

MEMORANDUM

Texas Department of Aging and Disability Services

TO: Regulatory Services Division
Regional Directors and State Office Managers

FROM: Dana McGrath, Unit Manager
Policy, Rules and Curriculum Development Unit
State Office MC E-370

SUBJECT: Regional Survey and Certification (RS&C) Letter No. 12-04

DATE: April 12, 2012

The referenced Region VI Centers for Medicare and Medicaid Services (CMS) Regional Survey and Certification (RS&C) Letter was issued on March 14, 2012. This letter, which was distributed by e-mail on April 11, 2012 is being provided to you for information and action purposes and should be shared with all professional staff.

- RS&C Letter No. 12-04 – CMS Region VI-Dallas Delegation of Notification of the Imposition and Starting Date of Optional Denial of Payment for New Admissions to the State Survey Agencies in Region VI

If you have any questions, please contact a nursing facility policy program specialist in the Policy, Rules and Curriculum Development Unit at (512) 438-3161.

Attachment



Division of Survey and Certification, Region VI

March 14, 2012

REGIONAL SURVEY AND CERTIFICATION LETTER NO. 12-04

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

SUBJECT: CMS Region VI–Dallas Delegation of Notification of the Imposition and Starting Date of Optional Denial of Payment for New Admissions to the State Survey Agencies in Region VI.

This letter delegates to Region VI- Dallas State Survey Agencies the authority to provide notice to Skilled Nursing Facilities (SNF) and dually certified Skilled Nursing Facilities/Nursing Facilities (SNF/NF) that the Centers for Medicare & Medicaid Services (CMS) will impose Optional Denial of Payment for New Admissions (ODPNA) in a “No Opportunity to Correct Before Remedies Are Imposed” Enforcement Action¹. This includes Immediate Jeopardy (IJ) that remains at the end of the survey, which requires a two (2) day notice of ODPNA. Enforcement notification requirements are set forth at 42 CFR §488.402(f). ODPNA is authorized at 42 CFR §488.417(a). The purpose of delegating notice of ODPNA is to encourage the facility to achieve prompt compliance and to sustain compliance with the Medicare/Medicaid Requirements of Participation.

Implementing Instruction

1. The State will send notification of ODPNA by fax or email only.
2. When an Enforcement Action is a “No Opportunity to Correct before Remedies Are Imposed” (State Operations Manual; 7305.1.2) the Region VI State Survey Agencies will notify SNFs and SNF/NFs using the following language:

Optional Denial of Payment for New Admissions (ODPNA)

Based on deficiencies cited during this survey, and as authorized by Centers for Medicare & Medicaid Services (CMS) Dallas Regional Office, this is formal notification of Optional Denial of Payment for New Admissions (ODPNA). ODPNA will start [insert date that is 15 days from date of letter or 2 days from date of the letter for IJ that remains at exit]. Your State Medicaid Agency will be notified by copy of this letter. The CMS Regional Office will notify your Medicare payer. The Medicare and Medicaid programs will make no payment for residents admitted on or after the ODPNA effective date. ODPNA will

¹ An Enforcement Action is the process of imposing a remedy; State Operations Manual (SOM) Chapter 7 “Definitions.”

continue until your facility achieves substantial compliance or your provider agreement is terminated. [Facilities are prohibited from billing Medicare/Medicaid residents or their responsible parties during the denial period for services normally billed to Medicare or Medicaid.]

3. The Region VI State Survey Agencies notice of imposition of ODPNA letter will include appeal rights with the following language:

Appeal Rights

*If you disagree with **the determination of noncompliance on the CMS 2567 (and/or substandard quality of care with loss of Nurse Aide Training and Competency Evaluation program, if applicable)**, 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 42 CFR §498.40, et seq. You may appeal the finding of noncompliance that led to an enforcement action, but not the enforcement action or remedy itself. A written request for hearing must be filed no later than (date sixty days from date of this letter) (60 days from the date of receipt of this letter via fax or e-mail). Such written request should be made to:*

*Department of Health and Human Services
Departmental Appeals Board, MS 6132
Director, Civil Remedies Division
330 Independence Avenue, SW
Cohen Building, Room G-644
Washington, D.C. 20201*

A request for hearing should identify the specific issues, and the findings of fact and conclusions of law with which you disagree. It should also specify the basis for contending that the findings and conclusions are incorrect. You may be represented at a hearing by counsel at your own expense.

*Be sure to include a copy of this letter with your request to the Departmental Appeals Board. In addition, please forward **a copy of your request** to:*

*[Insert CMS RO contact name.()]
for the Associate Regional Administrator
Division of Survey and Certification
Centers for Medicare & Medicaid Services
1301 Young Street; Room 827
Dallas, Texas 75202*

When the Region VI State Survey Agencies send this notice to the provider, the Survey Agency will copy the State Medicaid Agency and update ASPEN Enforcement Manager (AEM) (see figure 1, attached). **These instructions are effective April 2, 2012.** If you have any questions please call Vilma Acosta at 214-767-4460.

Sincerely,

Diane Murphy,
Acting Associate Regional Administrator
Division of Survey and Certification

Figure 1: AEM - Remedies tab

Latest Alleged Compliance Date: Day 23 No JJ 3 Calendar Months: 02/11/2011 6 Calendar Months: 05/11/2011  Facility Detail

Case Basics | Surveys & IDR | Remedies | CMP | NATCEP | Notices | Hearing/Appeal |  Upload

Remedy Master List

Remedy	Remedy Type	In Effect?	Effective Date	Last Day in Effect	Reason Not In Effect
▶ 04A - Discretionary Deny Pay for New Admit	Fed- Cat 2	03 - Pending	12/24/2010		
11B - Mandatory Termination	Fed- Cat 3	03 - Pending	05/11/2011		



 Print...  Letter/History  Notes  Attachments  Cmplnt Inv

Please update the remedies tab by:

1. Choose 04A
2. Change: Remedy In effect? to "03 Pending"
3. Enter the effective date specified in the letter.