

MEMORANDUM

Texas Department of Aging and Disability Services

TO: Regulatory Services Division
Regional Directors and State Office Managers

FROM: Michelle Dionne-Vahalik, Manager
Policy Development and Support Unit
State Office MC E-370

SUBJECT: Regional Survey and Certification (RS&C) Letter No. 05-10

DATE: September 13, 2005

The attached Regional Survey and Certification (RS&C) letter was issued by the Region VI Medicare and Medicaid Services (CMS) office on September 9th. This letter, which was distributed by e-mail on September 12th, is being provided to you for information purposes and should be shared with all professional staff. The instructions are effective the date of the letter.

- **RS&C Letter No. 05-10 – Continuing Noncompliance Cycles on Standard Surveys: Correction to RS&C Letter 05-04**

If you have any questions, please contact Bevo Morris, Policy Specialist, Policy Development and Support, at (512) 438-2363.

[signature on file]

Michelle Dionne-Vahalik

MDV:bbm

Attachment

Division of Survey and Certification, Region VI

September 9, 2005

REGIONAL SURVEY AND CERTIFICATION LETTER NO. 05-10

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

SUBJECT: Continuing Noncompliance Cycles on Standard Surveys: Correction to RS&C Letter 05-04.

Note: This letter corrects Dallas RS&C 05-04 instruction for standard surveys.

The State Operations Manual (SOM) §7317C states that a Noncompliance Cycle (which may begin an “enforcement action” which is defined in SOM Chapter 7 Definitions), begins with substantial noncompliance (a "D" or higher) and ends only with (1) a determination of substantial compliance with **ALL** requirements (F-tags) or (2) termination of the provider agreement. A Noncompliance Cycle continues when any substantial noncompliance (new or continuing) is cited during any onsite visit. This includes a standard survey, extended survey, abbreviated survey (revisit or complaint), partially extended survey, or any combination of onsite surveys. The revisit policy in SOM §7317B states that a Noncompliance Cycle continues when substantial noncompliance is found, even if the *previous* noncompliance is corrected and *new* substantial noncompliance is cited.

Standard surveys were inadvertently left out of the revision of SOM §7317B and the revisit table. There may be times when a standard survey must be performed when there is "un-revisited" noncompliance, that is, before a mandatory onsite revisit can be made, or even before a plan of correction has been obtained. Because of the SOM§7317B omission, Q&A 17 in S&C Letter 01-23, dated August 15, 2001 still applies. State survey agencies are to implement the following instructions:

- Do not include a standard (or extended) survey in the onsite 3-revisit survey count.
- If a standard survey is performed during a Noncompliance Cycle (typically started by a complaint survey), the un-revisited noncompliance is reviewed on the standard survey. The survey team is routinely expected to include information from previous CMS 2567s as offsite concerns for investigation during the standard survey. Appendix P, Task 1 instructs surveyors to review the CMS 2567 and CMS 2567A:

The statements of deficiencies from the previous survey should be reviewed, along with the sample resident identifiers list. Review the specific information under each deficiency and note any special areas of concern. For resident-centered requirements, determine if any residents identified in the deficiency might be good candidates for the sample.

RS&C 05-04 Noncompliance Cycles on Onsite Revisits and Standard surveys.

- If there is no evidence of continuing noncompliance, complete a CMS 2567B. However, if new noncompliance is cited on the standard survey, the noncompliance cycle that began with the previous survey continues.

EFFECTIVE DATE OF INSTRUCTIONS:

These instructions are effective the date of this letter. If you have any questions please call CAPT Dan McElroy at (214) 767-2077 or email dmcelroy@cms.hhs.gov.

Sincerely,

Calvin Cline
Associate Regional Administrator
Division of Survey and Certification