

# Nursing Home Enforcement - Frequently Asked Questions

## 1. What role does CMS play in imposing enforcement actions?

Federal enforcement actions, referred to as remedies, are imposed by the CMS Regional Offices for the respective States in their jurisdiction. The State Operations Manual (SOM) describes how surveys are to be conducted and provides guidance on the survey and enforcement process.

## 2. What is an enforcement action?

An enforcement action is the process of imposing one or more of the following remedies in accordance with 42 CFR §488.406:

- Termination of the provider agreement;
- Temporary management;
- Denial of payment for all Medicare and/or Medicaid individuals by CMS;
- Denial of payment for all new Medicare and/or Medicaid admissions;
- Civil money penalties;
- State monitoring;
- Transfer of residents;
- Transfer of residents with closure of facility;
- Directed plan of correction;
- Directed in-service training; and
- Alternative or additional State remedies approved by CMS.

## 3. What is the purpose of enforcement remedies?

The purpose of remedies is to ensure prompt compliance with program requirements (42 CFR §488.402). 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 (42 CFR §488.404).

## 4. What is the basis for imposition and duration of remedies?

The nursing home enforcement procedures are based on the premise that all requirements must be met and enforced, and requirements take on greater or lesser significance depending on the specific circumstances and resident outcomes in each facility. Once a remedy is imposed it is in effect as of the start date in the notice letter (i.e., as soon as the minimum notice requirements are met). All remedies remain in effect and continue until the facility is in substantial compliance and in accordance with 42 CFR §488.414(a)(3) Repeated Substandard Quality of Care, until it has demonstrated that it can remain in substantial compliance with all the requirements, or is terminated from Medicare and/or Medicaid participation.

## 5. What enforcement actions must be taken when a facility does not comply with Federal regulations?

The Social Security Act (SSA) requires any nursing home that does not achieve substantial compliance with the Federal requirements within six months be terminated from participation in Medicare and/or Medicaid. The SSA also requires Denial of Medicare and Medicaid payment for any individual admitted to a nursing home that fails to return to substantial compliance within three months (referred to as a Mandatory Denial of Payment for New Admissions, or DPNA). Sections 1819(h) and 1919(h) of the Act, as well as 42 CFR §§488.404, 488.406, and 488.408, 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 State or CMS finds that a facility is out of compliance with participation requirements.

When immediate jeopardy exists the CMS Regional Office or State Medicaid Agency will impose termination and/or temporary management in as few as 2 calendar days (one of which must be a working day) after the survey which determined immediate jeopardy. In all cases of immediate jeopardy, the provider agreement must be terminated by CMS or State Medicaid Agency no later than 23 calendar days from the last day of the survey if the immediate jeopardy is not removed.

## 6. What notification is given to nursing homes that are not in compliance with program requirements?

Except when the State is taking action against a non-State operated nursing facility, CMS or the State (as authorized by CMS) gives the provider notice of the remedy, including:

- Nature of the noncompliance;
- Which remedy is imposed;
- Effective date of the remedy; and
- Right to appeal the determination leading to the remedy.

## 7. How can I find out information about a specific Nursing Home?

[Nursing Home Compare](#) contains information on every Medicare and Medicaid certified nursing home in the country. For nursing homes not certified under Medicare or Medicaid you should also check the specific State website if available.

## 8. How can I find out about State enforcement actions?

Contact the survey agency for the specific state. The names and addresses of these agencies are found on the Nursing Home Compare website.

## 9. What factors determine the severity of a deficiency?

There are four factors that determine the severity of a deficiency:

- **Level 1 - No actual harm with potential for minimal harm:** A deficiency that has the potential for causing no more than a minor negative impact on the residents or employees;
- **Level 2 - No actual harm with a potential for more than minimal harm that is not immediate jeopardy:** Noncompliance with the requirements that results in the potential for no more than minimal physical, mental, and/or psychosocial harm to the residents or employees and/or that result in minimal discomfort to the residents or employees of the facility, but has the potential to result in more than minimal harm that is not immediate jeopardy;
- **Level 3 - Actual harm that is not immediate jeopardy:** Noncompliance with the requirements that results in actual harm to residents or employees that is not immediate jeopardy;
- **Level 4 - Immediate jeopardy to resident health or safety:** Noncompliance with the requirements that results in immediate jeopardy to resident or employee health or safety in which immediate corrective action is necessary because the provider's noncompliance with one or more of those requirements has caused, or is likely to cause, serious injury, harm, impairment or death to a resident receiving care in a facility or an employee of the facility.

