



Larry Hogan, Governor · Boyd K. Rutherford, Lt. Governor · Robert R. Neall, Secretary

## MARYLAND MEDICAL ASSISTANCE PROGRAM

### Nursing Home Transmittal #266

January 22, 2018

To: Nursing Home Administrators

From: *Susan J. Tucker*  
Susan J. Tucker, Executive Director  
Office of Health Services

Re: Minimum Data Set Validation—Effective January 2018

Note: Please ensure that appropriate staff members in your organization are informed of the contents of this transmittal.

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The purpose of this transmittal is to describe the process for validating the Minimum Data Set (MDS) submitted by each nursing facility.

During calendar year 2017, every facility whose quarterly Medicaid rate is based on the facility's case mix index (CMI) received an on-site audit by the Department's Utilization Control Agent. The purpose of this initial round of audits was to educate facilities on the Department's MDS Validation Minimum Review Standards and process. During 2017, no penalties were assessed as a result of an MDS validation audit.

For audits conducted during calendar year 2018 and thereafter, the Department will conduct an annual audit and subsequent penalty audit when necessary. An annual audit consists of an onsite review of a sample of MDS data and supporting documentation. A penalty audit will only be conducted if an annual audit finds the facility to have a "negative error rate" greater than 20 percent. The negative error rate is calculated as the number of assessments where the acuity group decreased divided by the total number of assessments reviewed.

Additionally, a corrective action plan will be required if a penalty audit is necessary. Please see the MDS Validation Minimum Review Standards on the Department's website for specific documentation requirements (available for download at the link in this transmittal).

The penalty audit includes the review of 100 percent of the occupied beds for Medicaid residents on the last day of the three-month period being reviewed. If the facility again incurs a negative error rate of greater than 20 percent, the Department will enforce financial and programmatic penalties according to this transmittal and the MDS Validation Guidelines (available for

download at the link at the end of this transmittal). The MDS Validation Guidelines are a step-by-step description of the audit process.

The penalties shall encompass all of the following:

- Penalty 1. The facility rate for the following two quarters is reduced by an average rate per CMI point based on the change in Medicaid CMI between the pre-audit CMI and the audit-based CMI.
- Penalty 2. The facility is charged the cost of the MDS Penalty Audit as a mass adjustment for future claims. The cost is equal to the established per review rate for MDS Validation in the Department's contract with the Utilization Control Agent.

In addition to the above penalties, the Department will formally submit documentation of its findings to the Office of Health Care Quality regarding the facility's deficient record-keeping.

Please visit the Department's website below to download the MDS Validation Guidelines and the MDS Validation Minimum Review Standards.

<https://mmcp.health.maryland.gov/longtermcare/Pages/Nursing-Facility-Providers.aspx>

Comments regarding this transmittal may be directed to Eric Saber at [eric.saber@maryland.gov](mailto:eric.saber@maryland.gov).

Enclosure

cc: Nursing Home Liaison Committee



# MARYLAND Department of Health

Larry Hogan, Governor · Boyd Rutherford, Lt. Governor · Dennis Schrader, Secretary

## Minimum Data Set (MDS) Validation Guidelines

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### MDS Annual Audit

#### *Baseline Audit*

During the calendar month before the facility's scheduled MDS annual audit, Telligen requests and receives a file from Myers and Stauffer LC (MSLC) through the MSLC FTP site. Telligen requests the file by the 15th of the prior month and MSLC provides the file by the 25th.

One file is created for each facility. This file is broken into two parts:

- The first part includes all initial sample assessments to be reviewed during the baseline phase of the MDS Annual Audit.
- The second part includes all expanded sample assessments to be reviewed during an expanded MDS audit (if necessary).

The samples for both the initial and expanded reviews are taken from the 90-day period prior to the date of Telligen's request. The sample includes 20 percent (rounded to the nearest whole number) of

the occupied beds, or 20 assessments, whichever is greater.<sup>1</sup> The sample is stratified across each major RUGS domain represented in the facility.

