

MEMORANDUM

Texas Department of Human Services * Long Term Care/Policy

TO: Long Term Care -Regulatory
Regional Directors, State Office Section Managers and
HCSSA Program Administrators

FROM: Marc Gold, Director
Long Term Care Policy
State Office MC: W-519

SUBJECT: Regional Survey & Certification Letter #01-10

DATE: June 25, 2001

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. 01-10 -- Clarification of Policies about Verification of Compliance and Setting 3 and 6 month Remedy Effective Dates (RE: S&C 01-10); Call Cecile Hay, Professional Services, Long Term Care-Regulatory, at (512) 438-2396.

~Original Signature on File~

Marc Gold

Attachment



DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
Division of Medicaid and State Operations, Region VI

1301 Young Street, Room 827
Dallas, Texas 75202
Phone (214) 767-6301
Fax (214) 767-0270

May 11, 2001

REGIONAL SURVEY AND CERTIFICATION LETTER NO: 01-10

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

Subject: Clarification of Policies about Verification of Compliance and Setting 3 and 6 month
Remedy Effective Dates (**RE: S&C01-10**)

The purpose of this letter is to ensure that State Survey Agencies receive and implement the enclosed revisions to the revisit policy memo dated September 22, 2000. We have attached three documents which were released May 3, 2001:

- HCFA memo dated May 3, 2001,
- revisit/date of compliance policy grid,
- Q&As #1 thru #6.

The following are critical points of this policy revision:

1. The State initiates an enforcement action if substantial non-compliance is determined because of a standard survey or complaint investigation (This includes incidents which are self-reported).
2. The State cannot stop an enforcement action unless there is substantial compliance with all requirements at the time of the revisit. **If the original deficiencies are corrected but new deficiencies are found, the enforcement action continues.**
3. The State must conduct onsite revisits any time the deficiencies are substandard quality of care, actual harm, or immediate jeopardy until substantial compliance is determined.
4. HCFA authorizes the State to conduct two revisits when an enforcement action starts.
5. The RO may authorize a third and final revisit. **There will be no more than three revisits to determine substantial compliance.**

Please note: the visit conducted to remove Immediate Jeopardy (IJ) constitutes the first revisit. If you are performing AState Monitoring@ and determine the IJ removed, the visit becomes a revisit and appropriate paperwork is completed. This would include a 2567L with the original deficiency(s), evidence of what the facility did to remove the IJ,

and scope/severity lowered. If the IJ deficiency(s) is corrected, the State completes a 2567B. The resultant enforcement packet is forwarded to the RO.

6. If the SA conducts a first and/or second onsite revisit, the date of compliance will be the date of the revisit or an earlier date with acceptable evidence.
7. If the SA performs a desk audit instead of onsite revisits, the date of compliance will be the latest date on the plan of correction.
8. For third onsite revisits, the date of compliance is no earlier than the revisit date.
9. HCFA identifies examples of acceptable evidence. However, HCFA allows States discretion to determine other examples of acceptable evidence.

The RO will schedule a conference call with all State Agencies before implementation of this policy to ensure consistency. If you have any questions, please contact Theresa Bennett at 214/767-4406.

Sincerely,

~Signature on File~

Molly Crawshaw, Chief
Survey and Certification Operations Branch

Attachments

**Health Care Financing Administration
Center for Medicaid and State Operations
7500 Security Boulevard
Baltimore, MD 21244-1850**

Date: May 3, 2001

From: Director, Survey and Certification Group **Ref: S&C01-10**

Subject: Policies about Verification of Compliance and Setting 3- and 6-month Remedy Effective Dates

To: Associate Regional Administrator
Division of Medicaid & State Operations
Region I-X
State Survey Agency Directors

On September 22, 2000, we released a memo transmitting two enforcement policies, one concerning verification of facility compliance and the other pertaining to setting the effective dates for the mandatory 3- and 6-month remedies. The policy about facility compliance generated much discussion, and, after reconsideration of some of the issues raised, we have revised the guidance which is attached. This guidance is effective with any survey that begins a certification cycle on or after the date of this memorandum and it supersedes the September 22, 2000 memo. We have also attached a Question and Answer document to assist with understanding the revised revisit policy.

