

JUNE 29, 2017

REASONABLE ASSURANCE PERIOD AND VOLUNTARY TERMINATION WHEN AN ENFORCEMENT ACTION IS PENDING AGAINST A MEDICARE CERTIFIED PROVIDER OR SUPPLIER

On June 16, 2017, CMS issued transmittal S&C: 17-35-ALL. This transmittal clarified CMS policy by stating a reasonable assurance period will apply if a provider or supplier voluntarily terminates its Medicare certification when an enforcement action has been initiated by the State Survey Agency.

Section 2016 of the State Operations Manual allows a provider or supplier terminated from Medicare to reapply for Medicare certification. However, in almost every instance where a provider or supplier reapplies for Medicare certification, CMS will impose a reasonable assurance period. The reasonable assurance period requires the provider or supplier reapplying for Medicare certification to operate for a certain period of time without any deficiencies before it will be allowed to participate in the Medicare program. The State Survey Agency will generally conduct a survey to verify the provider or supplier is deficiency free. The reasonable assurance period is usually 30 to 120 days, and it is important to note the provider or supplier is not reimbursed during the reasonable assurance period. The federal regulation that sets forth the reasonable assurance period can be found at 42 CFR 489.57.

The transmittal simply clarifies CMS policy that does not allow a provider or supplier to avoid the reasonable assurance period by voluntarily terminating its participation in the Medicare program when the State Survey Agency has initiated an enforcement action against the provider or supplier. By way of example, let's say the state agency has proposed and CMS has agreed that a SNF should be terminated in 23 days. On day 22, the SNF voluntarily terminates its Medicare termination then reapplies at a later date. Under this scenario, the reasonable assurance period would apply once the provider reapplies for Medicare certification.

A link to this transmittal can be found [here](#).

If you have any questions, please contact **Todd Selby** at (317) 977-1440 or at tselby@hallrender.com or your regular Hall Render attorney.