

Center for Medicaid and State Operations/Survey and Certification Group

**Ref: S&C-04-38
Corrected**

DATE: August 12, 2004

TO: State Survey Agency Directors

FROM: Director
Survey and Certification Group

SUBJECT: Additional Language Required In Initial Notice To Nursing Homes

Letter Summary

- Additional language must be included in the initial notice to nursing homes when formal notification of remedies **is not** being provided in that notice.
- The added language will make it clear that the initial notice is not the notice that triggers the imposition of remedies and that any such determination will be provided in a separate notice.

Effective as soon as practicable, but no later than October 1, 2004, the following language must be inserted, **and bolded**, into all initial notices to nursing homes that **do not** also serve as formal notice of category 1 remedies or denial of payment for new admissions:

“Please note that this notice does not constitute formal notice of imposition of alternative remedies or termination of your provider agreement. Should the Centers for Medicare & Medicaid Services determine that termination or any other remedy is warranted, it¹ will provide you with a separate formal notification of that determination.”

¹ Changed “we” to “it” to accurately reflect CMS as the notifying party.

Background

In accordance with section 7305.A of the State Operations Manual, an initial notice is sent to all facilities following a survey, regardless of whether the findings constitute immediate jeopardy or non-immediate jeopardy, and regardless of whether the facility is or is not being given an opportunity to correct. Among other things, these notices provide information about the survey findings and the remedies that may be imposed if noncompliance is not corrected.

We have learned that providers oftentimes misconstrue the information in the initial notice about the potential imposition of remedies as being an official notice of termination or other remedy and proceed to file an appeal with the Departmental Appeals Board (DAB). This premature appeal often generates a tremendous workload for CMS and the Office of General Counsel in terms of preparing each of these cases for hearing when, in fact, in a number of these cases, remedies are not imposed and no need for a hearing results. In other words, many facilities believe that the language in the initial notice about the possibility of provider agreement termination or other remedy constitutes formal notice of those remedies as well as the basis for an appeal. Since this is not an efficient, desirable or intended reaction to the information contained in the initial notice, we have concluded that the initial notice must be explicit that it is not the notice that triggers the imposition of remedies and that any such determination will be provided in a separate notice. If, in light of this clarification, facilities continue to appeal prematurely to the DAB, CMS will be in a better position to show that the challenge is premature and thereby avoid unnecessary burdens for all parties.

The above new instruction contained in this S&C letter **does not** apply to initial notices that also serve as formal notice for the imposition of category 1 remedies or denial of payment for new admissions.

Effective Date: As soon as practicable, but no later than October 1, 2004.

Training: This information should be distributed to all survey and certification staff, their managers, and the state/RO training coordinator.

/s/

Thomas E. Hamilton

cc: Survey and Certification Regional Office Management (G-5)
Jeff Golland, OGC
Office of the Regional Counsel, Region I-X