

# MEMORANDUM

## Texas Department of Aging and Disability Services

**TO:** Regulatory Services Division  
Regional Directors and State Office Managers

**FROM:** Linda Lothringer, Unit Manager  
Policy, Rules and Curriculum Development Unit  
State Office MC E-370

**SUBJECT:** Regional Survey and Certification (RS&C) Letter No. 09-02

**DATE:** March 13, 2009

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The referenced Centers for Medicare and Medicaid Services (CMS), Regional Survey and Certification (RS&C) Letter was issued on March 10, 2009. This letter, which was distributed by e-mail on March 12<sup>th</sup>, is being provided to you for information and action purposes and should be shared with all professional staff.

- RS&C Letter No. 09-02 – Guidance for the First, Second and Third SNF-SNF/NF Revisits and Federal Monitoring Survey Revisits

If you have any questions, please contact a nursing facility program specialist in the Policy, Rules and Curriculum Development unit at (512) 438-3161.

Attachment



## Division of Survey and Certification, Region VI

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March 10, 2009

### **REGIONAL SURVEY AND CERTIFICATION LETTER NO. 09-02**

**TO:** All State Survey Agencies (Action/Information)  
All Title XIX Single State Agencies (Information)

**SUBJECT:** Guidance for the First, Second and Third SNF-SNF/NF Revisits and Federal Monitoring Survey Revisits.

#### Background

SOM 7317B states that a revisit is not guaranteed. However, CMS recognizes that termination may adversely affect residents. The Dallas Regional Office (RO) prefers not to terminate a facility without a revisit. SOM 7317B3 limits SNFs and SNF/NFs to two onsite revisits at the State's discretion and a third revisit which must be authorized by the RO. The purpose of the "3-revisit" policy is to conserve survey resources. (State Medicaid Agencies are encouraged to conserve survey resources for NFs).

SOM 7317B3 states that when a complaint survey is conducted at the same time as the revisit, the revisit will count as one of the three permitted revisits. Previously, we asked our States not to perform a revisit with a complaint investigation, if the complaint survey found deficiencies at "D" or above. Our intent was to conserve the first revisit. This letter clarifies our request. We recommend that States follow revisit guidelines as outlined below when a facility is given up to 6 months to show substantial compliance in accordance with Appendix P.

#### First Revisits

SOM 7317B4 states the first revisit should occur any time between the last correction date on the plan of correction and the 60<sup>th</sup> day to allow time for a notice of mandatory (three-month) denial of payment for new admissions (DPNA). This implies that CMS expects the period of time to attain compliance will generally be less than 60 days. However, a revisit cannot be conducted before the facility's latest correction completed date. Based on this, we ask:

- If you must investigate a complaint (2 or 10 day priority) before the 30<sup>th</sup> day of an enforcement action, do not conduct the first revisit with the complaint survey, if possible.
- In the *absence* of a 2 or 10 day complaint which must be investigated, conduct the first revisit before the 60<sup>th</sup> day of the enforcement action, if possible.
- In all cases, conduct the first revisit before the 90<sup>th</sup> day, even if you must conduct a complaint survey and a revisit together.

#### Second Revisits

- If possible, conduct the second revisit before the 120<sup>th</sup> day.

### Third Revisits

- If you do not believe that the facility can achieve and sustain compliance you may recommend no further revisits and termination of the facility as soon as possible.
- If, after two revisits, you believe that the facility can achieve and sustain compliance, you may recommend a third revisit to the RO by the 135<sup>th</sup> day.
- In order to legally terminate a Medicare provider agreement, CMS must notify the public at least 15 days before the date Medicare participation will end.

Our *requested* timeframes should allow the RO to authorize a third revisit to be conducted during the fifth month and ensure that termination will occur with public notice on or before the sixth month of noncompliance. These timeframes also permit timely imposition of other appropriate remedies. For example, if a lack of measurability, thoroughness, and effectiveness in the facility's plans of correction has resulted in failure to attain and sustain compliance, the State may consider demanding more specificity in the facility's PoCs or imposing a directed plan of correction or temporary manager. These remedies are more likely to be useful if they are imposed early in a noncompliance cycle.

### Other Revisit-Related Issues

- **Transfer ALL cases to the RO no later than the 105<sup>th</sup> day.**
- The third revisit must always be onsite. If substantial compliance is determined, the State will certify compliance on the third revisit survey date. Complaints received after the third revisit must be investigated in accordance with SOM Chapter 5. However, a complaint survey cannot be used to certify compliance after the third revisit is conducted and substantial compliance was not certified (SOM 7317B3).
- A standard survey does not count as one of the three revisits. However, if a standard survey does not cite an un-revisited deficiency, S&C Letter 01-23 instructs the survey agency to prepare a CMS 2567B for any un-cited deficiencies.

### Revisits to Federal Monitoring Surveys:

If the State is asked to perform the revisit to a federal monitoring survey, it is best to perform both the State and Federal revisits together unless the federal survey is a separate enforcement action (typically Life Safety Code Comparative Federal Monitoring Surveys). Please notify your Dallas Regional Office Long Term Care Certification and Enforcement Branch (LCEB) contact if you are unable to perform both revisits together.

### RO Monitoring:

The RO will develop and share with our States a method to monitor facilities past 90 days without a revisit and/or 105 days without RO upload.

If you would like more information about this letter, you may call Daniel J. McElroy, R.N. of my staff, at (214) 767-2077 or email at [daniel.mcelroy@cms.hhs.gov](mailto:daniel.mcelroy@cms.hhs.gov).

Sincerely,

David R. Wright  
Associate Regional Administrator  
Division of Survey and Certification