



STATE PLAN UNDER THE TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Pennsylvania

CRITERIA FOR THE APPLICATION OF SPECIFIED REMEDIES FOR  
SKILLED NURSING AND INTERMEDIATE CARE FACILITIES

(When and how each remedy is applied, the amounts of any  
fines, and the severity of the remedies)

OBRA—87 requires the Department to implement six (6) specified remedies  
with respect to providers that are not in compliance with the provider participation requirements established by  
the Act:

- 1) Denial of payment under the State Plan with respect to new admissions.
- 2) Civil Monetary Penalties, assessed and collected with interest, for each day a provider facility is or was out of compliance with specified requirements under the Act.

Funds collected as a result of civil monetary penalties against deficient nursing facilities, shall be deposited into a restricted revenue account from which disbursements shall be applied to the protection of the health or property of residents of nursing facilities that the State or the Secretary finds deficient, including payment for the costs of relocation of residents to other facilities, maintenance of operation of a facility pending correction of deficiencies or closure, and reimbursement of residents for personal funds lost.

(The Act provides for other civil monetary penalties against individuals which are to be administered by federal agencies. [42 U.S.C. §§ 1320a—7a, 1396 (b) (3)(B)(ii)]

- 3) Appointment of Temporary Management to oversee operations in the event of an orderly closure of the facility or while improvements are made in order to bring the facility into compliance with the Act's requirements.
- 4) Authority, in the case of an emergency, to close the facility and/or to Transfer the residents to another facility. [42 U.S.C. § 1396r (h) (2) (A)]
- 5) Denial of payment for new admissions of any provider facility which has not come into compliance with specified requirements of the Act within 3 months after the date on which that facility is found to be out of compliance. [42 U.S.C. § 1396r (h) (2) (C)]

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TN No. 92—25  
Supersedes  
TN No. 90—03

Approval Date NOV 03 1992 Effective Date 04/01/90

HCFA ID: 1080P/0019P

Revision: HCFA—PM—90—2 (BPD)  
JANUARY 1990

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(When and how each remedy is applied, the amounts of any fines,  
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- 6) Denial of payment for new admissions and continuous monitoring until the Department is satisfied that the facility will remain in compliance as to a facility which, on 3 consecutive standard surveys, has been found to have provided substandard quality of care.  
[ 42 U.S.C. § 1396r (h) (2) (D) ]

In addition, the Act permits the States to implement additional remedies, such as directed plans of correction. [ 42 U.S.C. §§ 1396r (h) (1), 1396r (h) (2) (A) ]

THE DEPARTMENT WILL BEGIN TO APPLY AND IMPOSE THE SANCTIONS REQUIRED BY OBRA-87 IMMEDIATELY, ALONG WITH ANY OTHER REMEDIES OTHERWISE AVAILABLE UNDER STATE LAW AND REGULATIONS. APPLICATION OF THESE REMEDIES WILL NOT BE RESTRICTED TO THE SURVEY AND CERTIFICATION PROCESS. THE DEPARTMENT MAY CITE A FACILITY FOR VIOLATIONS OF APPLICABLE OBRA-87 STANDARDS AND MAY REQUIRE THE PROVIDER FACILITY TO SHOW CAUSE WHY ANY OF THESE REMEDIES SHOULD NOT BE IMPOSED AT ANY TIME. THE DEPARTMENT SHALL CONTINUE TO COORDINATE ITS EFFORTS WITH THOSE OF OTHER AGENCIES INVOLVED IN PROTECTING THE HEALTH, SAFETY, AND WELFARE OF PROVIDER FACILITY RESIDENTS.

Termination of Facility Participation in the Program

A provider facility shall be terminated from participation in the Medical Assistance Program in those cases where termination is required by Program regulations or otherwise by law (e.g., when such termination is directed by federal authorities pursuant to 42 U.S.C. § 1320a-7 or when the provider is convicted of a Program-related crime or when the provider's license is suspended or revoked). A provider facility shall be terminated from participation in the Medical Assistance Program as otherwise permitted by Program regulations whenever the provider facility has not shown cause for and agreed to the application of another remedy provided for in this Amendment or otherwise in State law and regulations, including the application of the mandatory remedies required by 42 U.S.C. §§ 1396r (h) (2) (C-D). A provider facility shall be terminated from participation in the Medical Assistance Program in any case in which the Department determines that compliance with Program standards and conditions of participation can most effectively be

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TN No. 90—03 (New)  
Supersedes \_\_\_\_\_ Approval Date FEB 01 1991 Effective Date 04-01-90  
TN No. \_\_\_\_\_

HCFA ID: 1080P/0019P

Revision: HCFA—PM—90—2 (BPD)  
JANUARY 1990

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achieved by terminating the facility's participation, including those cases in which the facility has a history of repeated noncompliance with Program standards or conditions of participation for reasons within the control of the facility or its owners or where the facility or its owners have knowingly violated Program standards or conditions of participation or any Program regulation.

