



DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
Division of Survey and Certification, Region VI

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October 8, 2004

REGIONAL SURVEY AND CERTIFICATION LETTER NO. 04-07

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

SUBJECT: Policy Change Regarding Imposition of Statutory Denial of Payment for New Admissions for Opportunity to Correct Enforcement Actions in Nursing Home

This letter supercedes 04-06. We determined a number of technical errors that necessitated reissuing of the letter. We are allowing additional time for implementation of this action by changing the effective date as well. We apologize for any inconvenience this may cause.

CMS is notifying State Survey Agencies in Region VI that we are changing our policy and procedure for imposition of statutory Denial of Payment for New Admissions (DPNA). **We are authorizing all States to issue notice for statutory DPNA in their initial notice for opportunity to correct enforcement actions when substantial noncompliance is found as specified at SOM 7305A1.d and 7305B1.b.**

The purpose of the policy change is to ensure that we consistently meet the requirement for statutory DPNA. Previously, we had authorized States to issue notice of Denial of Payment for New Admissions following the first revisit or the survey that determined continuing noncompliance. During a review of enforcement activity, the Regional Office determined that untimely notice by States is resulting in DPNA not being effectuated.

To achieve this policy change, we are providing the following model language for use in initial notice letters:

Based on deficiencies cited during this survey and as authorized by CMS Dallas Regional Office, we are giving formal notice of imposition of statutory Denial of Payment for New Admissions effective (insert date). This remedy will be effectuated on the stated date unless you demonstrate substantial compliance with an acceptable plan of correction and subsequent revisit. This notice in no way limits the prerogative of CMS to impose discretionary DPNA at any appropriate time.



CMS Regional Office will notify your intermediary and the Medicaid Agency. If effectuated, denial of payment will continue until your facility achieves substantial compliance or your provider agreement is terminated. [Facilities are prohibited from billing those Medicare/Medicaid residents or their responsible parties during the denial period for services normally billed to Medicare or Medicaid.] The Medicare and Medicaid programs will make no payment for residents whose plans of care begin on or after the DPNA effective date.

Note, the effective date for statutory DPNA will be 3 months from the original date of survey. For example, if the original survey date is January 1, the DPNA effective date is April 1.

Additionally, when the State issues notice of imposition, they must also give the nursing home their formal appeal rights. Please use the following language:

Appeal Rights

*If you disagree with **the determination of noncompliance (and/or substandard quality of care, if applicable)**, you or your legal representative may request a hearing before an administrative law judge of the Department of Health and Human Services, Departmental Appeals Board. Procedures governing this process are set out in 42 CFR §498.40, et. seq. You may appeal the finding of noncompliance that led to an enforcement action, but not the enforcement action or remedy itself. A written request for hearing must be filed no later than (date sixty days from date of this letter) (60 days from the date of receipt of this letter via fax). Such written request should be made **directly** to:*

***Attention: Ms. Jacqueline T. Williams
Departmental Appeals Board
Civil Remedies Division
Cohen Building Room G-644
200 Independence Avenue S.W.
Washington, D.C. 20201***

A request for hearing should identify the specific issues, and the findings of fact and conclusions of law with which you disagree. It should also specify the basis for contending that the findings and conclusions are incorrect. You may be represented at a hearing by counsel at your own expense.

*Be sure to include a copy of this letter with your request to the Departmental Appeals Board. In addition, please forward **a copy of your request** to:*

***Attention: (Insert CMS RO person assigned to your state, state/region)
Long Term Care Branch
Division of Survey and Certification
Centers for Medicare & Medicaid Services
1301 Young Street Room 827
Dallas, Texas 75202***

We expect State survey agencies to implement this policy change effective November 5, 2004. If you make any changes to the model language, you must submit the language to Dallas Regional Office for approval before implementation. We hope this change will enhance enforcement for nursing home providers who fail to demonstrate substantial compliance. If you have any questions, please contact Theresa Bennett at 214/767-4406, tbennett1@cms.hhs.gov or Dan McElroy at 214/767-2077, dmcelroy@cms.hhs.gov.

Thank you for your assistance and cooperation.

Sincerely,

David Wright, Chief
Long Term Care Branch