



DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

7500 Security Boulevard
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Ref: S&C-01-10

DATE: May 3, 2001

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

SUBJECT: Policies about Verification of Compliance and Setting 3- and 6-month Remedy Effective Dates

TO: Associate Regional Administrator, DMSO
State Survey Agency Directors

On September 22, 2000, we released a memo transmitting two enforcement policies, one concerning verification of facility compliance and the other pertaining to setting the effective dates for the mandatory 3- and 6-month remedies. The policy about facility compliance generated much discussion, and, after reconsideration of some of the issues raised, we have revised the guidance which is attached. This guidance is effective with any survey that begins a certification cycle on or after the date of this memorandum and it supersedes the September 22, 2000 memo. We have also attached a Question and Answer document to assist with understanding the revised revisit policy.

Summary of Revisions

The September 22 policy required an onsite revisit to certify compliance as well as to stop remedies. Various stakeholders contended that the policy placed further reliance on States to perform revisits timely since the date of the revisit (that verifies facility compliance) also would become the effective date of compliance as well as the date used to stop any remedies imposed. When revisits cannot be conducted timely, facilities would continue to operate with remedies in place. This is particularly significant when those remedies are monetary penalties that continue to accrue, or denial of payment for new admissions which continue to run, until stopped as of the date of the revisit.

In contrast, the revised policy set forth in the attachment provides a course of action for certifying compliance based on the seriousness of the noncompliance and the number of revisits that have already occurred. It represents a continuum ranging from accepting the latest correction date on the facility's approved plan of correction as the date of compliance to conducting an onsite revisit to establish that date. In other words, the facility's ability to be certified in compliance as of a date sooner than the date of the revisit is diminished with each revisit. In addition, because we

have now included an “evidence” provision and given examples of what might constitute acceptable evidence, we have removed the expectation that revisits would generally be the only acceptable method for verification when deficiencies involve quality of care issues. However, due to the nature of corrections that are oftentimes necessary to address quality of care deficiencies, it may well be that many of these corrections will not lend themselves to the acceptable evidence provision and may require an onsite revisit.

1. Verifying Facility Compliance

When remedies are imposed against noncompliant facilities, they cannot be lifted until evidence of facility compliance has been verified. The evidence [requirements] necessary to determine compliance is based on the seriousness of the noncompliance as well as how many revisits have already occurred. While we have indicated on the attached chart the circumstances under which revisits occur or remedies must be imposed, it is important to remember that *revisits may be conducted anytime for any level of noncompliance, remedies may be imposed anytime for any level of noncompliance, and revisits are not assured before termination can occur.* The policies for conducting revisits, lifting remedies, or certifying compliance are governed by the following chart. It should also be noted that there has been no change to the policy issued on August 20, 1998, which provides that revisits must continue until compliance is achieved or the facility is terminated, whenever a survey finds noncompliance at F (substandard quality of care), harm or immediate jeopardy. Since there has been some confusion about the maximum number of revisits permitted under this scenario, we wish to make it clear that two revisits are permitted, at the State’s discretion, without prior approval from the Regional Office; a third revisit may be approved at the discretion of the regional office.

Noncompliance and Certification Cycles

A certification cycle begins with a recertification or complaint survey and ends when substantial compliance is achieved or the facility is terminated from the Medicare or Medicaid program. The certification cycle cannot exceed 6 months. Once a remedy is imposed, it continues until the facility is in substantial compliance or is terminated from our programs.

When a revisit finds that previously identified deficiencies have been corrected but there is new evidence of noncompliance, the survey cycle continues because facilities are expected to be in substantial compliance at all times. However, after considering the level of the new deficiencies as well as other factors, States may or may not give the facility an additional opportunity to correct the new deficiencies that caused the continued noncompliance. When another opportunity to correct is provided, timing of the imposition of the mandatory denial of payment for new admissions remedy or termination will not be delayed to accommodate correction of the new noncompliance.

Number of Revisits

Two revisits are permitted, at the State’s discretion, for each certification cycle. A 3rd revisit may be conducted, at the discretion of the Regional Office, and only after it is approved by the

Regional Office. Regional Offices are limited to approving only this one additional revisit.

2. Setting the Mandatory 3- and 6-month Remedy Time Frames

There is variation in the wording used in a number of documents that address the mandatory 3- and 6-month effective dates for denial of payment for new admissions and termination, respectively. As a result, the dates for these statutorily mandated actions have not been set consistently among the regional offices and States. It has been, and continues to be, our intention that these dates be set based on full months rather than on a number of days. With few exceptions, these dates should be set by simply going to the same numerical date in the 3rd or 6th month following the survey dates. For example, if a survey ended on 1/15, the 3-month effective date for denial of payment for new admissions is 4/15, and the 6-month termination date is 7/15.

Exceptions to this rule involve those cases for which a 3-month or 6-month numerical date is not on the calendar. In these cases, move ahead a day or two to the beginning of the next month. For example, if a survey ended on 1/31, the 3-month effective date for denial of payment for new admissions would be 4/31. However, since there is no 31st day in April, the 3-month effective date is 5/1, and the 6-month termination date is 7/31.

Effective Date: This guidance is effective with any survey that begins a certification cycle on or after the date of this memorandum.