Civil Monetary Penalties

Where the Department determines that a facility is out of compliance with any requirement of 42 U.S.C. §§ 1396r (b—d) and such noncompliance could have been prevented by the provider, the Department may require the facility to make payment at a rate of \$100 per violation per day of noncompliance, plus interest at the legal rate, until paid; however, if the provider unreasonably fails to correct any such deficiency within ten (10) days of notice thereof (including notice from its own records or staff), then the rate shall be increased to \$500 per violation per day of delayed compliance, plus interest at the legal rate, until paid.

Where the Department determines that a provider facility, within sixty (60) days, is again out of compliance with the same requirement of 42 U.S.C. §§ 1396r (b—d) as to which the Department has previously sought a civil monetary penalty and such repeated noncompliance could have been prevented by the provider, the Department may require the facility to make payment at a rate of \$200 per violation per day of noncompliance, plus interest at the legal rate, until paid; however, if the provider unreasonably fails to correct any such deficiency within ten (10) days of notice thereof (including notice from its own records or staff), then the rate shall be increased to \$500 per violation per day of delayed compliance, plus interest at the legal rate, until paid.

With respect to deficiencies involving screening, services or notices required for residents, the Department shall deem each resident that failed to receive the required notice or service or screening to be a separate violation.

The provider shall be held liable for violations caused by the acts and omissions of its officers, agents, and employees; however, the provider shall not automatically be held liable for violations caused by the criminal acts of such persons, but may be liable in cases where the provider is also liable for such acts. Where the Department determines that a provider facility is knowingly out of

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TN No. 90—03 (New)  
Supersedes \_\_\_\_\_ Approval Date FEB 01 1991 Effective Date 04-01-90  
TN No. \_\_\_\_\_

HCFA ID: 1080P/0019P

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compliance with any Program regulation or requirement, it shall refer the matter to the Office of Attorney General for review as to possible prosecution under the Public Welfare Code or other applicable laws, as well as, where appropriate, to relevant licensing agencies.

Temporary Management

The appointment of temporary management will be required to oversee the operation of a provider facility and to assure the health and safety of the facility's residents in the following six (6) cases:

(1) Where the facility, after notice by the Department or by the Department of Health of a violation of a Program standard and the acceptance of a plan of correction submitted by the facility, has failed to bring the facility into compliance in the time specified in the plan of correction (even in a case where the facility has determined in the interim to close);

(2) Where the facility has demonstrated a pattern of episodes of noncompliance such as would convince a reasonable person that any correction of violations would be unlikely to be maintained (even in a case where the facility has determined to close);

(3) Where the facility has failed to submit a plan of correction within the time frame established by the survey agency after notice of violations from the Department or the Department of Health (even in a case where the facility has determined to close);

(4) Where persons responsible for the facility's management are disqualified from participation in the Program;

(5) Where persons responsible for the facility's management are otherwise unable to perform and the facility has certified to the Department that it requires a temporary manager pending the hiring of new personnel; or,

(6) Where the facility has been denied renewal of its license and that determination has been timely appealed to the licensing agency (the grant of a provisional license shall not be construed as a denial of renewal of a license)

Revision: HCFA—PM—90—2 (BPD)  
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Closure of Facilities and Transfer of Residents and Intervention to Cure Immediate Threats to Resident Health and Safety

In the event of an emergency, a provider facility shall be closed and its residents transferred to other facilities, as provided by Department regulations and as determined by the Department of Health in cooperation with the facility. All facilities are required by law to notify the Department of Health in the event of any intended closure and that Department is authorized to require closures in order to protect residents' health and safety (28 Pa. Code § 201.23). Provider facilities must also notify the Department of Public Welfare of any impending strike or emergency requiring resident transfers (55 Pa. Code § 1181.58). The Department of Public Welfare shall coordinate with the Department of Health in cases where there is a finding that there are deficiencies which immediately jeopardize the health and safety of residents to take immediate action to remove the jeopardy either by correcting the deficiencies, by transferring the residents, or by closing the facility temporarily or permanently. A provider facility's participation in the Medical Assistance Program is not automatically terminated because of closures or transfers of residents in the case of an emergency.

