

## New Survey and Enforcement Process

On December 15, 1999 HCFA issued final revisions, effective January 14, 2000, to Chapter 7 of the State Operations Manual (SOM) for nursing facility survey and enforcement. The revised chapter includes new instructions to state agencies for imposing remedies on non-compliant nursing facilities and details the enforcement consequences for states demonstrating inadequate survey performance. Following are some highlights of the revised SOM:

- The revised SOM eliminates the designation “poor performing facility” and refers to an “opportunity to correct” or “no opportunity to correct” before a remedy is imposed.
- There are three mandatory criteria for “no opportunity to correct”
  1. The “double G;” that is, a G-level (actual harm) deficiency on the current and previous or any intervening survey. This means that facilities with a G, H, I, J, K or L-level deficiency on any two consecutive surveys will have immediate sanctions/remedies imposed. HCFA expects the “double G” rule will result in at least 15% more immediate remedies being imposed. The Division of Aging has already cited some facilities in Missouri with the “double G.”
  2. When a previously terminated facility has actual harm deficiencies at the first survey after re-entry into the program.
  3. When immediate jeopardy has been determined.
- There is no mandatory criteria for states to afford facilities an “opportunity to correct” before a sanction is imposed. States are given greater discretion for making this determination.
- The revised SOM clearly states that a facility is not entitled to multiple revisits. Revisits will now be limited to two during any 180-day cycle of noncompliance (one after the initial survey, another if the facility remains out of compliance) unless the HCFA regional office grants permission for the state agency to conduct more.
- The final rule for per-instance civil money penalties (CMPs), effective May 17, 1999, has been incorporated. In addition to the traditional per-day CMP, HCFA or the state agencies may impose a single CMP, ranging from \$1,000 to \$10,000, on a per-instance basis for noncompliance. There is no opportunity to correct before the per-instance penalty is imposed.
- States now have the authority to impose category-I remedies and denial of payment for new admissions. Regulations permit state agencies, under HCFA’s authorization, to send notice of adverse actions to facilities that would otherwise be sent directly by HCFA. Previously, HCFA had implemented this policy only in instances of minimal noncompliance. States are now authorized to impose, as directed by HCFA and/or the state Medicaid agency, certain remedies within applicable notice requirements. This means that the cover letter accompanying the facility’s statement of deficiencies (HCFA Form 2567) can now contain not just recommendations for imposing remedies, but can serve as formal notice of remedies, such as denial of payment for new admissions, that will be imposed as soon as 15 days from receipt of the notice, and no later than three months from the date of survey.
- While face-to-face informal dispute resolution is still an option, the language encouraging face-to-face resolutions has been deleted.
- A new section provides guidance for readmitting facilities to the Medicare/Medicaid program(s) following termination. Included is the “reasonable assurance concept” that precludes reinstatement until it has been demonstrated that the provider is capable of achieving and maintaining substantial compliance with all requirements. Two surveys are required, at the beginning and end of a state- or Medicare-designated “reasonable assurance period”—to verify that the reason for termination no longer exists and that continued compliance has been maintained.

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- Another new section provides guidance on imposing sanctions for life safety code deficiencies. It includes guidance for severity and scope determinations, coordinating surveys and two options for possible enforcement approaches. In the first option, one enforcement track and set of timeframes is followed for all deficiencies, regardless of whether they are life safety code deficiencies or health deficiencies. The second option includes two tracks and two sets of timeframes. If the life-safety code and health survey occur together or not more than seven days apart, option 1 is to be followed. Guidance for granting temporary waivers (for corrective actions that will take 90 days or more) or continuing waivers (granted when corrections will pose unreasonable financial hardship and there is not a threat to residents' health and safety) is also included.
- Instructions now state that when immediate jeopardy exists, the regional office or state agency should impose another remedy in addition to termination without an opportunity to correct.
- Facilities are now required to submit an allegation that the immediate jeopardy has been removed and demonstrate how it is being addressed. In most cases, a plan of correction will be deferred until, on the basis of a revisit, removal of the immediate jeopardy has been verified. An allegation of removal does not guarantee a revisit before the effective date of termination.
- HCFA or the state agency determines whether an opportunity to correct will be afforded. If no opportunity to correct is allowed and termination is selected, an additional remedy is to be imposed.
- The need for a separate allegation of compliance has been deleted. The plan of correction will serve as the allegation of compliance.

MoAHA has copies of a *Survey and Enforcement* manual available for purchase by members. The manual includes exhibits and forms from Chapter 9 of the SOM, survey procedures for facilities (Appendix P of SOM), requirements of participation and interpretive guidelines (Appendix PP of SOM), resident assessment instrument materials (Appendix R of SOM), and enforcement procedures (Chapter 7 of SOM). Please call Carol at 800-966-0043 for an order form.