

**DEPARTMENT OF COMMUNITY HEALTH**  
**HEALTH LEGISLATION AND POLICY DEVELOPMENT**  
**GENERAL RULES**

(By authority conferred on the department of community health by sections 1 to 4 of Act No. 80 of the Public Acts of 1905, as amended, sections 111 and 112 of Act No. 280 of the Public Acts of 1939, as amended, section 33 of Act No. 306 of the Public Acts of 1969, as amended, sections 114 and 114a of Act No. 258 of the Public Acts of 1974, as amended, and Executive Reorganization Order No. 1996-1, being §§19.141 to 19.144, 400.111, 400.112, 24.233, 330.1114, 330.1114a, and 330.3101 of the Michigan Compiled Laws)

**PART 11. ENFORCEMENT SYSTEM FOR LONG-TERM CARE FACILITIES**

**R 330.11001 Definitions.**

Rule 11001. As used in this part:

(a) "Administrative or clinical advisor" means an additional remedy imposed upon a facility for the purpose of monitoring and mentoring the facility administrative staff or clinical staff or both through the period of corrective action.

(b) "Category" means a grouping of remedies used to address and correct a certain level of deficiency.

(c) "Civil money penalty" means a fiscal assessment amount which is within a range commensurate to the level of noncompliance, for example, immediate jeopardy or non-immediate jeopardy, and which is levied against nursing facilities for certain findings of noncompliance. A civil money penalty is determined by multiplying an amount, based upon the finding of noncompliance, by the number of days of noncompliance. A daily civil money penalty shall be assessed up to and including the day before the state medicaid agency or the health care financing administration determines that the facility is in substantial compliance or up to and including the day that the civil money penalty is no longer warranted.

(d) "Date certain" means the last day of a specified time frame in which a nursing facility is allowed to correct deficiencies, generally without the application of remedies. A date certain may be allowed at the state medicaid agency's discretion. A date certain shall not be allowed in cases involving an immediate-jeopardy situation or involving a poor-performer facility. If substantial compliance is not attained by the date certain, then the state medicaid agency shall impose 1 or more remedies after reviewing the determinations of the state survey agency.

(e) "Deficiency" means a nursing facility's failure to meet any participation requirement as specified in section 1919 of the social security act of 1935, as amended, being 42 U.S.C. §1396r et seq. or in 42 C.F.R. §§483.5 to 485.75 (1992).

(f) "Department" means the Michigan department of community health (MDCH).

(g) "HCFA" means the federal health care financing administration.

(h) "Immediate jeopardy" means a situation in which the nursing facility's noncompliance with 1 or more requirements of participation has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident.

(i) "Menu" means a grouping of remedy categories that takes into account facility history and the current level of nursing facility noncompliance or deficient practices.

(j) "Needing early review" means a facility identified for possible immediate imposition or recommendation of enforcement remedies by the state survey agency under its licensure authority.

(k) "Noncompliance" means the presence of any deficiency that causes a nursing facility to not be in substantial compliance.

(l) "Nursing facility" means a facility which provides long-term nursing care, which is enrolled in the state's medicaid program, and which is not enrolled in the medicare program. The term excludes a facility owned by the state. The term includes a county medical care facility and a hospital

long-term care unit if not enrolled in the medicare program.

(m) "OBRA" means the omnibus budget reconciliation act of 1987, as amended, being Public Law 100-203, 101 Stat. 1.

(n) "Plan of correction" means a plan accepted by the state survey agency that is mandatory for all deficiencies of scope and severity levels B through L on the remedy determination grid table 1 of this part, referred to in this part as the "quick reference chart." If a facility fails to obtain an accepted plan of correction, then the state medicaid agency shall impose remedies immediately.

(o) "Poor performer" means a federally identified poor-performing nursing facility. The state medicaid agency shall not afford a poor performer an opportunity to correct deficiencies before remedies are imposed.

(p) "Remedy" means a corrective action which is specified in federal or state law or these rules and which is taken by the state survey agency or the state medicaid agency against a nursing facility for findings of deficiencies.

(q) "Repeat deficiency" means a deficiency which is in the same regulatory grouping of requirements and which is found again at the next survey.

(r) "Repeated noncompliance" means a finding of substandard quality of care based on 3 consecutive standard surveys [standard survey as stated in section 1919(g)(2)(A) of the social security act of 1935, 42 U.S.C. §1396r(g)(2)(A)] regardless of whether the exact tag number of deficiency was repeated or that the substance of a deficiency was repeated.

