

# MEMORANDUM

## Texas Department of Human Services \* Long Term Care/Policy

**TO:** LTC-R Regional Directors  
Section/Unit Managers

**FROM:** Marc Gold  
Section Manager  
Long Term Care-Policy  
State Office MC: W-519

**SUBJECT:** Regional Survey & Certification Letter #98-13

**DATE:** September 15, 1998

**NOTE:** LTC-R Administration is in the process of evaluating potential methods for addressing this issue. Regional LTC-R staff will receive further instruction from State Office LTC-R via a Survey & Certification Clarification (S&CC) letter regarding the implementation of applicable enforcement procedures.

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The attached RS&C Letter is being provided to you for information purposes and should be shared with all professional staff.

RS&C Letter No. 98-13: Enforcement Procedures when a Nursing Home Fails to Transmit Minimum Data Set (MDS) Data to the State.

If you have any further questions, please direct your inquiries to Beverly Tucker, Section Manager, LTC-R Policy Liaison at (512) 438-2548.

~Original Signature on File~

Marc Gold

Attachment

**DEPARTMENT OF HEALTH & HUMAN SERVICES**  
**Health Care Financing Administration**

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Region VI  
1301 Young Street, Room 833  
Dallas, Texas 75202

August 13, 1998

REGIONAL SURVEY AND CERTIFICATION LETTER NO: 98-13

To: All State Survey Agencies (Action)  
All Title XIX Single State Agencies (Information)

Subject: Enforcement Procedures when a Nursing Home Fails to Transmit Minimum Data Set (MDS) Data to the State

The purpose of this memorandum is to communicate the enforcement procedures for State survey agencies to follow when a nursing home fails to transmit MDS data in accordance with the new requirements at 42 Code of Federal Regulations 483.20(f). The procedures are enclosed.

Some States have expressed uncertainty about the rationale for the second part of these procedures: citing a Level 2 ("F") deficiency for continued failure to transmit MDS data to the State. Specifically we have been asked how failure to transmit MDS data constitutes a "potential for more than minimal harm" to residents.

OBRA 1987 mandates that nursing homes "must maintain a quality assessment and assurance committee..." and "...must provide the services to attain or maintain the highest practicable well-being of each resident..." MDS data transmission will be an essential component for improving nursing home quality assessment and assurance and improving the quality of the services provided to residents.

In a previous memorandum, the Director of the HCFA Center for Medicaid and State Operations, explained: "The longitudinal process of continuous measurement using collected MDS data incrementally increases its importance in assessing resident functional status and other resident characteristics. Failure to collect data over time adversely impacts quality improvement efforts and our responsibility to assure that nursing home residents achieve their highest level of well-being and functioning. Consequently, a facility's failure to transmit useable data is more serious." The repeated failure of nursing homes to transmit MDS data undermines the national effort to evaluate and improve nursing home care and outcomes. The failure of any single nursing home to transmit MDS data also means that the nursing home will lack quality indicator data to use for its own quality assessment, assurance and improvement.

Finally, we note that the enforcement grid is resident-centered and outcome-oriented, while MDS data transmission is a structural requirement. We agree that structural requirements do not easily fit the enforcement grid. Nevertheless, nursing homes must comply with structural requirements in order to participate in Medicare and Medicaid. Ultimately, any structural failure adversely affects outcome. The failure of a nursing home to participate in the MDS-based quality improvement project will ultimately result in its residents failing to attain or maintain their highest practicable well-being.

The enclosed documents have been sent electronically to your Resident Assessment Instrument and MDS Automation coordinator(s).

If you have any questions please contact CDR Daniel McElroy, RN at 214-767-2077.

Thank you for your assistance.

Sincerely,

~Signature on File~

Molly Crawshaw, Acting Chief  
Survey and Certification Operations Branch

Enclosures  
Official

## Enforcement Procedure for a Nursing Home's Failure to Transmit MDS Data to the State

***The implementation of these procedures requires coordination between the automation entity and the survey and certification entity within each State.***

Requirement: 42 CFR 483.20(f)(3) Monthly transmittal requirements.

A facility must electronically transmit, at least monthly, encoded, accurate, complete MDS data to the State for all assessments conducted during the previous month, including the following: admission assessment; annual assessment; significant change in status assessment; significant correction of prior full assessment; significant correction of prior quarterly assessment; quarterly review; a subset of items upon a resident's transfer, reentry, discharge and death; and, background (face sheet) information, for an initial transmission of MDS data on a resident that does not have an admission assessment.

### Determining Deficiencies:

An on-site visit to the facility is not necessary to determine if the facility has electronically transmitted the required MDS data. The State agency determines, using the report titled, MDS FACILITY LIST (NON-SUBMITTED DATA) if MDS data has not been transmitted by a facility. The date of the deficiency is the date that the report is created. The State creates the first report on August 6, 1998. The State creates the second report on September 8, 1998, to determine if production data was submitted between August 7, 1998, and September 7, 1998. (If a facility's failure to transmit represents an exceptional situation, it will be handled on a case by case basis.)

### Assigning Scope and Severity for Facility Failure to Transmit MDS Data:

Usually, the deficiency (Tag F287) is assigned a scope and severity of "C" which is considered substantial compliance per the enforcement matrix, for the **first time** that a facility does not transmit the MDS data. If a nursing home does **not** transmit data on August 6 and **again does not** transmit data by September 7, the deficiency (Tag F287) is assigned a scope and severity of "F," per the enforcement matrix and is noncompliance.

