

MANDATORY FEDERAL REMEDIES FOR NURSING HOMES

On July 22, 2016, the Center for Clinical Standards and Quality/Survey & Certification Group released a memorandum that revised Chapter 7 of the State Operations Manual ("SOM") and provided guidance on its policy to immediately impose federal remedies when a deficiency of a certain type is cited. The remedies are in addition to a civil money penalty ("CMP") imposed any time Immediate Jeopardy ("IJ") is identified. These changes and mandatory imposition of remedies apply to surveys conducted on and after September 1, 2016.

REMEDIES IN THE PAST

Skilled nursing facilities, nursing facilities and dually participating facilities must comply with Medicare and Medicaid requirements to avoid enforcement actions. These facilities must correct deficiencies pointed out by the federal survey in order to remain in compliance and retain their participation in provider agreements. In the past, CMS and state survey agencies have provided nursing homes with the opportunity to correct deficiencies prior to imposing federal enforcement remedies such as CMPs, temporary management, termination, directed plan of correction, state monitoring, directed in-service training or denial of payment for all individuals.

REMEDIES TODAY

The SOM now requires a mandatory immediate imposition of federal remedies. Once a deficiency has been identified, the state survey and/or Medicaid agencies **shall not** offer a facility the opportunity to correct cited deficiencies before federal remedies are imposed if the situation meets any of the following criteria.

- IJ is identified.
- Deficiencies of substandard quality of care that are not IJ are identified.
- Any G-level deficiency is identified in the current survey that relates to resident behavior and facility practices, quality of life or quality of care.
- Deficiencies of actual harm or above (level G or above), as well as deficiencies of actual harm or above on the previous standard of health or Life Safety Code survey, or deficiencies of actual harm or above on any type of survey between the current survey and the last standard survey.
- A facility is classified as a special focus facility and has a deficiency citation at level F or higher on its current survey.

The memorandum instructs CMS to impose a remedy regardless of a state's recommendation. The agency has authorized the state to recommend and impose Category 1 remedies on its own.

PRACTICAL TAKEAWAYS

- CMS nor the state survey agency may give a facility an opportunity to correct deficiencies cited before remedies are imposed.
- CMPs are immediately imposed if IJ is cited.
- Other deficiencies that require immediate enforcement of remedies include deficiencies of actual harm or above on any type of survey between the current survey and the last standard survey.

For more information, click [here](#).

If you have any questions or would like additional information about this topic, please contact:

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