(s) "State medicaid agency" means the Michigan department of community health, medical services administration.

(t) "State survey agency" means the Michigan department of consumer and industry services (MDCIS).

(u) "Substandard quality of care" or "SQC" means 1 or more deficiencies on the remedy determination grid in square f, h, i, j, k, or l of table 1 of this part that constitute any of the following related to participation requirements under 42 C.F.R. §483.13, resident behavior and facility practices, 42 C.F.R. §483.15, quality of life, or 42 C.F.R. §483.25, quality of care:

- (i) Immediate jeopardy to resident health or safety.
- (ii) A pattern of actual harm or widespread actual harm that is not immediate jeopardy.
- (iii) A widespread potential for more than minimal harm, but less than immediate jeopardy, with no actual harm.
- (v) "Substantial compliance" means a facility that does not have deficiencies which impose any greater risk than a potential for minimal harm.

History: 1998-2000 AACCS.

### **R 330.11002 Department authority and duties.**

Rule 11002. (1) The department is responsible for the implementation of an enforcement system for nursing facilities. The department's duties include, but are not limited to, determining remedies for noncompliance with federal conditions of participation to be used instead of, or in addition to, termination of a facility's participation in the medicaid program. These rules are promulgated in accordance with section 1919 of the social security act of 1935, 42 U.S.C. §1396(h)(2)(A). Section 1919 requires that a state establish, by law, whether by statute or by regulation, remedies for noncompliance.

(2) The department shall enter into an agreement or contract with the designated state survey agency. The designated state survey agency is responsible for all survey and medicaid certification functions assigned to it by the contract or agreement between MDCH and the designated state survey agency. Nothing in these rules shall be construed as restricting the remedies or authority otherwise available to the state survey agency under federal and state law to address a nursing facility's deficiencies.

History: 1998-2000 AACCS.

### **R 330.11003 Determining substantial compliance with regulations governing medicaid certification.**

Rule 11003. (1) The state medicaid agency, based on the determinations and recommendations of the state survey agency or HCFA, on the basis of a standard, abbreviated, extended, or partial extended survey, shall determine whether a participating nursing facility is in substantial compliance with the regulations governing medicaid certification.

(2) Based on the determination of noncompliance, the department or HCFA may impose 1 or more remedies. Remedies may be based on any of the following:

- (a) The welfare of the residents.
- (b) The seriousness of the deficiency.
- (c) The facility compliance history.
- (d) The likelihood that the remedy will lead to quick and sustained compliance.

(3) The rules of this part have been designed to minimize the time between identification of the deficiencies and the application of the remedies.

(4) The department or HCFA shall assess progressively stronger remedies for repeated or uncorrected deficiencies.

(5) Enforcement remedies include federal and state enforcement options and these rules.

(6) If the state medicaid agency finds that a nursing facility currently meets the requirements, but previously was noncompliant, then the state medicaid agency may impose a remedy for the days it finds that the facility was not in substantial compliance.

(7) Nothing in this rule shall be construed as restricting the remedies available to any state agency to address a nursing facility's deficiencies.

History: 1998-2000 AACCS.

### **R 330.11004 Determining seriousness of deficiencies.**

Rule 11004. (1) The state medicaid agency shall determine the seriousness of a deficiency for the purpose of selecting enforcement remedies based upon the scope and severity determinations and recommendations of the state survey agency. Scope represents how many residents are or may be affected by a specific deficiency. Severity represents the seriousness of the deficiency on resident outcome.

(2) Each scope and severity combination shall be assigned an alphabetic level. The most serious deficiency cited, which is based on the level of severity first, and then scope shall determine the category or categories of remedies that shall be applied.

(3) Any of the following additional factors may be included in the selection of remedies:

(a) Whether the deficiency poses immediate jeopardy to the resident's health or safety.

(b) The relationship of one deficiency to other deficiencies.

(c) The facility's compliance history.

(d) The likelihood that the selected remedy will achieve correction and continued compliance.

History: 1998-2000 AACCS.

### **R 330.11005 Severity.**

Rule 11005. The level of severity of a deficiency shall be categorized by the department or by HCFA as 1 of the following:

(a) "No actual harm with a potential for minimal harm." This level means that a deficiency has the potential for causing no more than a minor negative impact on the resident.

(b) "No actual harm with a potential for more than minimal harm, but not immediate jeopardy." This level means noncompliance that results in minimal physical, mental, or psychosocial discomfort to the resident or has the potential to compromise the resident's ability to maintain or reach his or her highest practicable physical, mental, or psychosocial well-being as defined by an accurate and comprehensive resident assessment, plan of care, and provision of services.

