

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

4.35-A Criteria For The Application Of Specified Remedies For Nursing Facilities

4.35-B Alternative Remedies To Specified Remedies For Nursing Facilities

I. Remedies where deficiencies place the health and safety of nursing home residents in immediate jeopardy. (section 1919(h)(1)(A)).

If the Ohio Department of Health (ODH) finds a deficiency or cluster of deficiencies that creates immediate jeopardy, it must notify the Ohio Department of Human Services (ODHS). In accordance with the requirements of sub-sections 1919(h)(1)(A) and (h)(2)(A)(iii) of the Social Security Act, section 5111.51(A)(1) of Am. Sub. H.B. 822 requires ODHS or the contracting agency to impose either temporary management or termination of the facility's Medicaid participation in any of the following ways: appointment of temporary management, with or without the provider's approval, to oversee the operation of the facility; application to the courts for appointment of temporary management to oversee the orderly closure of the facility and the transfer of residents; or termination of the facility's Medicaid participation. In accordance with the permissive authority granted under sub-section 1919(h)(1)(A) of the Social Security Act, section 5111.51(A)(2) of Am. Sub. H.B. 822 permits ODHS or the contracting agency to impose one or more of the other remedies listed in section 1919(h)(2)(A). Specifically, section 5111.51(A)(2)(a) permits issuance of an order denying Medicaid payments for eligible residents admitted after the order's effective date. Section 5111.51(A)(2)(b) permits imposing the remedies available under sections 5111.46 to 5111.48. Those remedies include issuance of orders denying Medicaid payments for all Medicaid eligible residents or for residents within specific diagnostic groups after the effective date of the order, imposition of fines, and appointment of temporary management. Selection of these remedies is based on the severity and scope of the deficiency as delineated in sections 5111.46 to 5111.48, as determined by ODH, and on factors identified in section 5111.49. The amounts of fines are determined under standards specified in section 5111.56.

TN No. 90-52 APPROVAL DATE 1-21-92
SUPERSEDES
TN No. NEW EFFECTIVE DATE 10-1-90

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(Continued)

II. Remedies where deficiencies do not place the health and safety of nursing home residents in immediate jeopardy. (section 1919(h)(1)(B)).

The presence of deficiencies which do not jeopardize patient health and/or safety are subject to the imposition of remedies as specified in section 1919(h)(1)(B) of the Social Security Act and Amended Substitute House Bill 822. The remedies established by the State in Am. Sub. H.B. 822 in sections 5111.46 to 5111.48 and section 5111.51(A) are in conformance with section 1919(h)(2)(A) of the Social Security Act. They are as follows:

Termination of the facility's participation in the Medicaid program.

Appointment of temporary management.

Directed plan of correction.

Denial of payment for Medicaid eligible residents admitted after the effective date of the order who have certain diagnostic or special care needs.

Denial of payment for Medicaid eligible residents admitted after the effective date of the remedy.

Closure of the facility and transfer of residents in the event of an emergency.

Imposition of civil money penalties which are subject to the collection of interest on any unpaid balance. The amount of a fine is based on the product of multiplying \$2.50 for each day the fine is in effect by the number of licensed or certified beds, whichever is greater. Civil money penalties are subject to being increased or decreased dependent on the severity and scope of the deficiency.

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II. Remedies where deficiencies do not place the health and safety of nursing home residents in immediate jeopardy. (Section 1919(h)(1)(B)). (Continued)

In determining which remedies to impose ODHS or the contracting agency shall do the following:

Impose the remedies that are most likely to achieve correction of deficiencies, encourage sustained compliance with certification requirements, and protect the health, safety and rights of facility residents, but that are not directed at punishment of the facility.

In addition, all of the following shall be considered.

The presence or absence of immediate jeopardy.

The relationships of groups of deficiencies to each other.

The facility's history of compliance with certification requirements generally and in the specific area of the deficiency or deficiencies.

Whether the deficiency or deficiencies are directly related to resident care.

The corrective, long term compliance, resident protective, and non-punitive outcomes sought by ODHS or the contracting agency.

The nature, scope and duration of the non-compliance with certification requirements.

The existence of repeat deficiencies.

The category of certification requirements with which the facility is out of compliance.

Any period of non-compliance with certification requirements that occurred between two certifications by the Department of Health that the facility was in compliance with certification requirements.

The facility's degree of culpability.

The accuracy, extent, and availability of facility records.

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II. Remedies where deficiencies do not place the health and safety of nursing home residents in immediate jeopardy. (Section 1919(h)(1)(B)). (Continued)

The facility's financial condition, exclusive of any moneys donated to a facility that is an organization described in subsection 501(c)(3) and is tax exempt under subsection 510(a) of the Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1.

Any adverse effect that the action or fine would have on the health and safety of facility residents.

If the non-compliance that resulted in the citation of a deficiency or cluster of deficiencies existed before a change in ownership of the facility, whether the new owner or owners have had sufficient time to correct the non-compliance.

III Remedies in case of prolonged or repeated non-compliance (sections 1919(h)(2)(C) and (D)).

Section 5111.57(A) of Am. Sub. H.B. 822 requires ODHS or the contracting agency to issue an order denying Medicaid payments whenever a nursing facility has not complied with the requirements of subsections (b), (c), and (d) of section 1919 of the Social Security Act within three months after the facility is found out of compliance with the requirements, as required by subsection 1919(h)(2)(C) of the Social Security Act. Sections 5111.55(D) and 5111.57(B) of Am. Sub. H.B. 822 require the appointment of monitors and denial of payments in the event a nursing facility is found to have provided substandard care on three consecutive surveys, as required by section 1919(h)(2)(D) of the Act.

IV. Incentives for high quality of care. (section 1919(h)(2)(F)).

At this time the state has not elected to create a incentive program to reward facilities that provide the highest quality care.

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