/or other facility staff, as indicated, to determine what procedures, systems, structures, and processes have been changed.
- Reviewing through observation, interview and record review, how the facility identified and implemented interventions to address the noncompliance. Examples of interventions may include, but are not limited to:
 - The facility's review, revision, or development of policies and/or procedures to address the areas of concerns;
 - The provision and use of new equipment, as necessary;
 - The provision of staff training required to assure ongoing compliance for the implementation and use of new and/or revised policies, procedures, and/or equipment, especially with new and/or temporary staff;
 - The provision of additional staffing, changes in assignments or deployment of staff, as needed; and
 - The provision of a monitoring mechanism to assure that the changes made are being supervised, evaluated, and reinforced by responsible facility staff.
- Evaluating whether the facility has a functioning quality assessment and assurance committee whose responsibilities include the identification of quality issues; providing timely response to ascertain the cause; implementing corrective action; implementing monitoring mechanisms in place to assure continued correction and revision of approaches, as necessary, to eliminate the potential risk of occurrence to other residents and to assure continued compliance.

A citation of past noncompliance must meet all of the criteria described in Task 6 below.

5300.4 - Task 6: Information Analysis

(Rev. 18, Issued: 03-17-06; Effective/Implementation Dates: 03-17-06)

Review all information collected. If there are inconsistencies, do additional data collection as needed, to resolve the inconsistencies. Determine if there is any other information still needed.

Determine whether:

- The allegations are substantiated or unsubstantiated;
- The facility failed to meet any of the regulatory requirements; and
- The facility practice or procedure that contributed to the complaint has been changed to achieve and/or maintain compliance.

To cite past noncompliance with a specific survey data tag (F-tag or K-tag), all of the following three criteria must be met:

- 1) The facility was not in compliance with the specific regulatory requirement(s) (as referenced by the specific F-tag or K-tag) at the time the situation occurred;
- 2) The noncompliance occurred after the exit date of the last standard recertification survey and before the survey (standard, complaint, or revisit) currently being conducted; and
- 3) There is sufficient evidence that the facility corrected the noncompliance and is in substantial compliance at the time of the current survey for the specific regulatory requirement(s), as referenced by the specific F-tag or K-tag.

A nursing home does not provide a plan of correction for a deficiency cited as past noncompliance as the deficiency is already corrected; however, the survey team documents the facility's corrective actions on Form CMS-2567.

5300.5 - Task 7: Exit Conference

(Rev. XX, Issued: XX-XX-XX; Effective/Implementation Dates: XX-XX-XX)

Conduct an Exit Conference related to a complaint survey in accordance with the process described of Task 7 in Appendix P. Do not inform [the nursing facility](#) of confidential information unless the individual who provided the information specifically authorizes you to do so.

If a deficiency is not present now, but was present and has been corrected, notify the facility orally and in writing that the complaint was substantiated because deficiencies existed at the time that the complaint situation occurred. (See SOM [Chapter 7](#), Survey and Enforcement Process for Skilled Nursing Facilities and Nursing Facilities, for specific information about citing past noncompliance.)

If the complaint is unsubstantiated, (i.e., the surveyor(s) cannot determine that it occurred and there is no indication of deficient practice), notify the facility of this decision.

5310 - Action on Complaints of Resident Neglect and Abuse, and Misappropriation of Resident Property

(Rev. 18, Issued: 03-17-06; Effective/Implementation Dates: 03-17-06)

5310.1 - Written Procedures

(Rev. 18, Issued: 03-17-06; Effective/Implementation Dates: 03-17-06)

The State must have written procedures for the timely review and investigation of allegations of resident abuse and neglect, and misappropriation of resident property.

5310.2 - Review of Allegation

(Rev. 18, Issued: 03-17-06; Effective/Implementation Dates: 03-17-06)

The State Reviews all allegations of resident neglect and abuse and misappropriation of resident property regardless of the source of the complaint.

5310.3 - Investigating Allegations

(Rev. 18, Issued: 03-17-06; Effective/Implementation Dates: 03-17-06)

If there is reason to believe, either through oral or written evidence, that an individual used by a facility to provide services to residents could have abused or neglected a resident or misappropriated a resident's property, the State must investigate the allegation. During the investigation, the SA should evaluate how the facility developed policies and procedures to prevent the abuse, and after the abuse occurred, how the facility took action to report and investigate the allegations while ensuring the safety of the residents.

