

Delaware Health and Social Services



Division of Long Term Care Residents Protection

Enforcement Process

Presentation Date: January 7, 2014

Provider



Requirements

Training

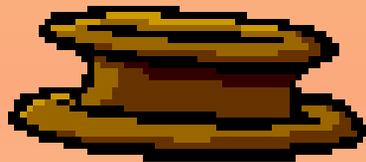
For

Nursing

Facilities



Enforcement



Process

The Nursing Home Reform Regulation Establishes Several Expectations:

Expectation #1

- Providers remain in substantial compliance with Medicare/ Medicaid program requirements as well as state law. The regulation emphasizes the need for **continued**, rather than cyclical compliance.



THE GOAL



Distinguish between those facilities that have an active and effective **quality assurance process** in place that in fact lead to enhanced quality of care and quality of life for residents and those facilities that do not.

Enforcement Mandates

- Policies and procedures are established to remedy deficient practices.
- Ensure that corrective action is lasting.
- Facilities take the initiative and responsibility for monitoring their own performance continuously to sustain compliance.

Timelines to Remedies

Remedies will be put into place quickly when a situation merits immediate attention.

- Civil money Penalties
- Temporary Managers
- Directed POC's
- In-Service training
- Denial of payment for new admissions
- State monitoring can be imposed before a provider has an opportunity to correct deficiencies.

Enforcement Timelines

- While CMS has always had the authority to take prompt action, and to impose remedies quickly.
- Enforcement timelines are **no longer classified** as either 23 day or 90 day tracks. Under the system contained in these sections, action can be taken much sooner. Immediate sanctions with no opportunity to correct, i.e., Double Gs or Double Actual Harm.

AN OPPORTUNITY TO
CORRECT BEFORE
IMPOSITION OF
REMEDIES IS NOT
ASSURED.

NO OPPORTUNITY TO CORRECT

When facilities have
deficiencies of **actual harm or
above on the current survey
and on the previous survey.**

This = to S/S of G or above on
the enforcement grid.

Another example of NO OPPORTUNITY TO CORRECT

Facilities that have had deficiencies causing actual harm on the first survey after re-entry into the program.

Also NO OPPORTUNITY TO CORRECT

Facilities that have IJ.

Non compliance against
which a per instance civil
money penalty was imposed.

Scope and Severity Matrix Cont.

S E V E R I T Y	No actual harm with potential for more than minimal harm that is not immediate jeopardy	D	E	F Substandard Quality of Care
	No actual harm with potential for minimal harm	A Substantial Compliance	B Substantial Compliance	C Substantial Compliance
		Isolated (1)	Pattern (2)	Widespread (3)
		Scope		

Scope and Severity Matrix

S E V E R I T Y	Immediate jeopardy to resident health or safety	J Immediate Jeopardy	K Immediate Jeopardy	L Immediate Jeopardy
	Actual harm that is not immediate jeopardy	G	H Substandard Quality of Care	I Substandard Quality of Care
		Isolated (1)	Pattern (2)	Widespread (3)
		Scope		

Substantial Compliance

Substantial compliance constitutes compliance with participation requirements.

A level of compliance with the requirements of participation such that any identified deficiencies pose no greater risk than the potential for causing **minimal harm [s/s of a, b or c]** .

ACTION WHEN



IMMEDIATE JEOPARDY EXISTS

SECOND CALENDAR DAY



- The regional office or State Medicaid Agency (SMA) will impose termination and/or temporary management in as few as 2 calendar days (one of which must be a working day) following the last day of survey.
- In all cases of immediate jeopardy the provider agreements must be terminated by CMS or SMA no later than 23 calendar days from the last day of the survey if the immediate jeopardy is not removed.

Action for IJ

- The regional office or State Medicaid agency can impose another remedy in addition to termination when immediate jeopardy has been determined.
- An alternative remedy can be considered without first offering the facility an opportunity to correct, even if the facility successfully removes the immediate jeopardy but is still **not in substantial compliance**.

Additional Actions for IJ

- The regional office, State Medicaid agency, or State (as authorized by CMS) may impose State monitoring immediately.
- The State, as authorized by CMS may also impose denial of payment for new admissions effective 2 calendar days (one of which must be a working day) from the date the provider receives notice.
- The State will require that the facility submit an allegation that the IJ has been removed and sufficient detail so that the State can verify the removal of the IJ.

Action WHEN

IMMEDIATE

JEOPARDY

 DOES NOT EXIST

- **IJ does not exist**
- **CMS or the state must determine whether the facility will be given an opportunity to correct its deficiencies before remedies are imposed.**

ACTIONS FOR NON IJ

- **The regional office or SMA agency can impose another remedy in addition to termination for a facility not being given an opportunity to correct.**

- **The RO or the SMA terminates the Medicare and/or Medicaid provider agreements no later than 6 months from the date of survey during which it was identified. Except for State monitoring for which no notice is required, the RO or SMA may impose these remedies 15 calendar days from the date the facility receives notice**

ACTIONS FOR NON IJ

▪ **When there is an opportunity to correct before remedies are imposed, the State will request an acceptable Plan of Correction, provide formal notice of the imposition of denial of payment for new admissions and subsequent termination if compliance is not achieved.**

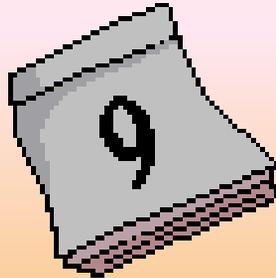
▪ **If substantial compliance is not achieved, the RO or SMA must impose denial of payment for new admissions no later than 3 months after the last day of the survey that identified the noncompliance.**

ACTIONS FOR NON IJ

The RO or the SMA may impose either a per day civil money penalty, effective as of the date of the noncompliance, or a per instance CMP.

