

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
Western Division of Survey and Certification
San Francisco Regional Office
90 7th Street, Suite 5-300 (5W)
San Francisco, CA 94103-6707



Refer to: WDSC-ML

[Receipt Of This Notice Is Presumed To Be September 12, 2019 - Date Notice Faxed]
Important Notice - Please Read Carefully

September 12, 2019

CMS Certification Number (CCN): 05-6435

Survey Date: September 10, 2019

Administrator
Hyde Park Healthcare Center
6520 West Blvd
Los Angeles, CA 90043

Dear Administrator:

On September 10, 2019, the California Department of Public Health (State Survey Agency) completed a survey of your facility, Hyde Park Healthcare Center, in which it was determined that your facility was **not in substantial compliance** with Federal requirements for nursing homes participating in the Medicare and/or Medicaid programs. See 42 C.F.R. Part 483. Indeed, the survey findings documented that immediate jeopardy to resident's health and safety was identified on August 7, 2019. The immediate jeopardy was abated August 9, 2019.

As a result of the September 10, 2019 survey findings which were listed on a Statement of Deficiencies (Form CMS-2567) that was forwarded to you after the survey, the State Survey Agency notified you that it would recommend to the Centers for Medicare and Medicaid Services (CMS) that certain remedies be imposed against your facility.

CMS's Approval of a Certification/Finding of Noncompliance

Having reviewed the September 10, 2019 survey findings and the State Survey Agency recommendations, this office has concluded that we concur with the findings documented during the survey completed on September 10, 2019 (and listed on the above-referenced Form CMS-2567 for that survey).

Accordingly, this office has approved a certification/finding of noncompliance based on our conclusion that Hyde Park Healthcare Center was not in substantial compliance with nursing home participation requirements at 42 C.F.R. Part 483 as documented by the survey completed on September 10, 2019 (and set forth in the referenced Form CMS-2567 for that survey, **the contents of which are incorporated herein by reference**).

CMS's Imposition of Remedies

Based upon this certification/finding of noncompliance, we have determined, in accordance with sections 1819(h) and 1919(h) of the Social Security Act and the enforcement regulations at 42 C.F.R. Part 488 to impose the following remedy:

[X] Denial of payment for new admissions [42 C.F.R. § 488.417(a)], **effective September 27, 2019.**

[X] Civil money penalty [42 C.F.R. § 488.430] in the amount of \$8,830.00 per day effective July 13, 2019 (entry date of the date of the survey) and at a reduced rate of \$110.00 per day effective August 9, 2019 for the noncompliance after the immediate jeopardy was abated and remaining in effect at that rate for each day thereafter until substantial compliance is achieved or your facility's provider agreement is terminated.¹

The denial of payment for new admissions and civil money penalty will continue in effect until CMS either determines that your facility is in substantial compliance with the applicable participation requirements or terminates your facility's Medicare provider agreement (as discussed below). 42 C.F.R. 488.454.

Please be advised that even though the immediate jeopardy was abated on August 9, 2019, your facility remains out of "substantial compliance" as that term is defined at 42 C.F.R. § 488.301 as evidenced by the deficiencies documented on the above-referenced Statement of Deficiencies. As you have been informed by the State Survey Agency, all of those deficiencies (including the deficiencies previously noted as immediate jeopardy, but now reduced in scope and severity) must be promptly corrected, and your facility must otherwise attain and maintain substantial compliance with all applicable participation requirements at 42 C.F.R. Part 483. Absent such prompt action by your facility, further remedial action (including possible termination of your provider agreement) will be taken by this office.

¹ In determining the amount of the civil money penalty being imposed herein, we considered the applicable factors specified in the regulations at 42 C.F.R. § 488.438(f). One of the factors in section 488.438(f) concerns the financial condition of your facility. 42 C.F.R. § 488.438(f)(2). In considering this factor in determining the amount of the civil money penalty, we reviewed our files and took into account the State Survey Agency's review of its files. If you are of the opinion that there is information concerning your financial status that we should consider, you have the opportunity to submit such information within five (5) days of receipt of this notice. (Because this notice is being sent to you by facsimile on the date indicated above, we consider the date the notice is transmitted as the date of receipt. Therefore, you must submit such information within five (5) days of the date of this notice.) If such information is timely received by this office, we will thoroughly review your submittal and determine whether there is a basis for revising the amount of the civil money penalty that is being imposed.