Denial of Program Payment for New Admissions

The Department will require a provider facility to waive Program payments with respect to new admissions (either in general or limited to those requiring certain kinds or levels of care):

(1) Where the provider facility has been out of compliance with any requirement of 42 U.S.C. §§ 1396r (b—d) for a period of 3 months after the date the facility is found to be out of compliance with any such requirement and continues to be out of compliance;

(2) Where the provider facility has been found on 3 consecutive standard surveys conducted under 42 U.S.C. § 1396r (g) (2) to have provided substandard quality of care and the Department has not made a subsequent determination that the facility is or will remain in compliance with the requirements of 42 U.S.C. §§ 1396r (b—d)

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TN No. 90—03 (New)  
Supersedes \_\_\_\_\_ Approval Date FEB 01 1991 Effective Date 04-01-90  
TN No. \_\_\_\_\_

HCFA ID: 1080P/0019P

Revision: HCFA—PM—90—2 (BPD)  
JANUARY 1990

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State/Territory: Pennsylvania

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(3) Where the Department has determined that the facility is not currently in compliance with requirements of 42 U.S.C. §§ 1396r (b—d) and is not able to provide services in compliance with the requirements of 42 U.S.C. §§ 1396r (b—d) for such additional residents;

(4) Where the Department determines that the facility is not able to provide services in compliance with the requirements of 42 U.S.C. §§ 1396r (b—d) for such additional residents; or ,

(5) Where the Department has not approved the admission of such additional residents through the pre-admission screening processes established by law.

Monitoring Facilities With Repeated Substandard Care

Where a provider facility has been determined on 3 consecutive standard surveys conducted under 42 U.S.C. § 1396r (g) (2) to have provided substandard quality of care , the Department shall require the facility to permit the Department to monitor the facility , consistent with the requirements of 42 U.S.C. §§ 1396r (g) (4) (B) , 1396r (h) (2) (D) (ii) , until the facility has demonstrated to the satisfaction of the Department that it is in compliance with the requirements of 42 U.S.C. §§ 1396r (b—d) and that it will remain in compliance with such requirements . Nothing in this paragraph shall be construed to limit the Department's rights to monitor provider facility operations as required by 42 U.S.C. § 1396r (g) (4) (B) or as otherwise permitted by law or otherwise.

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TN No. 90—03 (New)  
Supersedes \_\_\_\_\_ Approval Date FEB 01 1991 Effective Date 04-01-90  
TN No. \_\_\_\_\_

HCFA ID: 1080P/0019P

Revision: HCFA—PM—90—2 (BPD)  
JANUARY 1990

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STATE PLAN UNDER THE TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory:  Pennsylvania

ADDITIONAL REMEDIES AVAILABLE TO THE STATE  
FOR SKILLED NURSING AND INTERMEDIATE  
CARE FACILITIES

Current State Law

Closure of Facilities and Removal of Jeopardy to Resident Health and Safety.

Under current State law, the Department of Health is authorized to close nursing facilities (other than ICFs/MR) in the event of emergencies and, where necessary, to require the transfer of residents to other nursing facilities and take any other steps required to remove jeopardy to resident health and safety (35 P.S. {{ 448.814 - 448.819}). The Department of Public Welfare provides limited payment in such situations (55 Pa. Code { 1181.58}). Both Departments are required by law to coordinate their activities in such a situation (71 P.S. { 181}), and such coordination can include delegation by the Department of Health to Department of Public Welfare staff to perform duties ordinarily assigned to staff of the Department of Health. The Department of Public Welfare has determined that these existing provisions of State law are sufficient to comply with the requirement that the State have the authority, in the case of an emergency, to close a provider facility and/or to transfer residents to other facilities, as required by 42 U.S.C. { 1396r(h)(2)(A)(iv)}. Therefore, no new statutes or regulations are required to meet this provision of the Act.

Denial of Payments for New Admissions.

