DEPARTMENT OF HEALTH & HUMAN SERVICES Centers for Medicare & Medicaid Services

7500 Security Boulevard
Baltimore, MD 21244-1850

Ref: S&C 01-23

DATE: **August 15, 2001**

FROM: Director
Survey and Certification Group
Center for Medicaid and State Operations

SUBJECT: Response to Questions about Verification Policy (S&C01-10)

TO: Associate Regional Administrators, DMSO
State Survey Agency Directors

The purpose of this memorandum is to provide you with our answers to questions we received regarding our survey and certification policy letter S&-C01-10.

1Q: How many revisits is a facility "entitled" to per certification cycle? Is there any exception to that number?

1A: Facilities can expect no more than 2 revisits per certification cycle. A third revisit may be authorized by the regional office.

2Q: When substandard quality of care, actual harm, or immediate jeopardy is cited and those tags are subsequently corrected by the time of the first revisit, must revisits continue to that facility until it achieves substantial compliance with any other tags that are at or below Box F (no substandard quality of care)?

2A: No. The May 3, 2001 revisit memo reiterated that policy on this topic issued in the August 20, 1998 memo was still in effect, i.e., once substandard quality of care, actual harm, or immediate jeopardy is cited, revisits must continue to that facility until the facility achieves substantial compliance with *all* requirements. However, in keeping with the Administration's commitment to focus more attention on poorly performing facilities and those having serious compliance problems, we are adjusting our revisit policy to provide that when it is determined at the first revisit that a facility has achieved substantial compliance with the affected substandard quality of care, actual harm, or immediate jeopardy tags, no continued revisits are necessary for any other tags that are at or below Box F (no substandard quality of care). However, if a revisit isn't conducted for these other tags, the facility must provide evidence that they were corrected and are now in substantial compliance. We have not changed our policy requiring continued revisits to verify substantial compliance when substandard quality of care, harm, or immediate jeopardy are found, even if the deficiencies improve.

3Q: Does this policy apply to Medicaid facilities as well as Medicare facilities?

3A: This policy applies to Medicare-only, dually participating facilities, and State-operated facilities. While we cannot require that it be applied to Medicaid-only facilities, State Medicaid Agencies should follow it so that the programs are run consistently.

4Q: Must States request authorization for a 3rd revisit from HCFA for Title XIX-only facilities?

4A: No. States are not required to get regional office approval for the 3rd revisit to a non-State-operated Medicaid-only facility. However, even though this policy applies to Medicare-only, dually participating facilities, and State-operated facilities, and while we cannot require States to get such approval from the State Medicaid Agency, States should consult with the Medicaid agency prior to conducting any 3rd revisit so that the programs are run consistently.

5Q: Under licensure regulations, some States are required to conduct complaint surveys within a specified time frame. If an enforcement cycle begins in response to a standard survey or a complaint survey, and a new complaint is received, these States must still meet the mandated time frame (24 hours, 7 days or 30 days) to conduct the complaint survey. In order to conserve resources, when such complaints were conducted in the past, States simultaneously conducted a revisit for any pre-existing deficiencies. Under the new guidance, when the new complaint survey is conducted under the State's mandated time frames, will the complaint survey be considered as a revisit that will count toward the State's 2-revisit count? Or, will it not affect the number of revisits allowed under this policy? Also, what about any revisits based on this new complaint?

5A: Initial complaint investigation visits, whether substantiated or not, are not counted toward the two revisits. However, when the complaint survey is conducted at the same time as a revisit, the revisit will count toward the revisit count. And, although the mandated complaint survey itself is not considered a revisit, any revisits associated with it would be counted toward the 2nd revisit count. This also applies to Federal complaint guidelines.

6Q: States recommend termination at 6 months when they conduct a 3rd revisit and still find noncompliance. If a complaint is received and a complaint survey is conducted (in accordance with State-mandated time frames) after a 3rd revisit but before the 6-month termination date, should certification tags be cited? Should any revisits be conducted for this new complaint?

6A: First, it's important that the situation be discussed with the regional office since they may have sent a termination letter. If the timing is such that the complaint investigation is conducted prior to the termination date, any deficiencies should be cited and they would provide additional evidence in support of the termination action. Since 3 revisits have already been conducted, another revisit, based on the new complaint deficiencies, cannot be conducted without consultation with the regional office and central office.

7Q: If a 3rd revisit determines that there are still deficiencies at scope and severity levels "D" or "E", States recommend termination. After a 3rd revisit, the State receives a complaint and conducts a complaint survey, which finds no deficiencies. Can States use this opportunity to determine if the deficiencies from the 3rd revisit are now in compliance?

7A: No. Facilities cannot get another revisit by virtue of a complaint investigation. The purpose of conducting a complaint investigation is to protect the health and safety of residents.

8Q: For purposes of the revisit count, are life safety code revisits counted separately from health revisits?

8A: When the revisit is for the sole purpose of *either* the health survey or the life safety code survey, *but not both*, there are separate revisit counts towards each type of survey, regardless of the timing of the two surveys and regardless of whether or not the same entity is performing the surveys and revisits. Otherwise, both surveys are covered by the same revisit count.

9Q: When the first revisit is to determine (only) if immediate jeopardy has been removed and is not a revisit on all deficiencies, does it count toward the revisit count?

9A: Yes. A visit to determine if immediate jeopardy is abated will count as one of the two revisits. This is because a determination of immediate jeopardy is very serious. If we were not to count the revisit, we would, in effect, be "rewarding" findings of immediate jeopardy by allowing an additional revisit. It would be in this facility's best interest to also be able to correct most of its other deficiencies by the time of the first revisit.