In this regard (as discussed more fully below), CMS will terminate your facility's Medicare provider agreement if substantial compliance with Medicare participation requirements is not promptly achieved and maintained. If such substantial compliance is not achieved and maintained, you will be informed by future notice of the exact date of termination. You are reminded that Congress has mandated that under no circumstances will termination of a facility be effective later than six months from the last day of the survey documenting the facility's failure to be in substantial compliance. See 42 C.F.R. § 488.412(d). In this case, since the survey documenting your facility's failure to be in substantial compliance was completed on September 10, 2019, under no circumstances will the termination be effective later than **March 10, 2020**. It is emphasized, however, that the termination date may be implemented sooner (after proper notice).

More particularly, you have been informed by the State Survey Agency that you must promptly submit an allegation of compliance and an acceptable plan of correction addressing each of the cited deficiencies on the Form CMS-2567 for the survey completed on September 10, 2019. If this is timely submitted, and it is determined that the information provided credibly establishes that you have taken action to correct all of the identified deficiencies, a revisit of your facility will be scheduled to determine whether the facility has achieved substantial compliance with controlling participation requirements at 42 C.F.R. Part 483. If acceptable documentation of corrective action is not timely submitted (as described above), or if timely submitted but a revisit survey documents a continued failure to be in substantial compliance, this office will expeditiously proceed to terminate your Medicare provider agreement. If this should occur, you will receive a further detailed notice identifying the date of termination and your respective appeal rights.

Denial of Approval of Nurse Aide Training Program

Please note that under certain specified circumstances sections 1819(f)(2)(B) and 1919(f)(2)(B) of the Social Security Act requires withdrawal of approval of nurse aide training and competency evaluation programs and nurse aide competency evaluation programs offered by or in a facility. 42 C.F.R. § 483.151(e)(1). As a result of the imposition (as noticed herein) of the denial of payment for new admissions and civil money penalty, this provision is applicable to your facility and you will receive further notification from the State in this connection. In light of the foregoing, you may finish any nurse assistant training class you are presently conducting; you may not, however, start another such class.

Additional Documentation Supporting Certification of Noncompliance

It is emphasized that even though the certification/finding of noncompliance (and thus enforcement action-noticed in this letter are based on the findings of the surveys as set forth in the Form CMS-2567 referenced herein, CMS may have additional evidence and information (including, but not limited to State licensure information, correspondence, provider records, or verified complaints) relating to the deficiencies identified during the referenced survey that may be presented at the time of (or before) an administrative hearing challenging CMS's certification/finding of noncompliance. This corroborating evidence/information may be used at a hearing to resolve possible conflicts of factual

information and to otherwise support CMS's adverse findings. Accordingly, nothing in this notice should be viewed as limiting or constraining CMS's right to present this additional evidence/information at an administrative hearing. (See State Operations Manual section 30026F.)

Appeal Rights

If you disagree with the determination of noncompliance (and/or substandard quality of care resulting in the loss of your Nurse Aide Training and Competency Evaluation Program (NATCEP), if applicable), you or your legal representative may request a hearing before an administrative law judge of the U.S. Department of Health and Human Services, Departmental Appeals Board. Procedures governing this process are set out in 42 CFR §498.40, et. seq. You may appeal the finding of noncompliance that led to an enforcement action, but not the enforcement action or remedy itself. A request for a hearing should identify the specific issues, and the findings of fact and conclusions of law with which you disagree. It should also specify the basis for contending that the findings and conclusions are incorrect. You may have counsel represent you at a hearing (at your own expense). Requests for a hearing submitted by U.S. mail or commercial carrier are no longer accepted unless you do not have access to a computer or internet service. **You must file your hearing request electronically by using the Departmental Appeals Board's Electronic Filing System (DAB E-File) at <https://dab.efile.hhs.gov> no later than 60 days from the date of receipt of this letter.**

When using DAB E-File for the first time, you will need to create an account by a) clicking Register on the DAB E-File home page; b) entering the requested information on the Register New Account form; and c) clicking Register Account at the bottom of the form. Each representative authorized to represent you must register separately to use the DAB E-File on your behalf.

