Writing a Plan of Correction: Keys to Success

By Caralyn Davis, Staff Writer - November 26, 2019

Receiving the statement of deficiencies (form CMS-2567 (https://www.cms.gov/Medicare/CMS-Forms/CMS-Forms/Downloads/CMS2567.pdf)) from the state survey team and seeing citations finally laid out in black and white can be a shock for any director of nursing services (DNS), says **Janet Feldkamp**, RN, BSN, LNHA, CHC, JD, a partner at Benesch, Friedlander, Coplan & Aronoff in Columbus, OH. The following steps can help DNSs mitigate the shock and reduce the negative impacts from survey:

Get started ASAP

In the non-immediate jeopardy process, the plan of correction gives providers the opportunity to correct deficiencies before remedies are imposed. Nursing homes have 10 calendar days from their receipt of the CMS-2567 to reply with an acceptable plan of correction in response to each listed citation—or the state will speed up the timetable for imposing remedies.

Note: Immediate jeopardy citations follow a separate process. For more information, see sections 7307, Immediate Jeopardy Exists, through section 7309, Key Dates When Immediate Jeopardy Exists, in Chapter 7 (https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/som107c07.pdf), "Survey and Enforcement Process for Skilled Nursing Facilities and Nursing Facilities," in the *State Operations Manual* (*SOM*).

"You clearly want to make sure that you are well within your timeline of 10 days to submit your plan of correction," says Feldkamp. "It takes longer to write a plan of correction than people think, so you don't want to put it off. Give yourself time to write several drafts."

Read the statement of deficiencies from two perspectives

There are two purposes for reading the entire statement of deficiencies, says Feldkamp. "And you should analyze the statement of deficiencies for both of these purposes at the very same time."

The first is to begin work on the plan of correction, says Feldkamp. "Is each citation what the survey team told you it would be during the exit conference? How will you address it in your plan of correction?"

Second, providers should consider whether any informal dispute resolution is needed, notes Feldkamp. "You want to determine: Is there anything in the statement of deficiencies that is not correct? Is there anything not in the statement of deficiencies that would clearly change the assumptions and conclusions?"

Sometimes what is not there is most important, she stresses. "You want to look at both what is there and what is not there, and then determine what is right and what is not right. Most states no longer accept any type of dispute from the facility in the plan of correction, so you have to be ready to go with informal dispute resolution if needed."

Outline as you read the statement of deficiencies

In a citation, a number of different types of elements may be noncompliant, points out Feldkamp. "Make notes on your statement of deficiencies to highlight the elements that the surveyors have cited as to why you are noncompliant. You will need to look at aspects of these elements as you develop your plan of correction."

For example, infection prevention and control is a large program with many working parts, she notes. "If the survey team gives you a citation for your infection prevention and control program because nurse aides were walking around holding linens against their clothes and not washing their hands, you want to keep track of those specific elements of the citation so that you can figure out how to tailor your plan to target those elements while you also address the overall program via education and policy changes."

Know the core elements of an acceptable plan of correction

In November 2018, the Centers for Medicare & Medicaid Services (CMS) quietly updated section 7317, Acceptable Plan of Correction, in chapter 7 of the *SOM* to provide greater clarity on the federal requirements for an acceptable plan of correction. Note: See the excerpted section 7317 at the end of this article.

"Per the federal guidance, typically there are five elements that you look at to draft a plan of correction for each citation," says Feldkamp. "The plan for correcting the specific deficiency should address the actions you will take for the residents directly affected by the deficient practice, how you will identify additional residents that could be affected if that deficient practice continues, and the measures you will take to improve the facility systems and processes that led to the deficiency being cited."

The plan of correction for each deficiency also must explain the monitoring process that will be used, says Feldkamp. "That is really the role your quality assessment and assurance committee or quality assurance and performance improvement team will have in maintaining compliance. In addition, you have to provide a timetable for completing all corrective actions."

There are some variations as to what different state agencies will accept, she adds. "Consequently, you need to understand what your state agency expects despite the fact you are replying to federal citations. Typically, most states send their elements for an acceptable plan of correction with the statement of deficiencies. You want to pay attention to that."

