
CMS Manual System

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Provider Certification

Department of Health &
Human Services (DHHS)
Centers for Medicare &
Medicaid Services (CMS)

Transmittal 63

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SUBJECT: Chapter 7 – “Survey and Enforcement Process for Skilled Nursing Facilities and Nursing Facilities”

I. SUMMARY OF CHANGES: This instruction updates Chapter 7 to include policy information and decisions that have been communicated through other means since the Chapter was last revised. This revision also deletes information determined to be inappropriate for this chapter, and revises subsection numbering.

NEW/REVISED MATERIAL: EFFECTIVE DATE: September 10, 2010
IMPLEMENTATION DATE: September 10, 2010

Disclaimer for manual changes only: The revision date and transmittal number apply to the red italicized material only. Any other material was previously published and remains unchanged. However, if this revision contains a table of contents, you will receive the new/revised information only, and not the entire table of contents.

II. CHANGES IN MANUAL INSTRUCTIONS: (N/A if manual not updated.)
(R = REVISED, N = NEW, D = DELETED) – (Only One Per Row.)

R/N/D	CHAPTER/SECTION/SUBSECTION/TITLE
R	7/Table of Contents
R	7/7000/Introduction
R	7/7001/Definitions and Acronyms
R	7/7002/Change in Certification Status for Medicaid Nursing Facilities
R	7/7004/7004.1/Citations
R	7/7004/7004.2/Description of Skilled Nursing Facility
R	7/7006/7006.1/Citations
R	7/7006/7006.2/Description of Nursing Facility
R	7/7008/Types of Facilities That May Qualify as Skilled Nursing Facilities and Nursing Facilities
R	7/7014/7014.1/Waiver of Nurse Staffing Requirements
R	7/7014/7014.1/7014.1.1/Waiver of 7-Day Registered Nurse (RN) Requirement for Skilled Nursing Facility
R	7/7014/7014.1/7014.1.2/Waivers of Nurse Staffing Requirements in Nursing Facilities
R	7/7014/7014.1/7014.1.3/Waivers of Nurse Staffing Requirements for Dually

- Civil money penalties;
- Transfer of residents;
- Transfer of residents with closure of facility; and
- State monitoring.

The State Medicaid Agency may establish additional or alternative remedies as long as the State has been authorized by CMS to do so under its State plan. Guidance on the review and approval (or disapproval) of State Plan amendment requests for alternative or additional remedies can be found in §7805.

7400.3.3 - Availability of State Medicaid Agency Remedies to the Regional Office in Dually Participating Facilities

(Rev. 63, Issued: 09-10-10, Effective: 09-10-10, Implementation: 09-10-10)

Whenever a State Medicaid Agency's remedy is unique to its State plan and has been approved by CMS, then that remedy may also be imposed by the regional office against the Medicare provider agreement of a dually participating facility in that State. For example, where CMS has approved a State's ban on admissions remedy as an alternative remedy under the State plan, CMS may impose this remedy but only against Medicare and Medicaid residents; only the State can ban the admission of private pay residents.

7400.4 - Measuring Seriousness of Deficiencies

(Rev. 63, Issued: 09-10-10, Effective: 09-10-10, Implementation: 09-10-10)

Measuring the seriousness of deficiencies is **only** for the purpose of determining the enforcement response most appropriate for specific degrees of noncompliance. The scope and severity system, by which the seriousness of deficiencies is rated, is a national system to be used by States and CMS. Immediate jeopardy has historically been determined by guidance provided in Appendix Q of this manual and will continue to be determined using that guidance. Appendix P of this manual provides guidance about how to determine the seriousness of non-immediate jeopardy deficiencies.

7400.5 - Selection of Remedies

(Rev. 63, Issued: 09-10-10, Effective: 09-10-10, Implementation: 09-10-10)

7400.5.1 - Factors That Must Be Considered When Selecting Remedies

(See also Appendix P, V of this manual.)

(Rev. 63, Issued: 09-10-10, Effective: 09-10-10, Implementation: 09-10-10)

In order to select the appropriate remedy(ies) for a facility's noncompliance, the seriousness of the deficiencies must first be assessed, because specific levels of seriousness correlate with specific categories of enforcement responses. The assessment factors that must be used to determine the seriousness of deficiencies are presented on the visual matrix that follows in this subsection. These factors are also listed below. They relate to whether the deficiencies constitute:

- No actual harm with a potential for minimal harm;
- No actual harm with a potential for more than minimal harm but not immediate jeopardy;
- Actual harm that is not immediate jeopardy; or
- Immediate jeopardy to resident health or safety.

AND, whether deficiencies:

- Are isolated;
- Constitute a pattern; or
- Are widespread.

**ASSESSMENT FACTORS USED TO DETERMINE
THE SERIOUSNESS OF DEFICIENCIES MATRIX**

Immediate jeopardy to resident health or safety	J PoC Required: Cat. 3 Optional: Cat. 1 Optional: Cat. 2 	K PoC Required: Cat. 3 Optional: Cat. 1 Optional: Cat. 2 	L PoC Required: Cat. 3 Optional: Cat. 2 Optional: Cat. 1
Actual harm that is not immediate	G PoC Required* Cat. 2 Optional: Cat. 1	H PoC Required* Cat. 2 Optional: Cat. 1 	I PoC Required* Cat. 2 Optional: Cat. 1 Optional: Temporary Mgmt.
No actual harm with potential for more than minimal harm that is not immediate jeopardy	D PoC Required* Cat. 1 Optional: Cat. 2	E PoC Required* Cat. 1 Optional: Cat. 2	F PoC Required* Cat. 2 Optional: Cat. 1
No actual harm with potential for minimal harm	A No PoC No remedies Commitment to Correct Not on CMS-2567	B PoC 	C PoC
	Isolated	Pattern	Widespread

Substandard quality of care is any deficiency in 42 CFR 483.13, Resident Behavior and Facility Practices, 42 CFR 483.15 Quality of Life, or 42 CFR 483.25, Quality of Care, that constitutes immediate jeopardy to resident health or safety; or a pattern of or widespread actual harm that is not immediate jeopardy; or a widespread potential for more than minimal harm that is not immediate jeopardy, with no actual harm.

