

PUBLIC HEALTH CODE (EXCERPT)
Act 368 of 1978
PART 221.
FEDERAL CERTIFICATION OF NURSING HOMES

333.22101 Definitions.

Sec. 22101.

- (1) As used in this part:
 - (a) "Certification" means certification issued by the Centers for Medicare and Medicaid Services to a nursing home as evidence that the nursing home complies with requirements under federal law for participation in Medicare.
 - (b) "Consecutive days" means calendar days, but does not include Saturday, Sunday, or state- or federally recognized holidays.
 - (c) "Form CMS-2567" means the Centers for Medicare and Medicaid Services form for the statement of deficiencies and plan of correction or a successor form serving the same purpose.
 - (d) "Immediate jeopardy" means that term as defined in the "state operations manual" published by the Centers for Medicare and Medicaid Services.
 - (e) "Informal dispute resolution process" means the process described in section 22115.
- (2) In addition, article 1 contains general definitions and principles of construction applicable to all articles in this code and part 201 contains definitions applicable to this part.

History: Add. 2022, Act 187, Imd. Eff. July 25, 2022

Compiler's Notes: Former MCL 333.22101 - 333.22181 were repealed by Act 76 of 1981, Eff. Oct. 1, 1981 and Act 332 of 1988, Eff. Oct. 1, 1988.

Popular Name: Act 368

333.22102 Administration of certification process; conflict of laws.

Sec. 22102.

- (1) The department shall administer the certification process in this state in conformance with 42 USC 1395aa and the "mission and priority document" and "state operations manual" published by the Centers for Medicare and Medicaid Services.
- (2) To the extent that there is a conflict between this part and federal law, federal law controls.

History: Add. 2022, Act 187, Imd. Eff. July 25, 2022

Popular Name: Act 368

333.22103 Quality assurance monitoring process; surveys for certification; survey teams; quality assurance monitor; responsibilities.

Sec. 22103.

- (1) The department shall implement a quality assurance monitoring process for the purposes of conducting the surveys described in this part for the purpose of certification. The quality assurance monitoring process must include the quality assurance review of citations as described in this part. The department shall establish an advisory workgroup to provide recommendations to the department on the quality assurance monitoring process. Subject to

subsection (2), the advisory workgroup established under this section must include a representative from the department, representatives from nursing home provider organizations, the state long-term care ombudsman, and any other representative that the department considers necessary or appropriate. The advisory workgroup shall identify and make recommendations on improvements to the quality assurance monitoring process to ensure ongoing validity, reliability, and consistency of nursing home survey findings.

(2) Representatives from each nursing home provider organization that does not own or operate a nursing home representing 30 or more nursing homes statewide and the state long-term care ombudsman or his or her designee are permanent members of the advisory workgroup established under subsection (1). The department shall issue survey certification memorandums to providers to announce or clarify changes in the interpretation of regulations.

(3) The department shall ensure that each nursing home survey team conducting a standard survey is composed of an interdisciplinary group of professionals, at least 1 of whom must be a registered professional nurse. Other members of the survey team may include social workers, therapists, dietitians, pharmacists, administrators, physicians, sanitarians, and others who may have the expertise necessary to evaluate specific aspects of nursing home operation.

(4) The nursing home surveyors conducting a standard survey shall designate a quality assurance monitor. The individual designated as the quality assurance monitor shall ensure all of the following:

(a) That survey protocols from the Centers for Medicare and Medicaid Services are followed.

(b) That interpretive regulatory guidance issued by the Centers for Medicare and Medicaid Services is applied consistently and noncompliance with the interpretive regulatory guidance is documented in a clear and concise manner.

(c) An entrance and exit conference is conducted in accordance with survey procedural guidelines established by the Centers for Medicare and Medicaid Services.

(d) That the survey complies with this part.

History: Add. 2022, Act 187, Imd. Eff. July 25, 2022

Popular Name: Act 368

333.22105 Limitation on number of nursing home surveyors; exception; length of standard survey.

Sec. 22105.

