

(2) For other survey inadequacies in Medicaid facilities, CMS provides for training of survey teams.

(d) *Medicare facilities.* For all survey inadequacies in Medicare facilities, CMS—

(1) Requires that the State survey agency submit a plan of correction;

(2) Provides for training of survey teams;

(3) Provides technical assistance on scheduling and procedural policies;

(4) Provides CMS-directed scheduling; or

(5) Initiates action to terminate the agreement between the Secretary and the State under section 1864 of the Act, either in whole or in part.

(e) *Reduction of FFP.* In reducing FFP for inadequate survey performance, CMS uses the formula specified in section 1919(g)(3)(C) of the Act, that is 33 percent multiplied by a fraction—

(1) The numerator of which is equal to the total number of residents in the NFs that CMS found to be noncompliant during validation surveys for that quarter; and

(2) The denominator of which is equal to the total number of residents in the NFs in which CMS conducted validation surveys during that quarter.

(f) *Appeal of FFP reduction.* When a State is dissatisfied with CMS's determination to reduce FFP, the State may appeal the determination to the Departmental Appeals Board, using the procedures specified in 45 CFR part 16.

§ 488.325 Disclosure of results of surveys and activities.

(a) *Information which must be provided to public.* As provided in sections 1819(g)(5) and 1919(g)(5) of the Act, the following information must be made available to the public, upon the public's request, by the State or CMS for all surveys and certifications of SNFs and NFs:

(1) Statements of deficiencies and providers' comments.

(2) A list of isolated deficiencies that constitute no actual harm, with the potential for minimal harm.

(3) Approved plans of correction.

(4) Statements that the facility did not submit an acceptable plan of correction or failed to comply with the conditions of imposed remedies.

(5) Final appeal results.

(6) Notice of termination of a facility.

(7) Medicare and Medicaid cost reports.

(8) Names of individuals with direct or indirect ownership interest in a SNF or NF, as defined in § 420.201 of this chapter.

(9) Names of individuals with direct or indirect ownership interest in a SNF or NF, as defined in § 420.201 of this chapter, who have been found guilty by a court of law of a criminal offense in violation of Medicare or Medicaid law.

(b) *Charge to public for information.* CMS and the State may charge the public for specified services with respect to requests for information in accordance with—

(1) Section 401.140 of this chapter, for Medicare; or

(2) State procedures, for Medicaid.

(c) *How public can request information.* The public may request information in accordance with disclosure procedures specified in 45 CFR part 5.

(d) *When information must be disclosed.* The disclosing agency must make available to the public, upon the public's request, information concerning all surveys and certifications of SNFs and NFs, including statements of deficiencies, separate listings of any isolated deficiencies that constitute no actual harm, with the potential for minimal harm, and plans of correction (which contain any provider response to the deficiency statement) within 14 calendar days after each item is made available to the facility.

(e) *Procedures for responding to requests.* The procedures and time periods for responding to requests are in accordance with—

(1) Section 401.136 of this chapter for documents maintained by CMS; and

(2) State procedures for documents maintained by the State.

(f) *Information that must be provided to the State's long-term care ombudsman.* The State must provide the State's long-term care ombudsman with the following:

(1) A statement of deficiencies reflecting facility noncompliance, including a separate list of isolated deficiencies that constitute no harm with the potential for minimal harm.

(2) Reports of adverse actions specified at § 488.406 imposed on a facility.

(3) Written response by the provider.

(4) A provider's request for an appeal and the results of any appeal.

(g) *Information which must be provided to State by a facility with substandard quality of care.* (1) To provide for the notice to physicians required under sections 1819(g)(5)(C) and 1919(g)(5)(C) of the Act, not later than 10 working days after receiving a notice of substandard quality of care, a SNF or NF must provide the State with a list of—

(i) Each resident in the facility with respect to which such finding was made; and

(ii) The name and address of his or her attending physician.

(2) Failure to disclose the information timely will result in termination of participation or imposition of alternative remedies.

(h) *Information the State must provide to attending physician and State board.* Not later than 20 calendar days after a SNF or NF complies with paragraph (g) of this section, the State must provide written notice of the noncompliance to—

(1) The attending physician of each resident in the facility with respect to which a finding of substandard quality of care was made; and

(2) The State board responsible for licensing the facility's administrator.

(i) *Access to information by State Medicaid fraud control unit.* The State must provide access to any survey and certification information incidental to a SNF's or NF's participation in Medicare or Medicaid upon written request by the State Medicaid fraud control unit established under part 1007, of this title, consistent with current State laws.

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§ 488.330 Certification of compliance or noncompliance.

(a) *General rules—*(1) *Responsibility for certification.* (i) The State survey agency surveys all facilities for compliance or noncompliance with requirements for long term care facilities. The survey by the State survey agency may be followed by a Federal validation survey.

(A) The State certifies the compliance or noncompliance of non-State operated NFs. Regardless of the State entity doing the certification, it is final, except in the case of a complaint or validation survey conducted by CMS, or CMS review of the State's findings.

(B) CMS certifies the compliance or noncompliance of all State-operated facilities.

(C) The State survey agency certifies the compliance or noncompliance of a non-State operated SNF, subject to the approval of CMS.

(D) The State survey agency certifies compliance or noncompliance for a dually participating SNF/NF. In the case of a disagreement between CMS and the State survey agency, a finding of noncompliance takes precedence over that of compliance.

(ii) In the case of a validation survey, the Secretary's determination as to the facility's noncompliance is binding, and takes precedence over a certification of compliance resulting from the State survey.

(2) *Basis for certification.* (i) Certification by the State is based on the survey agency findings.

(ii) Certification by CMS is based on either the survey agency findings (in the case of State-operated facilities), or, in the case of a validation survey, on CMS's own survey findings.

(b) *Effect of certification—*(1) *Certification of compliance.* A certification of compliance constitutes a determination that the facility is in substantial compliance and is eligible to participate in Medicaid as a NF, or in Medicare as a SNF, or in Medicare and Medicaid as a dually participating facility.

(2) *Certification of noncompliance.* A certification of noncompliance requires denial of participation for prospective providers and enforcement action for current providers in accordance with subpart F of this part. Enforcement action must include one of the following:

(i) Termination of any Medicare or Medicaid provider agreements that are in effect.

(ii) Application of alternative remedies instead of, or in addition to, termination procedures.

(c) *Notice of certification of noncompliance and resulting action.* The notice of