

alleged resident abuse or neglect, or misappropriation of resident property did occur; and

(viii) Fact that the individual has the right to be represented by an attorney at the individual's own expense.

(d) *Conduct of hearing.* (1) The State must complete the hearing and the hearing record within 120 days from the day it receives the request for a hearing.

(2) The State must hold the hearing at a reasonable place and time convenient for the individual.

(e) *Factors beyond the individual's control.* A State must not make a finding that an individual has neglected a resident if the individual demonstrates that such neglect was caused by factors beyond the control of the individual.

(f) *Report of findings.* If the finding is that the individual has neglected or abused a resident or misappropriated resident property or if the individual waives the right to a hearing, the State must report the findings in writing within 10 working days to—

(1) The individual;

(2) The current administrator of the facility in which the incident occurred; and

(3) The administrator of the facility that currently employs the individual, if different than the facility in which the incident occurred;

(4) The licensing authority for individuals used by the facility other than nurse aides, if applicable; and

(5) The nurse aide registry for nurse aides. Only the State survey agency may report the findings to the nurse aide registry, and this must be done within 10 working days of the findings, in accordance with § 483.156(c) of this chapter. The State survey agency may not delegate this responsibility.

(g) *Contents and retention of report of finding to the nurse aide registry.* (1) The report of finding must include information in accordance with § 483.156(c) of this chapter.

(2) The survey agency must retain the information as specified in paragraph (g)(1) of this section, in accordance with the procedures specified in § 483.156(c) of this chapter.

(h) *Survey agency responsibility.* (1) The survey agency must promptly review the results of all complaint inves-

tigations and determine whether or not a facility has violated any requirements in part 483, subpart B of this chapter.

(2) If a facility is not in substantial compliance with the requirements in part 483, subpart B of this chapter, the survey agency initiates appropriate actions, as specified in subpart F of this part.

[59 FR 56238, Nov. 10, 1994; 60 FR 50118, Sept. 28, 1995]

### Subpart F—Enforcement of Compliance for Long-Term Care Facilities with Deficiencies

SOURCE: 59 FR 56243, Nov. 10, 1994, unless otherwise noted.

#### § 488.400 Statutory basis.

Sections 1819(h) and 1919(h) of the Act specify remedies that may be used by the Secretary or the State respectively when a SNF or a NF is not in substantial compliance with the requirements for participation in the Medicare and Medicaid programs. These sections also provide for ensuring prompt compliance and specify that these remedies are in addition to any other available under State or Federal law, and, except, for civil money penalties imposed on NFs-only by the State, are imposed prior to the conduct of a hearing.

[76 FR 15126, Mar. 18, 2011]

#### § 488.401 Definitions.

As used in this subpart—

*New admission* means a resident who is admitted to the facility on or after the effective date of a denial of payment remedy and, if previously admitted, has been discharged before that effective date. Residents admitted before the effective date of the denial of payment, and taking temporary leave, are not considered new admissions, nor subject to the denial of payment.

*Plan of correction* means a plan developed by the facility and approved by CMS or the survey agency that describes the actions the facility will

## § 488.402

take to correct deficiencies and specifies the date by which those deficiencies will be corrected.

[59 FR 56243, Nov. 10, 1994; 60 FR 50118, Sept. 28, 1995]

### § 488.402 General provisions.

(a) *Purpose of remedies.* The purpose of remedies is to ensure prompt compliance with program requirements.

(b) *Basis for imposition and duration of remedies.* When CMS or the State chooses to apply one or more remedies specified in § 488.406, the remedies are applied on the basis of noncompliance found during surveys conducted by CMS or by the survey agency.

(c) *Number of remedies.* CMS or the State may apply one or more remedies for each deficiency constituting noncompliance or for all deficiencies constituting noncompliance.

(d) *Plan of correction requirement.* (1) Except as specified in paragraph (d)(2) of this section, regardless of which remedy is applied, each facility that has deficiencies with respect to program requirements must submit a plan of correction for approval by CMS or the survey agency.

(2) *Isolated deficiencies.* A facility is not required to submit a plan of correction when it has deficiencies that are isolated and have a potential for minimal harm, but no actual harm has occurred.

(e) *Disagreement regarding remedies.* If the State and CMS disagree on the decision to impose a remedy, the disagreement is resolved in accordance with § 488.452.

(f) *Notification requirements—*(1) Except when the State is taking action against a non-State operated NF, CMS or the State (as authorized by CMS) gives the provider notice of the remedy, including the—

- (i) Nature of the noncompliance;
- (ii) Which remedy is imposed;
- (iii) Effective date of the remedy; and
- (iv) Right to appeal the determination leading to the remedy.

(2) When a State is taking action against a non-State operated NF, the State's notice must include the same information required by CMS in paragraph (f)(1) of this section.

(3) *Immediate jeopardy—2 day notice.* Except for civil money penalties and

## 42 CFR Ch. IV (10–1–14 Edition)

State monitoring imposed when there is immediate jeopardy, for all remedies specified in § 488.406 imposed when there is immediate jeopardy, the notice must be given at least 2 calendar days before the effective date of the enforcement action.

(4) *No immediate jeopardy—15 day notice.* Except for civil money penalties and State monitoring, notice must be given at least 15 calendar days before the effective date of the enforcement action in situations in which there is no immediate jeopardy.

(5) *Date of enforcement action.* The 2- and 15-day notice periods begin when the facility receives the notice.

(6) *Civil money penalties.* For civil money penalties, the notices must be given in accordance with the provisions of §§ 488.434 and 488.440.

(7) *State monitoring.* For State monitoring, no prior notice is required.

[59 FR 56243, Nov. 10, 1994; 60 FR 50118, Sept. 28, 1995, as amended at 64 FR 13360, Mar. 18, 1999]

### § 488.404 Factors to be considered in selecting remedies.

(a) *Initial assessment.* In order to select the appropriate remedy, if any, to apply to a facility with deficiencies, CMS and the State determine the seriousness of the deficiencies.

(b) *Determining seriousness of deficiencies.* To determine the seriousness of the deficiency, CMS considers and the State must consider at least the following factors:

(1) Whether a facility's deficiencies constitute—

- (i) No actual harm with a potential for minimal harm;
- (ii) No actual harm with a potential for more than minimal harm, but not immediate jeopardy;
- (iii) Actual harm that is not immediate jeopardy; or
- (iv) Immediate jeopardy to resident health or safety.

(2) Whether the deficiencies—

- (i) Are isolated;
- (ii) Constitute a pattern; or
- (iii) Are widespread.