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CMS and the Ohio Department of Health surveys: Active enforcement and increased transparency

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Surveys are an ever-present part of the regulatory oversight of health care entities. The industry continues to see ongoing active enforcement by both the Centers for Medicare and Medicaid Services (CMS) and the Ohio Department of Health (ODH), and we expect this to continue into 2019.

Recently in Ohio, ODH has been active in conducting maternity license surveys and has taken significant enforcement actions over the past year. Regularly cited in these recent actions are violations determined to “present an imminent threat of serious physical or life threatening danger, or an immediate serious threat to the emotional health, safety or security of one or more patients or residents”. These violations have resulted in the highest level of civil monetary penalties, ranging from \$100,000 up to \$250,000, and, sometimes, proposed license revocation. ODH has reported that since 2012, 28 maternity units have been under enforcement action. No license revocation has occurred during this time, with all actions resolved through the payment of fines, acceptable plans of corrections and/or settlement agreements.

At the federal level, CMS continues to conduct its own validation surveys and take an active role in the oversight of surveys conducted by accrediting organizations (AOs).

CMS has expressed concern regarding whether AOs, such as The Joint Commission, are uncovering all deficiencies during the AO accreditation surveys. In October 2018, CMS [noted](#) that it was “testing a more streamlined, effective way to assess AOs’ ability to ensure that facilities and suppliers comply with CMS requirements.” To that end, CMS has piloted a program to have CMS surveyors present to conduct direct observation of the AO survey. CMS has also begun publishing data identifying “Accreditation Organizations with Hospitals with Recent Substantial Deficiencies.” CMS recently launched a website for “[Quality, Certification and Oversight Reports](#)” (QCOR). The website lists, by AO, those hospitals that have “recent substantial deficient practices” and notes for each AO the percentage of hospitals accredited by that AO with such deficiencies. The QCOR website was also designed to increase transparency of the survey process.

CMS deficiency reports (Form 2567) are available on the QCOR website. While these reports have always been public, they have previously not been easy to find or search. The QCOR website currently only posts reports from the past six months; however, the Association of Health Care Journalists has created [another website](#) that posts survey reports from a much longer time period. Neither of these websites posts the plan of correction at this time. The QCOR website notes at the top of each survey report, “[f]or information on the provider’s plan to correct this deficiency, please contact the provider or the state survey agency.” CMS touts the new transparency, stating: “[b]y posting more detail—accredited hospitals’ complaint surveys, out-of-compliance information, and performance data for AOs themselves—CMS will offer the public more nuanced information than accreditation status alone provides.”