(c) "Actual harm that is not immediate jeopardy." This level means noncompliance that results in a negative outcome that has compromised the resident's

ability to maintain or reach his or her highest practicable physical, mental, and psychosocial well-being as defined by an accurate and comprehensive resident assessment, plan of care, and provision of services.

(d) "Immediate jeopardy to resident health or safety." This level means a situation in which immediate corrective action is necessary because the nursing facility's noncompliance with 1 or more requirements of participation has caused, or is likely to cause, serious injury, serious harm, impairment, or death to a resident receiving care in the facility.

History: 1998-2000 AACCS.

### **R 330.11006 Scope.**

Rule 11006. The degree of scope is provided in the HCFA-issued state operations manual, appendix P, part I, section V, deficiency categorization, and is categorized as follows:

(a) Isolated. Scope is isolated if 1 or a very limited number of residents are affected or if 1 or a very limited number of staff are involved, or if the situation has occurred only occasionally or in a very limited number of locations, or both.

(b) Pattern. Scope is a pattern if more than a very limited number of residents are affected or if more than a very limited number of staff are involved, or both, or if the situation has occurred in several locations or the same residents have been affected by repeated occurrences of the same deficient practice, or both. The effect of the deficient practice is not found to be pervasive throughout the facility.

(c) Widespread. Scope is widespread if the problems causing the deficiencies are pervasive in the facility or represent systemic failure that affected, or has the potential to affect, a large portion or all of the facility's residents.

History: 1998-2000 AACCS.

### **R 330.11007 Remedies for deficiencies.**

Rule 11007. (1) Remedies that may be imposed by the state medicaid agency, based upon determinations and recommendations of the state survey agency or HCFA, are specified in these rules. The state medicaid agency may accept an action by the state survey agency, under state licensure authority, as a remedy imposed under these rules.

(2) Remedies shall be grouped into 3 categories. The categories take into consideration the scope and severity of the deficiency. When the scope and severity increase, the number of categories available from which to select remedies also increases.

(3) Federally authorized remedies that the state medicaid agency may impose are described in federal rules as stated in 42 C.F.R. §488.400 et seq. and as further discussed in section 7400 of the health care financing administration (HCFA) state operations manual for medicaid and medicare certified

facilities. The federally authorized remedies include, but are not limited to, 1 or more of the following:

(a) A denial of payment for new admissions.

- (b) State monitoring.
- (c) A temporary manager.
- (d) An administrative advisor or clinical advisor, or both.
- (e) A directed plan of correction.
- (f) Directed in-service training.
- (g) Civil money penalties.
- (h) Closure of a nursing facility or the transfer of residents, or both.
- (i) Termination of a provider agreement.
- (j) Denial of payment for all individuals. This remedy is imposed by HCFA.
- (k) Public notice that is required under state licensure authority.

(5) The state medicaid agency may also accept 1 or more of the following enforcement actions by the state survey agency, under state licensure authority, as a remedy imposed under these rules:

- (a) A correction notice or order requiring a temporary administrative or clinical advisor.
- (b) An emergency order limiting, suspending, or revoking a license.
- (c) A notice of intent to revoke licensure.
- (d) A correction notice or order to ban admissions or readmissions, or both.
- (e) A correction notice or order to transfer selected patients, reduce licensed capacity, or comply with specific requirements.
- (f) A correction notice or order requiring a temporary manager.
- (g) State patient rights penalties, if applicable.

(6) An administrative or clinical advisor who is allowed under federal enforcement as an additional remedy has been added to the enforcement tools available to the state medicaid agency. The responsibility of the administrative or clinical advisor is to monitor and mentor the facility administrative or clinical staff through the period of corrective action.

(7) The state medicaid agency shall consider whether a facility meets the federal definition of poor performer or has been subject to early review by the state survey agency under its state licensure authority and shall impose or accept 1 or more of the following remedies consistent with the following menus:

- (a) Category 1:
  - (i) Directed plan of correction.
  - (ii) State monitoring.
  - (iii) Directed in-service training.
- (b) Category 2:
  - (i) Denial of payment for new admissions.
  - (ii) Appointment of an administrative or clinical advisor.
  - (iii) Denial of payment for all medicaid residents imposed by HCFA.
  - (iv) Civil money penalties that can range from \$50.00 up to a maximum of \$3,000.00 per day in accordance with 42 C.F.R. §488.38.
  - (v) Any category 1 remedy, at the option of the state medicaid agency.
- (c) Category 3:
  - (i) Appointment of a temporary manager.
  - (ii) Termination of the provider agreement.

