LONG TERM CARE
COMMUNITY COALITION

Advancing Quality, Dignity & Justice

LTCCC Guide: Responding to Questions About CMS's Risk-Based Surveys

A Practical Guide for Long-Term Care Ombudsmen

Effective dates: CMS began using the Risk-Based Survey (RBS) process on September 8, 2026. CMS plans to begin publicly identifying qualifying facilities on Care Compare and in the Provider Data Catalog on September 30, 2026.

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1. What is the Risk-Based Survey?

The Risk-Based Survey (RBS) is a modified version of the standard Long-Term Care Survey Process. According to CMS, it is being implemented to address the problem in delays in both state surveys (which are required to be conducted on an average of once per year, but are often conducted much less frequency) and responses to complaints about resident neglect, abuse, and substandard care. It is intended for a limited group of nursing homes that CMS identifies as low-risk based on indicators like overall and staffing star ratings and inspection history. CMS estimates that about 12% of nursing homes nationwide will qualify for the RBS.

LTCCC and other advocates and experts are concerned about the RBS for numerous reasons. The criteria selected by CMS do not provide a validated basis for identifying so-called low-risk/high-performing nursing homes. Studies have shown that nursing home ratings systems are

much better at identifying poorly performing facilities than good ones.[1] In respect to CMS's specific criteria, too many "five-star" facilities have serious problem.[2] In addition, research commissioned by CMS has found that a three-star (average) staffing rating is well below what is necessary to meet the most basic clinical care needs of residents.[3] In our alert when the RBS rule was announced, we urged CMS to use data and other resources so that surveyors can perform smarter and more efficient, rather than weaker, surveys.[4]

Important things to know about the RBS:

- The RBS employs **significantly reduced survey activities**, a smaller resident sample, generally about one-third as many surveyors, and roughly half the onsite time of the standard survey.
- **Infection control is the only mandatory facility task** for the RBS. All other facility tasks are only completed if specific concerns are identified.
- Many important facility tasks are not automatically conducted. **The following tasks are conducted only when the survey team identifies a concern, such as a concern raised by the ombudsman**: sufficient and competent nurse staffing, resident council, dining, environment, kitchen, medication administration, personal funds, and resident assessment.
- **Surveyors are instructed to "not review the facility history of abuse."**
- Surveyors are instructed to contact the ombudsman as part of offsite prep for the survey. During the survey, **surveyors "must answer any resident-specific Ombudsman concern area."**
- Eligibility is reassessed through quarterly lists. A facility generally remains eligible for six months unless a disqualifying event occurs.
- The state survey agency may choose the full survey process when resident health or safety concerns warrant it. CMS may also require the full process.
- Complaint investigations continue. The RBS changes the standard recertification survey; it does not eliminate the state agency's obligation to respond to complaints and facility-reported incidents in a timely and effective manner.

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[1] *See*, Phillips, C.D., Hawes, C., Lieberman, T. *et al,* "Where should Momma go? Current nursing home performance measurement strategies and a less ambitious approach," *BMC Health Serv Res* 7, 93 (2007). https://doi.org/10.1186/1472-6963-7-93.

[2] *See,* LTCCC and Center for Medicare Advocacy, "When Five Stars Aren't Enough: Elder Justice "No Harm" Newsletter" (Volume 7, Issue 1). Available at https://nursinghome411.org/elder-justice-7-1/.

[3] *See*, Abt Associates, "Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes, Report to Congress" (2001). Available at https://nursinghome411.org/wp-content/uploads/2024/04/abt-study-appropriateness-of-minimum-staffing-ratios-2001.pdf.

[4] https://nursinghome411.org/alert-cms-rbs/.

2. Which Facilities Can Qualify?

To appear on CMS's quarterly RBS-qualified list, a facility must pass all of the following screens:

CMS Screen	Threshold for Qualification
Overall rating	5 stars
Staffing rating	At least 3 stars
Recent serious citations	No actual-harm, immediate jeopardy, or substandard-quality-of-care citations in the last survey cycle
Survey timeliness	A standard survey within the last 18 months
Staffing waiver	No staffing waiver in effect
PBJ staffing-data audit	No failed Payroll-Based Journal staffing-data audit
MDS resident-assessment audit	No failed Minimum Data Set audit
Health inspection score	At or better than the state median (CMS uses a score at or below the 50th percentile)
Schizophrenia coding	Fewer than two residents age 65 or older newly coded with schizophrenia after admission
Ownership	No change in ownership since the last standard survey
Special Focus Facility status	Not a Special Focus Facility candidate

3. Frequently Asked Questions

What does the "high-performing" icon on Care Compare mean?
CMS is using a graphic of a golden trophy to indicate eligibility for the RBS on Care Compare. Due to the weakness of the selection criteria, **the icon should not be considered an indicator of high quality, safety, or humane treatment.** We strongly encourage prospective residents, families, and ombudsmen to disregard the golden trophy and, if anything, approach these facilities with heightened scrutiny, since their surveys will involve fewer surveyors, fewer investigative activities, a smaller resident sample, and substantially less onsite time.