5310.4 - Factors Beyond the Control of the Individual

(Rev. 18, Issued: 03-17-06; Effective/Implementation Dates: 03-17-06)

The State must not make a finding that an individual neglected a resident if the individual demonstrates that such neglect was caused by factors beyond the control of the individual.

EXAMPLE: A nurse aide could not be found negligent for not providing clean bed and bath linens to a resident if the facility had no clean bed and bath linens available. However, the facility is responsible for providing clean bed and bath linens to residents.

5320 – Reporting Findings of Abuse, Neglect, or Misappropriation of Property to the Nurse Aide Registry

(Rev. 18, Issued: 03-17-06; Effective/Implementation Dates: 03-17-06)

5320.1 - Notification Procedures - Preliminary Determinations

(Rev. 18, Issued: 03-17-06; Effective/Implementation Dates: 03-17-06)

If the State makes a preliminary determination, based on oral or written evidence and its investigation, that resident neglect, abuse, or misappropriation of property has occurred, the State completes the following notification procedures:

1. Individuals Notified - The State notifies the following individuals in writing within 10 working days of the investigation:

- a. Individual(s) implicated in the investigation; and
- b. The current administrator of the facility in which the incident occurred.

2. Notice Information - The following information is included in the notice:

- a. Nature of the allegation (specific facts);
- b. Date and time of the occurrence;
- c. A statement that the individual implicated in the investigation has a right to a hearing and must request the hearing within 30 days from the date of the notice. Provide the individual with the specific information needed to request a hearing, such as the name and address of a contact in the State to request a hearing;
- d. Statement that if the individual fails to request a hearing, in writing, within 30 days from the date of the notice, the presumed substantiated findings is reported to the nurse aide registry or the appropriate licensure authority;
- e. The intent to report findings substantiated by a hearing in writing to the nurse aide registry and/or to the appropriate licensure authority;
- f. Consequences of waiving the right to a hearing;
- g. Consequences of a finding through the hearing process that the resident abuse or neglect, or misappropriation of property did occur; and
- h. Right of the accused individual to be represented by an attorney at the individual's own expense.

5320.2 - Conduct of Hearing for Nurse Aides

1- Time frame to Complete the Hearing

The State must complete the hearing and the hearing record within 120 days from the day it receives the request for a hearing.

2 - Hearing Location

The State must hold the hearing in a manner consistent with State practice at a reasonable place and time convenient for the individual.

5320.3 - Reporting Findings

1 - Reporting to Entities

If the individual waives the right to a hearing or the time to request a hearing has expired, or if the hearing finding is that the individual neglected or abused a resident or misappropriated a resident's property, the substantiated findings must be reported in writing within 10 working days to:

- a. The individual;
- b. Current administrator of the facility in which the incident occurred;
- c. The administrator of the facility that currently employs the individual, if it is not the same facility in which the incident occurred;
- d. Applicable licensing authorities; and

The nurse aide registry for nurse aides as specified in 42 CFR 483.156(c) and discussed in §4141. Section 4141 discusses the function of the registry, the information contained in the registry, and responsibility for the registry.

2 - Information Submitted to the Nurse Aide Registry

The following information must be included and remain in the registry permanently, unless the finding was made in error, the individual was found not guilty in a court of law, or the State is notified of the individual's death. See [§4141.B](#).

- a. Documentation of the investigation, including the nature of the allegation and the evidence that led to the conclusion that the allegation was valid;
- b. The date of the hearing, if the individual chose to have one, and its outcome; and
- c. A statement by the individual disputing the allegation if the individual chose to make one.

3 - Information Retained in the Nurse Aide Registry Permanently

The registry must remove entries for individuals who have performed no nursing or nursing-related services for 24 consecutive months, unless the individual's registry entry includes documented findings of abuse, neglect, or misappropriation of property.

5330 - Reporting Abuse to Law Enforcement and the Medicaid Fraud Control Unit

When the SA or RO substantiates a finding of abuse, the SA or RO must report the substantiated findings to local law enforcement and, if appropriate, the Medicaid Fraud Control Unit.