Under current Department regulations, the Department may terminate or suspend a provider facility's participation in the Medical Assistance Program (55 Pa. Code {{ 1101.73, 1101.77}). This includes termination or suspension of payments pending appeals (55 Pa. { { 1101.73, 1101.77(c)}). Such action may be taken if the Department determines that the provider facility has failed to comply with any requirements of 55 Pa. Code, Chapters 1101 and 1181, including the requirements that such facilities conform with the requirements established by OBRA-87 (55 Pa. Code {{ 1101.77(a)(1), 1181.41(3)}). The Department may also preclude admissions of certain applicants whom the Department determines cannot be adequately served by the facility because of the facility's noncompliance with certain Program standards (55 Pa. Code {{ 1181.82, 1181.548(3)}). In addition, the Public Welfare Code authorizes the Department to make Medical Assistance payments to nursing facilities subject to their meeting the requirements established by Title XIX of the Social Security Act for participation in the Medical Assistance Program (62 P.S. { 443.1}). Under this existing authority, the Department has precluded payments for new admissions pending correction of compliance deficiencies as an intermediate sanction. In addition, the Department of Health is authorized to preclude a facility from

TN No. 90—03 (New)  
Supersedes \_\_\_\_\_  
TN No. \_\_\_\_\_

Approval Date \_\_\_\_\_ Effective Date 04-01-90

HCFA ID: 1080P/0019P



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ADDITIONAL REMEDIES AVAILABLE TO THE STATE  
FOR SKILLED NURSING AND INTERMEDIATE  
CARE FACILITIES

admitting additional patients as part of a plan of correction of licensing violations. The Department has determined that this existing authority is sufficient to comply with the requirement that the State have the authority to deny payments for new admissions at provider facilities determined to be out of compliance with OBRA-87 standards, as required by 42 U.S.C. {{ 1396r(h)(2)(A)(i), 1396r(h)(2)(C), 1396r(h)(2)(D)}. Therefore, no new statutes or regulations are required to meet such provisions of the Act.

Monitoring Provider Operations to Assure Compliance. Under existing Department regulations, the Department has the authority to monitor provider facility operations to review compliance with Program requirements and to preclude the participation of provider facilities which are not in compliance (55 Pa. Code {{ 1101.71, 1101.77, 1181.83}). The Department may also preclude the re-enrollment of a terminated provider until such time as it is satisfied that there will be no repetition of the violations which led to the provider's termination (55 Pa. Code { 1101.82). In addition, the Department of Health is authorized to monitor facility compliance with the requirements of applicable State and federal regulations (35 P.S. { 448.813). The Department has determined that these existing provisions of State law are sufficient to comply with the requirement that the State have the authority to monitor a provider facility in order to determine that the facility will remain in compliance with OBRA-87, as required by 42 U.S.C. { 1396r(h)(2)(D)(ii)}. Therefore, no new statutes or regulations are required to meet this provision of the Act.

Civil Monetary Penalties. Under existing Department regulations, the Department has the authority to terminate or suspend provider facilities' participation in the Medical Assistance Program, including the suspension of payments pending appeals. Under this existing authority, the Department has imposed administrative monetary penalties on providers as an alternative to termination. The Department has also utilized statistical samples, pursuant to 55 Pa. Code { 1101.83(a), to determine restitution for services rendered contrary to Program requirements. The Department of Health is also authorized to impose civil monetary penalties in cases where provider facilities fail to promptly correct serious deficiencies which are also licensure requirements (35 P.S. { 448.817(b)). The Department has determined that these existing provisions of State law are sufficient to comply with the requirement that the State have the authority to impose civil monetary penalties on provider facilities found to be out of compliance with Program requirements, as required by 42 U.S.C. { 1396r(h)(2)(A)(ii)}. Therefore, no new statutes or regulations are required to meet this provision of the Act.

TN No. 90-03 (New)  
Supersedes \_\_\_\_\_ Approval Date FEB 01 1991 Effective Date 04-01-90  
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ADDITIONAL REMEDIES AVAILABLE TO THE STATE  
FOR SKILLED NURSING AND INTERMEDIATE  
CARE FACILITIES