Training: These policies should be shared with all survey and certification staff, their managers, legal counsel and the State/Regional office training coordinator. We are making changes to Chapter 7 of the State Operations Manual to reflect these policies.

/s/

Steven A. Pelovitz

Attachments: Chart
Qs and As

cc: OL
Jeff Golland, OGC

***Revisit/Date of Compliance Policy
Questions and Answers***

Q1. If old deficiencies are corrected but new deficiencies are found at the time of the 2nd or 3rd revisit, does a new certification cycle begin with the new noncompliance?

A1. No. If noncompliance exists at the time of the 2nd or 3rd revisit, it is considered to be continuing noncompliance regardless of whether the previous deficiencies remain or new ones are cited, because it is the whole facility, not just deficiencies, that factor into the decision about a nursing home's compliance status. In addition, the timeframes for imposition of the mandatory denial of payment for new admissions remedy and termination are not adjusted when there's continuing noncompliance.

Q2. If different Tags are cited at the 2nd or 3rd revisit, would the new Tags be considered continuing noncompliance or new noncompliance?

A2. Regardless of whether the new deficiencies are in the same or different Tag(s) as those previously cited, the fact that noncompliance exists at the time of the revisit constitutes continuing noncompliance.

Q3. Are revisits required to verify the removal of immediate jeopardy?

A3. Yes.

Q4. Deficiencies involving quality of care should require a revisit to verify correction. Why was that requirement removed in the final policy?

A4. Revisits can be conducted anytime for any level of noncompliance. While in the majority of cases, States may determine that an onsite revisit is necessary to confirm compliance with deficiencies in quality of care, some believe that there are instances when these issues can be satisfactorily handled through acceptable evidence. Our policy preserves that option.

Q5. According to the chart, a 3rd revisit is not "required" to be performed. In cases when it is either not performed by the State or not approved by the regional office, is it correct that termination would proceed after the 2nd revisit?

A5. Yes. At the time of the 2nd revisit where noncompliance continues to exist, the facility's ability and/or willingness to achieve compliance sometimes becomes debatable, and what should have been a facility priority from the first survey of the cycle (i.e., achieving compliance) does not translate into a priority for the survey agency to perform a 3rd revisit.

Q6. If a 3rd revisit is not assured, how can States fulfill HCFA's policy that revisits must continue until compliance is achieved or the facility is terminated when a survey finds noncompliance at F (SQC), harm or immediate jeopardy?

A6. While the revised policy provides the expectation that revisits will continue until compliance is achieved or termination occurs when SQC, harm, or IJ is identified, it is important to remember that revisits are not assured and, depending on the circumstances of any given situation, termination can occur anytime for any level of facility noncompliance without regard to revisits. Facilities have the responsibility to correct their deficiencies and notify HCFA through an approved plan of correction when that will be done. It is critical that facilities use revisits sparingly so that the likelihood of needing additional ones is reduced. If correction is not achieved at the expected time, the facility should notify the State that correction has been delayed so that the revisit can be delayed; otherwise revisits are performed by the State with the expectation that the facility has achieved compliance status as alleged in their plan of correction.

REVISIT/DATE OF COMPLIANCE POLICY

<i>Revisit #</i>	Substantial Compliance	<i>Old deficiencies corrected but continuing noncompliance at F(no SQC) or below</i>	<i>Old deficiencies corrected but continuing noncompliance at F(SQC), harm or IJ</i>	Noncompliance continues	Any noncompliance
<i>1st revisit</i>	Compliance is certified as of the latest correction date on the approved PoC, unless it is determined that either correction actually occurred between the latest correction date on the PoC and the date of the 1 st revisit, or correction occurred sooner than the latest correction date on the PoC.	<p>1. A 2nd revisit is discretionary if acceptable evidence is provided. When evidence is accepted with no 2nd revisit, compliance is certified as of the date confirmed by the evidence.</p> <p>2. When a 2nd revisit is conducted, acceptable evidence is required if the facility wants a date earlier than that of the 2nd revisit to be considered for the compliance date.</p>	<p>1. A 2nd revisit is required.</p> <p>2. Acceptable evidence is required if the facility wants a date earlier than that of the 2nd revisit to be considered for the compliance date.</p>	<p>1. A 2nd revisit is required.</p> <p>2. Acceptable evidence is required if the facility wants a date earlier than that of the 2nd revisit to be considered as the compliance date.</p> <p>3. A remedy must be imposed.</p>	
<i>2nd revisit</i>	Compliance is certified as of the date of the 2 nd revisit or the date confirmed by the acceptable evidence, whichever is sooner.				<p>1. A remedy must be imposed if not already imposed.</p> <p>2. Either conduct a 3rd revisit or proceed to termination.</p>

A 3rd REVISIT IS NOT ASSURED AND MUST BE APPROVED BY THE RO

<i>3rd revisit</i>	Compliance is certified as of the date of the 3 rd revisit.				Proceed to termination.
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Examples of acceptable evidence may include, but are not limited to:

- An invoice or receipt verifying purchases, repairs, etc.
- Sign-in sheets verifying attendance of staff at in-services training.
- Interviews with more than 1 training participant about training.
- Contact with resident council, e.g., when dignity issues are involved

Givens:

- *An approved PoC is required whenever there is noncompliance;*
- *Remedies can be imposed anytime for any level of noncompliance;*
- *Revisits can be conducted anytime for any level of noncompliance.*