

MEMORANDUM

Department of Aging and Disability Services Regulatory Services Policy * Survey and Certification Clarification

TO: Regulatory Services
Regional Directors and State Office Managers

FROM: Veronda L. Durden
Assistant Commissioner
Regulatory Services

SUBJECT: Substantial Compliance – S&CC 06-15

APPLIES TO: Skilled Nursing Facilities (SNFs) and Nursing Facilities (NFs)

DATE: October 19, 2006

This memorandum is to clarify the concept of “substantial compliance” and promote consistency in determining its existence at a nursing facility or a skilled nursing facility following a survey.

According to State Operations Manual (SOM) Appendix P, SNFs and NFs are required to be in compliance with the requirements at 42 Code of Federal Regulations (CFR) Part 483, Subpart B, in order to receive payment under the Medicare or Medicaid programs. Substantial compliance is defined at 42 CFR §488.301 as a “level of compliance with the requirements of participation such that any identified deficiencies pose no greater risk to resident health and safety than the potential for causing minimal harm.” The term means that there are no deficiencies at scope and severity level D or above according to the scope and severity level grid found in SOM Chapter 7, §7400E1.

According to the SOM Chapter 7, §7001, noncompliance means any deficiency that causes a facility not to be in substantial compliance. This involves deficiencies that fall at levels D or higher of the scope and severity level grid. A facility attains substantial compliance when all deficiencies are corrected or are cited at a scope and severity level C or below.

The surveyor records deficiencies at scope and severity level A, which are isolated deficiencies with no actual harm and potential for only minimal harm, on Form A. The facility is not required to submit a plan of correction for level A deficiencies. All other deficiencies are recorded on the Centers for Medicare and Medicaid Services (CMS) Form 2567, and a plan of correction for these deficiencies is required.

If you have questions regarding this process, please contact Vella Salazar, Nursing Facility Policy Specialist, Policy, Rules, and Curriculum Development, at (512) 438-3334.