

(2) The agency must not make the reports public until—

(i) The contractor or provider has had a reasonable opportunity, not to exceed 30 days, to comment on them; and

(ii) Those comments have been incorporated in the report.

(3) The agency must ensure that the reports contain no identification of individual patients, individual health care practitioners or other individuals.

[43 FR 45188, Sept. 29, 1978, as amended at 44 FR 41644, July 17, 1979; 59 FR 56232, Nov. 10, 1994]

**§ 431.120 State requirements with respect to nursing facilities.**

(a) *State plan requirements.* A State plan must—

(1) Provide that the requirements of subpart D of part 483 of this chapter are met; and

(2) Specify the procedures and rules that the State follows in carrying out the specified requirements, including review and approval of State-operated programs.

(3) To an NF or ICF/MR that is dissatisfied with a determination as to the effective date of its provider agreement.

(b) *Basis and scope of requirements.* The requirements set forth in part 483 of this chapter pertain to the following aspects of nursing facility services and are required by the indicated sections of the Act.

(1) Nurse aide training and competency programs, and evaluation of nurse aide competency (1919(e)(1) of the Act).

(2) Nurse aide registry (1919(e)(2) of the Act).

[56 FR 48918, Sept. 26, 1991, as amended at 62 FR 43935, Aug. 18, 1997]

**Subpart D—Appeals Process for NFs and ICFs/MR**

SOURCE: 44 FR 9753, Feb. 15, 1979, unless otherwise noted.

**§ 431.151 Scope and applicability.**

(a) *General rules.* This subpart sets forth the appeals procedures that a State must make available as follows:

(1) To a nursing facility (NF) that is dissatisfied with a State's finding of noncompliance that has resulted in one of the following adverse actions:

(i) Denial or termination of its provider agreement.

(ii) Imposition of a civil money penalty or other alternative remedy.

(2) To an intermediate care facility for the mentally retarded (ICF/MR) that is dissatisfied with a State's finding of noncompliance that has resulted in the denial, termination, or non-renewal of its provider agreement.

(3) To an NF or ICF/MR that is dissatisfied with a determination as to the effective date of its provider agreement.

(b) *Special rules.* This subpart also sets forth the special rules that apply in particular circumstances, the limitations on the grounds for appeal, and the scope of review during a hearing.

[61 FR 32348, June 24, 1996, as amended at 62 FR 43935, Aug. 18, 1997]

**§ 431.152 State plan requirements.**

The State plan must provide for appeals procedures that, as a minimum, satisfy the requirements of §§ 431.153 and 431.154.

[59 FR 56232, Nov. 10, 1994, as amended at 61 FR 32348, June 24, 1996]

**§ 431.153 Evidentiary hearing.**

(a) *Right to hearing.* Except as provided in paragraph (b) of this section, and subject to the provisions of paragraphs (c) through (j) of this section, the State must give the facility a full evidentiary hearing for any of the actions specified in § 431.151.

(b) *Limit on grounds for appeal.* The following are not subject to appeal:

(1) The choice of sanction or remedy.

(2) The State monitoring remedy.

(3) [Reserved]

(4) The level of noncompliance found by a State except when a favorable final administrative review decision would affect the range of civil money penalty amounts the State could collect.

(5) A State survey agency's decision as to when to conduct an initial survey of a prospective provider.

(c) *Notice of deficiencies and impending remedies.* The State must give the facility a written notice that includes:

(1) The basis for the decision; and

(2) A statement of the deficiencies on which the decision was based.

(d) *Request for hearing.* The facility or its legal representative or other authorized official must file written request for hearing within 60 days of receipt of the notice of adverse action.

(e) *Special rules: Denial, termination or nonrenewal of provider agreement.* (1) *Appeal by an ICF/MR.* If an ICF/MR requests a hearing on denial, termination, or nonrenewal of its provider agreement—

(i) The evidentiary hearing must be completed either before, or within 120 days after, the effective date of the adverse action; and

(ii) If the hearing is made available only after the effective date of the action, the State must, before that date, offer the ICF/MR an informal reconsideration that meets the requirements of § 431.154.

(2) *Appeal by an NF.* If an NF requests a hearing on the denial or termination of its provider agreement, the request does not delay the adverse action and the hearing need not be completed before the effective date of the action.

(f) *Special rules: Imposition of remedies.* If a State imposes a civil money penalty or other remedies on an NF, the following rules apply:

(1) *Basic rule.* Except as provided in paragraph (f)(2) of this section (and notwithstanding any provision of State law), the State must impose all remedies timely on the NF, even if the NF requests a hearing.

(2) *Exception.* The State may not collect a civil money penalty until after the 60-day period for request of hearing has elapsed or, if the NF requests a hearing, until issuance of a final administrative decision that supports imposition of the penalty.

(g) *Special rules: Dually participating facilities.* If an NF is also participating or seeking to participate in Medicare as an SNF, and the basis for the State's denial or termination of participation in Medicaid is also a basis for denial or termination of participation in Medicare, the State must advise the facility that—

(1) The appeals procedures specified for Medicare facilities in part 498 of this chapter apply; and

(2) A final decision entered under the Medicare appeals procedures is binding for both programs.

(h) *Special rules: Adverse action by CMS.* If CMS finds that an NF is not in substantial compliance and either terminates the NF's Medicaid provider agreement or imposes alternative remedies on the NF (because CMS's findings and proposed remedies prevail over those of the State in accordance with § 488.452 of this chapter), the NF is entitled only to the appeals procedures set forth in part 498 of this chapter, instead of the procedures specified in this subpart.

(i) *Required elements of hearing.* The hearing must include at least the following:

(1) Opportunity for the facility—

(i) To appear before an impartial decision-maker to refute the finding of noncompliance on which the adverse action was based;

(ii) To be represented by counsel or other representative; and

(iii) To be heard directly or through its representative, to call witnesses, and to present documentary evidence.

(2) A written decision by the impartial decision-maker, setting forth the reasons for the decision and the evidence on which the decision is based.

(j) *Limits on scope of review: Civil money penalty cases.* In civil money penalty cases—

(1) The State's finding as to a NF's level of noncompliance must be upheld unless it is clearly erroneous; and

(2) The scope of review is as set forth in § 488.438(e) of this chapter.

[61 FR 32348, June 24, 1996, as amended at 62 FR 43935, Aug. 18, 1997; 64 FR 39937, July 23, 1999]

#### § 431.154 Informal reconsideration for ICFs/MR.

The informal reconsideration must, at a minimum, include—

(a) Written notice to the facility of the denial, termination or nonrenewal and the findings upon which it was based;

(b) A reasonable opportunity for the facility to refute those findings in writing, and