



Center for Clinical Standards and Quality/Survey & Certification Group

Ref: S&C: 17-35-ALL

DATE: June 16, 2017

TO: State Survey Agency Directors

FROM: Director
Survey and Certification Group

SUBJECT: Reasonable Assurance Will Apply to Providers and Suppliers Who Voluntarily Terminate and Seek New Certification If a Termination Action by the State Agency Had Been Initiated

Memorandum Summary

- **Reasonable assurance will be applied to providers and suppliers once a termination action has been initiated by a State Survey Agency and the entity was allowed to terminate Medicare participation voluntarily before the termination action was made effective.** See Section 2016 and 2017 of the State Operations Manual (SOM).

Background

As explained in Section 2016 of the SOM, a Medicare provider who was terminated by the Centers for Medicare & Medicaid Services (CMS) under 42 CFR §489.53 may reapply for certification at any time, including via deemed status accreditation under a CMS-approved Medicare accreditation program. However, such a provider is first required to operate for a certain period of time without recurrence of the deficiencies which were the basis for the termination. This “reasonable assurance” requirement is set forth at 42 CFR §489.57.

Under 42 CFR §489.57, a new agreement with a CMS-terminated provider will not be accepted unless CMS finds: (a) That the reason for termination of the previous agreement has been removed and there is reasonable assurance that it will not recur; and (b) That the provider has fulfilled, or has made satisfactory arrangements to fulfill, all of the statutory and regulatory responsibilities of its previous agreement.

The Medicare “reasonable assurance” period and how long it lasts is managed by the applicable CMS Regional Office (RO) after an evaluation of the provider or supplier’s previous compliance history. (Reasonable assurance periods are usually 30-120 days, but depending on the circumstances, can be for a shorter or longer period of time.) Participation can only resume following that period if the provider or supplier has maintained compliance with program requirements.

The reasonable assurance decision is an administrative action (not an initial determination), and it is not subject to the appeals process at 42 CFR Part §498.3(d)(5).

The reasonable assurance concept applies to:

- Medicare providers, including a Skilled Nursing Facility (SNF) in a dually-participating facility, terminated pursuant to §1866(b)(2) of the Act;
- Medicare suppliers such as Ambulatory Surgical Centers (ASCs) (42 CFR 416.35(e)), Federally Qualified Health Centers (FQHCs) (42 CFR 405.2440), Rural Health Clinics (RHCs) (42 CFR 405.2404(e)), and End-Stage Renal Disease (ESRD) facilities (42 CFR 405.2180(c)).
- Medicaid Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID) providers terminated pursuant to §1910(b)(1) of the Act.

There is no statutory or regulatory requirement that States must establish a reasonable assurance period for Medicaid-only facilities or a NF in a dually-participating facility that has been terminated by the SMA under §§1902(i) and 1919(h)(1) of the Act. However, the RO may consider using the initial NF compliance survey as the first step in the regional assurance process for a facility requesting restoration of SNF/NF participation.

Reasonable Assurance after Voluntary Termination

Reasonable assurance may also be required for reapplying entities that voluntarily terminated.

As noted in the SOM at section 2017, if a termination action has been initiated but the entity is allowed to terminate Medicare participation voluntarily before the action is made effective, the reasonable assurance provision will be applied. If there is not a State Survey Agency (SA) certification of noncompliance at the time a provider/supplier notifies the RO of voluntary termination, the reasonable assurance provision does not apply.

Section 2734B of the SOM addresses certification of noncompliance.

Section 2734B Certifying Noncompliance

The SA certifies noncompliance based on a provider or supplier's:

- *Failure to meet the Conditions of Participation, Conditions for Coverage, or substantially meet the Requirements for Skilled Nursing Facilities and Nursing Facilities; or*
- *Inability or refusal to submit an acceptable Plan of Correction for any other unmet requirement.*

Following a certification of noncompliance, the State Agency follows the procedures for denial, termination, or denial of payment in §§3000-3040 or Chapter VII for Skilled Nursing Facilities/Nursing Facilities.

Per the SOM at section 2734B, once a State Agency has certified the noncompliance of a provider or supplier, the SA would begin the procedures for termination procedures.

At this point, per the SOM at section 2017, such a provider or supplier would be subject to reasonable assurance should it wish to reapply for certification and seek a new Medicare agreement.

Contact: For questions or concerns regarding this policy memorandum, please contact your appropriate Regional Office.

Effective Date: Immediately. This policy should be communicated with all survey and certification staff, their managers and the State/Regional Office training coordinators within 30 days of this memorandum.

/s/
David R. Wright

cc: Survey and Certification Regional Office Management