

Foundational Investigative Skills Module 4, Lesson 1

CMS Foundational Investigative Skills
Module 4—Depositions and Hearing Testimony

Resources Help Glossary SKILLS 1 of 3

Depositions and Hearing Testimony

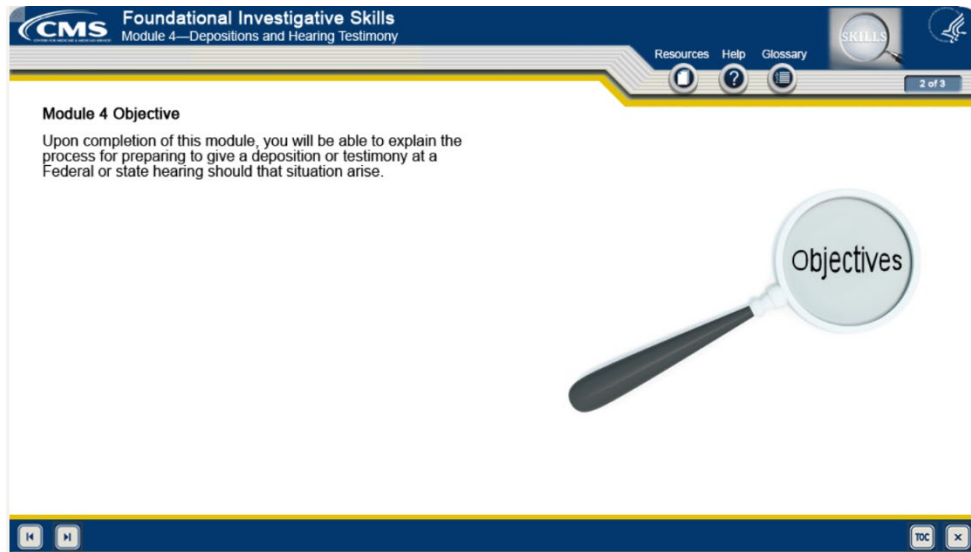


11 TOC X

The image is a screenshot of a web-based learning module. At the top, there is a blue header with the CMS logo and the title 'Foundational Investigative Skills Module 4—Depositions and Hearing Testimony'. To the right of the header are navigation links for 'Resources', 'Help', and 'Glossary', along with a 'SKILLS' icon and a '1 of 3' indicator. Below the header, the main content area has a white background with the title 'Depositions and Hearing Testimony' centered. Underneath the title is a horizontal row of four square images: the first shows a wooden courtroom bench; the second shows a close-up of a hand resting on a dark wooden witness box; the third shows a woman in a black patterned dress sitting at a table, looking towards the camera; the fourth shows a close-up of a wooden gavel resting on a stack of books. At the bottom of the content area, there is a blue bar with a '11' icon on the left and 'TOC' and 'X' icons on the right.

Depositions and Hearing Testimony

Foundational Investigative Skills Module 4, Lesson 1



The screenshot shows a web-based learning module interface. At the top, there is a blue header with the CMS logo on the left, the title "Foundational Investigative Skills" and subtitle "Module 4—Depositions and Hearing Testimony" in the center, and navigation links for "Resources", "Help", and "Glossary" on the right. A "SKILLS" icon and a "2 of 3" indicator are also present in the top right. The main content area has a white background with a blue border. It features the heading "Module 4 Objective" followed by the text: "Upon completion of this module, you will be able to explain the process for preparing to give a deposition or testimony at a Federal or state hearing should that situation arise." Below this text is a large magnifying glass graphic with the word "Objectives" written inside its lens. At the bottom of the interface, there are navigation icons for back, forward, and search, along with a "TOC" (Table of Contents) button and a close button.

Module 4 Objective

Upon completion of this module, you will be able to explain the process for preparing to give a deposition or testimony at a Federal or state hearing should that situation arise.

Foundational Investigative Skills Module 4, Lesson 1

Module 4 Menu

This module is organized into two lessons, which will take approximately 1 hour to complete.