### Deficiency Statement: Tag F287

#### 1. **Scope and Severity of "C":**

*This requirement is not met as evidenced by:*

*Based on record review, the facility failed to transmit electronic MDS records that pass HCFA standard edit specifications within 31 days of the final lock date of the record. The findings include: On August 6, 1998, our records indicate that your facility had not transmitted the required MDS data.*

#### 2. **Scope and Severity of "F":**

*This requirement is not met as evidenced by:*

*Based on record review, the facility has continually failed to transmit electronic MDS records that pass HCFA standard edit specifications within 31 days of the final lock date of the record. The findings include: On August 6, 1998, and September 8, 1998, our records indicate that your facility has not transmitted the required MDS data.*

### Notification to Facility for Failure to Transmit MDS Data:

1. The State agency sends the notice (See attached form "Use the following notice if citing the deficiency at the level of "C") if the deficiency is assigned a scope and severity of "C" per the enforcement matrix. The notice includes the citation of the deficiency. However, a State has the option to prepare a separate HCFA-2567 and include the HCFA-2567 with a modified cover notice to the facility. This notification is sent to the facility via facsimile, electronic mail, or regular mail.
2. The State agency follows the existing procedures for noncompliance found in the State Operations Manual

(SOM), per Transmittal 273, if the deficiency is assigned a scope and severity of "F." An official HCFA-2567 and an initial letter (Exhibit 139) is sent by the State to the facility. (The existing language of Exhibit 139 and subsequent letters to the facility regarding the imposition of a remedy are modified to appropriately reflect noncompliance for failure to transmit MDS data that has been determined **without** an on-site survey.

Plan of Correction Requirement:

For a deficiency assigned a scope and severity of either "C" or "F," the facility provides to the State agency, within ten calendar days, a plan of correction which describes the steps it plans to take so that it can transmit the data, the date it expects to transmit the data, and provisions for the submission of any data that is late.

Tracking Deficiencies:

The deficiency cited at "C" is not entered into the HCFA Online Survey Certification and Reporting System (OSCAR). The deficiency cited at "F" is entered at ODIE and treated as a revisit attached to the most current survey. Use September 8, 1998, as the revisit date. Enter Tag F287 as a new deficiency. The applicable fields of the HCFA-670 are completed (Field A, and Field D and/or I).

Action for Continued Failure to Transmit MDS Data (Scope and Severity of F):

A deficiency cited at the level of "F" is noncompliance because data was not submitted on August 6 and not submitted again on September 8. For a deficiency assigned an "F" per the enforcement matrix, the enforcement process begins.

Enforcement Actions:

1. When noncompliance with the new MDS requirements is determined during an on-site survey which finds noncompliance with other requirements, any remedy imposed by HCFA or the State Medicaid Agency is consistent with the existing procedures in the State Operations Manual (Transmittal 273). The remedy selected is from the category of remedies based on the most severe deficiency found during the survey and the remedy stays in place until the facility comes into substantial compliance with all participation requirements.
2. When noncompliance with the new MDS requirements is NOT determined during an on-site survey, any remedy imposed by HCFA or the State Medicaid Agency is tracked **separately** from any remedy imposed as a result of the health survey or the life safety code survey. Regardless of any other remedies imposed, noncompliance for failure to transmit MDS data triggers the imposition of denial of payment for new admissions at the third month if the noncompliance is present and termination occurs at the sixth month if the noncompliance is present. Regarding completing the HCFA-462L to track remedies imposed when there is no on-site survey, enter the type of survey as "08" (MDS Submission). When a facility comes into compliance with the requirement to transmit MDS data, the imposed remedy is lifted.

**Use the following notice if citing the deficiency at the level of "C"**

Date:  
Provider Name:  
Provider Number:  
Provider Address:

On August 6, we determined that your facility failed to transmit any electronic Minimum Data Set (MDS) records within 31 days of the final lock date of the record. You are required as stated at 42 Code of Federal Regulations 483.20(f) to encode and transmit MDS data to the State. This failure to transmit MDS data is a deficiency (Tag F287):

***This requirement is not met as evidenced by:***

***Based on record review, the facility failed to transmit electronic MDS records that pass HCFA standard edit specifications within 31 days of the final lock date of the record. The findings include:  
On August 6, 1998, our records indicate that your facility had not transmitted the required MDS data.***

Although your facility is in substantial compliance, you are required to submit an acceptable plan of correction within ten calendar days of this notice. To be acceptable, your plan of correction must include: the steps your facility will take to encode and transmit the data, the date of completion, and when any data that is late will be submitted. Your plan of correction may be recorded on the bottom half of this sheet. If you have transmitted the MDS data, please indicate this below and return this sheet by FAX or mail. Your plan of correction may serve as your allegation of compliance if you so indicate by checking the box below.

If you disagree with this deficiency or need further assistance, please contact the following individual (within ten calendar days of the date of this notice):

Name:  
State Agency Name:  
Address:  
Telephone, Fax, Electronic mail:

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**PLAN OF CORRECTION**

This plan of correction serves as our allegation of compliance.