

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

ELIGIBILITY CONDITIONS AND REQUIREMENTS

Enforcement of Compliance for Nursing Facilities

The State uses other factors described below to determine the seriousness of deficiencies in addition to those described at § 488.404(b)(1):

Not applicable.

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Termination of Provider Agreement: Describe the criteria (as required at §1919(h)(2)(A)) for applying the remedy.

XXX Specified remedy
(Will use the criteria and notice requirements specified in the regulation.)

§1. Mandatory termination. As set forth by 42 CFR §488.408 (1995), the Commonwealth shall:

- A. Impose temporary management on the nursing facility;
- B. Terminate the nursing facility's provider agreement; or
- C. Impose both of these remedies

when there are one or more deficiencies that constitute immediate jeopardy to resident health or safety. In addition, the Commonwealth shall terminate the nursing facility's provider agreement when the NF fails to relinquish control to the temporary manager, or in situations when a facility's deficiencies do not pose immediate jeopardy, if the NF does not meet the eligibility criteria for continuation of payment set forth in 42 CFR 488.412(a) (1995).

§2. The Commonwealth shall have the authority to terminate a NF's provider agreement if such NF:

- A. Is not in substantial compliance with the requirements of participation, regardless of whether or not immediate jeopardy is present; or
- B. Fails to submit an acceptable plan of correction within the timeframe specified by the Commonwealth. For purposes of this regulation, substantial compliance shall be defined as meaning a level of compliance with the requirements of participation such that any identified deficiencies pose no greater risk to resident health or safety than the potential for causing minimal harm.

§3. Situations without immediate jeopardy. If a NF's deficiencies do not pose immediate jeopardy to residents' health or safety, and the facility is not in substantial compliance, the Commonwealth shall have the authority to terminate the NF's provider agreement or allow the

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NF to continue to participate for no longer than six months from the last day of the survey agency's survey if:

- A. The survey agency finds that it is more appropriate to impose alternative remedies than to terminate the NF's provider agreement;
- B. The Commonwealth has submitted a plan and timetable for corrective action approved by HCFA; and
- C. The facility in the case of a Medicare skilled nursing facility or Commonwealth in the case of a Medicaid NF agrees to repay to the federal government payments received after the last day of the survey that first identified the deficiencies if corrective action is not taken in accordance with the approved plan of correction.

§4. Effect of termination. Termination of the provider agreement shall end payment to the NF.

§5. Patient transfer. The Commonwealth shall provide for the safe and orderly transfer of residents when the facility's provider agreement is terminated.

§6. Continuation of payments to a facility with deficiencies. As set forth by 42 CFR §488.450:

- A. The Commonwealth shall have the authority to terminate the NF's provider agreement before the end of the correction period if the following criteria are not met: (1) the survey agency finds that it is more appropriate to impose alternative remedies than to terminate the NF's provider agreement; (2) the Commonwealth has submitted a plan and timetable for corrective action which has been approved by HCFA; and (3) the Commonwealth has agreed to repay the Federal government payments received under this provision if corrective action is not taken in accordance with the approved plan and timetable for corrective action.
- B. Cessation of payments. If termination is not sought, either by itself or with another remedy or remedies, or any of the criteria of Part A of this section are not met or agreed to by either the facility or the Commonwealth, the facility or the Commonwealth shall receive no Federal Medicaid payments, as applicable, from the last day of the survey.

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- C. Period of continued payments. If the criteria of Part A of this section are met, HCFA may continue payments to the Commonwealth for a Medicaid facility with noncompliance that does not constitute immediate jeopardy for up to six months from the last day of the survey. If the facility does not achieve substantial compliance by the end of this six-month period, the Commonwealth shall have the authority to terminate its provider agreement.

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Temporary Management: Describe the criteria (as required at §1919(h)(2)(A)) for applying the remedy.

XXX Specified Remedy

(Will use the criteria and notice requirements specified in the regulation.)

Alternative Remedy

(Describe the criteria and demonstrate that the alternative remedy is as effective in deterring non-compliance. Notice requirements are as specified in the regulations.)

- §1. Temporary management in cases of immediate jeopardy. In accordance with 42 CFR §488.408 (1995) and §488.410 (1995), the Commonwealth shall:
 - A. Impose temporary management on the nursing facility,
 - B. Terminate the nursing facility's provider agreement, or
 - C. Impose both of these remedies

when there are one or more deficiencies that constitute immediate jeopardy to resident health or safety. For purposes of this regulation, temporary management shall mean the temporary appointment by HCFA or the Commonwealth of a substitute facility manager or administrator with authority to hire, terminate, or reassign staff, obligate NF funds, alter NF procedures, and manage the NF to correct deficiencies identified in the NF's operation. The individual appointed as a temporary manager shall meet the qualifications of 42 CFR §488.415(b) (1995) and be compensated in accordance with the requirements of 42 CFR §488.415(c) (1995). The Commonwealth shall notify the facility that a temporary manager is being appointed. In situations of immediate jeopardy, the Commonwealth shall also have the authority to impose other remedies, as appropriate, in addition to termination of the provider agreement and temporary management. In a NF or dually participating facility, if the Commonwealth finds that such NF's or facility's noncompliance poses immediate jeopardy to resident health or safety, the Commonwealth shall notify HCFA of such finding.

