



Center for Clinical Standards and Quality/Survey & Certification Group

Ref: S&C: 13-50-NH

DATE: August 2, 2013

TO: State Survey Agency Directors

FROM: Director
Survey and Certification Group

SUBJECT: Notification of Facility Closure: Revisions to Tags F203 and F204 and Issuance of New Tags F523 and F524 in the State Operations Manual (SOM), Appendix PP

Memorandum Summary

- **Background:** Any individual serving as the administrator of a skilled nursing facility (SNF), nursing facility (NF) or dually participating facility (SNF/NF) must provide written notification of an impending closure of a facility including the plan for relocation of residents at least 60 days prior to the impending closure. New regulations have been added at 42 CFR §§483.75(r) and (s) as well as amendments made to §§483.12(a)(8) and 489.52(a)(2) to reflect this requirement.
- **SOM Appendix PP:** The Centers for Medicare & Medicaid Services (CMS) is providing advanced guidance regarding the federal requirements for Notification of Facility Closure.

Background:

Under sections 1128I(h) and 1819(h)(4) of the Social Security Act (the Act) and regulations at 42 CFR 483.75(r) and (s), individuals serving as the administrator of a SNF, SNF/NF or NF must provide written notification of an impending closure of a facility which also includes the plan for relocation of residents at least 60 days prior to the impending closure; or, if the Secretary terminates the facility's participation in Medicare or Medicaid, not later than the date the Secretary determines appropriate. Notice must be provided to CMS, the state long term care ombudsman, all the residents of the facility, and the legal representatives of such residents or other responsible parties. A final rule was published in the Federal Register on March 19, 2013 and became effective on April 18, 2013 (78 FR 16795).

An advanced copy of the revisions to Appendix PP of the SOM is attached which revises tags F203 and F204 and adds new tags F523 and F524. The final version of this document, when published in the online SOM may differ slightly from this interim advanced copy.

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For questions on this memorandum and the interim advance guidelines, please contact Jay Weinstein at 410-786-0506 or via email at Jay.Weinstein@cms.hhs.gov.

Effective Date: The guidance is effective immediately. Please ensure that all appropriate staff is fully informed within 30 days of the date of the memorandum.

Training: The information contained in this announcement should be shared with all survey and certification staff, their managers, State and Regional Office training coordinators.

/s/

Thomas E. Hamilton

Attachment

cc: Survey and Certification Regional Office Management

CMS Manual System

Pub. 100-07 State Operations Provider Certification

Department of Health &
Human Services (DHHS)
Centers for Medicare &
Medicaid Services (CMS)

Transmittal Advance
Guidance

Date:

SUBJECT: Changes for Notification of Facility Closure

SUMMARY OF CHANGES: Revisions to Tags F203 and F204 and Issuance of New Tags F523 and F524 in the State Operations Manual (SOM), Appendix PP. Any individual serving as the administrator of a skilled nursing facility (SNF), nursing facility (NF) or dually participating facility (SNF/NF) must provide written notification of an impending closure of a facility including the plan for relocation of residents at least 60 days prior to the impending closure. New regulations have been added at 42 CFR §§483.75(r) and (s) as well as amendments made to §§483.12(a)(8) and 489.52(a)(2) to reflect this requirement.

NEW/REVISED MATERIAL - EFFECTIVE DATE*: Upon Issuance

IMPLEMENTATION DATE: Upon Issuance

Disclaimer for manual changes only: The revision date and transmittal number apply to the red italicized material only. Any other material was previously published and remains unchanged. However, if this revision contains a table of contents, you will receive the new/revised information only, and not the entire table of contents.

II. CHANGES IN MANUAL INSTRUCTIONS: (N/A if manual not updated.)

(R = REVISED, N = NEW, D = DELETED) – (Only One Per Row.)