- Lesson 1—Preparing for a Hearing or Deposition
- Lesson 2—Common Mistakes in Writing Deficiency Citations

This module is designed to take each lesson in the order presented since one builds upon the other. To aid the learning process, there are questions interspersed throughout each lesson to help you focus your attention while reviewing each topic.

After you have completed all lessons, select the **Exit** button at the bottom of your screen to return to the Course Menu Page on the Surveyor Training website.

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Slide 1

CMS Foundational Investigative Skills
Module 4—Depositions and Hearing Testimony
Lesson 1—Preparing for a Hearing or Deposition

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Preparing for a Hearing or Deposition



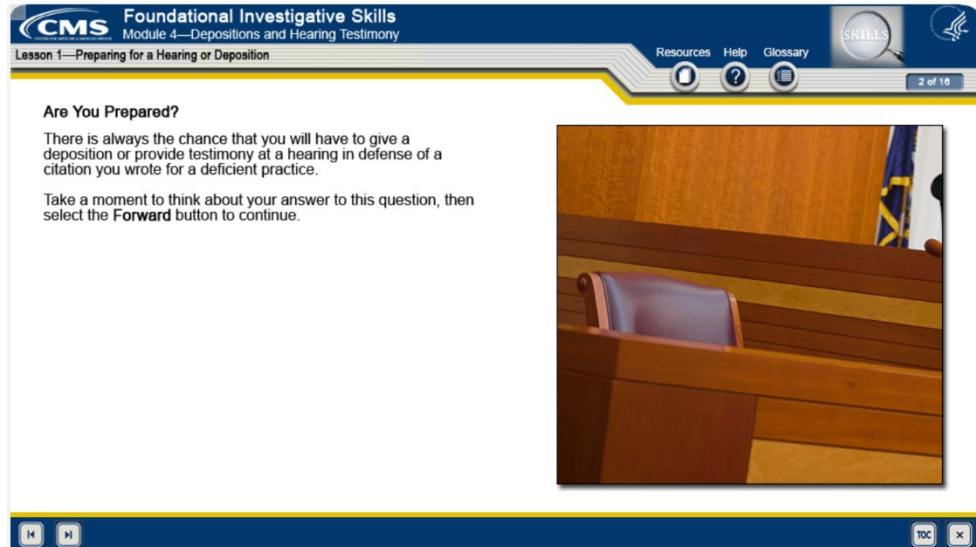
Navigation: [K] [H] [TOC] [X]

The slide features a blue header with the CMS logo and course information. Below the header, the title 'Preparing for a Hearing or Deposition' is centered. Underneath the title is a row of four square images: the first shows a wooden gavel resting on a surface next to an American flag; the second shows a person's hand being placed on a book with another hand raised in a gesture of swearing; the third shows a woman with blonde hair speaking; the fourth shows a woman in a dark suit sitting at a table with a laptop, likely in a deposition or hearing setting. At the bottom of the slide, there are navigation icons for back, forward, table of contents, and close.

Preparing for a Hearing or Deposition

Foundational Investigative Skills Module 4, Lesson 1

Slide 2



The screenshot shows a web application interface with a blue header. The header contains the CMS logo, the title 'Foundational Investigative Skills', and the subtitle 'Module 4—Depositions and Hearing Testimony'. Below the header, the current lesson is identified as 'Lesson 1—Preparing for a Hearing or Deposition'. Navigation links for 'Resources', 'Help', and 'Glossary' are visible. A '2 of 18' indicator is present in the top right corner. The main content area features the heading 'Are You Prepared?' followed by two paragraphs of text. To the right of the text is a photograph of a courtroom interior, showing a wooden bench and a portion of a flag. At the bottom of the interface, there are navigation buttons for 'Home', 'Next', 'Table of Contents', and 'Close'.

Are You Prepared?

There is always the chance that you will have to give a deposition or provide testimony at a hearing in defense of a citation you wrote for a deficient practice.

Take a moment to think about your answer to this question, then select the **Forward** button to continue.