The e-mail address and password given during registration must be entered on the login screen at: https://dab.efile.hhs.gov/user_sessions/new to access DAB E-File. A registered user's access to DAB E-File is restricted to the appeals for which he/she is a party or an authorized representative. You can file a new appeal by a) clicking the *File New Appeal* link on the Manage Existing Appeals screen; then b) clicking *Civil Remedies Division* on the File New Appeal screen; and c) entering and uploading the requested information and documents on the File New Appeal-Civil Remedies Division form.

The Civil Remedies Division (CRD) requires all hearing requests to be signed and accompanied by the notice letter from CMS that addresses the action taken and your appeal rights. All submitted documents must be in Portable Document Format (PDF). Documents uploaded to DAB E-File on any day on or before 11:59p.m. ET will be considered to have been received on that day. You will be expected to accept electronic service of any appeal-related documents filed by CMS or that the CRD issues on behalf of the Administrative Law Judge (ALJ) via DAB E-File. Further instructions are located at: https://dab.efile.hhs.gov/appeals/to_crd_instructions. Please contact the Civil Remedies Division at (202) 565-9462 if you have questions regarding the DAB E-Filing System. If

you experience technical issues with the DAB E-Filing System, please contact E-File System Support at OSDABImmediateOffice@hhs.gov or call (202) 565-0146 before 4:00p.m. ET.

If you do not have access to a computer or internet service, you may call the Civil Remedies Division at (202) 565-9462 to request a waiver from e-filing and provide an explanation as to why you cannot file electronically or you may mail a written request for a waiver along with your written request for a hearing. A written request for a hearing must be filed no later than 60 days from the date of receipt of this letter by mailing to the following address:

Department of Health & Human Services
Departmental Appeals Board, MS 6132
Director, Civil Remedies Division
330 Independence Avenue, S.W.
Cohen Building – Room G-644
Washington, D.C. 20201

In addition, please email a copy of your request to Western Division of Survey and Certification-San Francisco, excluding any exhibits or supporting documents at ROSFEnforcements@cms.hhs.gov Subject Line: Hearing Request Attn: Mary Lee

Details Regarding the Civil Money Penalty

In lieu of requesting a hearing to challenge the certification/finding of noncompliance noticed herein (that is, the certification/finding of noncompliance based on the determination that Hyde Park Healthcare Center was not in substantial compliance with controlling Medicare participation requirements at 42 C.F.R. Part 483 as documented during the survey completed on April 2, 2019), you may choose to waive your right to such a hearing. A decision to exercise this waiver option must be made in writing within sixty (60) calendar days from the date of this notice (which is being sent to you via facsimile). See 42 C.F.R. § 488.436. **Please send your waiver to ROSFEnforcements@cms.hhs.gov SUBJECT LINE: Waiver CMS Certification# XX-XXXX Attn: Mary Lee**

Such a waiver of your hearing rights would constitute an acceptance of this office's determination that your facility was not in substantial compliance as documented during the survey completed on April 2, 2019; and an acceptance of all enforcement remedies under 42 C.F.R. § 488.406 resulting from the certification/finding of noncompliance not being challenged (*i.e.*, the certification/finding of noncompliance based on the April 2, 2019 survey). By your waiver, therefore, you would accept all of the enforcement remedies that are being imposed by this office as a result of our determination that your facility was not in substantial compliance with 42 C.F.R. Part 483 participation requirements as documented during the survey completed on April 2, 2019. The total amount of the affected civil money penalty would, however, be reduced by thirty-five percent (35%) in accordance with 42 C.F.R. § 488.436(b).

Details Regarding the Civil Money Penalty

In lieu of requesting a hearing to challenge the certification/finding of noncompliance noticed herein (that is, the certification/finding of noncompliance based on the determination that Hyde Park Healthcare Center was not in substantial compliance with controlling Medicare participation requirements at 42 C.F.R. Part 483 as documented during the survey completed on September 10, 2019), you may choose to waive your right to such a hearing. A decision to exercise this waiver option must be made in writing within sixty (60) calendar days from the date of this notice (which is being sent to you via facsimile). See 42 C.F.R. § 488.436.