- The State may impose as authorized by the RO or SMA category remedies and/or denial of payment for new admissions.**

Required Actions



1. By no later than the 10th working day after the last day of the standard survey, the State Agency must forward to the provider the Form CMS- 2567, and a letter notifying the provider, and if applicable, the statement of isolated deficiencies which cause no harm and potential for minimal harm.



Required Actions

2. Within 10 calendar days after the provider receives the Form CMS-2567, the provider submits its POC to the SA with the four core elements.
3. If the provider does not submit an acceptable POC by the 10th day after it receives the Form CMS - 2567, the SA notifies the provider that it is recommending to the RO/SMA that it impose remedies effective as soon as notice requirements are met.

Required Actions For

6. The RO and the SMA provide notice, except in the case of category 1 remedies, before enforcement actions are imposed.
7. The RO and/or SMA may provide notice for category 1 remedies.
8. The SA may provide notice as authorized by the RO and/or SMA of category 1 remedies.

Required Actions

9. No later than the 3rd month after the last day of the survey, the RO and/or the SMA must impose a mandatory denial of payment for all new admissions to be effective 3 months after the last day of the standard health survey.
10. No later than the 6th month after the last day of the standard survey, termination is effective, or if an agreement to repay is signed, Federal funding is stopped.

ENFORCEMENT

REMEDIES

FOR SNEs AND NEs

Enforcement Remedies for SNFs and NFs



Sections 1819 and 1919 of the Act as well as sections of 42 CFR provide that CMS or the state may impose one or more remedies in addition to, or instead of, termination of the provider agreement when the states or CMS finds that a facility has deficiencies. (DE does not recommend)

Enforcement Remedies for SNFs and NFs

Available Enforcement Remedies

1. Termination of Provider agreement
2. Temporary management
3. Denial of payment for all Medicare and/or Medicaid residents by CMS
4. Denial of payment for all new Medicare and/or Medicaid Admissions CMPs
5. State monitoring

Enforcement Remedies for SNFs and NFs

Available Enforcement Remedies

6. Transfer of residents
7. Transfer of residents with closure of facility
8. Directed POC
9. Directed in-service training
10. Alternative or additional State remedies approved by CMS

Mandatory Enforcement Remedies

Regardless of what other remedies the SMA may want to establish in addition to the provider agreement, it must establish, at a minimum, these statutorily specified remedies or an approved alternative to these specified remedies:

Mandatory Enforcement Remedies

1. Temporary management
2. Denial of payment for all new admissions CMPs
3. Transfer of residents
4. Transfer of residents with closure of facility
5. State monitoring

Required Action Relating to the POC

1. The State Agency is required by CMS to notify the Regional office by the 60th day if the POC has not been accepted by the state.

Required Action Relating to the POC

2. Facilities may appeal the finding of noncompliance which lead to the enforcement action, except state monitoring.
3. Enforcement actions may be imposed while the facility is appealing the noncompliance which lead to the enforcement action. **Consequently POCs are a separate process from the IDR process.**

Denial Of Payment For All New Admissions For SNFs And NFs

Sections 1819(h) and 1919(h) of the Act and 42 CFR 488.417 provide for denial of payment for all new admissions when a facility is not in substantial compliance. Substantial compliance means a level of compliance with the requirements of participation such that any identified deficiencies pose no greater risk to resident health or safety than the potential for causing minimal harm.

Mandatory Denial Of Payment For All New Admissions

Sections 1819(h) (2) D and (E) and 1919(h) (2) (C) and (D) of the Act and 42 CFR488.417 (b) require that, regardless of any other remedies that may be imposed, denial of payment for all new admissions must be imposed when the facility is not in substantial compliance by the third month after the last day of the survey identifying the deficiency, or when a provider has been found to have furnished substandard care on the last three consecutive standard surveys.

Mandatory Denial Of Payment For All New Admissions

(See 42 CFR 488.414.) At the discretion of CMS or the SMA, the denial of payment remedy may be imposed at other times singly or in conjunction with other remedies, when a facility is not in substantial compliance.

Denial of Payment for New Admissions

1. Medicare Facilities – CMS must deny payment to the facility for all new admissions.
2. Medicaid Facilities - The SMA must deny payment to the facility, and CMS must deny payment (FFP) to the SMA for all new admissions to the facility.

Effect of Remedy of Resident's Status

The resident's status on the effective date of the denial of payment is the controlling factor in determining whether readmitted residents are subject to the denial of payment.

Effect of Remedy of Resident's Status

Guidelines are as follows:

1. Residents who were admitted and discharged before the effective date of the denial of payment are considered new admissions if they are readmitted on or after the effective date. Therefore, they are subject to the denial of payment.
2. Residents admitted on or after the effective date of the denial of payment are considered new admissions. If readmitted after being discharged, they continue to be considered new admissions, and are subject to the denial of payment.

Effect of Remedy of Resident's Status

Guidelines:

3. Residents admitted before and discharged on or after the effective date of the denial of payment are considered new admissions if subsequently readmitted. Therefore, they are subject to the denial of payment.
4. Residents admitted before the effective date of the denial of payment who take temporary leave before, on, or after the effective date of the denial of payment are not considered new admissions upon return, and therefore, are not subject to the denial of payment.

Effect of Remedy of Resident's Status

Guidelines:

5. Residents admitted on or after the effective date of the denial of payment who take temporary leave are not considered new admissions, but continue to be subject to the denial of payment.



The End