

(b) *Failure to conduct IDR timely.* Failure of CMS or the State, as appropriate, to complete IDR shall not delay the effective date of any enforcement action.

(c) *Revised statement of deficiencies as a result of IDR.* If any findings are revised or removed by CMS or the State based on IDR, the official statement of deficiencies is revised accordingly and any enforcement actions imposed solely as a result of those cited deficiencies are adjusted accordingly.

(d) *Notification.* When the survey findings indicate a condition-level deficiency, CMS or the State, as appropriate, must provide the agency with written notification of the opportunity for participating in an IDR process at the time the official statement of deficiencies is issued. The request for IDR must be submitted in writing to the State or CMS, must include the specific deficiencies that are disputed, and must be made within the same 10 calendar day period that the HHA has for submitting an acceptable plan of correction.

Subpart J—Alternative Sanctions for Home Health Agencies With Deficiencies

SOURCE: 77 FR 67165, Nov. 8, 2012, unless otherwise noted.

§ 488.800 Statutory basis.

Section 1891(e) through (f) of the Act authorizes the Secretary to take actions to remove and correct deficiencies in an HHA through an alternative sanction or termination or both. Furthermore, this section specifies that these sanctions are in addition to any others available under State or Federal law, and, except for the final determination of civil money penalties, are imposed prior to the conduct of a hearing.

§ 488.805 Definitions.

As used in this subpart—

Directed plan of correction means CMS or the temporary manager (with CMS/SA approval) may direct the HHA to take specific corrective action to achieve specific outcomes within specific timeframes.

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 patient(s).

New admission means an individual who becomes a patient or is readmitted to the HHA on or after the effective date of a suspension of payment sanction.

Per instance means a single event of noncompliance identified and corrected through a survey, for which the statute authorizes CMS to impose a sanction.

Plan of correction means a plan developed by the HHA and approved by CMS that is the HHA's written response to survey findings detailing corrective actions to cited deficiencies and specifies the date by which those deficiencies will be corrected.

Repeat deficiency means a condition-level citation that is cited on the current survey and is substantially the same as or similar to, a finding of a standard-level or condition-level deficiency citation cited on the most recent previous standard survey or on any intervening survey since the most recent standard survey.

Temporary management means the temporary appointment by CMS or by a CMS authorized agent, of a substitute manager or administrator based upon qualifications described in §§ 484.105(b) and 484.115 of this chapter. The HHA's governing body must ensure that the temporary manager has authority to hire, terminate or reassign staff, obligate funds, alter procedures, and manage the HHA to correct deficiencies identified in the HHA's operation.

[77 FR 67165, Nov. 8, 2012, as amended at 82 FR 4591, Jan. 13, 2017]

§ 488.810 General provisions.

(a) *Purpose of sanctions.* The purpose of sanctions is to ensure prompt compliance with program requirements in order to protect the health and safety of individuals under the care of an HHA.

(b) *Basis for imposition of sanctions.* When CMS chooses to apply one or more sanctions specified in § 488.820, the sanctions are applied on the basis of noncompliance with one or more

conditions of participation found through a survey and may be based on failure to correct previous deficiency findings as evidenced by repeat deficiencies.

(c) *Number of sanctions.* CMS may apply one or more sanctions for each deficiency constituting noncompliance or for all deficiencies constituting noncompliance.

(d) *Extent of sanctions imposed.* When CMS imposes a sanction, the sanction applies to the parent HHA and its respective branch offices.

(e) *Plan of correction requirement.* Regardless of which sanction is applied, a non-compliant HHA must submit a plan of correction for approval by CMS.

(f) *Notification requirements—(1) Notice.* CMS provides written notification to the HHA of the intent to impose the sanction.

(2) *Date of enforcement action.* The notice periods specified in § 488.825(b) and § 488.830(b) begin the day after the HHA receives the notice.

(g) *Appeals.* (1) The provisions of part 498 of this chapter apply when the HHA requests a hearing on a determination of noncompliance leading to the imposition of a sanction, including termination of the provider agreement.

(2) A pending hearing does not delay the effective date of a sanction, including termination, against an HHA. Sanctions continue to be in effect regardless of the timing of any appeals proceedings.

§ 488.815 Factors to be considered in selecting sanctions.

CMS bases its choice of sanction or sanctions on consideration of one or more factors that include, but are not limited to, the following:

(a) The extent to which the deficiencies pose immediate jeopardy to patient health and safety.

(b) The nature, incidence, manner, degree, and duration of the deficiencies or noncompliance.

(c) The presence of repeat deficiencies, the HHA's overall compliance history and any history of repeat deficiencies at either the parent or branch location.

(d) The extent to which the deficiencies are directly related to a failure to provide quality patient care.

(e) The extent to which the HHA is part of a larger organization with performance problems.

(f) An indication of any system-wide failure to provide quality care.

§ 488.820 Available sanctions.

In addition to termination of the provider agreement, the following alternative sanctions are available:

(a) Civil money penalties.

(b) Suspension of payment for all new admissions.

(c) Temporary management of the HHA.

(d) Directed plan of correction, as set out at § 488.850.

(e) Directed in-service training, as set out at § 488.855.

§ 488.825 Action when deficiencies pose immediate jeopardy.

(a) *Immediate jeopardy.* If there is immediate jeopardy to the HHA's patient health or safety—

(1) CMS immediately terminates the HHA provider agreement in accordance with § 489.53 of this chapter.

(2) CMS terminates the HHA provider agreement no later than 23 days from the last day of the survey, if the immediate jeopardy has not been removed by the HHA.

(3) In addition to a termination, CMS may impose one or more alternative sanctions, as appropriate.

(b) *2-day notice.* Except for civil money penalties, for all sanctions specified in § 488.820 that are imposed when there is immediate jeopardy, notice must be given at least 2 calendar days before the effective date of the enforcement action.

(c) *Transfer of care.* An HHA, if its provider agreement terminated, is responsible for providing information, assistance, and arrangements necessary for the proper and safe transfer of patients to another local HHA within 30 days of termination. The State must assist the HHA in the safe and orderly transfer of care and services for the patients to another local HHA.