Substantial compliance

REMEDY CATEGORIES

Category 1 (Cat.1)	Category 2 (Cat.2)	Category 3 (Cat.3)
Directed Plan of Correction	Denial of Payment for New Admissions	Temp. Mgmt.
State Monitor, and/or	Denial of Payment for All Individuals imposed by CMS; and/or	Termination
Directed In-Service Training	Civil money penalties: \$50 - \$3,000/day \$1,000 - \$10,000/instance	Optional: Civil money penalties 3,050-\$10,000/day \$1,000 - \$10,000/instance

Denial of payment for new admissions must be imposed when a facility is not in substantial compliance within 3 months after being found out of compliance.

Denial of payment and State monitoring must be imposed when a facility has been found to have provided substandard quality of care on three consecutive standard surveys.

NOTE: Termination may be imposed by the State *Medicaid Agency* or CMS at any time.

*This is required only when a decision is made to impose alternative remedies instead of or in addition to termination.

Once the seriousness of the deficiencies is determined, and the decision is made to impose remedies **instead of, or in addition to**, termination, the regional office, or the State Medicaid Agency, or both, as determined in accordance with §7300, must select one or more remedies from the remedy category (or a CMS approved alternative or additional State remedy) associated with the specific level of noncompliance in accordance with the visual matrix above. The remedy category to be applied against facility noncompliance will be determined by the most serious deficiencies identified, i.e., the deficiencies falling into the box closest to level L. Additional factors may be considered, including but not limited to, those provided in §7400.5.2.

7400.5.2 - Other Factors That May Be Considered in Selecting Enforcement Remedy Within a Remedy Category

(Rev. 63, Issued: 09-10-10, Effective: 09-10-10, Implementation: 09-10-10)

Additional factors that may be considered to assist in determining which and/or how many remedies to impose within the available remedy categories for particular levels of noncompliance, include but are not limited to:

- The relationship of one deficiency to other deficiencies;

- The facility's prior history of noncompliance in general, and specifically with reference to the cited deficiencies; and
- The likelihood that the selected remedy(ies) will achieve correction and continued compliance.

EXAMPLE:

If failure to spend money is the root cause of the facility's noncompliance, then any civil money penalty that is imposed should at least exceed the amount saved by the facility by not maintaining compliance.

7400.5.3 - Requirement for Facility to Submit Plan of Correction

(Rev. 63, Issued: 09-10-10, Effective: 09-10-10, Implementation: 09-10-10)

Except when a facility has isolated deficiencies that constitute no actual harm with potential for no more than minimal harm *or a citation of past noncompliance*, each facility that has a deficiency must submit an acceptable plan of correction. For a plan of correction to be acceptable, it must address all of the required elements provided in §7304. Those facilities having isolated deficiencies that constitute no actual harm with potential for minimal harm need not submit a plan of correction. The regional office approves plans of corrections for State-operated facilities and for validation surveys; the State approves all others. The process and timetable for CMS's approval of plans of corrections under the continuation of payment provision is in accordance with §7600. The requirement that facilities submit a plan of correction can be found in 42 CFR 488.402(d) and §7304.4 and §7400.2.

7400.6 - When To Select Remedy From Specific Remedy Category

(Rev. 63, Issued: 09-10-10, Effective: 09-10-10, Implementation: 09-10-10)

7400.6.1 - Category 1

(Rev. 63, Issued: 09-10-10, Effective: 09-10-10, Implementation: 09-10-10)

Select at least one remedy from category 1 when there:

- are isolated deficiencies that constitute no actual harm with a potential for more than minimal harm but not immediate jeopardy; or
- is a pattern of deficiencies that constitutes no actual harm with a potential for more than minimal harm but not immediate jeopardy.

EXCEPT when the facility is in substantial compliance, one or more of the remedies in category 1 may be applied to any deficiency.

CATEGORY 1 remedies include:

- Directed plan of correction (see §7500);
- State monitoring (see §7504); and
- Directed in-service training (see §7502).

NOTE: As an agent of CMS or the State Medicaid Agency, the State may impose one or more category 1 remedies, as authorized by CMS or the State Medicaid Agency, in accordance with §7314.

7400.6.2 - Category 2

(Rev. 63, Issued: 09-10-10, Effective: 09-10-10, Implementation: 09-10-10)

Select at least one remedy from category 2 when there are:

- Widespread deficiencies that constitute no actual harm with a potential for more than minimal harm but not immediate jeopardy; or
- One or more deficiencies (regardless of scope) that constitute actual harm that is not immediate jeopardy.

EXCEPT when the facility is in substantial compliance, one or more of the remedies in category 2 may be applied to any deficiency.

NOTE: The State Medicaid Agency does not have the statutory authority to impose the remedy of denial of payment for all Medicare and/or Medicaid residents. As an agent of CMS or the State Medicaid Agency, the State may provide *formal* notice of imposition of denial of payment for new admissions, as authorized by CMS and/or the State Medicaid Agency, in accordance with §7314.

CATEGORY 2 remedies include:

- Denial of payment for all new Medicare and/or Medicaid admissions (see §7506);
- Denial of payment for all Medicare and/or Medicaid residents, imposed by the regional office (see §7508);
- Civil money penalties of \$50 - \$3,000 per day of noncompliance (see §7510); and