

§ 488.830

§ 488.830 Action when deficiencies are at the condition-level but do not pose immediate jeopardy.

(a) *Noncompliance.* If the HHA is no longer in compliance with the conditions of participation, either because the deficiency or deficiencies substantially limit the provider's capacity to furnish adequate care but do not pose immediate jeopardy, have a condition-level deficiency or deficiencies that do not pose immediate jeopardy, or because the HHA has repeat noncompliance that results in a condition-level deficiency based on the HHA's failure to correct and sustain compliance, CMS will:

(1) Terminate the HHA's provider agreement; or

(2) Impose one or more alternative sanctions set forth in §488.820(a) through (f) of this part as an alternative to termination, for a period not to exceed 6 months.

(b) *15-day notice.* Except for civil money penalties, for all sanctions specified in §488.820 imposed when there is no immediate jeopardy, notice must be given at least 15 calendar days before the effective date of the enforcement action. The requirements of the notice are set forth in §488.810(f) of this part.

(c) *Not meeting criteria for continuation of payment.* If an HHA does not meet the criteria for continuation of payment under §488.860(a) of this part, CMS will terminate the HHA's provider agreement in accordance with §488.865 of this part.

(d) *Termination time frame when there is no immediate jeopardy.* CMS terminates an HHA within 6 months of the last day of the survey, if the HHA is not in compliance with the conditions of participation, and the terms of the plan of correction have not been met.

(e) *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.

42 CFR Ch. IV (10-1-23 Edition)

§ 488.835 Temporary management.

(a) *Application.* (1) CMS may impose temporary management of an HHA if it determines that an HHA has a condition-level noncompliance and CMS determines that management limitations or the deficiencies are likely to impair the HHA's ability to correct deficiencies and return the HHA to full compliance with the conditions of participation within the timeframe required.

(2) [Reserved]

(b) *Procedures.* (1) CMS notifies the HHA that a temporary manager is being appointed.

(2) If the HHA fails to relinquish authority and control to the temporary manager, CMS terminates the HHA's provider agreement in accordance with §488.865.

(c) *Duration and effect of sanction.* Temporary management continues until—

(1) CMS determines that the HHA has achieved substantial compliance and has the management capability to ensure continued compliance with all the conditions of participation;

(2) CMS terminates the provider agreement; or

(3) The HHA reassumes management control without CMS approval. In such case, CMS initiates termination of the provider agreement and may impose additional sanctions.

(4) Temporary management will not exceed a period of 6 months from the date of the survey identifying non-compliance.

(d) *Payment of salary.* (1) The temporary manager's salary—

(i) Is paid directly by the HHA while the temporary manager is assigned to that HHA; and

(ii) Must be at least equivalent to the sum of the following:

(A) The prevailing salary paid by providers for positions of this type in what the State considers to be the HHA's geographic area (prevailing salary based on the Geographic Guide by the Department of Labor (BLS Wage Data by Area and Occupation);

(B) Any additional costs that would have reasonably been incurred by the HHA if such person had been in an employment relationship; and