(1) Except as otherwise provided in this subsection, the department shall limit the number of nursing home surveyors that conduct a standard survey to the recommended number of surveyors identified in survey procedural guidelines established by the Centers for Medicare and Medicaid Services. The department may exceed the recommended number of nursing home surveyors only for the reasons identified in the guidelines described in this subsection.

(2) The department shall limit the length of a nursing home standard survey to a reasonable duration. In determining what is a reasonable duration, the department shall consider the average length of surveys nationally.

History: Add. 2022, Act 187, Imd. Eff. July 25, 2022

Popular Name: Act 368

333.22107 Departmental responsibilities; standard surveys; plan of corrections; revisits; letter of compliance.

Sec. 22107.

(1) When preparing to conduct any standard survey, the department shall determine if there is an open survey cycle and make every reasonable effort to confirm that substantial compliance has been achieved by implementing the nursing home's accepted plan of correction before initiating the standard survey while maintaining the federal

requirement for a standard survey interval and the state survey average of 12 months.

(2) All abbreviated complaint surveys must be conducted on consecutive days until complete. All form CMS-2567 reports of survey findings must be released to the nursing home within 10 consecutive days after completion of the exit date of the survey.

(3) Departmental notifications of acceptance or rejection of a nursing home's plan of correction must be reviewed and released to the nursing home within 10 consecutive days after the receipt of the plan of correction.

(4) A nursing-home-submitted plan of correction in response to any survey must have a completion date not to exceed 40 days from the exit date of the survey. If a nursing home has not received additional citations before a revisit occurs, the department shall conduct the first revisit not more than 60 days from the exit date of the survey.

(5) A letter of compliance notification to a nursing home must be released to the nursing home within 10 consecutive days after the exit date of all revisits.

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Popular Name: Act 368

333.22109 Deficient practices; reevaluations.

Sec. 22109.

If a deficient practice occurred at a nursing home after the most recent survey of the nursing home under this part and the deficient practice is no longer occurring in the nursing home, the department shall, on the request of the nursing home, evaluate the deficient practice. If the nursing home is not eligible for an evaluation based on requirements from the Centers for Medicare and Medicaid Services, the department shall provide written notice to the nursing home explaining the reason the evaluation cannot be not granted.

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Compiler's Notes: In this section, "evaluation cannot be not granted" evidently should read "evaluation cannot be granted."

Popular Name: Act 368

333.22111 Issuance of citations for immediate jeopardy or substandard quality of care; notification.

Sec. 22111.

(1) The department shall maintain the process by which the director of the long-term care division of the department reviews and authorizes the issuance of a citation for immediate jeopardy or substandard quality of care before a statement of deficiencies is made final. The review must ensure the consistent and accurate application of federal and state survey protocols and defined regulatory standards.

(2) On the discovery of a potential immediate jeopardy, a nursing home surveyor shall communicate with the nursing home administrator, the director of nursing for the nursing home, or the medical director of the nursing home, if available, to review the issues of concern and to give the nursing home an opportunity to share any data or documentation that may have an impact on a decision by the department to authorize the issuance of a citation for immediate jeopardy. If a citation for immediate jeopardy is issued to a nursing home, the department shall do both of the following:

(a) Contact the nursing home, at least once per day, until the immediate jeopardy is abated.

(b) Ensure that at least 1 nursing home surveyor remains on-site at the nursing home until the immediate jeopardy is abated unless the department determines that having a nursing home surveyor on-site at the nursing home is not practical.

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333.22113 Desk review of citations.

Sec. 22113.

On the receipt of a request from a nursing home, the department shall conduct a desk review of a citation if the circumstances meet the requirements established by the Centers for Medicare and Medicaid Services for a desk review instead of an on-site revisit for a standard or abbreviated survey. If the department determines that the nursing home is not eligible for a desk review, the department shall notify the nursing home, in writing, with an explanation of why a desk review could not be conducted.

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333.22115 Citations; informal dispute resolution process.

Sec. 22115.

(1) A nursing home that is issued a citation may request an appeal of the citation through an informal dispute resolution process from a peer review organization approved by the department. The department shall adopt the recommendations of the peer review organization on whether to support, amend, or delete the citation.

