

(1) The hearing is open to CMS and the organization requesting the reconsideration, including—

- (i) Authorized representatives;
- (ii) Technical advisors (individuals with knowledge of the facts of the case or presenting interpretation of the facts); and
- (iii) Legal counsel;

(2) The hearing is conducted by the hearing officer who receives testimony and documents related to the proposed action;

(3) Testimony and other evidence may be accepted by the hearing officer even though it would be inadmissible under the usual rules of court procedures;

(4) Either party may call witnesses from among those individuals specified in paragraph (b)(1) of this section; and

(5) The hearing officer does not have the authority to compel by subpoena the production of witnesses, papers, or other evidence.

#### § 488.209 Hearing officer's findings.

(a) Within 30 days of the close of the hearing, the hearing officer will present the findings and recommendations to the accreditation organization or State laboratory program that requested the reconsideration.

(b) The written report of the hearing officer will include—

- (1) Separate numbered findings of fact; and
- (2) The legal conclusions of the hearing officer.

#### § 488.211 Final reconsideration determination.

(a) The hearing officer's decision is final unless the Administrator, within 30 days of the hearing officer's decision, chooses to review that decision.

(b) The Administrator may accept, reject or modify the hearing officer's findings.

(c) Should the Administrator choose to review the hearing officer's decision, the Administrator will issue a final reconsideration determination to the accreditation organization or State laboratory program on the basis of the hearing officer's findings and recommendations and other relevant information.

(d) The reconsideration determination of the Administrator is final.

(e) A final reconsideration determination against an accreditation organization or State laboratory program will be published by CMS in the FEDERAL REGISTER.

### Subpart E—Survey and Certification of Long-Term Care Facilities

SOURCE: 59 FR 56238, Nov. 10, 1994, unless otherwise noted.

#### § 488.300 Statutory basis.

Sections 1819 and 1919 of the Act establish requirements for surveying SNFs and NFs to determine whether they meet the requirements for participation in the Medicare and Medicaid programs.

#### § 488.301 Definitions.

As used in this subpart—

*Abbreviated standard survey* means a survey other than a standard survey that gathers information primarily through resident-centered techniques on facility compliance with the requirements for participation. An abbreviated standard survey may be premised on complaints received; a change of ownership, management, or director of nursing; or other indicators of specific concern. Abbreviated standard surveys conducted to investigate a complaint or to conduct on-site monitoring to verify compliance with participation requirements are subject to the requirements of § 488.332. Other premises for abbreviated standard surveys would follow the requirements of § 488.314.

*Abuse* is the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish. Abuse also includes the deprivation by an individual, including a caretaker, of goods or services that are necessary to attain or maintain physical, mental, and psychosocial well-being. Instances of abuse of all residents, irrespective of any mental or physical condition, cause physical harm, pain or mental anguish. It includes verbal abuse, sexual abuse, physical abuse,

and mental abuse including abuse facilitated or enabled through the use of technology. *Willful*, as used in this definition of abuse, means the individual must have acted deliberately, not that the individual must have intended to inflict injury or harm.

*Deficiency* means a SNF's or NF's failure to meet a participation requirement specified in the Act or in part 483, subpart B of this chapter.

*Dually participating facility* means a facility that has a provider agreement in both the Medicare and Medicaid programs.

*Extended survey* means a survey that evaluates additional participation requirements subsequent to finding substandard quality of care during a standard survey.

*Facility* means a SNF or NF, or a distinct part SNF or NF, in accordance with § 483.5 of this chapter.

*Immediate family* means husband or wife; natural or adoptive parent, child or sibling; stepparent, stepchild, stepbrother, or stepsister; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law; grandparent or grandchild.

*Immediate jeopardy* means a situation in which the provider's noncompliance with one or more requirements of participation has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident.

*Misappropriation of resident property* means the deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident's belongings or money without the resident's consent.

*Neglect* is the failure of the facility, its employees or service providers to provide goods and services to a resident that are necessary to avoid physical harm, pain, mental anguish, or emotional distress.

*Noncompliance* means any deficiency that causes a facility to not be in substantial compliance.

*Nurse aide* means an individual, as defined in § 483.5 of this chapter.

*Nursing facility (NF)* means a Medicaid nursing facility.

*Paid feeding assistant* means an individual who meets the requirements specified in § 483.60(h)(1) of this chapter and who is paid to feed residents by a

facility, or who is used under an arrangement with another agency or organization.

*Partial extended survey* means a survey that evaluates additional participation requirements subsequent to finding substandard quality of care during an abbreviated standard survey.

*Skilled nursing facility (SNF)* means a Medicare nursing facility.

*Standard survey* means a periodic, resident-centered inspection which gathers information about the quality of service furnished in a facility to determine compliance with the requirements for participation.

*Substandard quality of care* means one or more deficiencies related to participation requirements under § 483.10 "Resident rights", paragraphs (a)(1) through (a)(2), (b)(1) through (b)(2), (e) (except for (e)(2), (e)(7), and (e)(8)), (f)(1) through (f)(3), (f)(5) through (f)(8), and (i) of this chapter; § 483.12 of this chapter "Freedom from abuse, neglect, and exploitation"; § 483.24 of this chapter "Quality of life"; § 483.25 of this chapter "Quality of care"; § 483.40 "Behavioral health services", paragraphs (b) and (d) of this chapter; § 483.45 "Pharmacy services", paragraphs (d), (e), and (f) of this chapter; § 483.70 "Administration", paragraph (p) of this chapter, and § 483.80 "Infection control", paragraph (d) of this chapter, which constitute either immediate jeopardy to resident health or safety; a pattern of or widespread actual harm that is not immediate jeopardy; or a widespread potential for more than minimal harm, but less than immediate jeopardy, with no actual harm.

*Substantial compliance* means 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.

*Validation survey* means a survey conducted by the Secretary within 2 months following a standard survey, abbreviated standard survey, partial extended survey, or extended survey for the purpose of monitoring State survey agency performance.

[59 FR 56238, Nov. 10, 1994, as amended at 68 FR 55539, Sept. 26, 2003; 81 FR 68871, Oct. 4, 2016; 82 FR 36635, Aug. 4, 2017]