

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 by the department under 42 C.F.R. Part 488 (2011). 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 individuals with intellectual disabilities. "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 during a survey conducted under 42 C.F.R. Part 488 (2011), on the basis of one or more actions, practices, situations, or incidents occurring at a nursing facility.
  - (3) "Survey" means a survey of a nursing facility conducted under section 5165.64 of the Revised Code and under 42 C.F.R. Part 488 (2011).
  - (4) "Follow-up survey" means a survey conducted by the department to determine whether a nursing facility has substantially corrected deficiencies cited in a previous survey.
  - (5) "Statement of deficiencies" means the detailed statement prepared by the department under 42 C.F.R. Part 488 (2011) that 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, the department ~~shall~~will 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, the facility ~~shall~~will 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~~will 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 that was substantially corrected before the survey, the plan ~~shall~~will describe the actions the facility took to correct the finding or deficiency and the date on which it was corrected.

- (D) The department ~~shall~~will notify the facility of the right to request informal review of any deficiency cited on the statement of deficiencies. A facility ~~shall~~will not be afforded an opportunity for an independent informal dispute resolution under 42 C.F.R. 488.331 (2011) 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~~is not allowed to 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~~will 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.
- (2) The facility ~~shall~~will request informal review, in a manner prescribed by the director, within the time for submitting the plan of correction, as prescribed by paragraph (C) of this rule. The request for informal review ~~shall~~will 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 under 42 C.F.R. Part 488 (2011), 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.
- (E) If informal review is requested in a timely manner, the review ~~shall~~will be conducted in accordance with the following procedures:

- (1) The first informal review ~~shall~~will be conducted by an employee of the department who did not participate in and was not directly involved in performing the survey. Within ten working days after the department receives the request, the department ~~shall~~will 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 department ~~shall~~will summarize the results of the review.
- (2) If the facility is satisfied with the results of the first informal review, the informal review process ~~shall~~will conclude. 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 department ~~shall~~will issue a revised page or pages of the statement of deficiencies reflecting that determination.
- (3) 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 (2003). The facility ~~shall~~will 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~~will 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~~will provide the facility.
  - (b) Upon receipt of the fee required under paragraph (F)(1) of this rule, the department ~~shall~~will assign a hearing officer to the second review. The hearing officer ~~shall~~will 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~~will 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~~will 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.
- (F) A facility that requests a second informal review, under paragraph (E) of this rule, ~~shall~~will 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~~will 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~~will be paid within thirty days after the facility receives the department's invoice.
- (G) The department's failure to meet any of the time frames specified by this rule ~~shall~~will not invalidate any finding or deficiency.

Effective: 6/19/2023

Five Year Review (FYR) Dates: 3/29/2023 and 06/09/2028

CERTIFIED ELECTRONICALLY

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Certification

06/09/2023

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Date

Promulgated Under: 119.03

Statutory Authority: 3721.022

Rule Amplifies: 3721.022

Prior Effective Dates: 12/01/1991, 03/25/2010, 10/28/2011 (Emer.),  
01/20/2012, 11/24/2016