(iii) Civil money penalties that can range from \$3050.00 up to a maximum of \$10,000.00 per day in accordance with 42 C.F.R. §488.38.

(iv) Any category 1 or 2 remedies, at the option of the state medicaid agency.

(8) Representation of how remedies and categories are grouped into menus is provided in table 1 of this part. Table 1 illustrates how facility history and the seriousness of the deficiency determines the type and level of remedies to be applied. The most serious deficiency determines the menu of remedies to be applied. Different remedies are applied for deficiencies that are classified by HCFA as "SQC." A plan of correction (PoC) is required for all levels of deficiency, except for a level A deficiency. Table 1 reads as follows:

Table 1

	Historically compliant or needing early review with possible date certain	Poor performer or needing early review with no date certain
L* PoC	Menu 3	Menu 6
K* PoC	Menu 3	Menu 6
J* PoC	Menu 3	Menu 6
I PoC	Menu 1 Menu 2 if SQC	Menu 4 Menu 5 if SQC
H PoC	Menu 1 Menu 2 if SQC	Menu 4 Menu 5 if SQC
G PoC	Menu 1	Menu 4
F PoC	Menu 1 Menu 2 if SQC	Menu 4 Menu 5 if SQC
E PoC	Menu 1	Menu 4
D PoC	Menu 1	Menu 4
C PoC	Only PoC required	Only PoC required
B PoC	Only PoC required	Only PoC required
A	No remedies, no PoC required	No remedies, no PoC required

\* Indicates immediate jeopardy Validation of removal of immediate jeopardy counts as a revisit.

If more than 1 menu is indicated by survey findings, then the highest appropriate menu shall be applied.

## Menu 6 Immediate jeopardy

Historical classification: poor performer or needing early review with no date certain. Scope and severity classification: J, K, or L. Survey type \*: any. Plan of correction: required.

### Federally authorized enforcement remedies

#### Category 3 (required):

1. A civil money penalty of \$3,050.00 to \$10,000.00 per day and
2. 23-day termination of provider agreement.
3. Temporary manager.

#### Category 2 (optional):

4. Denial of payment for new admissions.
5. Temporary administrative or clinical advisor or both.

#### Category 1 (optional):

6. Directed plan of correction.
7. Directed in-service training.
8. State monitoring.

#### State survey agency enforcement actions (1 or more may be accepted)

9. Emergency order limiting, suspending, or revoking licensure.
10. Notice of intent to revoke license.
11. Correction notice or order to ban admissions or readmissions, or both.
12. Correction notice or order to transfer selected patients, reduce licensed capacity, or comply with specific requirements.
13. Correction notice or order requiring temporary manager or requiring clinical or administrative advisor or both.
14. State patient rights penalties, if applicable.

## Menu 5 Substandard quality of care (SQC), but not immediate jeopardy



Historical classification: poor performer or needing early review with no date certain. Scope and severity classification: H, I, or F.

Survey type \*: any.

Plan of correction: required.

Federally authorized enforcement remedies

Category 2 (required):

14. Denial of payment for new admissions.

15. A civil money penalty of \$50.00 to \$3,000.00 per day.

16. Temporary administrative advisor or clinical advisor, or both.

Category 1 (optional):

17. Directed plan of correction.

18. Directed in-service training.

19. State monitoring.

State survey agency enforcement actions (1 or more may be accepted)

20. Notice of intent to revoke licensure.

21. Correction notice or order to ban admissions or readmissions or both.

22. Correction notice or order to transfer selected patients, reduce licensed capacity, or comply with specific requirements.

23. Correction notice or order requiring appointment of a temporary manager.

24. Correction notice or order requiring appointment of a temporary clinical advisor or administrative advisor, or both.

25. State patient rights penalties, if applicable.

If the SQC is not resolved by the first or subsequent revisit:

26. Denial of payment for new admissions (required federal remedy if noncompliance is on the ninetieth day).

27. Request the state survey agency to initiate receivership sale.

28. Additional enforcement action from menu 5.

29. Increase of civil money penalty within the specified range of \$50.00 to \$3000.00 per day.

#### Menu 4

#### Facility not in substantial compliance

Historical classification: poor performer or needing early review with no date certain. Scope and severity classification: D, E, F, or G.

Survey type: standard or abbreviated.

Plan of correction: required.