Summary of Revisions

The September 22 policy required an onsite revisit to certify compliance as well as to stop remedies. Various stakeholders contended that the policy placed further reliance on States to perform revisits timely since the date of the revisit (that verifies facility compliance) also would become the effective date of compliance as well as the date used to stop any remedies imposed. When revisits cannot be conducted timely, facilities would continue to operate with remedies in place. This is particularly significant when those remedies are monetary penalties that continue to accrue, or denial of payment for new admissions which continue to run, until stopped as of the date of the revisit.

In contrast, the revised policy set forth in the attachment provides a course of action for certifying compliance based on the seriousness of the noncompliance and the number of revisits that have already occurred. It represents a continuum ranging from accepting the latest correction date on the facility's approved plan of correction as the date of compliance to conducting an onsite revisit to establish that date. In other words, the facility's ability to be certified in compliance as of a date sooner than the date of the revisit is diminished with each revisit. In addition, because we have now included an "evidence" provision and given examples of what might constitute acceptable evidence, we have removed the expectation that revisits would

generally be the only acceptable method for verification when deficiencies involve quality of care issues. However, due to the nature of corrections that are oftentimes necessary to address quality of care deficiencies, it may well be that many of these corrections will not lend themselves to the acceptable evidence provision and may require an onsite revisit.

1. Verifying Facility Compliance

When remedies are imposed against noncompliant facilities, they cannot be lifted until evidence of facility compliance has been verified. The evidence [requirements] necessary to determine compliance is based on the seriousness of the noncompliance as well as how many revisits have already occurred. While we have indicated on the attached chart the circumstances under which revisits occur or remedies must be imposed, it is important to remember that *revisits may be conducted anytime for any level of noncompliance, remedies may be imposed anytime for any level of noncompliance, and revisits are not assured before termination can occur*. The policies for conducting revisits, lifting remedies, or certifying compliance are governed by the following chart. It should also be noted that there has been no change to the policy issued on August 20, 1998, which provides that revisits must continue until compliance is achieved or the facility is terminated, whenever a survey finds noncompliance at F (substandard quality of care), harm or immediate jeopardy. Since there has been some confusion about the maximum number of revisits permitted under this scenario, we wish to make it clear that two revisits are permitted, at the State's discretion, without prior approval from the Regional Office; a third revisit may be approved at the discretion of the regional office.

Noncompliance and Certification Cycles

A certification cycle begins with a recertification or complaint survey and ends when substantial compliance is achieved or the facility is terminated from the Medicare or Medicaid program. The certification cycle cannot exceed 6 months. Once a remedy is imposed, it continues until the facility is in substantial compliance or is terminated from our programs.

When a revisit finds that previously identified deficiencies have been corrected but there is new evidence of noncompliance, the survey cycle continues because facilities are expected to be in substantial compliance at all times. However, after considering the level of the new deficiencies as well as other factors, States may or may not give the facility an additional opportunity to correct the new deficiencies that caused the continued noncompliance. When another opportunity to correct is provided, timing of the imposition of the mandatory denial of payment for new admissions remedy or termination will not be delayed to accommodate correction of the new noncompliance.

Number of Revisits

Two revisits are permitted, at the State's discretion, for each certification cycle. A 3rd revisit may be conducted, at the discretion of the Regional Office, and only after it is approved by the Regional Office. Regional Offices are limited to approving only this one additional revisit.

2. Setting the Mandatory 3- and 6-month Remedy Time Frames

There is variation in the wording used in a number of documents that address the mandatory 3- and 6-month effective dates for denial of payment for new admissions and termination, respectively. As a result, the dates for these statutorily mandated actions have not been set consistently among the regional offices and States. It has been, and continues to be, our intention that these dates be set based on full months rather than on a number of days. With few exceptions, these dates should be set by simply going to the same numerical date in the 3rd or 6th month following the survey dates. For example, if a survey ended on 1/15, the 3-month effective date for denial of payment for new admissions is 4/15, and the 6-month termination date is 7/15.

Exceptions to this rule involve those cases for which a 3-month or 6-month numerical date is not on the calendar. In these cases, move ahead a day or two to the beginning of the next month. For example, if a survey ended on 1/31, the 3-month effective date for denial of payment for new admissions would be 4/31. However, since there is no 31st day in April, the 3-month effective date is 5/1, and the 6-month termination date is 7/31.

Effective Date: This guidance is effective with any survey that begins a certification cycle on or after the date of this memorandum.

Training: These policies should be shared with all survey and certification staff, their managers, legal counsel and the State/Regional office training coordinator. We are making changes to Chapter 7 of the *State Operations Manual* to reflect these policies.

