

physicians and the State board responsible for licensing the facility administrator of the finding of substandard quality of care, as specified in § 488.325(h).

[59 FR 56243, Nov. 10, 1994; 60 FR 50118, Sept. 28, 1995]

**§ 488.412 Action when there is no immediate jeopardy.**

(a) If a facility's deficiencies do not pose immediate jeopardy to residents' health or safety, and the facility is not in substantial compliance, CMS or the State may terminate the facility's provider agreement or may allow the facility to continue to participate for no longer than 6 months from the last day of the survey if—

(1) The State survey agency finds that it is more appropriate to impose alternative remedies than to terminate the facility's provider agreement;

(2) The State has submitted a plan and timetable for corrective action approved by CMS; and

(3) The facility in the case of a Medicare SNF or the State in the case of a Medicaid NF agrees to repay to the Federal government payments received after the last day of the survey that first identified the deficiencies if corrective action is not taken in accordance with the approved plan of correction.

(b) If a facility does not meet the criteria for continuation of payment under paragraph (a) of this section, CMS will and the State must terminate the facility's provider agreement.

(c) CMS does and the State must deny payment for new admissions when a facility is not in substantial compliance 3 months after the last day of the survey.

(d) CMS terminates the provider agreement for SNFs and NFs, and stops FFP to a State for a NF for which participation was continued under paragraph (a) of this section, if the facility is not in substantial compliance within 6 months of the last day of the survey.

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**§ 488.414 Action when there is repeated substandard quality of care.**

(a) *General.* If a facility has been found to have provided substandard

quality of care on the last three consecutive standard surveys, as defined in § 488.305, regardless of other remedies provided—

(1) CMS imposes denial of payment for all new admissions, as specified in § 488.417, or denial of all payments, as specified in § 488.418;

(2) The State must impose denial of payment for all new admissions, as specified in § 488.417; and

(3) CMS does and the State survey agency must impose State monitoring, as specified in § 488.422, until the facility has demonstrated to the satisfaction of CMS or the State, that it is in substantial compliance with all requirements and will remain in substantial compliance with all requirements.

(b) *Repeated noncompliance.* For purposes of this section, repeated noncompliance is based on the repeated finding of substandard quality of care and not on the basis that the substance of the deficiency or the exact tag number for the deficiency was repeated.

(c) *Standard surveys to which this provision applies.* Standard surveys completed by the State survey agency on or after October 1, 1990, are used to determine whether the threshold of three consecutive standard surveys is met.

(d) *Program participation.* (1) The determination that a certified facility has repeated instances of substandard quality of care is made without regard to any variances in the facility's program participation (that is, any standard survey completed for Medicare, Medicaid or both programs will be considered).

(2) Termination would allow the count of repeated substandard quality of care surveys to start over.

(3) *Change of ownership.* (i) A facility may not avoid a remedy on the basis that it underwent a change of ownership.

(ii) In a facility that has undergone a change of ownership, CMS does not and the State may not restart the count of repeated substandard quality of care surveys unless the new owner can demonstrate to the satisfaction of CMS or the State that the poor past performance no longer is a factor due to the change in ownership.