Does the "high-performing" designation mean residents are not at risk of harm?
No. Any nursing home can have serious problems, including problems that are unreported, not yet investigated, or not captured by CMS's measures. Staffing levels, residents' experiences, and current facility conditions are the foundation for assessing quality and safety.

Does the designation mean the facility has no deficiencies?
No. A qualifying facility can have deficiencies. The screening rule focuses on selected indicators, including the absence of certain serious citations in the last survey cycle. It does not require a deficiency-free record.

Can a facility qualify with only a 3-star staffing rating?
Yes. CMS requires five stars overall, but only three or more for staffing. A three-star staffing rating is just an average staffing level, and star ratings are relative measures – not a finding that staffing is sufficient for every resident on every shift (as required by federal rules).

Will the RBS miss problems because it is shorter?
CMS reports that pilot RBS surveys produced findings comparable to the traditional process. Nevertheless, a smaller sample, extremely limited scope of investigations, and fewer onsite hours will, in our view, undoubtedly decrease the chances that surveyors will identify problems effectively, no matter substantiate the extent to which violations are harming or endangering residents. Thus, timely and specific information from residents, families, ombudsmen, and other sources are especially important. Ombudsmen should not assume surveyors already know about a concern.

Are complaints still investigated at an RBS facility?
Yes. Complaint and facility-reported-incident investigations continue. In addition, certain new citations or pending intakes can disqualify a facility from the RBS and compel the state to undertake the full survey process.

Can the state decide not to use the shorter survey?
Yes. The State Survey Agency may use the traditional full survey process at an otherwise qualifying facility when health or safety concerns – such as complaint information or information from an ombudsman – support doing so. If a mandatory disqualifying event occurs before the RBS begins, the state must convert to the full process. Furthermore, if surveyors discover evidence of actual harm, immediate jeopardy, abuse, or widespread failure during an active RBS, the team is instructed to expand the survey.

What events can disqualify a facility after it appears on the list?
Before the RBS starts, disqualifying events include: an intake investigation resulting in actual harm, immediate jeopardy, abuse at any severity, or substandard quality of care; a pending intake triaged as immediate jeopardy (IJ); more than three pending active non-IJ intakes triaged as non-IJ medium or higher; a CMS-approved nursing waiver; or a change in ownership since the last standard survey.

Could Care Compare still show the icon after the circumstances change?
Yes. CMS warns that posting and data-transmission timing may cause differences between the public icon and the state's operative list. The State Survey Agency must use its list and check current disqualifying criteria before starting an RBS.

Should consumers choose a facility because it has the icon?
In short, no. CMS's criteria are too weak to assure that qualifying facilities are actually safe. Consumers should review the latest nurse staffing levels (especially for RNs and weekend coverage); examine recent inspection reports; visit (at different times if possible); and talk privately with residents, families, and the ombudsman.

What should an ombudsman say if a facility advertises itself as a "CMS-approved" or "certified safe"?
Clarify that CMS has identified the facility as eligible for a streamlined survey based on defined indicators. CMS has not certified that the facility is problem-free or safe. Encourage the person to consider the full record (especially nurse staffing levels) and present conditions.

Does the icon change residents' rights or the facility's obligations?
No. Federal resident rights and facility requirements remain the same. The facility must still provide the care and services necessary for each resident to attain or maintain their highest practicable well-being, protect residents from abuse and neglect, provide sufficient and competent staff, and comply with all other applicable requirements.

4. When Surveyors Contact the Ombudsman

The RBS Procedure Guide[5] directs the survey team to contact the Ombudsman Program before entering the facility to obtain information about any concerns the Omudsman Program has identified at the facility. Ombudsman concerns about staffing levels and resident-specific concerns are specifically noted in the Guide.

Information to Prepare Before the Call

- Patterns since the last survey – not just open cases – including recurring concerns across residents, units, shifts, or weekends.
- Concerns involving abuse, neglect, retaliation, unexplained injuries, elopement, avoidable decline, pressure injuries, falls, infection control, inappropriate transfers or discharges, medication use, food, call-light response, and continence care.