R/N/D	CHAPTER/SECTION/SUBSECTION/TITLE
R	Appendix PP – Guidance to Surveyors for Long term Care Facilities

III. FUNDING: No additional funding will be provided by CMS.

IV. ATTACHMENTS:

	Business Requirements
X	Manual Instruction
	Confidential Requirements
	One-Time Notification
	Recurring Update Notification

***Unless otherwise specified, the effective date is the date of service.**

483.12 Admission, Transfer, and Discharge Rights

F203

§483.12(a)(5) Timing of the notice.

(i) Except *as* specified in paragraph (a)(5)(ii) *and (a)(8) of this section*, the notice of transfer or discharge required under paragraph (a)(4) of this section must be made by the facility at least 30 days before the resident is transferred or discharged.

F204

§483.12(a)(7) Orientation for Transfer or Discharge

A facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

§483.12(a)(8) Notice in advance of facility closure

In the case of facility closure, the individual who is the administrator of the facility must provide written notification prior to the impending closure to the State Survey Agency, the State LTC ombudsman, residents of the facility, and the legal representatives of the residents or other responsible parties, as well as the plan for the transfer and adequate relocation of the residents, as required at §483.75(r).

Interpretive Guidelines: §483.12(a)(8)

In the event of an impending facility closure, excluding events that may result in a temporary closure resulting from a local, regional, state or national emergency situation such as a fire, hurricane, tornado, etc., the facility administrator must provide written notice in advance of the closure according to the requirements specified at §483.12(a)(8). If CMS or the State Medicaid Agency involuntarily terminates the facility's participation in the Medicare and/or Medicaid programs, the facility's notifications must be no later than the date specified by CMS or the State Medicaid Agency. Notice must still be given if the facility remains open but CMS or the State Medicaid Agency involuntarily terminates the facility's participation in the Medicare and/or Medicaid programs, as provided in §483.75(r)(1)(ii).

In addition, the administrator or someone acting on behalf of the administrator should notify in writing, prior to the impending closure of the facility, the:

- *Facility's Medical Director;*
- *Residents' primary physician;*
- *CMS Regional Office (RO);and*
- *State Medicaid Agency.*

The facility's notifications should be developed with input from the facility's Medical Director and other management staff and include a summary of key details from the closure plan for the safe and orderly transfer, discharge and adequate relocation of all residents.

In addition to written notification, facility staff should discuss (orally) this information with residents, their families and/or legal representatives in order to provide a better understanding of the situation and their rights. As required under §483.12(a)(4), notice of facility closure to residents and their legal or other responsible parties must be provided in a language and

manner they understand. The notice must include: the name, address and telephone number of the State LTC ombudsman; for residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act; and for residents with mental illness, the mailing address and telephone number of the agency responsible for the protection and advocacy of individuals with mental illness established under the Protection and Advocacy for Mentally Ill Individuals Act. In addition, the notice should include contact information for the primary facility contact(s) responsible for the daily operation and management of the facility during the facility's closure process.

F523

§483.75(r) Facility closure – Administrator

Any individual who is the administrator of the facility must:

(1) Submit to the State Survey Agency, the State LTC ombudsman, residents of the facility, and the legal representatives of such residents or other responsible parties, written notification of an impending closure:

(i) At least 60 days prior to the date of closure; or

(ii) In the case of a facility where the Secretary or a State terminates the facility's participation in the Medicare and/or Medicaid programs, not later than the date that the Secretary determines appropriate;

(2) Ensure that the facility does not admit any new residents on or after the date on which such written notification is submitted; and

(3) Include in the notice the plan, that has been approved by the State, for the transfer and adequate relocation of the residents of the facility by a date that would be specified by the State prior to closure, including assurances that the residents would be transferred to the most appropriate facility or other setting in terms of quality, services, and location, taking into consideration the needs, choice, and best interests of each resident.

F524

§483.75(s) Facility closure

The facility must have in place policies and procedures to ensure that the administrator's duties and responsibilities involve providing the appropriate notices in the event of a facility closure, as required at paragraph (r) of this section.