/s/

Steven A. Pelovitz

Revisit #	Substantial Compliance	Old deficiencies corrected but continuing noncompliance at F(no SQC) or below	Old deficiencies corrected but continuing noncompliance at F(SQC), harm or IJ	Noncompliance continues	Any noncompliance
1 st revisit	Compliance is certified as of the latest correction date on the approved PoC, unless it is determined that either correction actually occurred between the latest correction date on the PoC and the date of the 1 st revisit, or correction occurred sooner than the latest correction date on the PoC.	1. A 2 nd revisit is discretionary if acceptable evidence is provided. When evidence is accepted with no 2 nd revisit, compliance is certified as of the date confirmed by the evidence. 2. When a 2 nd revisit is conducted, acceptable evidence is required if the facility wants a date earlier than that of the 2 nd revisit to be considered for the compliance date.	1. A 2 nd revisit is required. 2. Acceptable evidence is required if the facility wants a date earlier than that of the 2 nd revisit to be considered for the compliance date.	1. A 2 nd revisit is required. 2. Acceptable evidence is required if the facility wants a date earlier than that of the 2 nd revisit to be considered as the compliance date. 3. A remedy must be imposed.	
2 nd revisit	Compliance is certified as of the date of the 2 nd revisit or the date confirmed by the acceptable evidence, whichever is sooner.				1. A remedy must be imposed if not already imposed. 2. Either conduct a 3 rd revisit or proceed to termination.

A 3rd REVISIT IS NOT ASSURED AND MUST BE APPROVED BY THE RO

3 rd revisit	Compliance is certified as of the date of the 3 rd revisit.				Proceed to termination.
-------------------------	--	--	--	--	-------------------------

Examples of acceptable evidence may include, but are not limited to:

- An invoice or receipt verifying purchases, repairs, etc.
- Sign-in sheets verifying attendance of staff at in-service training.
- Interviews with more than 1 training participant about training.
- Contact with resident council, e.g., when dignity issues are involved.

Givens:

- *An approved PoC is required whenever there is noncompliance;*
- *Remedies can be imposed anytime for any level of noncompliance;*
- *Revisits can be conducted anytime for any level of noncompliance.*

<i>Revisit #</i>	<i>Substantial Compliance</i>	<i>Old deficiencies corrected but continuing noncompliance at F(no SQC) or below</i>	<i>Old deficiencies corrected but continuing noncompliance at F(SQC), harm or IJ</i>	<i>Noncompliance continues</i>	<i>Any noncompliance</i>
1st revisit	Compliance is certified as of the latest correction date on the approved PoC, unless it is determined that either correction actually occurred between the latest correction date on the PoC and the date of the 1 st revisit, or correction occurred sooner than the latest correction date on the PoC.	<p>1. A 2nd revisit is discretionary if acceptable evidence is provided.</p> <p>When evidence is accepted with no 2nd revisit, compliance is certified as of the date confirmed by the evidence.</p> <p>2. When a 2nd revisit is conducted, acceptable evidence is required if the facility wants a date earlier than that of the 2nd revisit to be considered for the compliance date.</p>	<p>1. A 2nd revisit is required.</p> <p>2. Acceptable evidence is required if the facility wants a date earlier than that of the 2nd revisit to be considered for the compliance date.</p>	<p>1. A 2nd revisit is required.</p> <p>2. Acceptable evidence is required if the facility wants a date earlier than that of the 2nd revisit to be considered as the compliance date.</p> <p>3. A remedy must be imposed.</p>	
2nd revisit	Compliance is certified as of the date of the 2 nd revisit or the date confirmed by the acceptable evidence, whichever is sooner.				<p>1. A remedy must be imposed if not already imposed.</p> <p>2. Either conduct a 3rd revisit or proceed to termination.</p>

A 3rd REVISIT IS NOT ASSURED AND MUST BE APPROVED BY THE RO

3rd revisit	Compliance is certified as of the date of the 3 rd revisit.				Proceed to termination.
-------------------------------	--	--	--	--	-------------------------

Examples of acceptable evidence may include, but are not limited to:

- An invoice or receipt verifying purchases, repairs, etc.
- Sign-in sheets verifying attendance of staff at in-service training.
- Interviews with more than 1 training participant about training.
- Contact with resident council, e.g., when dignity issues are involved.

Givens:

- *An approved PoC is required whenever there is noncompliance;*
- *Remedies can be imposed anytime for any level of noncompliance;*
- *Revisits can be conducted anytime for any level of noncompliance.*