

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 #01-14

DATE: October 1, 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. 01-14 -- Voluntary terminations from the Medicare and/or Medicaid Programs while not in Substantial Compliance; For nursing facility questions, please contact a Contract Specialist in Facility Enrollment, LTC-R, at (512) 438-2630. For HCSSA questions, please contact Mary Jo Grassmuck, R.N., Program Administrator, at (512) 438-2100.

~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
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August 13, 2001

REGIONAL SURVEY AND CERTIFICATION LETTER NO: 01-14

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

Subject: Voluntary terminations from the Medicare and/or Medicaid Programs while not in Substantial Compliance.

On April 19, 2000, the Centers for Medicare and Medicaid Services (CMS) Regional Office resumed processing all voluntary terminations/withdrawals (with the exception of CLIA). This included terminations because of expired/revoked licenses and cessation of business, as well as provider requests to withdraw. (Please reference enclosed Regional Survey and Certification Letter No. 00-10.)

Voluntary Termination: 42 CFR 489.52 -- SOM §3046-3049.

The requirements for a provider/supplier to terminate voluntarily from participation in the Medicare program are set forth at 42 CFR 489.52 and in the State Operations Manual (SOM) at §3046-3049. A provider may terminate voluntarily from participation in either the Medicare and/or Medicaid programs. A cessation of business occurs only when all Medicare beneficiaries and Medicaid recipients are discharged and the provider/supplier closes. A cessation of business is considered a voluntary termination.

The CMS Regional Office must review the proposed termination for Medicare beneficiary access and accept the proposed termination date. Also to terminate voluntarily from Medicare participation, the provider must terminate the agreement on the first day of the month and after providing at least 15 days public notice of the termination.

Medicare Reasonable Assurance: 42 CFR 489.57 -- SOM §2016, §2017 and §7321.

If CMS has initiated termination action and/or the State survey agency (SA) has certified noncompliance, the facility is subject to the Medicare reasonable assurance requirements at 42 CFR 489.57 and in SOM §2016, §2017 and §7321. (§7321 applies only to nursing homes). Certification of noncompliance is a citation of noncompliance with a Condition or a nursing

home requirement cited at "D" or above. The SA initiates an enforcement/termination action when it sends the provider/supplier initial notice of non-compliance proposing termination. A Medicare provider that is permitted to voluntarily terminate after CMS has initiated termination action and/or the State survey agency (SA) has certified noncompliance, is also subject to Medicare reasonable assurance. Medicare reasonable assurance will apply if the former SNF/NF seeks reapplication to Medicare.

Evidentiary hearing for a Dually Certified Facility: 42 CFR 431.153

For all Medicare-only providers, involuntary termination/ enforcement ends as of the date of voluntary termination. However, for SNF/NF's, the involuntary termination/enforcement action continues for a facility that is permitted to terminate voluntarily from only one program. Voluntary termination from Medicare by a SNF/NF does not stop federal involvement in the enforcement action. Based on 42CFR431.153, once a SA has certified noncompliance in a SNF/NF, any subsequent determinations, remedies, appeals and settlements are federal even if the RO permits the nursing home to voluntarily terminate from Medicare participation. (All subsequent enforcement actions and appeals for a former SNF/NF are implemented by the State Medicaid Agency as if the nursing home had always been a NF-only participant).

EFFECTIVE IMMEDIATELY

If a Medicare provider/supplier is not in substantial compliance, is under threat of termination/enforcement action, and requests to terminate voluntarily from the Medicare program, the State survey agency (SA) should inform the facility immediately of the termination requirements at 489.52 §3046-3049. The SA should forward the following information to the CMS Regional Office immediately:

1. A completed Medicare/Medicaid Certification and Transmittal (C&T), CMS-1539, indicating (in the remarks section) the proposed date of voluntary withdrawal by the provider. The SA will request CMS to determine if this date is acceptable.
2. A copy of the written notification from the provider/supplier stating the reason for withdrawal and the proposed effective date (along with the name and address of the custodian of records, i.e., patients records, cost reports, etc.)
3. For nursing facilities, a completed 462L with the termination blocks filled in with the date the provider voluntarily terminated.

These forms will notify the CMS RO that the enforcement/termination action will end due to voluntary withdrawal; ***except for a SNF/NF that continues to participate in Medicaid as a NF.*** If a dually certified facility remains Medicaid certified, the enforcement/termination action continues. *State Agencies are to continue to send nursing home enforcement packets to the RO until the nursing home achieves substantial compliance.* (Again, the State Medicaid Agency implements all subsequent enforcement actions for the former SNF/NF as if the nursing home had always been a NF-only participant).

A final packet as described in RS&C letter 00-10 is still required from SA when the voluntary termination is completed. Note this packet must contain a completed 462L (for nursing homes).

When the second packet is sent, the RO will close the enforcement action and complete imposition of remedies as applicable.

Voluntary Withdrawal from Medicaid Participation without Ceasing Business

An amendment to the Social Security Act §1919(c)(F), made in 1999, permits a nursing home to withdraw voluntarily from Medicaid without closing. No facility is required to cease doing business in order to voluntarily terminate. However, the nursing home is deemed to continue to participate in Medicaid as long as 1.) the nursing home continues to provide services of the type "provided by Nursing Facilities" AND 2.) Medicaid eligible residents who were in the facility on the day before the withdrawal date remain in the facility. This deemed participation as a NF includes residents in the NF on the day before withdrawal that may become Medicaid eligible in the future. A copy of the amendment is enclosed to this letter for reference.

