



MARK B HORTON, MD, MSPH
Director

State of California—Health and Human Services Agency
California Department of Public Health



ARNOLD SCHWARZENEGGER
Governor

July 16, 2010

AFL 10-17

TO: All Long-Term Care Facilities

SUBJECT: Newly Implemented Dual Enforcement Process

This letter announces a change in the enforcement process as implemented by the California Department of Public Health, Licensing and Certification Program (L&C). In August 2009, the L&C Program began implementation of a federal and state dual enforcement process for long term care facilities. This process entails the issuance of state citations and federal deficiency remedies for violations and deficiencies found as a result of complaint and entity reported incident investigations and/or licensing and re-certification surveys.

The L&C Program with the Centers for Medicare and Medicaid Services (CMS), Division of Survey and Certification, San Francisco Regional Office, worked to develop this policy and to review the guidance by which the policy is being implemented throughout the state.

This process is being implemented under the authority of Section 1423(a)(2) of the California Health and Safety Code.

The dual enforcement process is as follows:

State Citations:

1. Complaint investigation findings resulting in “A” and “AA” citations (where the incident occurred on or after August 1, 2009) will be evaluated for processing as federal deficiencies at the same time as the state citation process.
2. “AA” citations will be evaluated for processing as federal immediate jeopardy (IJs), if determined appropriate. Staff will follow the federal IJ process and notify CMS during the investigation.
3. “A” citations will be evaluated for processing as federal deficiencies and will be assigned a scope and severity of “F substandard” or “G or above” or IJ as appropriate.

State Licensing Surveys Findings:

1. Licensing survey findings of Title 22 California Code of Regulations (CCR) violations that rise to the level of an "A" or "AA" will be evaluated for processing as federal deficiencies at the same time as the state citation process.
2. "AA" citations will be evaluated for processing as federal deficiencies and will use a scope and severity of a "G" or above as appropriate. For IJs, staff will follow the federal IJ process and notify CMS during the investigation.
3. "A" citations will be evaluated for processing as federal deficiencies and will be assigned a scope and severity of "F substandard" or "G or above" or IJ as appropriate.

Federal Recertification Survey Findings:

1. Federal survey findings with a scope and severity of "F substandard" or "G and above" (where the recertification survey occurred on or after August 1, 2009) will be evaluated for potential issuance as an "A" or "AA" citation as appropriate.
2. Federal survey findings with IJs will be evaluated for potential issuance of an "AA" or "A" citation as appropriate.

All federal remedies and state citations will be considered for federal and/or state deficiencies and violations cited and remedies may be dually imposed with the exception of federal civil money penalties. Federal remedies that L&C will be recommending that may be imposed by CMS include:

- ◆ Denial of All Payments
- ◆ Denial of Payment for New Admissions
- ◆ Directed In-Service Training
- ◆ Directed Plan of Correction
- ◆ State Monitoring
- ◆ Temporary Management
- ◆ Termination of Provider Agreement
- ◆ Closure of facility, transfer of residents or both.

L&C will not recommend federal civil money penalties be imposed to CMS. Civil Money Penalties may be imposed by CMS, San Francisco Regional Office, at their determination and may result in a civil money penalty being imposed by CMS for federal deficiencies; this is in addition to the state citations issued by L&C.

Federal deficiencies and resulting federal remedies and/or state citations may be appealed through federal and state appeal processes respectively through normal courses of action. The federal and state appeal processes are separate and distinct processes and one process does not hamper or influence the other regardless of their outcome or settlement agreements.

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Thank you for your continued commitment to providing quality health care services to the residents of long term care facilities. If you have any questions please call Scott Vivona, Chief, Field Operations, at (916) 440-7360.

Sincerely,

Original Signed by Kathleen Billingsley, R.N.

Kathleen Billingsley, R.N.
Deputy Director
Center for Health Care Quality