Appointment of Temporary Management and Directed Plans of Correction. Under existing State law, the Department of Health may petition the courts for the appointment of a temporary manager or master to oversee facility operations for a specified period of time or until violations of licensing standards or patterns of non-compliance are corrected and may also direct specific plans of correction for the facility ( 35 P.S. { 448.814). The Department of Public Welfare has the authority to terminate or suspend provider facilities' participation in the Medical Assistance Program, including the suspension of payments pending appeals. Under this existing authority, the Department can, as a condition for the continuation of a provider agreement, require providers to permit the imposition of temporary management to oversee the operation of the facility and to assure the health and safety of the facility's residents and can direct specific plans of correction. The Department can also petition the courts for the appointment of a receiver in appropriate cases, Tate v. P.T.C., 410 Pa. 490, 190 A.2d 316 (1963) (Receivers may be appointed to manage solvent as well as insolvent entities in appropriate cases); or, for injunctive relief to require the facility to conform with OBRA-87 requirements, Rupel v. Bluestein, 280 Pa. Superior Ct. 65, 421 A.2d 406 (1980) (Courts of equity may prevent or restrain the commission of acts contrary to law and prejudicial to the rights of individuals). The Department has determined that these existing provisions of State law are sufficient to comply with the requirement that the State have the authority to appoint temporary management to oversee facility operations and to assure the health and safety of residents in appropriate cases where such temporary management is needed during the closure of a facility or in order to assure necessary improvements to bring the facility into compliance with OBRA-87 standards, as required by 42 U.S.C. { 1396r(h)(2)(A)(iii). Therefore, no new statutes or regulations are required to meet this provision of the Act.

Other Remedies. Any person or entity knowingly violating any of the Department's rules and regulations with respect to the Medical Assistance Program can be prosecuted under 62 P.S. { 483; and, if convicted, they shall be guilty of a misdemeanor and shall be sentenced to pay a fine not exceeding \$100, or to undergo imprisonment not exceeding 6 months, or both. If a provider or the owner, agent, or employee of a provider is convicted of such a crime, the Department can preclude the participation of the provider and any other convicted persons (s) in the Medical Assistance Program for a period of 5 years (55 Pa. Code { 1101.77 (b) (3)).

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TN No. 90-03 (New)  
Supersedes \_\_\_\_\_ Approval Date FEB 01 1991 Effective Date 04-01-90  
TN No. \_\_\_\_\_

HCFA ID: 1080P/0019P

Revision: HCFA—PM—95—4 (HSQB)  
JUNE 1995

ATTACHMENT 4.35—B

STATE PLAN UNDER THE TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Pennsylvania

ELIGIBILITY CONDITIONS AND REQUIREMENTS

Enforcement of Compliance for Nursing Facilities

Termination of Provider Agreement: Describe the criteria ( as required at §1919 (h) (2) (A) ) for applying the remedy.

Specified Remedy

( Will use the criteria and notice requirements specified in the regulation . )

TN No. 95—16

Supersedes

TN No. 90—03

Approval Date: SEP 14 1995

Effective Date: 7-1-95

Revision: HCFA—PM—95—4 (HSQB)  
JUNE 1995

ATTACHMENT 4.35—C

STATE PLAN UNDER THE TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Pennsylvania

ELIGIBILITY CONDITIONS AND REQUIREMENTS

Enforcement of Compliance for Nursing Facilities

Temporary Management: Describe the criteria (as required at §1919(h)(2)(A)) for applying the remedy.

Specified Remedy

( Will use the criteria and  
notice requirements specified  
in the regulation . )

Alternative Remedy

( Describe the criteria and  
demonstrate that the alternative  
remedy is as effective in deterring  
non-compliance . Notice requirements  
are as specified in the regulations . )

TN No. 95—16

Supersedes

TN No. 90—03

Approval Date: SEP 14 1995

Effective Date: 7-1-95

Revision: HCFA—PM—95—4 (HSQB)  
JUNE 1995

ATTACHMENT 4.35—D

STATE PLAN UNDER THE TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Pennsylvania

ELIGIBILITY CONDITIONS AND REQUIREMENTS

Enforcement of Compliance for Nursing Facilities

Denial of Payment for New Admissions: Describe the criteria ( as required at §1919 ( h ) ( 2 ) ( A ) ) for applying the remedy .

Specified Remedy

( Will use the criteria and notice requirements specified in the regulation . )

Alternative Remedy

( Describe the criteria and demonstrate that the alternative remedy is as effective in deterring non-compliance . Notice requirements are as specified in the regulations . )

TN No. 95—16

Supersedes

TN No. 90—03

Approval Date: SEP 14 1995

Effective Date: 7-1-95

Revision: HCFA—PM—95—4 (HSQB)  
JUNE 1995

ATTACHMENT 4.35—E

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State/Territory: Pennsylvania

ELIGIBILITY CONDITIONS AND REQUIREMENTS

Enforcement of Compliance for Nursing Facilities

Civil Money Penalty: Describe the criteria (as required at §1919(h)(2)(A)) for applying the remedy.