If you have any questions, please contact your state representative at (214) 767-6301.

Sincerely,

~Signature on File~

Molly Crawshaw, Chief
Survey and Certification Operations Branch

(D) NOTICE ON BED-HOLD POLICY AND READMISSION.--

(i) NOTICE BEFORE TRANSFER.--Before a resident of a nursing facility is transferred for hospitalization or therapeutic leave, a nursing facility must provide written information to the resident and an immediate family member or legal representative concerning--

(I) the provisions of the State plan under this title regarding the period (if any) during which the resident will be permitted under the State plan to return and resume residence in the facility, and

(II) the policies of the facility regarding such a period, which policies must be consistent with clause (iii).

(ii) Notice upon transfer.--At the time of transfer of a resident to a hospital or for therapeutic leave, a nursing facility must provide written notice to the resident and an immediate family member or legal representative of the duration of any period described in clause (i).

(iii) PERMITTING RESIDENT TO RETURN.--A nursing facility must establish and follow a written policy under which a residentB

(I) who is eligible for medical assistance for nursing facility services under a State plan,

(II) who is transferred from the facility for hospitalization or therapeutic leave, and

(III) whose hospitalization or therapeutic leave exceeds a period paid for under the State plan for the holding of a bed in the facility for the resident,

will be permitted to be readmitted to the facility immediately upon the first availability of a bed in a semiprivate room in the facility if, at the time of readmission, the resident requires the services provided by the facility.

(E) INFORMATION RESPECTING ADVANCE DIRECTIVES.--A nursing facility must comply with the requirement of section 1902(w) (relating to maintaining written policies and procedures respecting advance directives).

(F)^[175] CONTINUING RIGHTS IN CASE OF VOLUNTARY WITHDRAWAL FROM PARTICIPATION.--

(i) IN GENERAL.--In the case of a nursing facility that voluntarily withdraws from participation in a State plan under this title but continues to provide services of the type provided by nursing facilitiesB

(I) the facility's voluntary withdrawal from participation is not an acceptable basis for the transfer or discharge of residents of the facility who were residing in the facility on the day before the effective date of the withdrawal (including those residents who were not entitled to medical assistance as of such day);

(II) the provisions of this section continue to apply to such residents until the date of their discharge from the facility; and

(III) in the case of each individual who begins residence in the facility after the effective date of such withdrawal, the facility shall provide notice orally and in a prominent manner in writing on a separate page at the time the individual begins residence of the information described in clause (ii) and shall obtain from each such individual at such time an acknowledgment of receipt of such information that is in writing, signed by the individual, and separate from other documents signed by such individual.

Nothing in this subparagraph shall be construed as affecting any requirement of a participation agreement that a nursing facility provide advance notice to the State or the Secretary, or both, of its intention to terminate the agreement.

(ii) INFORMATION FOR NEW RESIDENTS.--The information described in this clause for a resident is the following:

(I) The facility is not participating in the program under this title with respect to that resident.

(II) The facility may transfer or discharge the resident from the facility at such time as the resident is unable to pay the charges of the facility, even though the resident may have become eligible for medical assistance for nursing facility services under this title.

(iii) CONTINUATION OF PAYMENTS AND OVERSIGHT AUTHORITY.--Notwithstanding any other provision of this title, with respect to the residents described in clause (i)(I), a participation agreement of a facility described in clause (i) is deemed to continue in effect under such plan after the effective date of the facility's voluntary withdrawal from participation under the State plan for purposes of B

(I) receiving payments under the State plan for nursing facility services provided to such residents;

(II) maintaining compliance with all applicable requirements of this title; and

(III) continuing to apply the survey, certification, and enforcement authority provided under subsections (g) and (h) (including involuntary termination of a participation agreement deemed continued under this clause).

(iv) NO APPLICATION TO NEW RESIDENTS.--This paragraph (other than subclause (III) of clause (i)) shall not apply to an individual who begins residence in a facility on or after the effective date of the withdrawal from participation under this subparagraph.

(3) ACCESS AND VISITATION RIGHTS.--A nursing facility must--

(A) permit immediate access to any resident by any representative of the Secretary, by any representative of the State, by an ombudsman or agency described in subclause (II), (III), or (IV) of paragraph (2)(B)(iii), or by the resident's individual physician;

(B) permit immediate access to a resident, subject to the resident's right to deny or withdraw consent at any time, by immediate family or other relatives of the resident;

(C) permit immediate access to a resident, subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, by others who are visiting with the consent of the resident;

(D) permit reasonable access to a resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time; and

(E) permit representatives of the State ombudsman (described in paragraph (2)(B)(iii)(II)), with the permission of the resident (or the resident's legal representative) and consistent with State law, to examine a resident's clinical records.

(4) Equal access to quality care.--

(A) IN GENERAL.--A nursing facility must establish and maintain identical policies and practices regarding transfer, discharge, and the provision of services required under the State plan for all individuals regardless of source of payment.

(B) CONSTRUCTION.--

(i) NOTHING PROHIBITING ANY CHARGES FOR NON-MEDICAID PATIENTS.-- Subparagraph (A) shall not be construed as prohibiting a nursing facility from charging any amount for services furnished, consistent with the notice in paragraph (1)(B) describing such charges.

(ii) NO ADDITIONAL SERVICES REQUIRED.-- Subparagraph (A) shall not be construed as requiring a State to offer additional services on behalf of a resident than are otherwise provided under the State plan.