Interpretive Guidelines: §§483.75(r) and (s)

The facility has the following policies and procedures in place that ensure that in the event of a non-emergency voluntary or involuntary facility closure:

- *The administrator's duties and responsibilities include provisions for providing written notice to the State Survey Agency, the State LTC ombudsman, residents of the facility,*

and the legal representatives of such residents or other responsible parties, as required by §483.75(r) and notice to the CMS RO as required under §489.52(a)(2).

- How the residents' primary physician, the State Medicaid Agency, and facility staff including vendors and contractors will be notified of the impending closure of the facility, to ensure continuity of care and that necessary goods and services are provided until the facility is closed;*
- The facility will not close until all residents are transferred in a safe and orderly manner to the most appropriate setting in terms of quality, services, and location, as available and determined appropriate by the resident's interdisciplinary team after taking into consideration the resident's individual needs, choices, and interests; and,*
- Each resident's complete medical record information including archived files, Minimum Data Set (MDS) discharge assessment, and all orders, recommendations or guidelines from the resident's attending physician is provided to the receiving facility or other provider at the time of the resident's discharge or relocation.*

***NOTE:** While these policies and procedures are intended for a non-emergency voluntary or involuntary facility closure, a facility should consider (although not required) including these plans and procedures in their Emergency Preparedness Plans in the event of an emergency facility evacuation and temporary closure.*

For all impending closures, the State Survey Agency must review and approve the facility's closure plans in order to determine that they contain the information necessary to identify the steps for an orderly facility closure, including the safe transfer and relocation of all residents and identify the individual(s) responsible for ensuring the plans and procedures are successfully carried out. At a minimum, the facility's plans and procedures must include:

- Assurance that no new residents will be admitted to the facility on or after the date that the written notice of impending closure was provided to the State Survey Agency;*
- The primary contact(s) responsible for the daily operation and management of the facility during the facility's closure process;*
- The primary contact(s) responsible for the oversight of those managing the facility operations during the closure process;*
- The roles and responsibilities of the facility's owners, administrator, or their replacement(s) or temporary managers/monitors during the closure process;*
- Identification of any and all sources of supplemental funding, if available, to assist in maintaining the facility's daily operations until all residents are safely relocated and/or transferred;*
- The process and procedures for providing timely written notification of the facility's impending closure, including its closure plan to the State Survey Agency, the State's LTC*

ombudsman, residents, their legal representatives or other responsible parties and the resident's primary physician;

- The process for providing notification of the facility's impending closure, including its closure plan to all facility staff, vendors, contractors and unions as appropriate;*
- The provisions for ongoing operations and management of the facility and its residents and staff during the closure process that include: (1) payment of salaries and expenses to staff, vendors, contractors, etc.; (2) continuation of appropriate staffing to meet the needs of all residents; (3) ongoing assessment of each residents' care needs and the ongoing provision of necessary services and care including the provision of medications, services, supplies and treatments as ordered by the resident's physician/practitioner; (4) ongoing accounting, maintenance and reporting of resident personal funds; (5) the provision of appropriate resident care information to the receiving facility to ensure continuity of care; and (6) the labeling, safekeeping and appropriate transfer of residents' personal belongings, such as clothing, medications, furnishings, etc. at the time of transfer or relocation including contact information for missing items after the facility has closed; and,*
- A process that provides assurance for how the closing facility will identify available facilities or other settings in terms of quality, services, and location, taking into consideration the need, choice, and best interests of each resident.*

Provisions for sufficient preparation and orientation to residents to ensure a safe and orderly move from the facility might include: interviewing residents and their legal or other responsible parties, where applicable, to determine each resident's goals, preferences, and needs in planning for the services, location, and setting to which they will be moved; offering each resident the opportunity to obtain information regarding their community options, including setting and location; providing residents with information or access to information pertaining to the quality of the providers and/or services they are considering; psychological preparation or counseling of each resident as necessary; and making every reasonable effort to accommodate each resident's goals, preferences and needs regarding receipt of services, location and setting.

