

3701-63-02

Plan of correction; informal review process for deficiency citations.

(A) This rule prescribes the procedure under which a nursing facility submits a plan of correction for findings and deficiencies cited as the result of a survey by the department of health. The rule also prescribes the procedure for a facility to obtain informal review of deficiencies that were included on a statement of deficiencies prepared ~~under section 5111.42 of the Revised Code~~ by the department under 42 C.F.R. Part 488. As used in this rule:

- (1) "Nursing facility" means a facility, or a distinct part of a facility, that is certified as a nursing facility by the director of health in accordance with Title XIX of the Social Security Act, 49 Stat. 620, 42 U.S.C. 301, as amended (1981), and is not an intermediate care facility for the mentally retarded. "Nursing facility" includes a facility, or distinct part of a facility, that is certified as a nursing facility by the director of health in accordance with Title XIX of the Social Security Act, and is certified as a skilled nursing facility by the director in accordance with Title XVIII of the Social Security Act.
- (2) "Deficiency" means a finding cited by the department ~~of health~~ during a survey conducted under 42 C.F.R. Part 488, on the basis of one or more actions, practices, situations, or incidents occurring at a nursing facility, ~~that constitutes a severity level three finding, severity level four finding, scope level three finding, or scope level four finding, as defined in section 5111.35 of the Revised Code. Whenever the finding is a repeat finding, "deficiency" also includes any finding that is a severity level two and scope level one finding, a severity level two and scope level two finding, or a severity level one and scope level two finding, as defined in section 5111.35 of the Revised Code.~~
- (3) "Survey" means a survey of a nursing facility conducted under section 5111.39 of the Revised Code and under 42 C.F.R. Part 488.
- (4) "Follow-up survey" means a survey conducted by the department ~~of health~~ to determine whether a nursing facility has substantially corrected deficiencies cited in a previous survey.
- (5) "Statement of deficiencies" means the detailed statement ~~required by division (A) of section 5111.42 of the Revised Code~~ prepared by the department under 42 C.F.R. Part 488 ~~that setting sets~~ sets forth all findings and deficiencies cited on the basis of a survey.
- (6) "Department" means the department of health.

- (B) When delivering a statement of deficiencies to a nursing facility ~~under section 5111.42 of the Revised Code~~, the department shall do so in such a manner that the statement is received by the facility no later than one business day after it is sent.
- (C) Whenever a nursing facility receives a statement of deficiencies ~~under section 5111.42 of the Revised Code~~, the facility shall submit to the department for its approval, no later than ten days after receipt of the statement, a plan of correction for each finding or deficiency cited in the statement. The plan shall describe the actions the facility will take to correct each finding or deficiency and specify the date by which each finding or deficiency will be corrected. In the case of a finding or deficiency ~~cited pursuant to division (E) of section 5111.41 of the Revised Code~~ (a finding or deficiency that was substantially corrected before the survey), the plan shall describe the actions the facility took to correct the finding or deficiency and the date on which it was corrected.
- (D) ~~The facility shall submit the plan of correction to the district office of the department that is designated by the department.~~
- (1) ~~The facility shall submit the plan to the district office no later than ten days after the facility receives its CMS form 2567.~~
- (2) ~~In the case of a follow-up survey, the department may specify a shorter time within which the facility shall submit the plan. The department shall not specify a shorter time for submitting a plan of correction for a deficiency initially cited on the follow-up survey.~~
- ~~(E)~~(D) The department ~~also~~ shall notify the facility of the right to request informal review of any deficiency cited on the statement of deficiencies. A facility shall not be afforded an opportunity for an independent informal dispute resolution under 42 C.F.R. 488.431 for the same deficiency unless the first informal review conducted under paragraph (E) of this rule was completed prior to the imposition of a civil money penalty. In the case of a follow-up survey, the facility may request informal review only of deficiencies that were cited on the follow-up survey but not on the original survey. The facility may not request informal review of deficiencies cited on the original survey that were cited as not corrected on the follow-up survey.
- (1) The department shall notify the facility of the right to request informal review at the same time that the department provides the facility with the statement of deficiencies ~~and the notice required by division (B) of section 5111.42 of the Revised Code.~~
- (2) The facility shall request informal review, in writing a manner prescribed by the director, within the time for submitting the plan of correction, as prescribed

by paragraph ~~(D)~~ (C) of this rule. The request for informal review shall include all of the following items:

