



# Client Alert



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## GAO Report Recommends Strengthening CMS's Special Focus Facility Program for Poorly Performing Nursing Homes

The Government Accountability Office (GAO) issued its report to Congress on the Special Focus Facility (SFF) Program, entitled *Poorly Performing Nursing Homes—Special Focus Facilities Are Often Improving, But CMS's Program Could Be Strengthened* (GAO Report, GAO-10-197) in March 2010. The GAO Report includes an analysis of SFFs and the impact of the SFF Program on improving quality of care problems in some of the nation's poorest performing nursing homes, and concludes with GAO's six recommendations for improving the program.

More than a decade ago, in 1998, the Centers for Medicare and Medicaid Services (CMS) implemented the SFF Program to tackle the issue of poor nursing home performance and chronic non-compliance with the Medicare and Medicaid standards. The SFF Program encouraged states to increase their monitoring and oversight of poorly performing nursing homes by focusing on a small number of such nursing homes in each state.

In the SFF selection process, CMS first identifies a list of the 15 worst-performing nursing homes in each state as candidates for the program (known as the SFF candidate list). The states then select a subset of nursing homes from that list to participate in the SFF Program, as openings become available. Due to resource constraints, the SFF Program is currently limited to 136 facilities nationwide and a maximum of six facilities per state. All SFFs must receive a minimum of two state surveys per year (generally this is twice as frequently as other nursing homes) until they meet the criteria to "graduate" from the SFF Program based on their performance in consecutive surveys. The SFF Program also allows states to levy escalated sanctions, including termination, for SFFs that fail to show improvement within the 18-month time frame for the program.<sup>1</sup>

In its study, the GAO analyzed 2005 to 2009 CMS data and interviewed officials from CMS's Survey and Certification Group, CMS's regional offices and state officials in 14 states. The focus of the GAO's study was to:

- identify the factors that various states considered in selecting SFFs;
- determine any differences between SFFs and other nursing homes;

<sup>1</sup> States may (and often do) retain an SFF that is improving but has not met the graduation criteria after three standard surveys (approximately 18 months). Only SFFs that fail to make significant progress in this timeframe are recommended for termination.

- assess state adherence to program guidance and the SFF Program's overall impact; and
- ascertain other strategies that states used to improve poorly performing nursing homes, such as the use of Systems Information Agreements (SIAs) and Corporate Integrity Agreements (CIAs) and the implementation of the Nursing Homes in Need (NHIN) initiative, which allows Quality Improvement Organizations to provide technical assistance to a limited number of nursing homes.<sup>2</sup>

## The GAO Report Recommendations

Based on the results of the study, the GAO made six recommendations for strengthening the SFF Program. HHS indicated that it would take GAO's recommendation to seek legislative authority to charge SFFs for the costs associated with the performance of additional surveys under advisement and generally agreed with the following five recommendations:

1. expand the SFF's public disclosure strategy by directing states to notify all SFF candidates regarding their risk of being selected for participation in the SFF Program;<sup>3</sup>
2. clarify program guidance to ensure more stringent and appropriate enforcement of sanctions (i.e., higher civil monetary penalties and termination) and increase monitoring of SFF sanctions;
3. educate CMS regional offices regarding necessary elements of SIAs and document any lessons learned from their use;
4. coordinate more systematically with the OIG regarding its experiences with CIAs; and
5. increase the SFF candidate list to include additional homes and facilitate SFFs to be chosen from a full complement of candidates, particularly for states with a large number of SFFs.

## The GAO Report Findings

State discretion is a critical component of the SFF selection methodology, and the GAO observed that most states considered several criteria in addition to the nursing home's rank on the SFF candidate list when selecting an SFF. Although SFFs were frequently chosen from among the five worst performers on the SFF candidate list, states considered factors such as compliance history, geographic location, financial situation and recent changes of ownership. For instance, a few states indicated they were more likely to select candidates with more recent poor performance or nursing homes that had been recently acquired by a new owner with a history of compliance problems. The GAO also identified limitations with the SFF candidate list, which further supported the necessity of state discretion in the selection process (i.e., lag time between home's most recent survey and the issuance of the SFF candidate list and insufficient numbers of new nursing homes on the SFF candidate list due to the inclusion of current SFFs on the list).

<sup>2</sup> An SIA is an agreement negotiated between CMS and an individual SFF, which typically requires the SFF to take specific steps to address its quality of care issues. Similarly, CIAs involve agreements among the Department of Health and Human Services (HHS), the Office of Inspector General (OIG) and a nursing home corporation to address the quality of care in all of the corporation's nursing homes.

<sup>3</sup> In 2007 and 2008, CMS made several changes in the program to increase public (and provider) awareness of the SFF Program, including requiring states to notify the governing bodies, owners, operators and administrators of a facility designated as an SFF and identifying all SFFs on CMS's *Nursing Home Compare* website. Additionally, the *Nursing Home Compare* website now provides information on SFFs, such as those SFFs that fail to improve their quality of care after one or more surveys.

Not surprisingly, the GAO found that SFFs differ from other nursing homes based on compliance history. SFFs on average required more revisits and were cited for more overall deficiencies and more serious deficiencies (i.e., 5.5 times more actual harm deficiencies and 19 times more immediate jeopardy deficiencies) than non-SFF nursing homes. In addition, GAO found that SFFs differed from other homes on several key characteristics. A higher percentage of SFFs were part of a chain organization, a for-profit organization, or both. On average, SFFs also had more beds and total residents than other homes, but a lower occupancy rate (approximately 79 percent occupancy). SFFs also had a greater share of Medicaid residents on average than other nursing homes. As a whole, SFFs also provided fewer registered nurse hours per resident-day and were more likely to be ranked lower on the overall quality rating and health inspection component of CMS's Five-Star System.

Despite some improvements noted with state compliance with CMS's program requirements since 2008, the GAO reported that several states still failed to perform two surveys for SFFs, allowed gaps of greater than 10 months between surveys, or delayed the initial survey for at least one SFF for seven months or longer. Similarly, GAO observed that states were inconsistent in interpreting and implementing CMS's directive to impose more severe and immediate enforcement actions on SFFs that failed to make significant improvements after three surveys (i.e., approximately 18 months). In fact, GAO noted that there was no difference in the number of SFFs subjected to civil monetary penalties or denials of payment for new admissions in comparison to other poorly performing nursing homes.

In addition, states appeared to interpret the SFF Program Guidance on enforcement inconsistently. For instance, many states retained in the program SFFs that failed to meet the graduation criteria instead of seeking termination, effectively preventing many poorly performing nursing homes from being selected for participation due to CMS's program limit of 136 SFFs. On the other hand, GAO noted that most SFFs did eventually graduate from the program (approximately 51 percent based on 2005 to 2009 data), and the average length of participation in the SFF program had gradually decreased from an average of 28 months for new SFFs in 2005 to 13 months for new SFFs in 2007.

Accurate application of "graduation" criteria for SFFs and the rates of sustained improvements after graduation varied among states, leading to mixed reviews about the effectiveness of the SFF program. However, the GAO acknowledged that the CMS and the states have implemented additional strategies aimed at improving the quality of care in SFFs and other nursing homes. These strategies vary from the use of SIAs and CIAs (as noted in the GAO's recommendations) to state-based quality improvement activities, such as monthly training opportunities for nursing home staff.

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