

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
MEDICAL ASSISTANCE PROGRAM
State/Territory: SOUTH DAKOTA

SECTION 4. GENERAL PROGRAM ADMINISTRATION

Citation 4.35 Enforcement of Compliance for Nursing Facilities

42 CFR 448.402(f) (a) Notification of Enforcement Remedies

When taking an enforcement action against a non-State operated NF, the State provides notification in accordance with 42 CFR 448.402(f).

(1) The notice (except for civil money penalties and State monitoring) specifies the:

- (i) nature of non-compliance,
- (ii) which remedy is imposed,
- (iii) effective date of the remedy, and
- (iv) right to appeal the determination leading to the remedy.

42 CFR 488.434 (2) The notice for civil money penalties is in writing and contains the information specified in 42 CFR 488.434.

42 CFR 488.402(f)(2) (3) Except for civil money penalties and State monitoring, notice is given at least 2 calendar days before the effective date of the enforcement remedy for immediate jeopardy situations and at least 15 calendar days before the effective date of the enforcement remedy when immediate jeopardy does not exist.

42 CFR 488.456(c)(d) (4) Notification of termination is given to the facility and to the public at least 2 calendar days before the remedy's effective date if the non-compliance constitutes immediate jeopardy and at least 15 calendar days before the remedy's effective date if the non-compliance does not constitute immediate jeopardy. The State must terminate the provider agreement of an NF in accordance with procedures in parts 431 and 442.

(b) Factors to be Considered in Selecting Remedies

42 CFR 488.404(b)(1) (1) In determining the seriousness of deficiencies, the State considers the factors specified in 42 CFR 488.404(b)(1) and (2).

___ The State considers additional factors. **ATTACHMENT 4.35-A** describes the State's other factors.

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Citation 4.35 Enforcement of Compliance for Nursing Facilities (continued)

(c) Application of Remedies

- 42 CFR 448.410 (1) If there is immediate jeopardy to resident health and safety, the State terminates the NF's provider agreement within 23 calendar days from the date of the last survey or immediately imposes temporary management to remove the threat within 23 days.
- 42 CFR 488.417(b)
Section 1919(h)(2)(C) of the Act (2) The State imposes the denial of payment (or its approved alternative) with respect to any individual admitted to an NF that has not come into substantial compliance within 3 months after the last day of the survey.
- 42 CFR 488.414
Section 1919(h)(2)(D) of the Act (3) The State imposes the denial of payment for new admissions remedy as specified in 42 CFR 488.417 (or its approved alternative) and a State monitor as specified at 42 CFR 488.422, when a facility has been found to have provided substandard quality of care in the last three consecutive surveys.
- 42 CFR 488.408
Section 1919(h)(2)(A) of the Act (4) The State follows the criteria specified at 42 CFR 488.408(c)(2), 408(d)(2), and 408(e)(2) when it imposes remedies in place of or in addition to termination.
- 42 CFR 488.412(a) (5) When immediate jeopardy does not exist, the State terminates an NF's provider agreement no later than 6 months from the finding of non-compliance, if the conditions of 42 CFR 488.412(a) are not met.

(d) Available Remedies

- (1) The State has established the remedies defined in 42 CFR 488.406(b).
- 42 CFR 488.406(b)
Section 1919(h)(2)(A) of the Act
- (i) Termination
 - (ii) Temporary management
 - (iii) Denial of payment for new admissions
 - (iv) Civil money penalties
 - (v) Transfer of residents; transfer of residents with closure of facility
 - (vi) State monitoring

ATTACHMENTS 4.35-B through 4.35-G describe the criteria for applying the above remedies.

Effective July 1, 1995, the State of South Dakota has implemented ARSD 67:49:01:02 which has incorporated 59 FR 56116 (November 10, 1994) into regulation.

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Citation 4.35 Enforcement of Compliance for Nursing Facilities (continued)

(d) Available Remedies (continued)

42 CFR 448.406(b)
Section 1919(h)(2)(B)(ii)
of the Act

(2) ___ The State uses alternative remedies. The State has established alternative remedies that the State will impose in place of a remedy specified in 42 CFR 488.406(b).

- ___ (i) Temporary management
- ___ (ii) Denial of payment for new admissions
- ___ (iii) Civil money penalties
- ___ (iv) Transfer of residents; transfer of residents with closure of facility
- ___ (v) State monitoring

ATTACHMENTS 4.35-B through 4.35-G describe the alternative remedies and the criteria for applying them.

42 CFR 488.303(b)
Section 1919(h)(2)(F) of
the Act

(e) ___ State Incentive Programs

- (1) ___ Public recognition
- (2) ___ Incentive payments