- §2. Temporary management in situations of no immediate jeopardy. When there are widespread deficiencies that constitute actual harm that is not immediate jeopardy, the Commonwealth shall have the authority to impose temporary management, in addition to the remedies of denial of payment for new admissions or civil money penalties of \$50-\$3,000 per day.

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§3. Failure to relinquish authority to temporary management.

- A. Termination of provider agreement. If a NF fails to relinquish authority to the temporary manager, the Commonwealth shall terminate the NF's provider agreement within 23 calendar days of the last day of the survey, if the immediate jeopardy is not removed. If the facility fails to relinquish control to the temporary manager, state monitoring may be imposed pending termination of the provider agreement. If the facility relinquishes control to the temporary manager, the Commonwealth must notify the facility that, unless it removes the immediate jeopardy, its provider agreement shall be terminated within 23 calendar days of the last day of the survey. A NF's failure to pay the salary of the temporary manager shall be considered a failure to relinquish authority to temporary management.

- B. Duration of temporary management. Temporary management shall end when the NF meets any of the conditions specified in 42 CFR §488.454(c) (1995). If the NF has not achieved substantial compliance to reassume management control, the Commonwealth shall have the authority to terminate this NF's provider agreement and impose additional remedies. For purposes of this regulation, substantial compliance shall mean a level of compliance with the requirements of participation such that any identified deficiencies pose no greater risk to resident health or safety than the potential for causing minimal harm.

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Denial of Payment for New Admissions: Describe the criteria (as required at §1919(h)(2)(A)) for applying the remedy.

XXX Specified Remedy

(Will use the criteria and notice requirements specified in the regulation.)

Alternative Remedy

(Describe the criteria and demonstrate that the alternative remedy is as effective in deterring non-compliance. Notice requirements are as specified in the regulations.)

§1. Denial of payment for new admissions. The Commonwealth shall:

- A. Deny payment for new admissions, or
- B. Impose civil money penalties of \$50-\$3,000 per day, or
- C. Impose both of these remedies

when there are widespread deficiencies that constitute no actual harm with a potential for more than minimal harm but not immediate jeopardy, or one or more deficiencies that constitute actual harm that is not immediate jeopardy. As set forth by 42 CFR §488.417 (1995), the Commonwealth shall deny payment for new admissions when a NF is not in substantial compliance three months after the last day of the survey identifying the noncompliance, or the survey agency has cited a NF with substandard quality of care on the last three consecutive, standard surveys. As set forth by 42 CFR §488.417, the Commonwealth shall have the authority to deny payment for all new admissions when a facility is not in substantial compliance. For the purposes of this regulation, a new admission shall be defined as a resident who is admitted to the facility on or after the effective date of a denial of payment remedy and, if previously admitted, has been discharged before that effective date. Residents admitted before the effective date of the denial of payment, and taking temporary leave, are not considered new admissions, nor subject to the denial of payment. Also for the purposes of this regulation, substantial compliance shall mean a level of compliance with the requirements of participation such that any identified deficiencies pose no greater risk to resident health or safety than the potential for causing minimal harm.

§2. Denial of payment for substandard quality of care on last three surveys. As set forth by 42 CFR §§488.414 and 488.417 (1995), if a facility is found to have provided substandard quality of care on the last three consecutive standard surveys, regardless of other remedies

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provided, the Commonwealth shall deny payment for all new admissions and shall impose state monitoring until such facility demonstrates to the satisfaction of the Commonwealth that it is in substantial compliance with all requirements and will remain in substantial compliance with all requirements.

- §3. The Commonwealth shall have the authority to deny payment for new admissions for any deficiency except when the facility is in substantial compliance.

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Civil Money Penalty: Describe the criteria (as required at §1919(h)(2)(A)) for applying the remedy.

XXX Specified Remedy

(Will use the criteria and notice requirements specified in the regulation.)

Alternative Remedy

(Describe the criteria and demonstrate that the alternative remedy is as effective in deterring non-compliance. Notice requirements are as specified in the regulations.)

- §1. Immediate jeopardy. In situations of immediate jeopardy, the Commonwealth shall have the authority to impose (in accordance with 42 CFR §488.430 through 42 CFR §488.444) a civil money penalty in the range of \$3,050-\$10,000 in addition to the remedies of imposing temporary management or terminating the NF's provider agreement. In imposing civil money penalties, the Commonwealth shall comply with all provisions of 42 CFR §488.430 through §488.444 (1995).
- §2. No immediate jeopardy. In accordance with 42 CFR §488.430 through 42 CFR §488.444, the Commonwealth shall:
 - A. Deny payment for new admissions, or
 - B. Impose civil money penalties of \$50-\$3,000 per day, or
 - C. Impose both of these remedies

when there are widespread deficiencies that constitute no actual harm with a potential for more than minimal harm but not immediate jeopardy, or one or more deficiencies that constitute actual harm that is not immediate jeopardy.
- §3. Notice. Either HCFA or the Commonwealth, as appropriate, shall send a prior written notice of the penalty to the facility as set forth by 42 CFR §488.434 (1995).
- §4. The Commonwealth shall have the authority to impose civil money penalties of \$50-\$3,000 per day to any deficiency except when the NF is in substantial compliance. If the Commonwealth imposes a civil money penalty for a deficiency that constitutes immediate jeopardy, the penalty must be in the range of \$3,050-\$10,000 per day. For the purposes of this regulation, substantial compliance shall mean a level of compliance with the requirements of

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participation such that any identified deficiencies pose no greater risk to resident health or safety than the potential for causing minimal harm.