Federally authorized enforcement remedies

Category 2 (required for classification F and G; optional for classification D and E):

- 30. Denial of payment for new admissions.
- 31. Administrative advisor or clinical advisor, or both.

Category 2 (optional)

- 32. A daily civil money penalty of \$50.00 to \$3,000.00.

Category 1 (optional for classification F and G; required for classification D and E):

- 33. Directed plan of correction.
- 34. Directed in-service training.
- 35. State monitoring.

State survey agency enforcement actions (1 or more may be accepted)

- 36. Correction notice or order to ban admissions or readmissions, or both.
- 37. Correction notice or order to transfer selected patients, reduce licensed capacity, or comply with specific requirements.
- 38. Correction notice or order requiring appointment of a temporary manager.
- 39. Correction notice or order requiring appointment of a temporary administrative advisor or clinical advisor, or both.
- 40. State patient rights penalties, if applicable.

If substantial compliance is not achieved at the first or subsequent revisit:

- 41. Notice of intent to revoke license.
- 42. Denial of payment for new admissions (required federal remedy if noncompliance continues at the ninetieth day).
- 43. Additional enforcement action from menu 4.
- 44. Civil money penalty adjustment may occur if scope and severity change.

If substantial compliance is not achieved by the one hundred and eightieth day:

- 45. Termination, as required by federal law.
- 46. Request the state survey agency to initiate receivership sale.

Notes:

If a facility has met the federal definition of "poor performer, immediate imposition of remedies will occur during the current cycle using menu 4, 5, or 6 as appropriate to the level of noncompliance.

Denial of payment for new admissions and state monitoring will be imposed if a facility has been found to have provided substandard quality of care on 3 consecutive standard surveys.

Notice of termination for failure to achieve substantial compliance within 180 days is always included with notification of alternate remedies.

If more than 1 menu is indicated by the survey findings, then the highest appropriate menu will be applied.

Federal law, as specified in the social security act at sections 1819(f)(2)(B) and 1919(f)(2)(B), prohibits approval of nurse aide training and competency evaluation programs and nurse aide competency evaluation programs offered by, or in, a facility that, within the previous 2 years, has operated under a section 1819(b)(4)(C)(ii)(II) or section 1919(b)(4)(C)(ii) waiver; has been subject to an extended or partial extended survey as a

result of a finding of substandard quality of care; has been assessed a total civil money penalty of not less than \$5,000.00; has been subject to a denial of payment, the appointment of a temporary manager, or termination; or, in the case of an emergency, has been closed or had its residents transferred to other facilities, or both. Exceptions, as specified in Public Law 105-15, "Permitting Waiver of Prohibition of Offering Nurse Aide Training and Competency Evaluation Programs in Certain Facilities," will apply.

\*"Any survey" means an annual standard survey, abbreviated survey, or revisit survey. A standard survey includes both the health survey and life safety code survey findings.

### Menu 3

If immediate jeopardy is found at any survey

Historical classification: historically compliant or needing early review with possible date certain.

Scope and severity classification: J, K, or L.

Survey type \*: any.

Plan of correction: required.

Federally authorized enforcement remedies

Category 3 (required):

47. 23-day termination of provider agreement.

48. Temporary manager.

Category 3 (optional):

49. A civil money penalty of \$3050.00 to \$10,000.00 per day.

Category 2 (optional):

- 50. Denial of payment for new admissions.
- 51. Administrative advisor or clinical advisor, or both.

Category 1 (optional):

- 52. Directed plan of correction.
- 53. Directed in-service training.
- 54. State monitoring.

State survey agency enforcement actions (1 or more may be accepted)

- 55. Emergency order limiting, suspending, or revoking a license.
- 56. Correction notice or order to ban admissions or readmissions, or both.
- 57. Correction notice or order to transfer selected patients, reduce licensed capacity, or comply with specific requirements.
- 58. Correction notice or order requiring appointment of a temporary manager.
- 59. Correction notice or order requiring appointment of a temporary administrative advisor or clinical advisor, or both.
- 60. State patient rights penalties, if applicable.

If the substandard quality of care remains at the first revisit or thereafter:

Federally authorized enforcement remedies

Category 2 (required):

- 61. Denial of payment for new admissions.
- 62. Administrative advisor or clinical advisor, or both.

Category 1 (optional):

- 63. Directed plan of correction.
- 64. Directed in-service training.
- 65. State monitoring.

Other:

- 66. Denial of payment for new admissions (required federal remedy for noncompliance at the ninetieth day).

