

NURSING HOME SURVEY PROCESS - STUDY

Section 14 of 2003 House Bill No. 1004, the appropriations bill for the State Department of Health, provides for a Legislative Council study of the nursing home survey process, including a review of federal, state, and local agency procedures and requirements that result in additional costs, duplicated procedures, and added regulations for nursing homes, and the potential for mitigating the impact of new mandated federal rules through collaboration between the State Department of Health and the Department of Human Services and the submission of waiver requests. A copy of House Bill No. 1004 is attached as Appendix A. The Budget Committee on Health Care has been assigned this responsibility for the 2003-04 interim.

BACKGROUND ON NURSING HOME SURVEY PROCESS

The Centers for Medicare and Medicaid Services, a component of the federal Department of Health and Human Services, oversees the Medicare and Medicaid programs. A large percentage of Medicare and Medicaid funding is used each year to provide nursing home care and services for the elderly and disabled. The 2003 North Dakota Legislative Assembly appropriated \$318,444,621, \$102,073,218 of which is from the general fund for nursing home facility payments under the Medicaid program.

Nursing homes that provide services under Medicare or Medicaid must be certified as meeting certain federal minimum requirements established by Congress. Certification is achieved through routine facility surveys performed by the states under contract with the Centers for Medicare and Medicaid Services. In North Dakota the State Department of Health is the agency responsible for conducting nursing home surveys. The state conducts the inspections of each nursing home on an average of once a year (9- to 15-month intervals); however, inspections may occur more frequently if the nursing home is performing poorly. There are two types of surveys conducted--health and life safety code surveys.

1. Health surveys - The health survey team consists of two to six trained inspectors, including at least one registered nurse. The established nursing home survey protocol includes interviewing a sample of residents and family members about the resident's life within the nursing home, interviews with caregivers and administrative staff, and reviews of clinical records. Title 42 of the Code of Federal Regulations, Part 483, provides detailed federal regulatory standards that long-term care facilities must meet. These standards address areas of service provided by the nursing home, including:

a. Administration - How well the nursing home is administrated and managed, including ensuring that staff is properly

trained and licensed to perform the tasks assigned.

- b. Quality of care** - How well the facility provides services and ensures that residents receive adequate supervision and assistance. The residents are to receive the necessary care and services to maintain and, when possible, improve functional ability.
- c. Residents' rights** - How well the facility ensures the rights of residents are respected, recognized, and upheld. This includes allowing the freedom of choice to make independent decisions, safeguarding the resident's property and money, providing privacy in communication, providing freedom from abuse or mistreatment, and providing reasonable accommodation of individual needs.
- d. Dietary services** - How well the resident meals are prepared and served. Food must be stored, prepared, and served under sanitary conditions. The meals must meet nutritional needs of the residents and be appetizing.
- e. Other services** - The availability of medical, pharmacy, and specialized rehabilitation services.

The Code of Federal Regulations specifically allows nursing home facilities located in rural areas to obtain a temporary waiver, subject to the approval of the Centers for Medicare and Medicaid Services, from the requirement that the facility have the services of a registered nurse for more than 40 hours a week. The Centers for Medicare and Medicaid Services requires at least one full-time registered nurse to be employed by the nursing home facility. In addition, physician orders must be obtained for each resident indicating that the resident does not require the services of a physician or registered nurse for a 48-hour period or the facility has made arrangements to have a physician or registered nurse on hand to provide necessary skilled nursing services on days when the regular full-time registered nurse is not on duty. Because of time restraints placed on the only registered nurse, this waiver effectively prohibits the nursing facility from providing a nurse's aide training and competency evaluation program for a period of two years after operating under this waiver.

Nursing home facilities may apply to the Centers for Medicare and Medicaid

Services for waivers from other federal regulatory standards. According to representatives of the State Department of Health, North Dakota currently does not have any approved temporary waivers relating to the health survey standards.

2. **Life safety code surveys** - The life safety code, pursuant to the National Fire Protection Association Standard 101, sets minimum building design, construction, operation, and maintenance requirements necessary to protect building occupants from dangers caused by fire, smoke, and toxic fumes. The life safety code also provides prompt escape requirements for new and existing buildings. Section 483.70 of Title 42 of the Code of Federal Regulations requires nursing home facilities to meet the provisions of the life safety code. Surveyors employed by the State Department of Health conduct onsite surveys of nursing home facilities under agreement with the Centers for Medicare and Medicaid Services within six months of the health survey.

The Centers for Medicare and Medicaid Services may waive specific provisions of the life safety code which, if rigidly applied, would result in unreasonable hardship upon the facility, but only if the waiver does not adversely affect the health and safety of residents or personnel. Attached as Appendix B is a listing of outstanding North Dakota life safety code waivers.

SURVEY DEFICIENCY CATEGORIES

When an inspection team finds that a nursing home does not meet a specific regulation, it issues a deficiency citation. Surveyors are to assign a scope and severity rating for each deficiency. The number of residents affected or **scope** of each deficiency is based on the following:

1. **Isolated** - This deficiency affects one or the fewest number of residents, staff, or occurrences.
2. **Pattern** - This deficiency affects more than a limited number of residents, staff, or occurrences.
3. **Widespread** - This deficiency is found to be widespread throughout the facility and/or has the potential to affect a large portion or all the residents.

The potential level of harm or **severity** of each deficiency is based on:

1. **Potential for minimal harm** - This deficiency has the potential for causing no more than a minor negative impact on the resident. An example is a nursing home's failure to post a statement of deficiencies.
2. **Minimal harm or potential for actual harm** - This deficiency results in minimal discomfort to the resident or has the potential to negatively affect the resident's ability to achieve his or her highest functional status. An example is

observing staff not washing hands properly between resident treatments.