#### *Expanded Sample*

The purpose of the audit is to capture an accurate picture of the facility's documentation of MDS data. If Telligen finds errors during the baseline audit that are likely to result in a negative error rate of greater than 20 percent, Telligen may expand the audit to include additional assessments to be reviewed. This does not automatically mean that the facility qualifies for a penalty audit. This expansion reduces the impact of outliers in order to improve the accuracy of the facility's final score.

This expansion of the annual audit will occur while on site. Reviews are completed in the same manner as written under the MDS Annual Audit. All reviews should be done using the expanded sample sent by MSLC during the initial request. This expanded audit should be completed on the same day, when possible, or within the next 3 business days if necessary.

#### *Closing out the Audit*

Telligen completes the review and requires the facility to sign off that the review was completed. This documentation is kept on file and made available to the Department when requested.

Telligen uploads the audit finding worksheets from the site visit to the FTP site within 10 calendar days of review completion.

### **Negative Error Rate**

After receiving the audit finding worksheets from Telligen, MSLC updates its files and analyzes discrepancies between MDS data and findings from the medical record. MSLC sends the Summary Sheets to Telligen on a weekly schedule. All validation submissions uploaded on or before Wednesday morning of each week will receive a summary page or have clarifications requested within 10 calendar days (Friday of the following week). Any submissions uploaded after Wednesday morning will be reviewed the following week.

The Summary Sheet includes each assessment that had at least one unsupported MDS item, the change made to the MDS item based on the review, any change that occurred in the RUG group for the assessment, the overall error rate and the negative error rate. The overall error rate is calculated as the number of assessments where the RUG group changed (higher or lower) divided by the number of assessments in the sample. The negative error rate is calculated as the number of assessments where the CMI decreased based on the review, thus influencing the State's payment methodology negatively, divided by the number of assessments in the sample.

The overall error rate and negative error rate are calculated using the review samples for both the baseline audit and the expanded sample if necessary.<sup>2</sup>

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<sup>1</sup> Note that the 90 day period in most cases will overlap multiple quarters and will not match the facility's resident roster used for case mix calculation.

<sup>2</sup> MSLC does not update its resident roster database with this information and rates are not adjusted at this time.

Telligen sends the Summary Sheet and a letter related to the findings to the facility. Please see the template Summary Sheet in Addendum 1 as an example.

- If no adverse findings are discovered, or the facility's negative error rate is 20 percent or less, Telligen sends the facility a standardized "exit letter" and summary, with no further action for Telligen, MSLC or the facility.
- If the facility is found to have a combined baseline and expanded audit negative error rate exceeding 20 percent, the MDS Penalty Audit is required (see next section).

In the event of a negative error rate of greater than 20 percent, Telligen sends a facility-specific letter and summary to the facility. The facility-specific letter directs the facility to develop and submit a Corrective Action Plan (e.g., MDS training, improved documentation systems) and directs that documentation of the steps taken to address the Corrective Action Plan be made available during the MDS Penalty Audit. The facility is directed to implement the Corrective Action Plan to come into compliance with documentation requirements.

### **MDS Penalty Audit**

When triggered by the negative error rate determined in the previous section, a penalty audit will be conducted to review the status of the corrective action plan and determine penalties, if necessary. This audit will be conducted approximately two months from the annual audit.<sup>3</sup> Telligen requests a new set of files from MSLC and conducts the MDS Penalty Audit. The sample includes 100 percent of the occupied beds for Medicaid residents on the last day of the three-month period being assessed.

Telligen completes the review and also collects and reviews the Corrective Action Plan implemented by the facility. Telligen uploads the audit finding worksheets from the site visit to the FTP site within 10 calendar days of review completion. MSLC analyzes discrepancies and sends the Summary Sheet to Telligen (as noted in the MDS Annual Audit).