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Foundational Investigative Skills Module 4, Lesson 1

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CMS Foundational Investigative Skills
Module 4—Depositions and Hearing Testimony
Lesson 1—Preparing for a Hearing or Deposition

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Lesson 1 Objectives
After completing this lesson, you will be able to:

- Recognize the difference between a deposition and testimony at a hearing.
- Describe the proper process for preparing to give a deposition or testimony at a hearing.
- Identify common oversights that surveyors make when preparing to give a deposition or testimony at a hearing.

Objectives

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100

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Slide 4

CMS Foundational Investigative Skills
Module 4—Depositions and Hearing Testimony

Lesson 1—Preparing for a Hearing or Deposition

Resources Help Glossary


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Lesson 1 Introduction

Because many cases are settled out of court, a surveyor does not regularly appear in court. Therefore, many surveyors are not sure how to best prepare for a courtroom appearance.

This lesson covers giving depositions and testimony in a hearing. As you know, preparing to give a deposition or testimony at a Federal or state hearing begins with the survey itself. Your deficiencies must be able to stand up to scrutiny before a judge. After all, when you conduct a survey, you are participating in a legal procedure. The survey and the documentation that supports your survey findings are critical parts of the legal proceedings.

Testifying at a Federal or state hearing can be challenging, but if you are prepared, you will find it a less daunting and more successful endeavor.



Navigation icons: back, forward, search, and close.

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Slide 5


CMS Foundational Investigative Skills
Module 4—Depositions and Hearing Testimony
Lesson 1—Preparing for a Hearing or Deposition

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Facilities' Right to Appeal

Facilities are entitled to dispute any citations they receive on Form CMS-2567 in an Informal Dispute Resolution (IDR) or Independent Informal Dispute Resolution (IIDR) procedure. On the other hand, providers may appeal and go to a formal hearing, but only when the Centers for Medicare & Medicaid Services (CMS) imposes remedies based on the citations that were issued on a Form CMS-2567. Enforcement remedies include civil money penalties, denial of payment for new admissions, or loss of a nurse aide training program.

CMS has the responsibility, in a formal appeal, of showing why the provider should be subject to an enforcement remedy.



The image shows a stack of CMS-2567 forms, which are used for Informal Dispute Resolution (IDR) or Independent Informal Dispute Resolution (IIDR). The forms are titled 'Statement of Complaints and Plan of Correction'. In the foreground, a wooden gavel is held by a hand, with an American flag visible in the background, symbolizing a formal hearing or appeal process.

Navigation icons: Home, Back, Forward, Search, Print, Close.

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CMS Foundational Investigative Skills
Module 4—Depositions and Hearing Testimony
Lesson 1—Preparing for a Hearing or Deposition


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Depositions and Testimony

A deposition is testimony given under oath, but outside of the courtroom. Testimony given in a deposition is just as legally binding as testimony given in court. A deposition is a fact-finding procedure and may be used to capture surveyor testimony.

It is just as important to prepare for a deposition as it is to prepare for a hearing. The process is very similar in terms of reviewing the case documentation beforehand.

Federal and state regulations differ on the use of depositions. In cases of a facility versus CMS, Federal regulations do not allow for depositions. In some states, depositions are allowed at the state level. You may be deposed by attorneys for either party in the initial fact-gathering phase of the appeal process.