State survey agency enforcement actions (1 or more may be accepted)

- 67. Correction notice or order requiring appointment of a temporary manager.
- 68. Correction notice or order requiring appointment of a temporary administrative advisor or clinical advisor, or both.
- 69. Correction notice or order requiring ban on admissions or readmissions, or both.

70. Correction notice or order to transfer selected patients, reduce licensed capacity, or comply with specific requirements.

71. State patient rights penalties, if applicable.

72. Notice of intent to revoke license.

If a facility is not in substantial compliance at the first revisit or thereafter:

Federally authorized enforcement remedies

Category 2 (required for F and G levels; optional for D and E levels):

73. Denial of payment for new admissions.

74. Administrative advisor or clinical advisor, or both.

Category 1 (optional):

75. Directed plan of correction.

76. Directed in-service training.

77. State monitoring.

Other:

78. Denial of payment for new admissions (required federal remedy for noncompliance at the ninetieth day).

State survey agency enforcement actions (1 or more may be accepted)

79. Correction notice or order requiring appointment of a temporary manager.

80. Correction notice or order requiring appointment of a temporary administrative advisor or clinical advisor, or both.

81. State patient rights penalties, if applicable.

82. Other licensure enforcement actions appropriate to the specific case, which may include a correction order, a notice to discontinue admissions or readmissions, transfer selected patients, reduce licensed capacity, or comply with specific requirements

## Menu 2

If substandard quality of care is found at any survey

Historical classification: historically compliant or needing early review with possible date certain.

Scope and severity classification: H, I, or F.

Survey type \*: any.

Plan of correction: required.

Federally authorized enforcement remedies

Category 1 (optional):

Directed plan of correction.

Directed in-service training.

State monitoring.

State survey agency enforcement actions (1 or more may be accepted)

- 83. Correction notice or order requiring appointment of a temporary manager.
- 84. Correction notice or order requiring appointment of a temporary administrative advisor or clinical advisor, or both.
- 85. State patient rights penalties, if applicable.
- 86. Correction notice or order to ban admissions or readmissions, or both.

If the SQC remains at the first revisit or thereafter:  
Federally authorized enforcement remedies

Category 2 (required):

- 87. Denial of payment for new admissions.
- 88. Administrative advisor or clinical advisor, or both.

Category 2 (optional):

- 89. A civil money penalty of \$50.00 to \$3,000.00 per day.

Category 1 (optional):

- 90. Directed plan of correction.
- 91. Directed in-service training.
- 92. State monitoring.
- 93. Denial of payment for new admissions (required remedy for noncompliance at the ninetieth day)

State survey agency enforcement actions (1 or more may be accepted)

- 94. Correction notice or order requiring appointment of a temporary manager.
- 95. Correction notice or order requiring appointment of a temporary administrative advisor or clinical advisor, or both.
- 96. Correction notice or order to ban admissions or readmissions, or both.
- 97. Correction notice or order to transfer selected patients, reduce licensed capacity, or comply with specific requirements.
- 98. State patient rights penalties, if applicable.
- 99. Notice of intent to revoke license.

If a facility is not in substantial compliance at the first revisit or thereafter:

Federally authorized enforcement remedies

Category 1 (required for D and E levels; optional for F, G, H, and I levels):

- 100. Directed plan of correction.

- 101. Directed in-service training.
- 102. State monitoring.

Category 2 (required for F, G, H, and I levels; optional for D and E levels):

- 103. Denial of payment for new admissions .
- 104. Temporary administrative advisor or clinical advisor, or both.

Category 2 (optional):

- 105. A daily civil money penalty of \$50.00 to \$3000.00.

Other:

106. Denial of payment for new admissions (required federal remedy for noncompliance at the ninetieth day).

State survey agency enforcement actions (1 or more may be accepted)

- 107. Correction notice or order requiring appointment of a temporary manager.
- 108. Correction notice or order requiring appointment of a temporary administrative advisor or clinical advisor, or both.
- 109. State patient rights penalties, if applicable.
- 110. Other remedial enforcement actions appropriate to the specific case, which may include a correction notice or order to ban admissions or readmissions, or both.
- 111. Transfer selected patients, reduce licensed capacity, or comply with specific requirements.

#### Menu 1

#### Facility not in substantial compliance

Historical classification: historically compliant or needing early review with possible date certain.

Scope and severity classification: D, E, G, F, H, or I if not SQC.

Survey type \*: standard or abbreviated.

Plan of correction: required.

No remedies; date certain opportunity to correct is given.