(2) Each quarter, the department shall do both of the following:

(a) Conduct a quality assurance review of amended or deleted citations with the peer review organization described in this section for the purposes of identifying whether there is a need for additional training of nursing home surveyors or peer review organization staff.

(b) Use the findings from the informal dispute resolution process for identifying training topics for the joint provider and surveyor training sessions described in section 20155.

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333.22117 Statewide reporting requirements for facility-reported incidents.

Sec. 22117.

(1) Subject to subsection (2), the department shall develop and implement statewide reporting requirements for facility-reported incidents for any category required by federal regulations and at least all of the following additional categories:

(a) Elopements.

(b) Bruising.

(c) Repeated statements from residents with mental health behaviors.

(d) Resident-to-resident incidents with no harm.

(2) The reporting requirements developed by the department under this section must exclude the following:

(a) A resident-to-resident altercation if there is no change in emotional status or physical functioning of each

resident involved in the altercation, including, but not limited to, no change in range of motion, toileting, eating, or ambulating.

(b) An injury of unknown origin if there is no change in emotional status or physical functioning of the resident with the injury, including, but not limited to, no change in range of motion, toileting, eating, or ambulating.

(c) An allegation made by a resident who has been diagnosed with a mental illness, including, but not limited to, psychosis or severe dementia, if the resident has a history of making false statements that are not based in reality and are documented in the resident's care plan, with interventions to protect the resident.

(d) An allegation if a thorough assessment does not substantiate the allegation.

(e) An allegation if the resident or the resident's legal guardian or other legal representative has been informed of the allegation, does not wish for the nursing home to report the allegation, and has received information on how to file a complaint with the department.

History: Add. 2022, Act 187, Imd. Eff. July 25, 2022

Popular Name: Act 368

333.22119 Annual report to legislature.

Sec. 22119.

The department shall report by March 1 of each year to the standing committees on appropriations and the standing committees having jurisdiction over issues involving senior citizens in the senate and the house of representatives on all of the following:

(a) The number and percentage of nursing home citations that are appealed through the informal dispute resolution process and an independent informal dispute resolution process.

(b) The number and percentage of nursing home citations that are appealed and supported, amended, or deleted through the informal dispute resolution process and an independent informal dispute resolution process.

(c) A summary of the quality assurance review of the amended citations and related nursing home survey retraining efforts to improve consistency among nursing home surveyors and across the survey administrative unit that occurred in the year being reported.

(d) The number of nursing home complaints and facility reported incidents received by the department, grouped by county. The information described in this subdivision must be shared as part of the quality assurance monitoring process and reviewed by the advisory workgroup established under section 22103.

(e) The number of surveys conducted.

(f) The number requiring follow-up surveys.

(g) The average number of citations per nursing home.

(h) The number of night and weekend responses to complaints conducted by the department.

(i) The review of citation patterns developed under section 20155(7).

(j) The number of standard surveys of nursing homes that were conducted during a period of open survey or enforcement cycle.

(k) The number of abbreviated complaint surveys that were not conducted on consecutive surveyor workdays.

(l) The percentage of all form CMS-2567 reports of findings that were released to the nursing home within the 10-working-day requirement.

(m) The percentage of provider notifications of acceptance or rejection of a plan of correction that were released to the nursing home within the 10-working-day requirement.

(n) The percentage of first revisits that were completed within 60 days from the date of survey completion.

(o) The percentage of second revisits that were completed within 85 days from the date of survey completion.

(p) The percentage of letters of compliance notification to the nursing home that were released within 10 working days of the date of the completion of the revisit.

(q) A summary of the discussions from the meetings required in section 20155(18).

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333.22121 Implementation of progressive discretionary enforcement actions.

Sec. 22121.

To the extent permitted by federal law, the department shall establish and implement progressive discretionary enforcement actions for the purposes of this part that consider the least restrictive enforcement action if a nursing home does not have a history of receiving citations in past nursing home surveys under this part and increase in severity if a nursing home has a history of receiving similar citations in past nursing home surveys under this part.

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333.22190 Expired. 1979, Act 113, Eff. Dec. 31, 1979.

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