

I. Introduction

The vast majority of nursing homes in the United States participate in the Medicare and/or Medicaid programs. In order to do so, they are required to meet the minimum standards laid out in the federal Nursing Home Reform Law and the federal regulations implementing that law. Fundamentally, the law requires that residents are provided the care and quality of life services sufficient to attain and maintain their highest practicable physical, emotional, and psychosocial well-being. The regulations, and sub-regulatory guidance, provide robust and extensive information on how these requirements must be realized in the lives of residents.

Despite the law and regulatory standards, serious nursing home problems are persistent and widespread. The reason for this is that, fundamentally, **care standards can only make a difference in the lives of residents when they are enforced by the state and federal agencies responsible for nursing home oversight.**

This guide aims to highlight and synthesize **key oversight responsibilities as detailed in the federal CMS State Operations Manual (SOM)**. These responsibilities include surveys (inspections), enforcement, complaint responses, remedies, and other quality assurance functions.

The guide highlights important guidance from the following **six categories**:

- I. **Program Background and Responsibilities**
- II. **Survey Process**
- III. **State Oversight Performance Standards**
- IV. **Enforcement and Remedies**
- V. **Civil Money Penalties**
- VI. **Information Disclosure**

In a hurry? The Table of Contents has descriptive titles for each of the topics covered in the guide. Click on the title to go directly to section of interest.

The purpose of this guide is to clarify to long-term care consumers and other stakeholders (including family members, advocates and ombudsmen, and policymakers) what they should expect from their state health departments. By highlighting key guidance from the SOM, we hope to demonstrate that state agency responsibilities extend far beyond their annual facility inspections; states are required by law to carry out numerous responsibilities—outside of inspections—to ensure that residents are safe and that their care needs are met every day of the year.

II. Nursing Home Surveys

Who is responsible?

The Centers for Medicare & Medicaid Services (CMS) is the federal agency responsible for overseeing nursing home care and ensuring that residents receive the care and quality of life services they are entitled to, in compliance with federal minimum standards. CMS contracts with the states to conduct monitoring and oversight and ensure compliance with federal quality standards. These activities are carried out by state survey agencies (SAs)—usually a state department of health or department of public health—which is responsible for ensuring resident safety, dignity, and well-being 24 hours a day, every day of the year.

Primary activities of an SA include surveying (inspecting) facilities, responding to complaints about care, and responding to facility-reported incidents to evaluate performance and effectiveness in rendering safe and acceptable quality of care.

What facilities are surveyed?

Virtually all nursing homes in the U.S. participate in Medicaid and/or Medicare (i.e., receive funds from one or both programs). Participation in Medicaid/Medicare is voluntary. When a nursing home operator chooses to take Medicare/Medicaid funds, they agree to meet or exceed all federal standards and to be surveyed by their state survey agency and CMS to ensure compliance with those standards.

Why do surveys matter?

Surveys are the principal mechanism through which nursing home quality is assessed and compliance with standards is determined.

Surveys during COVID

In March 2020 in response to the COVID-19 pandemic, CMS restricted regular survey activities at nursing homes and introduced infection control surveys. As a result, state agencies conducted only 8,999 complaint surveys in 2020, approximately half the previous year's total (16,662). When nursing home residents were most in need, too many facilities were operating without oversight. ([Journal of the American Geriatrics Society](#)).

III. The State Operations Manual (SOM)

What is the State Operations Manual?

The **State Operations Manual (SOM)** is a federal document, issued by CMS, containing survey and certification rules and guidance. The [SOM includes 10 chapters](#) covering a range of topics such as skilled nursing facilities (nursing homes), laboratories, and home health. **This guide focuses on nursing homes** and largely on [Chapter 7, “Survey and Enforcement Process for Skilled Nursing Facilities and Nursing Facilities.”](#)

Survey protocols promote consistency in the survey process and assure that a facility’s compliance with regulations is reviewed **thoroughly, efficiently, and consistently.**

Why is the State Operations Manual important?

The SOM provides guidance to help surveyors assess whether nursing homes are complying with critical regulatory requirements.

The manual includes key survey protocols such as instructions, checklists, and other tools. These protocols can be used to identify relevant areas and issues to be surveyed as specified in each regulation, and, in some cases, the methods to be used. The survey protocols also promote consistency in the survey process and assure that a facility’s compliance with regulations is done so thoroughly, efficiently, and consistently.

SAs must follow the proper protocols when conducting surveys and then consider the requirements in the statutes and regulations to determine whether a citation is appropriate. The SA bases any deficiency on a violation of the statute or the regulations. Decisions relating to violations of a statute or regulation must be based upon findings related to the facility’s performance, practices, or conditions.

Categories of SOM Guidance

This guide focuses on State Operations Manual (SOM) guidance from the following six categories:

- I. **Program Background and Responsibilities:** Certification and requirements for Medicare/Medicaid participation.
- II. **Survey Process:** A “how to” for nursing home surveys.
- III. **State Oversight Performance Standards:** The requirements which state survey agencies must meet to ensure nursing home compliance with federal standards.
- IV. **Enforcement and Remedies for Nursing Homes:** CMS and state action when facilities are out of compliance.
- V. **Civil Money Penalties:** Penalties and fines imposed by the regulatory agencies.
- VI. **Information Disclosure:** Survey and certification information requiring public disclosure.

Each category features selected SOM guidance and a number referencing the SOM source. The guidance text either quotes directly from the SOM or is lightly edited or paraphrased for clarity.

Note: The State Operations Manual (SOM) is extremely comprehensive, containing 10 frequently overlapping chapters to provide additional guidance or examples. This guide draws information predominately from [Chapter 7 – Survey and Enforcement Process for Skilled Nursing Facilities and Nursing Facilities](#). It does **not** cover guidance related to other facilities, such as laboratories, hospitals, and home health services.

IV. Summary of Federal Law

All nursing homes that contract to provide Medicaid and/or Medicare services are required to meet federal standards of care for all residents in their facilities (whether or not the individual is a beneficiary of one of those programs). These standards are founded in the 1987 Omnibus Budget Reconciliation Act (aka “OBRA ‘87”), which contains the Nursing Home Reform Law.¹ The Reform Law requires all skilled nursing facilities that receive federal funding to conform to specific standards of care, including that nursing staff help residents attain and maintain their “highest practicable physical, mental, and psychosocial well-being,” based on their individual needs and personal goals. The emphasis on individualized, resident-centered care was intended to reduce widespread problems in long-term care facilities, including abuse and neglect, and improve quality of life. Unfortunately, many of these reforms have not been fully implemented in the lives of residents and, as a result, nursing homes can often be poor places to live and get care. An important example is the widespread inappropriate use of antipsychotic drugs in nursing homes, which has received much attention from news and government sources in recent years. The extent and duration of this problem typifies the weaknesses in implementation of the Reform Law, according to which residents have the right to be free from unnecessary drugs and chemical restraints, as well as the right to be informed about, participate in, and refuse treatment.

¹ Nursing Home Reform Law, 42 U.S.C. §§1395i-3(a)-(h), 1396r(a)-(h) (Medicare and Medicaid, respectively) (December 1987). The Reform Law’s text is available at: <https://www.ecfr.gov/current/title-42/chapter-IV/subchapter-G/part-483>.