December 29, 2021 at 7:29 PM

From: Kimberly Beazley

Subject: Email requests

Good evening Mr. Sherlock

This is in response to your recent emails about nursing home inspections and the request for Office of Licensure and Certification information. Thank you for contacting us with your concerns.

**These are the relevant dates and the survey-related directives from CMS:**

* March 4, 2020 - QSO-20-12-ALL: CMS issues survey prioritization guidance
* March 13, 2020 - President declares national emergency
* March 20, 2020 - QSO-20-20-ALL: CMS limits survey activity to focused infection control (FIC) surveys, investigations of complaints and facility reported incidents alleging immediate jeopardy (IJ), revisit surveys necessary to verify removal of previously identified IJ deficiencies, and initial certification surveys
* June 1, 2020 - QSO-20-31-ALL

o    CMS permits state survey agencies to resume all survey activities once its state has entered Phase 3 (or earlier at the state's discretion), subject to the prioritization guidance provided

o    CMS announces that all onsite components of FIC surveys have to be completed by July 31, 2020 in order to qualify for the entire CMS CARES Act allotment

* July 1, 2020 - Virginia enters Phase 3
* July 10, 2020 - All onsite FIC survey components completed by VDH OLC
* July 17, 2020

o    VDH notifies CMS all FIC survey components are complete

o    VDH receives new list of FIC surveys from CMS, to be completed within either 2 days or 3 to 5 days, depending on outbreak severity and other factors

* July 2020 through February 2021 - VDH completes additional assigned FIC surveys from CMS and 50 ICF/IID recertification surveys, and begins working through backlog of non-IJ complaint surveys
* Starting February 2021 - VDH resumes nursing home recertification surveys, in addition to other surveys previously identified
* March 2021 - Office of Licensure and Certification uses its entire allotment of CARES Act funding to hire contract surveyors to assist with backlog from suspended surveys ($1.3 million for nursing home recertification surveys, FIC surveys, revisits and complaint investigations and $200,000 for end stage renal disease facility recertification surveys)

Year to date (CY 2021), VDH has completed:

* 160 FIC surveys
* 168 nursing home recertification surveys (both VDH staff and contractors)
* 637 complaint investigations
* 159 biennial nursing home licensure inspections

As to your question regarding the cause(s) for the nursing home recertification surveys being conducted beyond the 15-month interval, there are a number of factors that have contributed to the delay, including:

* CMS's guidance (explained above) delaying recertification surveys
* large volume of non-IJ complaints received that needed to be investigated once CMS lifted survey restrictions
* difficulty securing sufficient personal protection equipment (PPE) for surveyors and fit-testing surveyors to wear N95 masks
* retirement of the director of the Division of Long-Term Care Director on February 1, 2020
* **insufficient number of staff and vacancies in the Division of Long-Term Care Services**

**In response to your other questions, please see below:**

Q.  In the last year, has there been any change in the capability of OLC to perform inspections?  If so, how?

**A.  In the last year, OLC has not received additional state funding or additional FTEs for the purpose of conducting federal surveys or state inspections; however, OLC did receive $1.5 million in CARES Act funding. OLC used this entire allotment to hire contract surveyors to assist with nursing home recertification surveys primarily. This has increased OLC's capability to perform federal certification surveys, but not state licensure inspections. OLC also notes that CARES Act funding is a time-limited source of funding, so OLC anticipates its capability to recede to pre-pandemic levels once that funding lapses.**

Q. What is the overall assessment of OLC of the capabilities and performance of Virginia nursing homes in the past year?  Improving?  Declining?

A.    The situation in Virginia nursing homes is improving compared to this time last year, though has OLC noticed an upward trend in assigned focused infection control (FIC) surveys as the Delta variant moved through the Commonwealth. FIC surveys are triggered by a combination of factors, including number and frequency of resident COVID-19 infections, performance of required testing, and staff star rating. OLC may soon see another upward trend of FIC surveys with the recent identification and presence of the Omicron variant in the Commonwealth.

Q. What is the assessment of OLC of the current issues with staffing of nursing homes?

A.Many nursing homes have been concerned and struggled with the supply and availability of direct care staff during the pandemic. VDH previously convened a workgroup in 2020 about increasing the availability of the clinical workforce in nursing homes (pursuant to legislation passed prior to the pandemic). The Joint Commission on Health Care (JCHC) has been studying nursing home staffing throughout the pandemic and presented its findings on October 5, 2021. **The JCHC has continued to convene subsequent workgroups to determine what action(s) will be taken based on the study's findings**.

Q.  Why Envoy of Williamsburg (see attached spreadsheet) is not only still open but has actually increased its patient load under sanctions for both abuse and SFF?

A.  On July 1, 2021, Envoy of Williamsburg became a special focus facility (SFF), i.e., a nursing home with a record of poor survey performance on which CMS focuses extra attention. As the state survey agency, OLC conducts a full onsite inspection of all Medicare health and safety requirements every six months and recommends progressive enforcement (e.g., fines, denial of Medicare payment) until the nursing home either (1) graduates from the SFF program; or (2) is terminated from the Medicare and/or Medicaid program(s). For Envoy of Williamsburg, OLC conducted a complaint survey in August and a recertification survey in September; for both of these surveys, the highest level of deficiency was an E (E is a pattern of potential for more than minimal harm). For Envoy of Williamsburg to graduate from the SFF program, it will need to clear two consecutive surveys for which no revisit survey is required and the highest level of deficiency is a D (D is an isolated potential for more than minimal harm). As Envoy of Williamsburg only recently became an SFF and has not yet been subject to more progressive federal enforcement measures, more serious state administrative sanctions have not been pursued at this time.

Q.  At what point is a nursing home with such a documented record of failure to protect its patients shut down by the commissioner?  Has the commissioner ever sanctioned, including but not limited to shutting down, a nursing home using his authority under 12VAC5-371-90?

A.  The State Health Commissioner has limited sanction authority, especially compared with the menu of sanction options available at the federal level (e.g., the Commissioner cannot levy a fine against a facility for noncompliance with state requirements). The state sanctions available are extreme, either resulting in the actual shutdown of a facility or a potential drawn-out shutdown through denial of new admissions. **VDH does not have any record of the Commissioner revoking or suspending the license of a nursing home.**  VDH cannot speculate on future hypotheticals that may not occur, but generally, would allow CMS's process for termination to take place first before pursuing state sanctions.

Should you have further questions, please don't hesitate to contact me.