



STATE OF MICHIGAN

DEPARTMENT OF COMMUNITY HEALTH
LANSING

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MEMORANDUM

DATE: September 13, 2006

TO: Nursing Homes, Hospital Long Term Care Units,
County Medical Care Facilities

FROM: Mike Dankert, Director
Bureau of Health Systems

SUBJECT: Citations of Past Noncompliance

Background

On October 20, 2005 the Centers for Medicare and Medicaid Services (CMS) issued Survey and Certification letter S & C-06-01 with revised guidance to clarify survey and certification actions related to citations of past noncompliance. CMS recently provided additional guidance that is incorporated in this memorandum.

The use of the generic survey data tag F698 for all past noncompliance is discontinued effective November 1, 2005. ASPEN will be modified to accept citations of past noncompliance using the F-tag (or K-tag) that corresponds to the deficiency.

Past noncompliance may be identified during any survey type. CMS presumes past noncompliance will be identified more frequently with complaint investigations.

To cite past noncompliance, all of the following three (3) criteria must be met:

- 1) The facility must have been out of compliance with a regulatory requirement at the time the situation occurred, i.e. the facility must have had a violation; and
- 2) The noncompliance must have occurred after the exit date of the last standard survey, and before the current survey (standard, complaint, revisit); and
- 3) There must be specific evidence that the facility corrected the noncompliance (at the time of the incident) and is in substantial compliance at the current survey.

In summary, to cite past noncompliance there must have been a violation after the last standard survey with evidence that it was corrected before the current survey event that determines the facility is currently in compliance with the same regulatory requirement.

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A nursing home does not provide a formal plan of correction for a past noncompliance citation. (To qualify for “past noncompliance” the deficiency must have already been corrected.) The past noncompliance evidence must show that the facility identified the deficiency, developed and implemented a corrective action plan following the incident.

Documenting Past Noncompliance

Past noncompliance identified as immediate jeopardy is entered on CMS Form 2567 and a civil penalty is imposed. The specific deficiency tag, scope and severity and supporting documentation of the deficiency are required. The generic survey tag F 698 has been discontinued. The CMS 2567 should include the appropriate F-tag, date of deficiency, the date of past noncompliance and the evidence of past noncompliance so that the civil money penalty can be determined. (see SOM 7510B)

Past noncompliance that is not immediate jeopardy for which a quality assurance program has corrected the noncompliance should not be cited. (see SOM 7510A)

Enforcement Action on Past Noncompliance Citations

A civil money penalty is required for immediate jeopardy. If past noncompliance is cited, a civil penalty must be imposed. A civil money penalty is the only applicable enforcement action for a past noncompliance cite.

The civil money penalty assessed may be either a per day or per instance civil money penalty. The per instance civil money penalty may be the appropriate choice when it is difficult to accurately establish when the noncompliance began or when it was corrected. (see SOM 7510A)

Effective Date

This guidance was effective for all surveys that exited after November 1, 2005.

Informal Deficiency Review

A provider may request IDR on whether a past-noncompliance citation is a deficiency. A provider may not request IDR on whether a citation is past noncompliance.