Please note that you must send your waiver to ROSFEnforcements@cms.hhs.gov

SUBJECT LINE: Waiver ATTN: Mary Lee

Such a waiver of your hearing rights would constitute an acceptance of this office's determination that your facility was not in substantial compliance as documented during the survey completed on September 10, 2019; and an acceptance of all enforcement remedies under 42 C.F.R. § 488.406 resulting from the certification/finding of noncompliance not being challenged (i.e., the certification/finding of noncompliance based on the September 10, 2019 survey). By your waiver, therefore, you would accept all of the enforcement remedies that are being imposed by this office as a result of our determination that your facility was not in substantial compliance with 42 C.F.R. Part 483 participation requirements as documented during the survey completed on September 10, 2019. The total amount of the affected civil money penalty would, however, be reduced by thirty-five percent (35%) in accordance with 42 C.F.R. § 488.436(b).

You will receive an appropriate notice from CMS regarding any subsequent findings of noncompliance that are relevant to the continued imposition of the denial of payment for new admission, civil money penalty and/or the imposition of any new remedies, including termination of your Medicare provider agreement.

Independent Informal Dispute Resolution (Independent IDR)

Because a civil money penalty was imposed for the September 10, 2019 survey in which a deficiency was cited, the civil money penalty will be subject to the combined civil money penalty collection and escrow provisions and Independent IDR process set forth in 42 C.F.R. § 488.431. We are authorized pursuant to 42 C.F.R. § 488.431(b) to collect your CMP and place it in an escrow account on the earlier of the following dates: 1) the date on which the Independent IDR process is complete or 2) 90 days from the date of this notice. During the Independent IDR process a facility may dispute the factual basis of the cited deficiencies for which it requested Independent IDR. You may also contest scope and severity assessments for deficiencies which resulted in a finding of substandard quality of care (SQC) or immediate jeopardy.

You are required to send your written request for an Independent IDR, along with the specific deficiencies being disputed, and an explanation of why you are disputing those deficiencies (or why you are disputing the scope and severity assessments of deficiencies which been found to constitute SQC or immediate jeopardy) to:

Suzette Leverett-Clark, Assistant Chief
Department of Public Health
Health Facilities Division
12440 E. Imperial Highway, Room 522
Norwalk, CA 90650

Please include a copy of this CMS notice with your written request for an Independent IDR.

This request must be sent within 10 calendar days of receipt of this CMS notice. A request for an Independent IDR process will not delay the effective date of any enforcement remedy imposed on your facility, and it will not delay our collection of your facility's CMP for more than ninety (90) days.

Please note further that an incomplete IDR or Independent IDR process will not delay any deadline listed above under "Appeal Rights" for requesting a hearing, or under "Details Regarding the Civil Money Penalty" for requesting waiver of hearing rights.

Filing of Medicare or Medicaid Claims

Please note that any filing of Medicare or Medicaid claims for new admissions during the period that a denial of payment for new admissions (DPNA) is in effect could result in such claims being considered "false" claims under applicable federal statutes and thus potentially subjecting the filing entity to a referral to the appropriate authorities and possibly to the penalties prescribed under such statutes. An exception possibly applies where a timely appeal of the controlling certifications/findings of noncompliance is filed (and remains pending) under 42 C.F.R. Part 498, and where your facility has made arrangements acceptable to your Medicare and Medicaid fiscal intermediaries to submit the claim (or claims) with prominent flagging clearly indicating that the claim(s) is/are being filed not for current payment, but "under protest" and for the sole purpose of preserving a timely filing should the facility prevail on its administrative appeal under 42 C.F.R. Part 498.

We have coordinated this action with the State Medicaid Agency which will take concurrent action under Title XIX of the Social Security Act.

If you have any questions regarding this action, you may contact Mary Lee of my staff at Mary.Lee@cms.hhs.gov or at (415) 744-3743.

Sincerely,

FOR Paula Perse
Manager, Certification and Enforcement Branch
Western Division of Survey and Certification

cc: State Survey Agency
State Medicaid Agency