- (a) Identification of the specific deficiencies for which the facility is requesting review;
 - (b) A written statement explaining why the facility believes that the deficiency should not have been cited or a different severity or scope level for deficiencies constituting immediate jeopardy or substandard quality of care, as defined in section 5111.35 of the Revised Code under 42 C.F.R. Part 488, should have been assigned. The statement may be accompanied by any other documentation that the facility chooses to submit; and
 - (c) The name of an individual at the facility whom the department may contact concerning the request, his or her telephone number, and the times between 7:45 a.m. and 4:30 p.m. when the individual can be reached each day.
- ~~(3) The facility shall mail or hand deliver the request for informal review to both the designated department district office and to the bureau of regulatory compliance at the department's central office.~~
- ~~(F)~~(E) If informal review is requested in a timely manner, the review shall be conducted in accordance with the following procedures:
- (1) The first ~~level of~~ informal review shall be conducted by an ~~individual or individuals employee in the designated district office of the department who did not participate in and were was not directly involved in performing the survey. Within five ten working days after the district office department receives the request, an individual from that office the department shall telephone the facility's designated contact or, if the contact is unavailable, the administrator or other person in charge of the facility. In the telephone conversation, the individual from the district office department shall summarize the results of the review. After hearing the summary of the results, the individual representing the facility shall advise the district office representative whether the facility is satisfied with the results or desires further informal review in accordance with paragraph (G) of this rule.~~
 - (2) If the facility is satisfied with the results of the first informal review, the informal review process shall conclude ~~with the district office review~~. If the informal review results in a determination that one or more deficiencies should not have been cited or should have been cited under a different

requirement or that a different scope or severity level should have been assigned, the ~~district office~~ department shall issue a revised page or pages of the statement of deficiencies reflecting that determination.

(3) ~~If the facility is not satisfied with the results of the review at the district office and desires further informal review, the district office shall inform the department's central office of the request for further informal review~~ A facility that is not satisfied with the results of a first review may request, in a manner prescribed by the director, a second informal review of deficiencies that cause the facility to be in noncompliance as defined in 42 C.F.R. 488.301. The facility shall request this second review and pay the fee prescribed under paragraph (F)(1) of this rule within ten days of being informed of the results of the first review.

(a) If the facility requests a second informal review under this paragraph, the second review shall be conducted by either of the following as selected by the facility:

(i) A hearing officer employed by the department; or

(ii) A hearing officer included on a list the department shall provide the facility.

(b) Upon receipt of the fee required under paragraph (F)(1) of this rule, the department shall assign a hearing officer to the second review. The hearing officer shall notify the department of the results of the second informal review no later than thirty days after the hearing officer has been assigned the review.

(c) After review of the hearing officer's report, the department shall notify the facility's designated contact person by telephone of the department's final determination.

(d) Upon receipt of the fee required under paragraph (F)(2) of this rule, the department shall update all records relating to the survey to reflect a final determination that:

(i) Any deficiency should not have been cited;

(ii) Any deficiency should have been cited under a different requirement; or

(iii) A different severity or scope should have been assigned for any deficiency constituting immediate jeopardy or substandard quality of care.

~~(G)~~ If a facility requests further informal review under paragraph (F)(1) of this rule, an individual or individuals in the department's bureau of regulatory compliance who did not participate in and were not involved in any way with performing the survey shall review the information that was submitted by the facility under paragraph (E)(1) of this rule. Within five working days after receiving the notification from the district office under paragraph (F)(3) of this rule, an individual in the bureau of regulatory compliance shall notify the facility's designated contact by telephone of the results of the informal review. If the informal review results in a determination that one or more deficiencies should not have been cited or should have been cited under a different requirement or that a different scope or severity level should have been assigned, the district office shall issue a new page or pages of the statement of deficiencies reflecting that determination.

~~(H)~~(F) The bureau of regulatory compliance review prescribed by paragraph (G) of this rule shall be the final stage of informal review.A facility that requests a second informal review, under paragraph (E) of this rule, shall pay the following fee in a manner prescribed by the director and this paragraph:

- (1) A non-refundable fee of one hundred and fifty dollars which shall be paid in accordance with paragraph (E)(3) of this rule; and
- (2) A fee of seventy-five dollars per hour for each hour it takes the hearing officer to complete the review which shall be paid within thirty days after the facility receives the department's invoice.

~~(I)~~(G) The department's failure to meet any of the time frames specified by this rule shall not invalidate any finding or deficiency.

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CERTIFIED ELECTRONICALLY

Certification

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Date

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