If substantial compliance is not achieved at the first revisit or thereafter:

Federally authorized enforcement remedies

Category 1 (required for D and E levels; optional for F, G, H, and I levels):

- 112. Directed plan of correction.
- 113. Directed in-service training.
- 114. State monitoring.

Category 2 (required for F, G, H, and I levels; optional for D and E levels):

- 115. Denial of payment for new admissions .
- 116. Administrative advisor or clinical advisor or both.

Category 2 (optional):

- 117. A daily civil money penalty of \$50.00 to \$3000.00 per day.

Other:

- 118. Denial of payment for new admissions (required federal remedy for noncompliance at the ninetieth day).

State survey agency enforcement actions (1 or more may be accepted)

- 119. Correction notice or order requiring appointment of a temporary manager.
- 120. Correction notice or order requiring appointment of a temporary manager or clinical advisor, or both.
- 121. State patient rights penalties, if applicable.
- 122. Other licensure enforcement actions appropriate to the specific case, which may include a correction notice or order to ban admissions or readmissions, or both.
- 123. Correction notice or order to transfer selected patients, reduce licensed capacity, or comply with specific requirements.

Notes:

Denial of payment for new admissions and state monitoring will be imposed if a facility has been found to have provided substandard quality of care on 3 consecutive standard surveys.

Notice of termination for failure to achieve substantial compliance within 180 days is always included with notification of alternate remedies. Federal law, as specified in the social security act at sections 1819(f)(2)(B) and 1919(f)(2)(B), prohibits approval of nurse aide training and competency evaluation programs and nurse aide competency evaluation programs offered by, or in, a facility that, within the previous 2 years, has operated under a section 1819(b)(4)(C)(ii)(II) or section 1919(b)(4)(C)(ii) waiver; has been subject to an extended or partial extended survey as a result of a finding of substandard quality of care; has been assessed a total civil money penalty of not less than \$5,000.00; has been subject to a denial of payment, the appointment of a temporary manager, or termination; or, in the case of an emergency, has been closed or had its residents transferred to other facilities, or both. Exceptions as specified in Public Law 105-15, "Permitting Waiver of Prohibition of Offering Nurse Aide Training and Competency Evaluation Programs in Certain Facilities," will apply.

\*"Any survey" means an annual standard survey, abbreviated survey, or revisit survey. A standard survey includes both the health survey and life safety code survey findings.



History: 1998-2000 AACCS.

**R 330.11008 Facility classification.**

Rule 11008. (1) A facility that meets the federal definition of "poor performer" shall not be given a date certain, that is an opportunity to correct before remedies are imposed. Remedies shall be imposed immediately.

(2) In making a determination to impose remedies, the state medicaid agency shall consider whether the state survey agency has identified a nursing facility as needing early review under the state licensure authority.

(3) If a nursing facility is allowed a date certain, then the nursing facility may or may not have federal category 1 remedies imposed immediately.

History: 1998-2000 AACCS.

**R 330.11009 Assuring prompt facility certification compliance.**

Rule 11009. (1) If a nursing facility is not found by the state survey agency to be in substantial compliance with certification requirements within 90 days after the date the facility is determined to be out of compliance, then the state medicaid agency shall deny payment for services provided to medicaid eligible individuals admitted to the nursing facility on or after that date.

(2) The nursing facility shall not bill the medicaid program for services provided to medicaid-eligible clients admitted to the facility on or after that date.

(3) A nursing facility that has deficiencies that constitute serious and immediate jeopardy shall not be allowed more than 23 days to correct the serious and immediate jeopardy and, depending on the situation, may be allowed less than 23 days before termination of the medicaid participation agreement.

History: 1998-2000 AACCS.

**R 330.11010 Failure to readmit qualified medicaid resident.**

Rule 11010. (1) The state medicaid agency shall impose a daily civil money penalty of \$400.00 on a nursing facility if the state medicaid agency is notified that the nursing facility unlawfully refuses to readmit a qualified medicaid resident after hospitalization.

(2) If a nursing facility unlawfully refused to readmit a qualified medicaid resident after hospitalization, then a date certain shall not be applied. The daily civil money penalty shall start on the date validated by the state survey agency that nursing home readmission should have occurred.

(3) The daily \$400.00 penalty continues against the nursing facility until the resident is offered the next qualifying available medicaid bed.

History: 1998-2000 AACCS.

**R 330.11011 Substandard quality of care (SQC).**

Rule 11011. (1) If a nursing facility is cited for SQC, then, together with other remedies, the state medicaid agency shall apply the following additional remedies:

(a) Request the state survey agency to notify the attending physicians of residents identified during the survey process as having been affected by the SQC or by the deficient findings.