Navigation icons: Home, Back, Forward, TOC, Close

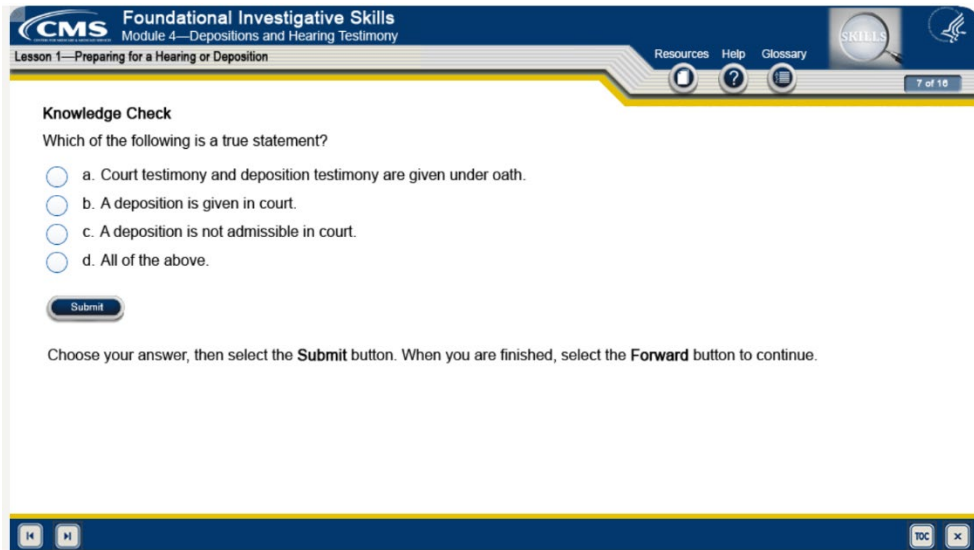
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Slide 7



Knowledge Check

Which of the following is a true statement?

- a. Court testimony and deposition testimony are given under oath.
- b. A de-position is given in court.
- c. A deposition is not admissible in court.
- d. All of the above.

Submit

Choose your answer, then select the **Submit** button. When you are finished, select the **Forward** button to continue.

Correct answer: A

Feedback when correct:

Correct. Testimony, whether it is given in a court or at a deposition, is given under oath.

Feedback when incorrect:

Incorrect. Depositions are not given in court, but they are admissible in court. The correct answer is court testimony and deposition testimony are given under oath.

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Module 4—Depositions and Hearing Testimony
Lesson 1—Preparing for a Hearing or Deposition


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Are You Prepared to Testify?

First and foremost, were you thorough in documenting your survey? A well-documented Form CMS-2567 decreases the chances of an appeal. Meaning, if you treat every deficiency as though it were to be disputed at a hearing, you will actually minimize any weaknesses in your citation that would otherwise invite an appeal.

If there is an appeal, the attorney assigned to the case will notify you that a hearing has been scheduled. You should begin to prepare at least a week or two before the hearing. Some important steps to take to prepare include the following:

- Review the Form CMS-2567.
- Review case-related documents.
- Maintain communication with the CMS attorney.



Navigation icons: back, forward, search, close.

You Prepared to Testify?

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- Maintain communication with the CMS attorney.

Slide 9

Review Case-Related Documents

Review all case documents so that you know the record completely. Select each folder for information on case-related documents.

Form CMS-2567

It is critical that you "know the record cold," or know every detail contained within it. You should carefully review Form CMS-2567 and any tags you helped write. Your job as a witness is to effectively communicate what you cited, why you cited it, and why it's a violation of the Federal regulations.

Even if you wrote a good deficiency and you understand why a violation exists, that really is not enough. You must be able to explain the deficiency to the judge and defend it on cross-examination.

Also, if your Form CMS-2567 contains any oversights or inconsistencies, you need to be aware of those and expect to be questioned about them specifically.

Folder icons: CMS-2567, Notes and Worksheets, Documents from CMS Lawyer, Pre-hearing Briefs.

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Also, if your Form CMS-2567 contains any oversights or inconsistencies, you need to be aware of those and expect to be questioned about them specifically.

Notes and Worksheets

Review your notes and/or worksheets so that you can compare them to the deficiency and know they are consistent. Worksheets may include any of the following:

- Interview Form
- Resident record review worksheets
- Surveyor notes worksheets
- Medication review worksheets
- Kitchen/food service observations

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- Fluids intake and output sheets
- Environmental worksheets

While reviewing, some questions to ask yourself are:

- Are the details in the deficiency consistent with my worksheet notes?
- Can I, under oath, prove that I based my decisions on my professional ability to determine if there is noncompliance reflected in the findings.

Documents from CMS Lawyer

You should also review all the relevant documents from the CMS lawyer. These can include copies of your worksheets and other documents from the resident's record. Doing this ensures that your preparation is consistent with CMS's.

Pre-Hearing Briefs

The pre-hearing brief is a document that most Administrative Law Judges (ALJ) require to be exchanged with each party. A pre-hearing brief explains the entire theory of the case.

