



STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
Aging and Long-Term Support Administration
PO Box 45600, Olympia, Washington 98504-5600

December 16, 2022

AL TSA: NH #2022-064
CMS RELEASED QSO-23-01-NH WITH REVISIONS TO
SPECIAL FOCUS FACILITY PROGRAM

Dear Nursing Facility/Home Administrator:

Sections 1819(f)(8) and 1919(f)(10) of the Social Security Act require Center for Medicare and Medicaid Services (CMS) to conduct a Special Focus Facility (SFF) program which focuses on nursing homes that have a persistent record of non-compliance leading to poor quality of care. The SFF program is intended to help facilities improve their compliance and quality of care.

On October 21, 2022, CMS released [QSO-23-01-NH](#) which provided updates and changes in the SFF program to improve the safety and quality of care in nursing homes as outlined in a [White House Fact Sheet](#). *Effective immediately*, these changes aim to address when facilities remain in the SFF program for too long and facilities that experience a non-compliance relapse after graduating. CMS is informing State Survey Agencies such as Residential Care Service (RCS) to consider a facility's staffing levels data when selecting SFFs from the SFF candidate list. The following eight sections of the SFF program include revisions:

Section I: SFF Candidate List

Nursing homes are identified as SFF candidates based on their last three standard health survey cycles and the last three years in complaint survey performance. Facilities are chosen based on a rating methodology and those that have the lowest numerical score in the state. CMS informs the SFF candidates of their inclusion on the monthly preview of the Five-Star Quality Rating System.

Section II: Initial Selection of SFF

- **Selection Process:** SFFs are selected from the list of SFF candidates sent to RCS, which is also posted on [cms.gov](#). When an SFF slot becomes available, RCS must select a new facility from the candidate list in 21 calendar days from when the slot opens. There, RCS recommends a candidate to the CMS location for approval.
- **Notification to Facility of Initial Selection:** Upon selection of a new SFF, RCS must provide notice in writing, *within 5 business days*, to the facility and all accountable parties. A model letter is included in Appendix B.
- **Meeting to Discuss Significance of SFF Selection:** In addition to the written notification to the nursing home being selected as an SFF, RCS must conduct a teleconference with the nursing home's accountable parties (owner, administrator, director of nursing, medical director, other facility leaders and the CMS location). The purpose of the meeting is to explain the SFF program, steps necessary to graduate from the program, and conditions by which the facility may be terminated from the Medicare and/or Medicaid participation. For specific topics to be covered in the teleconference, please refer to *page 3* of [QSO-23-01-ALL](#).

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Section III: Progressive Enforcement

While a nursing home is in the SFF program, RCS will conduct a standard health survey at least once every six months (as unpredictable as possible), as required by §1819(f)(8) and §1919(f)(10) of the Act and recommend progressively stronger enforcement actions in the event of continued failure to meet the requirements for participation in Medicare and/or Medicaid. All survey outcomes for an SFF must be reported to the CMS locations. Refer to the State Operations Manual (SOM) [Chapter 7](#) for more information on the Survey and Enforcement Process for nursing homes.

Section IV: Graduation From The SFF Program

The nursing home will graduate from the SFF program once it has completed two consecutive standard health surveys with 12 or fewer deficiencies cited at scope and severity level (S/S) of "E" or less on each survey. For more information on what criteria indicates that a SFF will not graduate, please refer to [QSO-23-01-NH](#), Section IV (page 5).

Section V: Termination

To avoid situations where a facility remains an SFF for a prolonged period of time, CMS is establishing criteria that may result in the facility's discretionary termination from the Medicare and/or Medicaid programs. SFFs with deficiencies cited at S/S of IJ on any two surveys (standard health, complaint, LSC or EP) while in the SFF program will be considered for discretionary termination.

Section VI: Factors Considered For Graduation Or Termination

Here, the CMS location may consider using its authority to terminate an SFF provider agreement when it believes it is an appropriate remedy. CMS retains discretion on decisions regarding graduation and termination based on the factors unique to each facility and Medicare/Medicaid programs. In addition, CMS has provided specifics as to who should be notified and the effective date when a facility has graduated from the program.

Section VII: Post-Graduation

CMS will closely monitor graduates from the SFF program for a period of three years to ensure improvements are sustained. For the SFFs that graduate and demonstrate poor compliance as identified on any survey (e.g., actual harm, substandard quality of care, or immediate jeopardy deficiencies), CMS may impose enhanced enforcement options, up to, and including discretionary termination from the Medicare/Medicaid programs.

Section VIII: Operational Procedures

- **Nursing Homes remaining in the SFF program after three standard surveys:** If the SFF has not met the graduation criteria following the third standard health survey, RCS must schedule a conference call with the CMS location to discuss the efforts the nursing home made towards improvement, the reasons for non-compliance, and the likelihood of the nursing home achieving sustained compliance. CMS has the final authority to determine if the facility should move towards discretionary termination or continue to collaborate with RCS to focus on facility improvement.
- **Public Posting Of SFFs:** CMS is revising the monthly SFF postings at <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/CertificationandCompliance/Downloads/SFFList.pdf>. The list is being updated to include all SFFs, how long they spent in the SFF program, their most recent standard health survey findings, recent terminations, and graduations.

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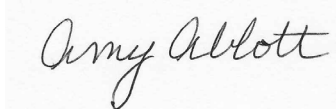
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Please refer to the [QSO-23-01-NH](#) for additional information in each category, the number of SFF slots and candidates for each state, and a sample model notification letter for the provider when the facility has been selected as an SFF.

Thank you for your continued commitment to resident health and safety. If you have any questions, please Molly McClintock, Nursing Home Policy Program Manager, at molly.mcclintock@dshs.wa.gov or (360) 742-6966.

Sincerely,

A handwritten signature in black ink that reads "Amy Abbott". The signature is written in a cursive style and is centered within a light gray rectangular box.

Amy Abbott, Director
Residential Care Services

DSHS: *"Transforming Lives"*