The penalties shall encompass all of the following when the penalty audit is above the 20 percent negative error rate:

- Penalty 1. The facility rate for the following two quarters is reduced by an average rate per CMI point based on the change in Medicaid CMI between the pre-audit CMI and the audit-based CMI.<sup>4</sup>
- Penalty 2. The facility is charged the cost of the MDS Penalty Audit as a mass adjustment for future claims. The cost is equal to the established per review rate for MDS Validation in the Department's contract with the Utilization Control Agent.

In addition to the above penalties, the Department will formally submit documentation of its findings to the Office of Health Care Quality regarding the facility's deficient record-keeping.

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<sup>3</sup> Please see the addendum for the Sample Timeline. This timeline shows the quarters in which a facility will be audited if they continue to fail each audit.

<sup>4</sup> Please see the addendum for example percent decreases to get to an accurate rate.

The Penalty Audit is conducted approximately every 6 months until the negative error rate no longer triggers a penalty. Each subsequent penalty audit will be conducted during the first quarter in which the previous rate penalty is implemented. Please see sample timeline for clarification.

When the facility comes into compliance, all prior penalties will continue until their intended end date (these will not be ended prematurely). No further penalties will be enforced. An annual audit will be conducted according to the annual schedule.

### **Baseline Year of Implementation**

During the first year of MDS Validation, January 1, 2017 through December 31, 2017, reviews consisted only of the annual audit and a follow-up expanded audit. The penalty audit was not conducted.

As of January 1, 2018, this guidance, sample timeline and regulations are in full force.

### **Appeals**

The provider may appeal the imposition of a penalty to the Office of Administrative Hearings. Instructions for requesting appeals will be provided when a penalty is proposed.

### **Change of Ownership**

Buyer and seller negotiate who is responsible for the penalty and continue to apply the penalty until lifted. Following a change in ownership (CHOW), Penalty 1 applies to the new owner. The mass adjustment based on Penalty 2 will be enforced against the owner as of the date of the audit.

# Addendum 1 Summary Sheet Example

## Results of MDS Field Verification

ResID	Name	Target Date	New Rug - Old Rug	MDS Field	Submitted Data	Supported Data
		11/13/2016	New RUG: PB1 - Prior RUG: CA1	G0110A1	-	1
				G0110A2	-	2
				G0110B1	-	0
				G0110B2	-	0
				G0110H1	-	1
				G0110H2	-	1
				G0110I1	-	3
				G0110I2	-	2
				N0350B	3	0

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### FACILITY SUMMARY

**Review Date:** [REDACTED]

**Number of MDS's Keyed:** 21

**Number of Errored Records:** 1

**Total Records Reviewed:** 21

**Facility Error Percentage:** 4.76%

**Errored Records with a CMI Decrease:** 0

**Facility Negative Error Percentage:** 0.00%

## Addendum 2 Sample Timeline

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar
Audit Type	Annual		Penalty Audit							2nd Penalty Audit						3rd Penalty Audit											
Penalty Period										First penalty assessed						Second penalty assessed								Third penalty assessed			
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar
Audit Type		Annual		Penalty Audit						2nd Penalty Audit						3rd Penalty Audit											
Penalty Period										First penalty assessed						Second penalty assessed								Third penalty assessed			
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar
Audit Type			Annual		Penalty Audit					2nd Penalty Audit						3rd Penalty Audit											
Penalty Period										First penalty assessed						Second penalty assessed								Third penalty assessed			



## Addendum 3 Penalty Audit Rate Reduction

Rate Per CMI Point Penalty Calculation Example  
Revised 11/16/2017

Average Rate per MA CMI Point (0.0001)	\$	0.0109						
Provider Name	MA CMI of Sample Prior to Penalty Audit	MA CMI of Sample After Penalty Audit	MA CMI Difference	Penalty (Difference x Average Rate Per MA CMI Point)	Rate After BAF + QA	Rate After BAF + QA Less Penalty	Penalty as a Percentage of the Rate	
Test Facility 1	1.2500	1.2000	0.0500	\$ 5.45	\$ 285.00	\$ 279.55	1.91%	

NOTE: Modify the shaded fields to calculate the penalty for a different facility.