

# MEMORANDUM

Texas Department of Human Services \* Long Term Care/Policy

**TO:** LTC-R Regional Directors  
Section/Unit Managers

**FROM:** Marc Gold  
Section Manager  
Long Term Care-Policy  
State Office MC: W-519

**SUBJECT:** Regional Survey & Certification Letter #99-09

**DATE:** April 26, 1999

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The attached RS&C Letter is being provided to you for information purposes and should be shared with all professional staff.

- RS&C Letter No. 99-09 -- Clarification of Appeals Rights in SNFs and SNF/NFs; Call Beverly Tucker, Section Manager, Professional Services, at (512) 438-2631.

If you have any questions, please direct inquiries to the individuals or sections listed above.

~Original Signature on File~

Marc Gold

Attachment

**DEPARTMENT OF HEALTH & HUMAN SERVICES**  
**Health Care Financing Administration**

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Region VI  
1301 Young Street, Room 833  
Dallas, Texas 75202

February 2, 1999

REGIONAL SURVEY AND CERTIFICATION LETTER NO: 99-09

To: All State Survey Agencies (Action)  
All Title XIX Single State Agencies (Information)

Subject: Clarification of Appeals Rights in SNFs and SNF/NFs

The purpose of this letter is to provide a policy clarification related to the appeal rights for SNFs and dually-participating nursing facilities. Please refer to the enclosed memorandum dated September 25, 1998.

**The memo states that nursing facilities should have the right to formally appeal deficiencies cited as the result of any follow-up visit whether or not there is a remedy imposed or a remedy is changed.** In the past, any time there was notice of remedy imposition or notice of a change of remedy such as a change in the amount of a civil money penalty, the facility was given sixty (60) days to file an appeal. This policy has been clarified to provide that any time there is a revisit with deficiencies cited, new appeal rights must be given. This would include all revisits where there is a continuation of the same remedies.

For example, a survey is conducted on January 1, 1999, deficiencies are cited, and remedies are recommended to HCFA. The RO receives the packet and sends notice to the provider of imposition of remedies. The remedies imposed are Denial of Payment for New Medicare/Medicaid Admissions and a Civil Money Penalty of \$50.00 per day beginning January 1. On February 1, the State conducts a revisit and determines that the facility remains in non-compliance. However, no new remedies or changes in remedies are recommended. The RO must receive the packet and send notice to the provider of new appeal rights based on the deficiencies cited at the revisit.

As a result of this policy clarification, the following action is needed on the part of the State Survey Agencies: **The results of all revisits must be forwarded to RO so that appeal rights can be issued whether or not there are any remedies recommended as a result of the revisit.**

If you have any questions concerning this information and necessary action, please contact Theresa Bennett at (214) 767-4416. Your cooperation in this matter will be greatly appreciated.

Sincerely,

{Signature on File}

Calvin Cline, Chief  
Operations Branch  
Division of Medicaid and State Operations

**DEPARTMENT OF HEALTH & HUMAN SERVICES**  
**Health Care Financing Administration**

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Center for Medicaid and State Operations  
7500 Security Boulevard  
Baltimore, MD 21244-1850

DATE: September 25, 1998

FROM: Acting Director  
Disabled and Elderly Health Programs Group

SUBJECT: Appeal Rights of Facilities That Have not Appealed Survey Findings or Remedies  
Arising Out of Initial Surveys -- ACTION

TO: Associate Regional Administrators, DMSO  
Regions I - X

The purpose of this memorandum is to advise you about a clarification of our policy regarding appeal rights of nursing facilities that have not appealed an initial determination of noncompliance, but wish to appeal survey findings arising out of follow-up surveys. In arriving at this policy clarification, we consulted with the Regional Offices as well as the Office of the General Counsel.

The issue, that arose, involved a facility upon which a remedy had been imposed as the result of an initial determination of noncompliance, but which chose not to appeal the noncompliance leading to the remedy because it accepted HCFA's determination. The facility corrected these deficiencies, but upon a revisit survey different deficiencies were identified. The facility disagreed with the new survey findings (which resulted in the continuation of the originally wished to challenge the deficiencies since it exposed the facility to the continuation of a remedy that it now believed to be unfounded. There has been some discussion as to whether the facility could challenge these new survey findings when it failed to challenge the findings following the initial survey at the time that the remedy was first imposed, or whether an appeal was now foreclosed since the time had elapsed to challenge the initially imposed remedy.

It is our view that nursing facilities should have an opportunity to appeal deficiencies cited as a result of follow-up surveys. We have reached this result because we believe that facilities ought not have to file frivolous appeals (and thereby contribute to an already overloaded DAB docket) in order to protect themselves against survey findings that have yet to be made by State Agency or Regional Office officials. Additionally, it is our hope that facilities, knowing that they need not challenge initial survey findings with which they agree (and the remedies that may flow from those survey findings), will use their resources more readily to correct the deficiencies that have been identified in these surveys rather than focus their attention on unnecessary challenges.

If you have any questions, please contact Carla McGregor or Cindy Graunke, in the Division of Outcome and Improvement, at 410/786-7239.

/s/  
Richard Brummel