## 10. What factors determine the scope of a deficiency?

There are three levels that are used to determine the scope of a deficiency: isolated, pattern, or widespread. The scope levels reflect how many residents were affected by the deficiencies cited and are described below:

- **Isolated:** When one or a very limited number of residents or employees is/are affected and/or a very limited area or number of locations within the facility are affected;
- **Pattern:** When more than a very limited number of residents or employees are affected, and/or the situation has occurred in more than a limited number of locations but the locations are not dispersed throughout the facility;
- **Widespread:** When the problems causing the deficiency are pervasive (affect many locations) throughout the facility and/or represent a systemic failure that affected, or has the potential to affect, a large portion or all of the residents or employees.

#### 11. Who determines if a nursing home gets an alternative remedy?

The State Survey Agency may recommend enforcement remedies, and the CMS Regional Office determines the final imposition of remedies.

#### 12. What documentation is used to record nursing home deficiencies?

The Statement of Deficiencies, form CMS-2567 is the official documentation to record deficiencies.

#### 13. What is a Plan of Correction (PoC)?

42 CFR §488.401 defines a Plan of Correction to mean a plan developed by the facility and approved by CMS or the survey agency that describes the actions the facility will take to correct deficiencies and specifies the date by which those deficiencies will be corrected.

#### 14. What information must be included in a PoC?

An acceptable plan of correction must address the following:

- Address how corrective action will be accomplished for those residents found to have been affected by the deficient practice;
- Address how the facility will identify other residents having the potential to be affected by the same deficient practice;
- Address what measures will be put into place or systemic changes made to ensure that the deficient practice will not recur;
- Indicate how the facility plans to monitor its performance to make sure that solutions are sustained; and
- Include dates when corrective action will be completed. The corrective action completion dates must be acceptable to the State. If the plan of correction is unacceptable for any reason, the State will notify the facility in writing. If the plan of correction is acceptable, the State will notify the facility by phone, e-mail, etc. Facilities should be cautioned that they are ultimately accountable for their own compliance, and that responsibility is not alleviated in cases where notification about the acceptability of their plan of correction is not made timely. The plan of correction will serve as the facility's allegation of compliance.

#### 15. Must all facilities with deficiencies submit a PoC?

Except in cases of past noncompliance and for deficiencies at a scope and severity level A, facilities must submit an acceptable PoC.

#### 16. What does the "past noncompliance" mean?

Past noncompliance means a deficiency citation at a specific survey data tag (F-tag or K-tag) that meets all of the following three criteria:

- The facility was not in compliance with the specific regulatory requirement(s) (as referenced by the specific F-tag or K-tag) at the time the situation occurred;
- The noncompliance occurred after the exit date of the last standard (recertification) survey and before the survey (standard, complaint, or revisit) currently being conducted; and
- There is sufficient evidence that the facility corrected the noncompliance and is in substantial compliance at the time of the current survey for the specific regulatory requirement(s), as referenced by the specific F-tag or K-tag.

**17. How much time is a nursing home given to submit their PoC?**

An acceptable PoC must be submitted within 10 calendar days from the date the facility receives its Statement of Deficiencies, form CMS-2567.

**18. What legislative authority does CMS have to impose enforcement actions against nursing homes and where can I find them?**

The statutory and regulatory requirements for participation of a SNF (Skilled Nursing Facility) in Medicare are found at section 1819 of the Social Security Act (the Act) and at 42 CFR Part 483. Section 1819(h)(2) of the Act authorizes the Secretary of Health and Human Services (Secretary) to impose enforcement remedies against a SNF for failure to comply substantially with the federal participation requirements established by sections 1819(b), (c), and (d) of the Act. Participation of a NF (Nursing Facility) in Medicaid is governed by section 1919 of the Act. Section 1919(h)(2) of the Act gives enforcement authority to the states to ensure that NFs comply with their participation requirements established by sections 1919(b),(c), and (d) of the Act.

**19. Where can I find more information about nursing home enforcement?**

The procedures, regulations with interpretative guidance and required forms for Long Term Care (LTC) facilities are contained in Appendix P & PP of the State Operations Manual (SOM). Additional direction is provided in the SOM: [Chapter 7 - Survey and Enforcement Process for Skilled Nursing Facilities and Nursing Facilities](#).