PAST NON-COMPLIANCE

Quality Assurance, Training & IDR Section

Bureau of Survey & Certification

Department of Licensing And Regulatory Affairs

LARA
LICENSING AND REGULATORY AFFAIRS

AGENDA

- Key/relevant requirements from Chapter 7
- Chase away historical attempts addressing Past Non-compliance
- Identify the CMS requirements for PNC (Past Non-compliance)
- Describe what Surveyors do regarding PNC
- Describe PNC documentation on the 2567
- Informal Dispute Resolution process
- Q & A with LTC Division Director

CHAPTER 7 OPENING PARAGRAPHS

The nursing home reform regulation establishes several expectations.

The first is that providers remain in substantial compliance with Medicare/Medicaid program requirements as well as State law.

The regulation emphasizes the need for continued, rather than cyclical compliance.

CHAPTER 7 OPENING PARAGRAPHS

The enforcement process mandates that policies and procedures be established to remedy deficient practices and to ensure that correction is lasting; **specifically, that facilities take the initiative and responsibility for continuously monitoring their own performance to sustain compliance.**

Measures such as the requirements for an acceptable plan of correction emphasize the ability to achieve and maintain compliance leading to improved quality of care.

CHAPTER 7 OPENING PARAGRAPHS

The second expectation is that all deficiencies will be addressed promptly.

The standard for program participation mandated by the regulation is **substantial compliance**.

CHAPTER 7 OPENING PARAGRAPHS

The third expectation is that residents will receive the care and services they need to meet their highest practicable level of functioning.

The process detailed in these sections provides incentives for the continued compliance needed to enable residents to reach these goals.

Failed Historical Attempts at PNC

Documentation via 2567 only at a certain scope and severity

Facility PNC “Packet” and Survey Manager approval

FROM 7510.1 IN CHAPTER 7

THREE CRITERIA FOR DETERMINING PNC

#1. The facility was not in compliance with the specific regulatory requirement at the time the situation occurred;

CRITERIA CONTINUED

#2. The noncompliance occurred after the exit date of the last standard/recertification survey and before the survey currently being conducted; *AND*

CRITERIA CONTINUED

#3. There is sufficient evidence that the facility corrected the noncompliance and is in substantial compliance at the time of the current survey for the specific regulatory requirement.

PNC DETERMINATION

SURVEYORS:

- Maintain open communication with the Nursing Home throughout the survey.
- Investigate any non-compliance by using the survey process.
- If surveyor's investigation determines non-compliance meets all three criteria for PNC…including maintaining sustained compliance…the non-compliance is PNC!

SCENARIO PRESENTED AS EXAMPLE

- Potential deficient practices can arise from multiple sources.
- This is an example of a best-case scenario.
- Determining PNC may not be this linear.
- PNC is not a separate entity from the survey process.
- PNC is determined over the course of a surveyor's thorough investigation into a concern.

SCENARIO HIGHLIGHTS

OBSERVATION

- Current proper placement of Fentanyl patch on Resident #1, along with Residents #2 and #3
- No observations of current issues with Fentanyl patches or other medication disposal

INTERVIEWS

- **Resident #1** – alleged deficiency
- **Residents #2 and #3** – like residents
- **Current staff** – assess competency, education
- **Staff member responsible for deficient practice** – confirm deficiency, education
- **Managerial / Administrative Staff** – confirm deficiency and corrective actions

RECORD REVIEW

- **Resident #1 (and Residents #2 and #3**) cognition, pertinent diagnoses, orders
- **Incident note(s)** – in this case, progress note
- **1:1 education**
- **All staff education**
- **Audits**
- **Policies / Procedures, QAPI documentation**

DOCUMENTATION ON 2567

The 2567 will reflect:

- PNC at the applicable “F” or “K” tag and will appear in tag number order.
- Assigned Scope and Severity.
- Findings supporting the deficiency.
- The Nursing Home’s corrective actions taken for the non-compliance.
- Within the provider’s plan of correction column on the 2567 … it will read “Past noncompliance – no plan of correction required”.

DOCUMENTATION ON 2567

"During the onsite survey, past noncompliance (PNC) was cited after the facility implemented actions to correct the noncompliance which included… (interventions/actions to correct the past noncompliance). The facility was able to demonstrate monitoring of the corrective action and sustained compliance."

FINAL NOTES

- Past noncompliance may be cited on any type of survey (standard recertification, abbreviated standard, e.g., complaint and revisit).
- Data about past noncompliance tags are not carried forward to subsequent revisit surveys.
- When PNC has been determined to exist, it will be communicated to the facility.

INFORMAL DISPUTE RESOLUTION

- A Nursing Home provider <u>can</u> IDR whether a past non-compliance citation is a deficiency.

- A Nursing Home provider <u>cannot</u> IDR any part of the survey process i.e. whether a deficiency <u>should have been</u> deemed as past non-compliance.

QUESTIONS & ANSWERS

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