Once notified of a facility's impending closure, if a copy of the facility's plan for the transfer and relocation of the residents was not included with the notice, the State Survey Agency should immediately request a copy of the facility's closure plans for their review and approval. In addition, the State Survey Agency should request the facility's admissions records to verify that no new residents have been admitted on or after the date that the notice of closure was provided.

A resident who had been temporarily transferred to an acute care setting, is on bed hold, or is on a temporary leave would not be considered to be a new admission upon return to the facility. However, each of these situations may need to be evaluated on a case by case review in order to determine if the clinical care or social needs of the resident may continue to be met by the facility if transferred back to the facility in closure. If it is determined that the clinical care or social needs of the resident cannot be met by the closing facility and the resident is not transferred back to the closing facility, the same notice requirements specified above apply to the resident and the resident's legal representatives, other responsible parties, and other parties as if the resident was still living in the facility.

Interview the individual(s) responsible for managing, overseeing, coordinating and implementing the plan to evaluate how each component of the plan is being operationalized.

NOTE: *The review of certain components of the Interpretive Guidelines at §§483.75(r) and (s), such as an evaluation of the facility's closure plan, policies and procedures may be conducted off-site by the State Survey Agency and may include assistance from the State LTC ombudsman program as the State Survey Agency deems suitable and necessary.*

When conducting an onsite survey prior to the impending closure, tour the facility and interview staff including the medical director, residents and family. Determine their involvement in and/or knowledge of the facility closure plans and the resident transfer process procedures. Determine through observation, interview and record review, as applicable:

- That the delivery of resident care and services are continuing to be provided, monitored and supervised based upon the assessed needs and choices of each resident. If problems are noted it may be necessary to further investigate and review other quality of care regulations as appropriate. Do not cite these issues under the Facility Closure regulations;*
- Whether written notices were provided timely and that the notice included the expected date of the resident's transfer to another facility or other setting; and*
- How the facility involved the resident, his/her legal representative or other responsible party, if applicable, and the resident's primary physician to determine the resident's goals, preferences and needs in planning for the services, location and setting to which they will be moved.*

NOTE: *Refer to §483.20(l)(3) – F284 for guidance for the post-discharge plan of care for an anticipated discharge which applies to a resident whom the facility discharges to a private residence or other home and community based setting, to another nursing home, or to another type of residential facility such as a board and care home or an intermediate care facility for individuals with intellectual disabilities or mental illness.*

NOTE: *§488.426(a)(1) and(2) - Transfer of residents, or closure of the facility and transfer of residents, gives authority to the State for temporary facility closure in emergency situations. For the purpose of regulations at §§483.75(r) and (s) as well as amendments made to §§483.12(a)(8) and 489.52(a)(2) , if the State Survey Agency approves a facility's temporary relocation of residents during an emergency with the expectation that the residents will return to the facility, this would not be regarded as a facility closure under these requirements and the notification requirements under 483.75(r) would not be applicable. However, if a facility ultimately closes permanently due to an emergency, the administrator is required to provide proper notifications and follow the procedures outlined in this guidance.*

In some cases, an administrator may not have direct control over an impending closure and implementing the facility's written notice and closure plans and procedures. For example, an administrator may be hired to oversee the facility's impending closure, although he/she was not present when the decision was made to close the facility, or the administrator was employed less than 60 days prior to impending closure. However, this does not relieve the current

administrator from implementing or developing the plans and the procedures as required and providing notifications. In this example, the administrator must provide the closure notice and plan as soon as possible and begin implementing the plans for closure working with the State Survey Agency for the orderly and safe transfer and relocation of all residents. The new administrator or other temporary manager hired to assist with the facility closure must develop and/or implement the closure plans and work closely with the State Survey Agency and CMS RO to assure that appropriate procedures are implemented.

In a situation in which notice requirements were not met by the previous or current administrator, the State Survey Agency and the CMS RO may take action against the administrator as permitted under §488.446. Refer to Chapter 7 of the State Operations Manual for more information on enforcement actions in these situations.