Be prepared to dig deep

The goal of the plan of correction is to show surveyors how the facility corrected the problem and how compliance will be maintained, says Feldkamp. "Depending on how a citation is written in the statement of deficiencies, sometimes providers need to do an analysis to find the root cause," she points out. "Unless you fix the root cause, you will never actually correct the deficient practice."

For example, if a nursing assistant walks through three wings of your facility with dirty linens in their arms, what is the root cause of that? "Do you have enough barrels? Are those barrels in inconvenient places for staff?" she asks. "After you read the statement of deficiencies and pull out the key elements of each citation, then you need to think critically about the cause—analyze what really happened so you can understand how to fix it and maintain compliance."

Don't admit deficient practices

From a legal perspective, the plan of correction is not the place to make direct admissions, suggests Feldkamp. "For example, you don't want to say that a resident fell 12 times. It's safest to keep your focus on the current status of the specific residents involved and what you have done to correct the deficient practice and to prevent any recurrence."

Edit your work

Providers want to get the plan of correction accepted on the first try, says Feldkamp. "Particularly if you have multiple deficiencies, it's a good idea to read through your last draft starting with the last F-tag and moving backward. When you have many pages of deficiencies, putting together the plan of correction is exhausting. It's easy to overlook mistakes. Reading your plan of correction back to front allows you to see what you have written with fresh eyes and more easily identify potential issues."

Once the final draft is ready, have someone else review it as well, she adds. "For example, if the DNS is writing the plan of correction, have another department head or the administrator review it. You want that additional perspective on whether you have met every required element for each deficiency."

7317 - Acceptable Plan of Correction

(Rev. 185, Issued: 11-16-18, Effective: 11-16-18, Implementation: 11-16-18)

Except in cases of past noncompliance, facilities having deficiencies (other than those at scope and severity level A) must submit an acceptable plan of correction. An acceptable plan of correction must:

- Address how corrective action will be accomplished for those residents found to have been affected by the deficient practice;
- Address how the facility will identify other residents having the potential to be affected by the same deficient practice;
- Address what measures will be put into place or systemic changes made to ensure that the deficient practice will not recur;
- Indicate how the facility plans to monitor its performance to make sure that solutions are sustained; and

- Include dates when corrective action will be completed. The corrective action completion dates must be acceptable to the State. If the plan of correction is unacceptable for any reason, the State will notify the facility in writing. If the plan of correction is acceptable, the State will notify the facility by phone, e-mail, etc. Facilities should be cautioned that they are ultimately accountable for their own compliance, and that responsibility is not alleviated in cases where notification about the acceptability of their plan of correction is not made timely.

The plan of correction serves as the facility's allegation of compliance and, without it, CMS and/or the State have no basis on which to verify compliance. A plan of correction must be submitted within 10 calendar days from the date the facility receives its Form CMS-2567. If an acceptable plan of correction is not received within this timeframe, the State notifies the facility that it is recommending to the RO and/or the State Medicaid Agency that remedies be imposed effective when notice requirements are met. The requirement for a plan of correction is in 42 CFR 488.402(d) (https://ecfr.gov/cgi-bin/text-idx?SID=eeff835860279753e7f04ae87eacfa45&mc=true&node=se42.5.488_1402&rgn=div8). Further, 42 CFR 488.456(b)(ii) (https://ecfr.gov/cgi-bin/text-idx?SID=eeff835860279753e7f04ae87eacfa45&mc=true&node=se42.5.488_1456&rgn=div8) requires CMS or the State to terminate the provider agreement of a facility that does not submit an acceptable plan of correction.

A facility is not required to provide a plan of correction for a deficiency cited as past noncompliance because that deficiency is corrected at the time it is cited; however, the survey team must document the facility's corrective actions on Form CMS-2567.

Source: Chapter 7 (https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/som107c07.pdf), "Survey and Enforcement Process for Skilled Nursing Facilities and Nursing Facilities," in the *State Operations Manual* (*SOM*).

Note: For additional information about the rules of the road for plans of correction, see section 2728B, PoC, in chapter 2 (https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/som107c02.pdf)," The Certification Process," of the *SOM*, as well as the June 2017 CMS survey-and-certification memo S&C: 17-34-ALL (https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Survey-and-Cert-Letter-17-34.pdf). Section 2728B uses different wording and includes an additional element: "The title of the person responsible for implementing the acceptable plan of correction."

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