5340 - Post-Survey Certification Actions for Nursing Homes

(Rev. XX, Issued: XX-XX-XX; Effective/Implementation Dates: XX-XX-XX)

Following the investigation, the *survey team* records any findings on Form CMS-2567, *the SA conducts a supervisory review of the CMS-2567 form and sends the provider a copy*. The SA requests a POC for any uncorrected deficiencies. See [§2728](#).

When Federal deficiencies are identified, the SA initiates certification actions as follows:

1. **Noncompliance that Constitutes Immediate Jeopardy to Resident Health and Safety** - The SA initiates procedures in accordance with §§7307 to 7309.
2. **Noncompliance that Does Not Constitute Immediate Jeopardy to Resident Health and Safety** - The SA initiates procedures in accordance with §§7311 to 7316.
3. **In Substantial Compliance** - The SA initiates procedures in accordance with §7319.

5350 – Data Entry

(Rev. 18, Issued: 03-17-06; Effective/Implementation Dates: 03-17-06)

The SA enters survey information into the ASPEN system (via ASPEN Central Office or ACTS), including Forms CMS-670 and CMS-2567.

5360 - Processing of Complaints Originating with or Investigated by the CMS RO

(Rev. 18, Issued: 03-17-06; Effective/Implementation Dates: 03-17-06)

The RO establishes procedures and clear organizational accountability to ensure that any complaint is properly evaluated, documented, acknowledged, and handled timely and appropriately. The RO uses ACTS to ensure timely and appropriated action on all allegations originating with or investigated by the RO.

The extent and nature of RO involvement with a given complaint varies depending on the nature of the allegation and the receiving organization. The following procedures address the major variants of RO involvement.

5370 - Pre-Investigation Actions on Allegations Originating Through the RO

(Rev. 18, Issued: 03-17-06; Effective/Implementation Dates: 03-17-06)

Most complaints originate through the SA and are recorded and controlled by the SA. When a complaint is filed directly with the RO, however, the RO assumes those initial SA responsibilities.

5380 - RO Processing of RO Investigated Complaints (Rev. 18, Issued: 03-17-06; Effective/Implementation Dates: 03-17-06)

This less frequent class of complaints includes allegations retained by the RO or forwarded to the RO by the SA for investigation or special processing. The RO responsibilities vary based on the type of complaint.

1 - Direct RO Investigation

These procedures apply when a direct RO investigation is conducted. When directly investigating, the RO begins by ensuring that it or the SA has met all intake, acknowledgment, and priority assignment requirements in [§5010](#) to §5020.

2 - Conducting the Investigation

The RO follows the procedures for investigation in §5300.

3 – RO Certification Actions

When Federal deficiencies are identified, the RO initiates certification actions as follows:

- a. Noncompliance that Constitutes Immediate Jeopardy to Resident Health and Safety - The RO initiates procedures in accordance with §§7307 to 7309. The RO performs the SA responsibilities described in these sections.
- b. Noncompliance that Does Not Constitute Immediate Jeopardy to Resident Health and Safety - The RO initiates procedures in accordance with §§7311 to 7316.
- c. In Substantial Compliance - The RO initiates procedures in accordance with §7319.

4 - Reporting

The RO should report survey information into the ASPEN system (via ASPEN Central Office or ACTS), including Forms CMS-670 and CMS-2567.

5390 – RO Oversight of Complaint-Related Processes (Rev. 18, Issued: 03-17-06; Effective/Implementation Dates: 03-17-06)

1. The RO considers any complaint data in targeting look-behind surveys or reviews.
2. The RO monitors data in summary form - either through a log or data system. See [§5060](#).

These records should include:

- Identification of region or State-wide patterns;
- Pinpointing of problem providers or States;
- Evaluation of SA processing times, workloads, performance, etc.; and
- Identification of overall SA workloads, including unsubstantiated and Medicaid-only complaint volumes.

3. Based on needs identified from oversight activities, the RO provides SA training and technical assistance.

NOTE: Sections 5400 to 5480.2 relate to alleged EMTALA violations.