Centers for Medicare & Medicaid Services, HHS § 488.452

§ 488.452 State and Federal disagreements involving findings not in agreement in non-State operated NFs and dually participating facilities when there is no immediate jeopardy.

The following rules apply when CMS and the State disagree over findings of noncompliance or application of remedies in a non-State operated NF or dually participating facility:

(a) Disagreement over whether facility has met requirements.

(i) The State’s finding of noncompliance takes precedence when—

(ii) CMS finds that a NF or a dually participating facility has not achieved substantial compliance; and

(ii) The State finds that a NF or a dually participating facility has not achieved substantial compliance.

(b) Disagreement over decision to terminate.

(i) Terminate the provider agreement subject to the applicable conditions of §488.450; and

(ii) Disagreement over decision to terminate. (1) CMS’s decision to terminate the participation of a facility takes precedence when—

(i) Both CMS and the State find that the facility has not achieved substantial compliance; and

(ii) CMS, but not the State, finds that the facility’s participation should be terminated. CMS will permit continuation of payment during the period prior to the effective date of termination not to exceed 6 months, if the applicable conditions of §488.450 are met.

(2) The State’s decision to terminate a facility’s participation and the procedures for appealing such termination, as specified in §431.159(c) of this chapter, takes precedence when—
(i) The State, but not CMS, finds that a NF’s participation should be terminated; and
(ii) The State’s effective date for the termination of the NF’s provider agreement is no later than 6 months after the last day of survey.
(c) Disagreement over timing of termination of facility. The State’s timing of termination takes precedence if it does not occur later than 6 months after the last day of the survey when both CMS and the State find that—
(1) A facility is not in substantial compliance; and
(2) The facility’s participation should be terminated.
(d) Disagreement over remedies. (1) When CMS or the State, but not both, establishes one or more remedies, in addition to or as an alternative to termination, the additional or alternative remedies will also apply when—
(i) Both CMS and the State find that a facility has not achieved substantial compliance; and
(ii) Both CMS and the State find that no immediate jeopardy exists.
(2) Overlap of remedies. When CMS and the State establish one or more remedies, in addition to or as an alternative to termination, only the CMS remedies apply when both CMS and the State find that a facility has not achieved substantial compliance.
(e) Regardless of whether CMS’s or the State’s decision controls, only one noncompliance and enforcement decision is applied to the Medicaid agreement, and for a dually participating facility, that same decision will apply to the Medicare agreement.
§ 488.454 Duration of remedies.
(a) Except as specified in paragraphs (b) and (d) of this section, alternative remedies continue until—
(1) The facility has achieved substantial compliance, as determined by CMS or the State based upon a revisit or after an examination of credible written evidence that it can verify without an on-site visit; or
(2) CMS or the State terminates the provider agreement.
(b) In the cases of State monitoring and denial of payment imposed for repeated substandard quality of care, remedies continue until—
(1) CMS or the State determines that the facility has achieved substantial compliance and is capable of remaining in substantial compliance; or
(2) CMS or the State terminates the provider agreement.
(c) In the case of temporary management, the remedy continues until—
(1) CMS or the State determines that the facility has achieved substantial compliance and is capable of remaining in substantial compliance;
(2) CMS or the State terminates the provider agreement; or
(3) The facility which has not achieved substantial compliance re-assumes management control.
(d) In the case of a civil money penalty imposed for an instance of non-compliance, the remedy is the specific amount of the civil money penalty imposed for the particular deficiency.
(e) If the facility can supply documentation acceptable to CMS or the State survey agency that it was in substantial compliance and was capable of remaining in substantial compliance, if necessary, on a date preceding that of the revisit, the remedies terminate on the date that CMS or the State can verify as the date that substantial compliance was achieved and the facility demonstrated that it could maintain substantial compliance, if necessary.
§ 488.456 Termination of provider agreement.
(a) Effect of termination. Termination of the provider agreement ends—
(1) Payment to the facility; and
(2) Any alternative remedy.
(b) Basis for termination. (1) CMS and the State may terminate a facility’s provider agreement if a facility—
(i) Is not in substantial compliance with the requirements of participation, regardless of whether or not immediate jeopardy is present; or
(ii) Fails to submit an acceptable plan of correction within the timeframe specified by CMS or the State.