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State Monitoring: Describe the criteria (as required at §1919(h)(2)(A)) for applying the remedy.

XXX Specified Remedy

(Will use the criteria and notice requirements specified in the regulation.)

Alternative Remedy

(Describe the criteria and demonstrate that the alternative remedy is as effective in deterring non-compliance. Notice requirements are as specified in the regulations.)

- §1. In accordance with 42 CFR §488.422 (1995), the Commonwealth shall directly monitor the delivery of services for NFs found to have isolated deficiencies that constitute no actual harm with a potential for more than minimal harm but not immediate jeopardy, or found to have a pattern of deficiencies that constitute no actual harm with a potential for more than minimal harm but not immediate jeopardy. As set forth by 42 CFR §488.408(c)(3) (1995), the Commonwealth shall have the authority to impose state monitoring at any time to any deficiency except when the facility is in substantial compliance. As set forth by 42 CFR §488.414 (1995), if a facility is found to have provided substandard quality of care on the last three consecutive standard surveys, regardless of other remedies provided, the Commonwealth shall deny payment for all new admissions and shall impose state monitoring as specified in §488.422 until such facility demonstrates to the satisfaction of the Commonwealth that it is in substantial compliance with all requirements and will remain in substantial compliance with all requirements. For purposes of this regulation, a new admission shall be defined as a resident who is admitted to the facility on or after the effective date of a denial of payment remedy and, if previously admitted, has been discharged before that effective date. Residents admitted before the effective date of the denial of payment, and taking temporary leave, are not considered new admissions, nor subject to the denial of payment. For the purposes of this regulation, substantial compliance shall mean a level of compliance with the requirements of participation such that any identified deficiencies pose no greater risk to resident health or safety than the potential for causing minimal harm.
- §2. For state monitoring, no prior notice shall be required of the Commonwealth to the NF.

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Transfer of residents. Transfer of residents with closure of facility: Describe the criteria (as required at §1919(h)(2)(A)) for applying the remedy.

XXX Specified Remedy

(Will use the criteria and notice requirements specified in the regulation.)

Alternative Remedy

(Describe the criteria and demonstrate that the alternative remedy is as effective in deterring non-compliance. Notice requirements are as specified in the regulations.)

- §1. Transfer of residents. The Commonwealth shall arrange for the safe and orderly transfer of NF Medicare and Medicaid residents when the provider agreement with the NF is terminated.
- §2. Emergency transfers. In an emergency, the Commonwealth shall have the authority to transfer Medicare and Medicaid residents to another facility; or close the facility and transfer the Medicare and Medicaid residents to another facility.

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Additional Remedies: Describe the criteria (as required at §1919(h)(2)(A)) for applying the additional remedy. Include the enforcement category in which the remedy will be imposed (i.e., category 1, category 2, or category 3 as described at 42 CFR 488.408).

Not applicable.

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Required Plan of Correction (as required by 42 CFR §488.408(f) (1995)):

- §1. Plan of Correction. In accordance with 42 CFR §488.408(f) (1995), a NF found to have a deficiency with regard to a Program requirement shall submit a Plan of Correction for approval by the Commonwealth without regard to the remedies which are imposed or the seriousness of the identified deficiencies. A NF shall not be required to submit a Plan of Correction when it has been found to have deficiencies that are isolated that the Commonwealth determines have only a potential for minimal harm but no actual harm has occurred.

- §2. For the purposes of this regulation, a Plan of Correction shall mean a plan developed by the NF or the appointed temporary manager and approved by HCFA or the state survey agency that describes the actions the NF will take to correct deficiencies and specifies the date by which those deficiencies will be corrected.

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Appeals (in accordance with 42 CFR §488.408(g) (1995)):

- §1. NF appeal rights. As set forth by 42 CFR §488.408(g) (1995), a nursing facility for which deficiencies have been identified may appeal a certification of noncompliance leading to an enforcement remedy.

- §2. Appeal limits. As set forth by 42 CFR §488.408(g) (1995), nursing facilities may not appeal the Commonwealth's choice of the remedy to be applied, including the factors considered by the Commonwealth or HCFA in selecting the remedy specified in 42 CFR §488.404.

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Repeated substandard quality of care. Any remedies or sanctions which may be imposed by the Commonwealth pursuant to 42 CFR §488.414(a) shall be imposed in accordance with the requirements set forth by 42 CFR §488.414(b) through §488.414(e) and §488.454(b).

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