

# MEMORANDUM

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

**TO:** Regulatory Services  
Regional Directors, Regional Enforcement Coordinators, Regional Program Managers, and State Office Managers

**FROM:** Veronda L. Durden  
Assistant Commissioner  
Regulatory Services

**SUBJECT:** Unacceptable Plan of Correction (PoC) Procedures – **S&CC 07-13**

**APPLIES TO:** Home and Community Support Services Agencies (HCSSAs)

**DATE:** January 22, 2008

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This memorandum provides procedures to assist agencies in forwarding acceptable PoCs to Department of Aging and Disability Services (DADS) regional offices in a timely manner.

**Certified HCSSAs** — 42 Code of Federal Regulations §488.28(a) requires that the agency submit an acceptable PoC for each deficiency by the 10<sup>th</sup> calendar day from receipt of DADS' notice letter.

**Licensed-only HCSSAs** — 40 Texas Administrative Code §97.527(g)(3) requires that an agency submit an acceptable PoC for each violation no later than 10 days after its receipt of the official written notification of the survey findings. Failure to meet this requirement may result in an administrative penalty.

### **Failure to Submit an Acceptable PoC**

#### **Certified HCSSAs**

If an agency submits an unacceptable PoC, the DADS regional office sends the agency a letter and conveys the following:

- Why the PoC was unacceptable
- A time frame by which to submit the revised PoC(s) and
- A statement that failure to submit an acceptable PoC(s) within the specified time frame results in notice of immediate termination of the agency's provider agreement

If the revised PoC is unacceptable, the DADS regional office sends the agency a letter recommending termination of certification due to unacceptable PoCs. CMS then sends the agency a letter terminating certification.

### **Licensed-only HCSSAs**

If an agency submits an unacceptable PoC, the DADS regional office contacts the agency by telephone and conveys the following:

- Why the PoC was unacceptable and
- A timeframe by which to submit the revised PoC(s)

If an agency fails to submit an acceptable PoC, DADS may recommend enforcement action.

### **Failure to Submit a PoC**

If a certified or licensed-only agency fails to submit a PoC, the DADS regional office contacts the agency by telephone to determine why the PoC was not submitted. If the region determines that the agency's reason for failing to submit a PoC is inadequate, the region follows the above procedure for unacceptable PoCs.

### **An example of an acceptable PoC**

An agency received a Form CMS 2567 and a DADS Form 3724 for two deficiencies and one violation. The agency's PoC included:

- Exactly how the agency corrected, or will correct, the deficiency or violation for patients/clients found to have been affected by the deficiency or violation and the procedure for implementing the acceptable PoC for the specific deficiency or violation cited. The PoC addressed the processes that led to the deficiency or violation. The agency attached additional documentation showing how the agency corrected the deficiency or violation to the DADS Form 3724. If the agency corrected the deficiency or violation since the survey, that fact could have been indicated on the form, along with the approximate date of correction.
- How the agency identified other patients/clients who have the potential to be affected by the same deficiency or violation, and how the agency will act to protect patients/clients in similar situations.
- What measures were, or will be, put into place or systemic changes were, or will be, made to ensure that the deficiency or violation will not recur.
- The monitoring procedure to ensure that the PoC is effective and that the specific deficiency or violation cited remains corrected and/or in compliance with regulatory requirements. How the agency will monitor its corrective actions/performance to ensure that the deficiency or violation is being corrected and will not recur, i.e., what program will be put into place to monitor the continued effectiveness of the systemic change to ensure that solutions are permanent.
- The expected date the agency will complete the corrective action for the deficiency or violation within the time frames specified in the form letter(s) requesting a PoC generated from ASPEN and sent to the agency.

The agency entered a PoC in the second column on the Form CMS 2567 and DADS Form 3724, opposite the corresponding tag number (e.g., Z148), and entered an expected completion date opposite each PoC in the last column of the form. The agency typed on the Form CMS 2567 and DADS Form 3724 or wrote legibly in black ink. The agency entered the title of the person responsible for implementing the acceptable PoC. The agency did not use proper names.

DADS staff reviews the PoC for appropriateness, legibility, and completeness and will send written notice that the PoC is acceptable or unacceptable. Please be advised that after a PoC is accepted, DADS staff will make an unannounced future contact to determine if the agency has made the corrections as agreed.

Computer-based training is available to assist agencies with writing acceptable PoCs. It includes information on PoC time frames. The training is available on the DADS Web site at <http://www.dads.state.tx.us/business/cbt/>.

For questions concerning this memorandum, please contact a policy specialist in the Policy, Rules, and Curriculum Development Unit at (512) 438-3161.