The facility's brief lays out the facility's planned defense in advance of the hearing. It is a great resource, and you should ask to review it before the hearing.

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Module 4—Depositions and Hearing Testimony


Lesson 1—Preparing for a Hearing or Deposition

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Maintain Communication with Attorney

Be sure to maintain good communication with the CMS attorney. It is important for surveyors to know what they need to do to prepare for court. If you do not get all the things you need from CMS counsel, ask them to get it for you.



Navigation icons: back, forward, TOC, close

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Knowledge Check

What are the proper steps for preparing to give a deposition or testimony at a hearing? Select all that apply.

- a. Review the Form CMS-2567.
- b. Review the case-related documents.
- c. Memorize the exact testimony you plan to give.
- d. Maintain communication with the CMS attorney.

Submit

Choose your answer, then select the **Submit** button. When you are finished, select the **Forward** button to continue.

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What are the proper steps for preparing to give a deposition or testimony at a hearing? Select all that apply.

- a. Review the Form CMS-2567.
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Submit

Choose your answer, then select the **Submit** button. When you are finished, select the **Forward** button to continue.

Correct answer: A, B, D

Feedback when correct:

Correct. Reviewing the Form CMS-2567, reviewing case-related documents, and maintaining communication with the CMS attorney are the steps for preparing for a deposition or testimony at a hearing.

Feedback when incorrect:

Incorrect. The correct answers are reviewing the Form CMS-2567, reviewing case-related documents, and maintaining communication with the CMS attorney.

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Module 4—Depositions and Hearing Testimony
Lesson 1—Preparing for a Hearing or Deposition

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Oversights in Preparation

One of the most common oversights a surveyor makes when preparing is simply not preparing well enough. Often, the surveyor does nothing except to perform a cursory review of the Form CMS-2567 along with his or her notes.

Another common misstep is having too little communication with the CMS lawyer before the hearing.



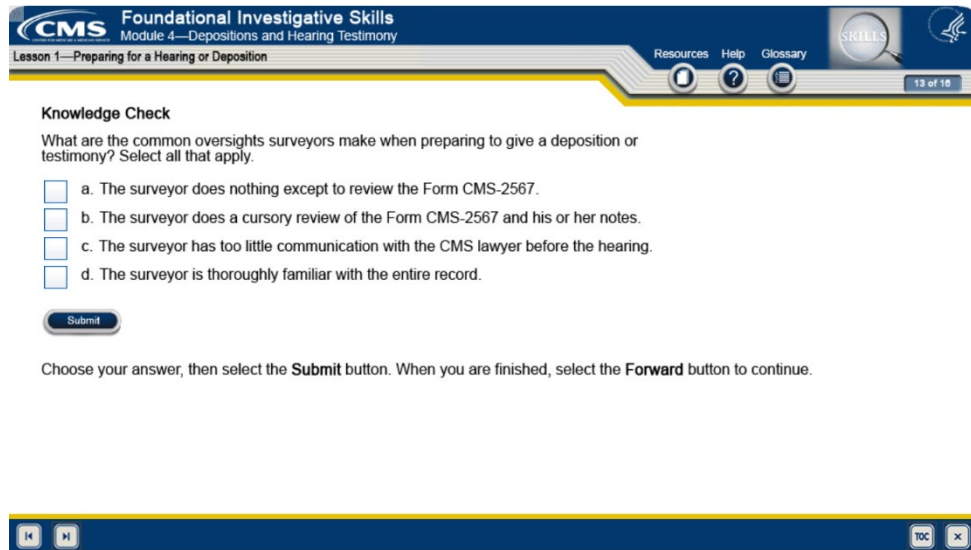
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Knowledge Check

What are the common oversights surveyors make when preparing to give a deposition or testimony? Select all that apply.

- a. The surveyor does nothing except to review the Form CMS-2567.
- b. The surveyor does a cursory review of the Form CMS-2567 and his or her notes.
- c. The surveyor has too little communication with the CMS lawyer before the hearing.
- d. The surveyor is thoroughly familiar with the entire record.

