

MEMORANDUM

Texas Department of Human Services * Long Term Care/Policy

TO: Long Term Care -Regulatory
Regional Directors, State Office Section Managers and
HCSSA Program Administrators

FROM: Marc Gold, Director
Long Term Care Policy
State Office MC: W-519

SUBJECT: Regional Survey & Certification Letter #01-06

DATE: June 20, 2001

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. 01-06 -- Appeal Rights for Loss of Nurse Aide Training Program When Substandard Quality of Care Is Determined; Call Cecile Hay, Nursing Facility Program Specialist, at (512) 438-2396.

~Original Signature on File~

Marc Gold

Attachment



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

1301 Young Street, Room 827
Dallas, Texas 75202
Phone (214) 767-6301
Fax (214) 767-0270

March 14, 2001

REGIONAL SURVEY AND CERTIFICATION LETTER NO: 01-06

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

Subject: Appeal Rights for Loss of Nurse Aide Training Program When Substandard Quality of Care Is Determined

The purpose of this letter is to provide guidance regarding the implementation of a change to the initial determination regulations, 42 CFR, Part 498 and the Medicaid hearing regulations at 42 CFR, Part 431. Please refer to attachment A, interim final rule, Vol. 64, No. 141, dated July 23, 1999 and attachment B, HCFA memo dated February 15, 2001.

As discussed in the interim final rule and the memorandum, a finding of Substandard Quality of Care (SQC) by HCFA resulting in withdrawal of a provider's Nurse Aide Training Competency Evaluation Program (NATCEP) by the State constitutes an appealable initial determination. This regulatory change applies to facilities that are Medicare-only or dually participating. For Medicaid-only facilities, HCFA may conduct a comparative survey and determine SQC that results in withdrawal of NATCEP by the State. In this case, the Medicaid-only facility will have appeal rights.

Otherwise, for actions taken by the State against Medicaid-only facilities, the appeal process is governed by State regulation. As related to States' determination of substandard quality of care and subsequent loss of NATCEP, we are not affirmatively requiring States to offer an evidentiary hearing. Each State should determine the appropriateness of an evidentiary hearing and take steps to submit a State Plan Amendment if applicable.

We are authorizing each State Survey Agency in Region VI to provide notice of an initial determination by HCFA as it concerns findings of Substandard Quality of Care and the subsequent loss of NATCEP.

Note that prior to implementation of the process outlined below, each State Agency must send a copy of their model notice letter to the HCFA RO for approval. The process must be implemented no later than April 15, 2001.

Procedure:

The SA notifies the Regional Office by e-mail or fax when a finding of SQC is made and documented on the HCFA-2567. This notification will take place simultaneously with the State's notice to the provider. The RO notification must contain: a copy of the notice letter to the facility and the deficiency(ies) which document the SQC. If the RO does not agree with the findings, HCFA will notify the State within two working days of receipt of the information.

The SA must add the following language to their notice letters:

Determination of Substandard Quality of Care

In accordance with sections 1819(f) and/ or 1919(f) of the Social Security Act and regulations at 42 CFR Part 498, the *(name of State Survey Agency)* is providing notice as authorized by the Dallas RO that HCFA has made a determination of Substandard Quality of Care which led to an extended or partial extended survey. Please refer to *(list f-tags)* on the enclosed 2567. This will result in the State withdrawing your NATCEP for two years.

Appeal Rights

If you disagree with HCFA's **determination of substandard quality of care**, 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 the regulations at 43 CFR '498.40 et. seq. You may appeal the finding of substandard quality of care which led to loss of NATCEP, but not the loss of NATCEP itself. A written request for hearing must be filed on behalf of the facility no later than (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
Room 637-D
HHH Building
200 Independence Avenue S.W.
Washington, D.C. 20201

A copy of your appeal should be forwarded to the HCFA RO at the following address:

Attention: *(indicate name of appropriate HCFA contact for your State)*
Health Care Financing Administration
Division of Medicaid and State Operations
1301 Young Street, Rm 833
Dallas, Texas 75202

If you have any questions regarding this process, please contact Theresa Bennett at 214/767-4406 or Dan McElroy at 214/767-2077.

Sincerely,

~Signature on File~

Molly Crawshaw, Chief
Survey and Certification Operations Branch