3. **Actual harm** - This deficiency results in a negative outcome that has negatively affected the resident's ability to achieve his or her highest functional status. An example is restraining an active or vocal resident, despite lack of medical symptoms for doing so, resulting in resident being withdrawn.
4. **Immediate jeopardy** - This deficiency has caused or is likely to cause serious injury, impairment, or death to a resident of the nursing home. Immediate corrective action is necessary when this deficiency is identified. An example is finding a resident with dementia wandering outside the nursing home property due to an insufficient or nonworking monitoring system.

Depending on the nature of the problem, the Centers for Medicare and Medicaid Services is permitted to take various actions against the nursing home, including fines, denying payment, or assigning a temporary manager. If problems are not corrected, the Centers for Medicare and Medicaid Services may terminate its agreement with the nursing home. As a result, the nursing home would no longer be certified to provide services to Medicare and Medicaid beneficiaries. Deficiencies are rated on a combination of their scope and severity:

Severity of the Deficiency	Scope of the Deficiency		
	Isolated	Pattern	Widespread
Immediate jeopardy	J*	K*	L*
Actual harm	G	H*	I*
Minimal harm or potential for actual harm	D	E	F*
Potential for minimal harm	A	B	C

* Ratings classified as substandard quality of care.

STATE NURSING HOME LICENSING REQUIREMENTS

North Dakota Administrative Code Section 33-07-03.2-03, as authorized by North Dakota Century Code (NDCC) Sections 23-01-03 and 28-32-02, requires that nursing home facilities must obtain a license from the State Department of Health to operate in North Dakota. An application for an initial license will not be accepted until the State Department of Health conducts an inspection of the nursing home facility and the facility is found to be in compliance with North Dakota Administrative Code Chapters 33-07-03.2 and 33-07-04.2. The State Department of Health will issue renewal licenses to facilities if they are found to be in compliance with the licensing requirements, as determined by periodic unannounced onsite surveys conducted by the department.

Renewal licenses expire on December 31 of each year. The annual license fee, pursuant to NDCC Section 23-16-03, for nursing home facilities not owned by the state or its political subdivisions is \$10 for each bed. This amount was increased from \$7, effective July 1,

2003, pursuant to Section 12 of 2003 House Bill No. 1004. Attached as Appendix C is a listing of the 84 licensed skilled nursing home facilities in North Dakota.

North Dakota Administrative Code Chapters 33-07-03.2 and 33-07-04.2 detail the state nursing home licensing requirements, which relate to quality of care provided, including administration, physical environment, equipment, and services. Long-term care facilities are not subject to federal survey requirements if they do not participate in the Medicaid or Medicare program; however, all facilities must meet the licensing rules.

North Dakota Administrative Code Section 33-07-03.2-04, as authorized by NDCC Sections 23-01-03 and 28-32-02, provides that state nursing home requirements may be waived from licensure requirements by the State Department of Health for a specified period in specific instances, provided such a waiver does not adversely affect the health and safety of the residents and would not result in unreasonable hardship upon the facility. A waiver may not exceed a period of one year and shall expire on December 31 of the year issued. The need for a continuation of a waiver is reviewed at the time of renewal of licensure. Nursing facilities may obtain a waiver by submitting a written proposal to the director, Division of Health Facilities, State Department of Health. A copy of the request for waiver form is attached as Appendix D. Decisions by the department to accept or deny a waiver request are to be documented in writing and communicated to the facility along with the rationale for acceptance or denial.

OTHER NURSING HOME MEDICAL ASSISTANCE RESPONSIBILITIES

Nursing home resident payment classifications -

The Department of Human Services, pursuant to NDCC Section 50-24.4-02, is responsible for establishing Medicaid-rate payment classifications and assigning residents of nursing homes qualifying as vendors for medical assistance to their appropriate classification. The payment rates are to be based on methods and standards which will adequately fund necessary costs incurred for the care of residents in efficiently and economically operated nursing homes. The department is to identify costs that are recognized for establishing payment rates. Residents or the nursing homes may appeal the assigned payment classification to the Department of Human Services. The final appeal decision of the Department of Human Services is subject to appeal to the district court. Section 50-24.4-03 provides that if any state provision is in conflict with federal

requirements for participation in the Medicaid program, the federal government requirement will prevail.

RECENT LEGISLATIVE COUNCIL STUDIES

The 2001-02 Budget Committee on Health Care reviewed the nursing home facility survey process. The committee learned, due to concerns regarding the nursing home facility process, the North Dakota Long Term Care Association planned to develop a proposal to be considered by the Health Care Financing Administration (since renamed the Centers for Medicare and Medicaid Services) to implement a pilot survey system in North Dakota. The pilot system would involve surveyors working collaboratively with nursing facilities to review care, identify problem areas, develop improvement strategies, evaluate the effectiveness of strategies, and establish expectations and timeframes for progress. The Centers for Medicare and Medicaid Services approved the pilot program; however, the program would have been required to be conducted in addition to the existing survey process and to be self-funded by the State Department of Health. Because of the additional requirements, the pilot program has not been implemented.

PROPOSED STUDY PLAN

1. Receive testimony from the State Department of Health regarding the nursing home survey process, including a review and comparison of federally required survey procedures and state licensing requirements.
2. Receive testimony from the State Department of Health and the Department of Human Services regarding the potential for mitigating the impact of any new mandated federal rules through collaboration between the State Department of Health and the Department of Human Services and the submission of waiver requests.
3. Receive testimony from other interested organizations and individuals regarding the nursing home survey process and the impact of any new mandated federal rules.
4. Develop committee recommendations and any related bill drafts regarding the nursing home survey process.
5. Prepare a final report for submission to the Legislative Council.

ATTACH:4