Choose your answer, then select the **Submit** button. When you are finished, select the **Forward** button to continue.

Correct answer: A, B, C

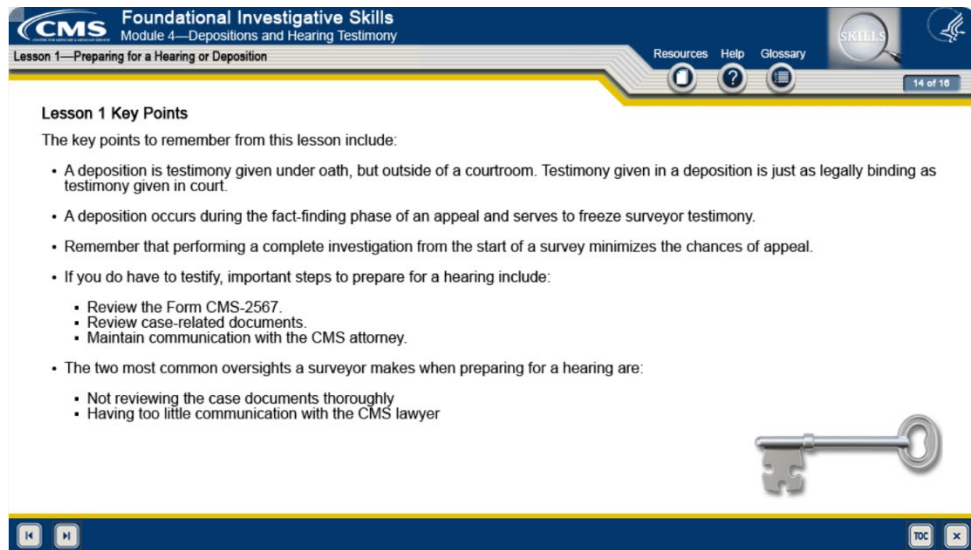
Feedback when correct:

Correct. Common oversights surveyors make when preparing to give a deposition or hearing testimony include doing nothing except to review the Form CMS-2567, doing a cursory review of the Form CMS-2567 and his or her notes, and having too little communication with the CMS lawyer.

Feedback when incorrect:

Incorrect. Common oversights surveyors make when preparing to give a deposition or hearing testimony include doing nothing except to review the Form CMS-2567, doing a cursory review of the Form CMS-2567 and his or her notes, and having too little communication with the CMS lawyer.

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CMS Foundational Investigative Skills
Module 4—Depositions and Hearing Testimony
Lesson 1—Preparing for a Hearing or Deposition

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Lesson 1 Key Points

The key points to remember from this lesson include:

- A deposition is testimony given under oath, but outside of a courtroom. Testimony given in a deposition is just as legally binding as testimony given in court.
- A deposition occurs during the fact-finding phase of an appeal and serves to freeze surveyor testimony.
- Remember that performing a complete investigation from the start of a survey minimizes the chances of appeal.
- If you do have to testify, important steps to prepare for a hearing include:
 - Review the Form CMS-2567.
 - Review case-related documents.
 - Maintain communication with the CMS attorney.
- The two most common oversights a surveyor makes when preparing for a hearing are:
 - Not reviewing the case documents thoroughly
 - Having too little communication with the CMS lawyer