Specified Remedy

( Will use the criteria and notice requirements specified in the regulation . )

Alternative Remedy

( Describe the criteria and demonstrate that the alternative remedy is as effective in deterring non-compliance . Notice requirements are as specified in the regulations . )

TN No. 95—16

Supersedes

TN No. 90—03

Approval Date: SEP 14 1995

Effective Date: 7-1-95

Revision: HCFA—PM—95—4 (HSQB)  
JUNE 1995

ATTACHMENT 4.35—F

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ELIGIBILITY CONDITIONS AND REQUIREMENTS

Enforcement of Compliance for Nursing Facilities

State Monitoring : Describe the criteria ( as required at §1919 ( h ) ( 2 ) ( A ) ) for applying the remedy .

Specified Remedy

( Will use the criteria and  
notice requirements specified  
in the regulation . )

Alternative Remedy

( Describe the criteria and  
demonstrate that the alternative  
remedy is as effective in deterring  
non-compliance . Notice requirements  
are as specified in the regulations . )

TN No. 95—16

Supersedes

TN No. 90—03

Approval Date: SEP 14 1995

Effective Date: 7-1-95

Revision: HCFA—PM—95—4 (HSQB)  
JUNE 1995

ATTACHMENT 4.35—G

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State/Territory: Pennsylvania

ELIGIBILITY CONDITIONS AND REQUIREMENTS

Enforcement of Compliance for Nursing Facilities

Transfer of residents ; Transfer of residents with closure of facility : Describe the criteria ( as required at §1919 ( h ) ( 2 ) ( A ) ) for applying the remedy .

Specified Remedy

( Will use the criteria and notice requirements specified in the regulation . )

Alternative Remedy

( Describe the criteria and demonstrate that the alternative remedy is as effective in deterring non-compliance . Notice requirements are as specified in the regulations . )

TN No. 95—16

Supersedes

TN No. 90—03

Approval Date: SEP 14 1995

Effective Date: 7-1-95



Revision: HCFA—PM—95—4 (HSQB)  
JUNE 1995

ATTACHMENT 4.35—H

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ELIGIBILITY CONDITIONS AND REQUIREMENTS

Enforcement of Compliance for Nursing Facilities

Additional Remedies: Describe the criteria (as required at §1919(h)(2)(A)) for applying the additional remedy. Include the enforcement category in which the remedy will be imposed (i.e., category 1, category 2, or category 3 as described at 42 CFR 488.408).

The State will apply directed inservice training as contained in 42 CFR 488.406 and 42 CFR 488.425. The enforcement category in which this remedy will be imposed is category 1.

TN No. 95—16

Supersedes

TN No. 90—03

Approval Date: SEP 14 1995

Effective Date: 7-1-95

STATE : COMMONWEALTH OF PENNSYLVANIA

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ELIGIBILITY CONDITIONS AND REQUIREMENTS

Enforcement of Compliance for Intermediate Care Facilities for the Mentally Retarded

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Seriousness of Deficiencies

The State will use the factors described at 42 CFR § 488.404 (b) to determine the seriousness of deficiencies.

Remedies

*Termination of Provider Agreement:* The State will use the criteria and notice requirements specified at § 1919 (h) (2) (A) .

*Temporary Management:* The State will use the criteria and notice requirements specified at § 1919 (h) (2) (A) .

*Denial of Payment for New Admissions:* The State will use the criteria and notice requirements specified at § 1919 (h) (2) (A) .

*Civil Money Penalty:* The State will use the criteria and notice requirements specified at § 1919 (h) (2) (A) .

*State Monitoring:* The State will use the criteria and notice requirements specified at § 1919 (h) (2) (A) .

*Transfer of residents ; Transfer of residents with closure of facility:* The State will use the criteria and notice requirements specified at § 1919 (h) (2) (A) .

Additional Remedies

The State will use the criteria at § 1919 (h) (2) (A) for applying the additional remedies .

The State will apply a directed plan of correction as contained in 42 CFR 488.406 and 42 CFR 488.424 . The enforcement category in which this remedy will be imposed is category 1 .

The State will apply directed in-service training as contained in 42 CFR 488.406 and 42 CFR 488.425 . The enforcement category in which this remedy will be imposed is category 1 .

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TN No. 02-005

Supersedes

TN No. NEW

Approval Date MAY 1 0 2002

Effective Date 01-01-02