[5] https://nursinghome411.org/wp-content/uploads/2026/09/RBS-Procedure-Guide.pdf.

- Staffing concerns (by role, shift, unit, and or date, if possible); missed care or resident harm (including psychosocial harm) connected to staffing; and discrepancies between reported staffing and observed conditions.
- Resident rights and quality-of-life concerns, including dignity, privacy, visitation, grievances, choice, activities, communication access, and resident or family council interference.
- Names or locations of potentially affected residents only when disclosure is authorized in accordance with Ombudsman Program requirements; otherwise provide non-identifying pattern information.
- Documents or sources surveyors could independently obtain, such as care plans, staffing assignments, staffing data, call-light logs, medication records, incident reports, grievances, council minutes, transfer notices, photographs held by a resident or representative, or specific dates for video review.
- Whether the issue was reported to the facility or another agency, the response received, and whether retaliation or fear of retaliation is a concern.

Questions Surveyors May Ask – and How to Answer

Possible surveyor question	Suggested approach
"Do you have concerns about this facility?"	Do not limit the response to active formal complaints. Identify recurring issues and recent observations. Consider whether there have been issues related to staffing, including delayed call bell response, speaking disrespectfully to resident, residents being diapered rather than being assisted to bathroom, etc…. Explain resident impact.
"Which residents should we speak with?"	Follow consent and disclosure rules. With authorization, identify residents who can describe their concerns. Without authorization, describe the unit, shift, pattern, or type of resident affected and suggest independent ways to identify interviewees.
"Is this an isolated event or pattern?"	To the extent possible, use your knowledge of and experience with the facility to provide dates, frequency, affected units or shifts, similar complaints, and whether corrective steps were implemented by the facility and lasted. Use available federal staffing data to

	identify patterns involving low nurse staffing, weekend staffing, turnover, and reported medical director, therapy, or activities staff time, as applicable.
"Did the facility resolve it?"	Describe both the facility's stated response and the observed result. Note recurrence, incomplete remedies, failure to involve the resident, or any continuing risk.
"What records should we review?"	Point to records that could corroborate or disprove the concern, including staffing data. Focus surveyors on relevant dates, units, residents, staff roles, and inconsistencies rather than offering a broad document list.
"Can we use the resident's or complainant's name?"	Apply state Ombudsman Program policy and federal disclosure requirements. Do not release resident- or complainant-identifying information merely because a surveyor requests it; obtain and document the required consent or use the applicable authorized process.
"Will you attend the Resident Council interview or exit conference?"	Attend when feasible and consistent with program policy. Resident Council participation depends on the council president's approval. Preserve residents' control of their meeting and avoid speaking for residents when they can speak for themselves.

5. Quick Preparation Checklist

- ☐ Confirm which facility and survey type the caller is discussing.
- ☐ Review facility contacts, visits, complaint themes, and unresolved issues since the facility's last survey.
- ☐ To the extent possible, organize concerns by issue, resident impact, date, location, shift, frequency, and status.
- ☐ Identify potential corroborating data, interviews, records, or observations.
- ☐ Check consent and disclosure authority before sharing identifying information.
- ☐ Consider whether there are staffing concerns (including care and dignity concerns often related to insufficient or poorly trained staff).

- ☐ Flag retaliation concerns and ask for confidential, private resident interviews.
- ☐ Ask whether the team plans a resident council interview and whether residents want ombudsman support.
- ☐ Request an invitation to the exit conference.
- ☐ Document what was shared, with whom, on what date, and any requested follow-up.

6. Key Cautions for Ombudsmen

- » **Do not adopt the label as a conclusion**. Use "RBS-qualified" when precision matters. The phrases "low risk" and "high-performing" can sound more definitive than CMS's actual criteria merit.
- » **Do not let a star rating override resident experience**. Current, specific information may reveal risks that historical ratings and survey findings do not capture.
- » **Do not disclose identifying information automatically**. Follow federal requirements and the policies of the State Long-Term Care Ombudsman Program regarding consent, referrals, and disclosure.
- » **Do not wait for the next annual survey when a resident faces current danger**. Use the complaint-resolution and referral options authorized by the resident and program policy; emergencies require prompt action through the appropriate channels.

About this guide. This resource is intended for education and advocacy. Ombudsmen should follow the policies and procedures of their State Long-Term Care Ombudsman Program. CMS may update the RBS criteria or procedures; verify current guidance before relying on specific operational details.