10Q: When the first revisit is to determine (only) if immediate jeopardy has been removed, and the abatement is confirmed, does the civil money penalty at the immediate jeopardy range stop on the plan of correction date?

10A: Unless evidence presented by the facility confirms correction at an earlier date, the date of the revisit should be used as the correction date.

11Q: The 2-revist policy may result in a greater number of terminated facilities. If this is the case, residents will need to be relocated to other certified SNFs or NFs. If additional certified beds are needed to accommodate the transfer of residents, would an exception be made to the existing manual rules on when a distinct part bed increase may be allowed?

11A: This is already permitted by §3202D.2 of the State Operations Manual which provides that facilities can eliminate distinct parts anytime and certify all beds for Medicare and Medicaid. However, an increase to, rather than elimination of, the distinct part is not permitted by current guidance.

12Q: Will there be any further guidance on what is considered "acceptable evidence" to determine the date deficiencies were corrected at the time of the second revisit?

12A: No. Since it is impossible to anticipate every situation that may arise, we cannot provide definitive guidance for all cases. However, the onus for establishing a date earlier than the date of the revisit lies with the facility, not the surveyor. Any evidence presented by the facility should establish the timing of a particular action taken by the facility and how that action corrected the deficiency. If training of facility staff was a part of the corrective action taken by the facility, surveyors should question facility staff to assure they understood the topics presented in the training and took any necessary action.

13Q: Since States are encouraged to make extra visits to Special Focus Facilities, does the 2-revisit policy apply to these facilities?

13A: Yes. The 2-revisit policy applies to Special Focus Facilities but the extra drop by visits to these facilities do not count against the 2 revisits.

14Q: Does a monitoring visit count toward the 2-revisit policy?

14A: No. Monitoring visits do not count because no survey is done. We recognize that State monitoring is a remedy in and of itself and those visits will not count as a revisit. State monitors oversee the correction of cited deficiencies and ensure that residents are protected from harm; revisits are on-site visits specifically intended to verify correction of deficiencies cited in a previous survey.

15Q: Will consideration be given to new operators who assume operation of a facility that has been out of compliance for some time?

15A: No. If a new operator assumes the existing provider agreement, he or she is responsible for assuring that corrections are made within the existing revisit policy.

16Q: **How should a complaint alleging actual harm be handled if there is already a non-corrected deficiency with a scope/severity of actual harm? Would it be necessary to investigate the latest complaint alleging actual harm within 10 days, or could this complaint investigation be postponed until the next scheduled revisit?**

16A: The most recent complaint should be investigated within 10 days using the normal triage methodology. This is because the new complaint may involve other resident(s) with other circumstances that may be causing harm. It is important to note that an initial complaint survey does not count as one of the two revisits as long as a revisit is not also made at the time of the complaint survey.

17Q: **A complaint survey starts a certification cycle. One month later, the State conducts a standard survey but does not recite the violations found a month earlier. The State does not technically conduct a revisit because the plan of correction dates are later. If it is determined that the deficiencies do not exist at the time of the standard survey, should an HCFA-2567B be prepared to clear the original deficiencies? Would the clearing of tags be considered a revisit and count toward the 2-revisit policy?**

17A: The fact that the standard survey did not find the same regulatory deficiencies as those cited during the complaint survey establishes that those deficiencies have been corrected and so a HCFA-2567B should be prepared to clear the original deficiencies. The standard survey is not considered a revisit and should not be included in the revisit count. This is because the intent of a standard survey is not the same as that of a revisit; the standard survey is broader in scope and performed to evaluate the facility's compliance with a comprehensive set of requirements.

18Q: How should the HCFA-2567B be completed if the first revisit finds previously cited deficiencies corrected, but cites new deficiencies? If the HCFA-2567B is completed using the plan of correction date, it will appear as if there is a period of compliance, i.e., a break in noncompliance prior to the new deficiencies cited at the time of the first revisit.

18A: The Revisit/Date of Compliance Policy chart accompanying Letter S&C01-10, dated May 3, 2001, indicates that the latest date on the approved plan of correction is used as the date of compliance only if the facility is found to be in substantial compliance at the time of the revisit. In the scenario described, however, the facility was not found in compliance at the time of the revisit and thus the period of non-compliance continues. The revisit date should be used on the HCFA-2567B to indicate the date that the previously cited deficiencies were corrected.

19Q: When a prospective provider has been subject to an initial survey and a revisit is performed to verify compliance, can a date earlier than that of the revisit be used to establish compliance?

19A: Yes. A memorandum dated 4/29/96 from the Director of the Office of Survey and Certification, HCFA, subject: Initial Surveys, provides, "The effective date of the provider agreement would be: the date the provider documents substantial compliance as determined by the evidence of correction submitted to and accepted by the survey agency; the date of the revisit that finds the provider in substantial compliance; or, *the date before the onsite revisit but verified through an onsite revisit when one is necessary to determine substantial compliance.*" In other words, the same principle in the new revisit policy, about establishing dates of compliance on a date earlier than that of the revisit, applies to initial surveys of prospective providers.

Effective Date: The information contained in this memorandum is current policy and is in effect.

Training: This policy memorandum should be shared with all the survey and certification staff, their managers, State and Regional office training coordinators and other appropriate staff. Clarifications contained in this memorandum will be reflected in the next revision to Chapter 7 of the State Operations Manual.

If you would like to discuss any of these issues further, please contact your regional office representative.

/s/
Steven A. Pelovitz