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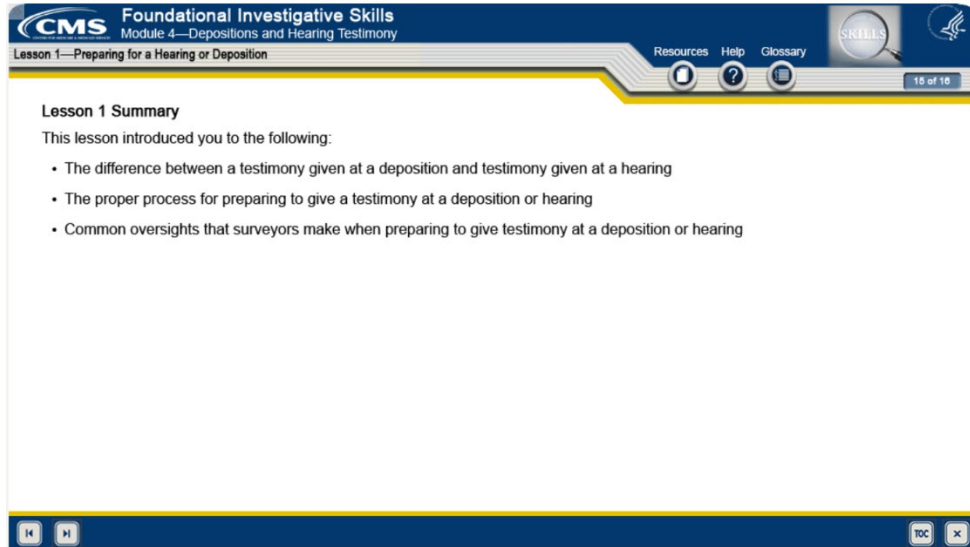
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Foundational Investigative Skills Module 4, Lesson 1

Slide 15



The screenshot shows a web application interface for 'Foundational Investigative Skills'. The header includes the CMS logo, the title 'Foundational Investigative Skills', and the subtitle 'Module 4—Depositions and Hearing Testimony'. Below the header, the current lesson is identified as 'Lesson 1—Preparing for a Hearing or Deposition'. Navigation links for 'Resources', 'Help', and 'Glossary' are visible. The main content area is titled 'Lesson 1 Summary' and contains the text 'This lesson introduced you to the following:' followed by a bulleted list of three items. The interface also features a search bar with the word 'SKILLS' and a magnifying glass icon, and a '18 of 18' indicator. At the bottom, there are navigation icons for back, forward, and search, along with a 'TOC' (Table of Contents) button and a close button.

Lesson 1 Summary

This lesson introduced you to the following:

- The difference between a testimony given at a deposition and testimony given at a hearing
- The proper process for preparing to give a testimony at a deposition or hearing
- Common oversights that surveyors make when preparing to give testimony at a deposition or hearing

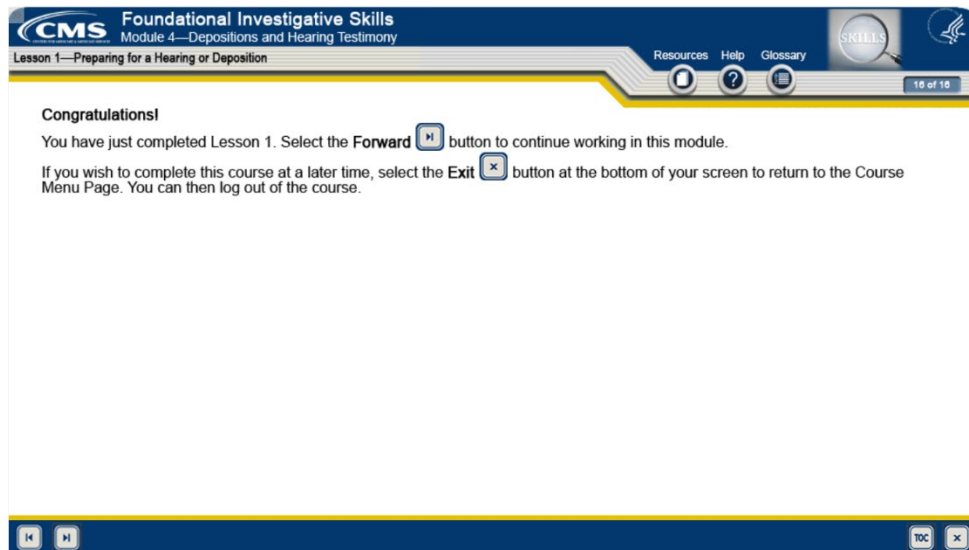
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Congratulations!

You have just completed Lesson 1. Select the **Forward** button to continue working in this module.

If you wish to complete this course at a later time, select the **Exit** button at the bottom of your screen to return to the Course Menu Page. You can then log out of the course.