(b) Request the state survey agency to notify the state nursing home administrator's licensure board of all findings of SQC.

(c) Request the state survey agency to revoke approval of the nurse aide training program.

(d) In the event of substandard quality of care, the state medicaid agency may assess a daily civil money penalty.

(2) If a nursing facility fails to correct the SQC by the ninetieth day, then, in addition to other appropriate remedies, the state medicaid agency shall deny payment for all new medicaid admissions.

(3) If a nursing facility fails to correct the SQC by the one hundred and eightieth day, then, in addition to other remedies, the state medicaid agency shall terminate the provider agreement.

(4) If a nursing facility has been found to have provided SQC on the last 3 consecutive standard surveys, then, together with other remedies, the state medicaid agency shall deny payment for new medicaid admissions and apply state monitoring.

History: 1998-2000 AACCS.

**R 330.11012 Immediate jeopardy.**

Rule 11012. (1) If a nursing facility is cited for immediate jeopardy, then a date certain will not be allowed. The state medicaid agency shall request that the state survey agency take immediate action to ensure that the facility removes the jeopardy and corrects the deficiencies or the state medicaid agency shall terminate the facility's participation under the medicaid state plan. Actions that may be taken or requested by the state medicaid agency include, but are not limited to, the following:

(a) Immediate termination under the 23-day serious and immediate threat policy.

(b) Additional actions, which may include 1 or more of the following:

(i) Request the state survey agency to order a temporary manager under its licensure authority.

(ii) Impose any category 1 or 2 remedies determined appropriate.

(iii) Impose a daily civil money penalty of \$3,050.00 to \$10,000.00.

(2) Impose or request additional remedies that can be applied pursuant to law based on the compliance history of the facility and to protect residents or assure compliance.

History: 1998-2000 AACCS.

**R 330.11013 Nursing facility not in substantial compliance; notice of termination.**

Rule 11013. (1) If a facility's deficiencies do not constitute immediate jeopardy, then the state medicaid agency may apply alternative remedies instead of termination of the provider agreement. However, even though the deficiencies do not constitute immediate jeopardy, a concurrent notice of termination shall be issued together with written notice of the deficiency.

(2) If a facility's deficiencies are not corrected, then the notice of termination shall be effective not later than 180 days from the last date of survey.

(3) If an alternate remedy is chosen and the nursing facility did not come into substantial compliance within 180 days, then the state medicaid agency shall be liable to HCFA for payments made in the interim and the nursing facility shall be liable to the state medicaid agency.

(4) Concurrent notice of termination from the state medicaid agency is given to alert the nursing facility to the potential for nonpayment of services.

History: 1998-2000 AACCS.

### **R 330.11014 Civil money penalty.**

Rule 11014. (1) Prior notice is not required before a civil money penalty is imposed.

(2) A penalty equivalent to a 1-day penalty shall apply in all circumstances even if a facility deficiency is immediately corrected.

(3) The daily penalty shall end on the day before the determination of substantial compliance. Civil money penalties remain effective until the nursing facility achieves substantial compliance or until termination.

(4) The state medicaid agency shall accept the determination of the state survey agency as to the date a nursing facility has come into substantial compliance.

(5) Civil money penalty amounts shall be increased or decreased to reflect changes in levels of compliance at revisit.

(6) Civil money penalty amounts shall increase by 50% for repeat deficiencies.

(7) Continuing assessment of civil money penalties may cease if facility cooperation exists and 1 of the following occurs:

(a) The appointment of a receiver by a circuit court.

(b) Closure of a nursing facility as evidenced by the filing of a notice of discontinuance of operation with the Michigan department of consumer and industry services under section 21785 of Act No. 368 of the Public Acts of 1978, as amended, being §333.21785 of the Michigan Compiled Laws.

(c) Appointment of a temporary manager for the purpose of overseeing the orderly closure of the nursing facility.

(8) Money collected by the department of as a result of civil money penalties shall be deposited into a special fund to be applied to the protection of the health and property of residents of any nursing facility that the state or HCFA finds deficient.

(9) Money withheld by the state medicaid agency from funds due a nursing facility because of a lack of payment of civil money penalties by the nursing facility shall also be deposited in the fund specified in subrule (8) of this rule.

History: 1998-2000 AACCS.

**R 330.11015 Notice of civil money penalty assessment.**

Rule 11015. (1) The state medicaid agency shall obtain both of the following from the state survey agency:

(a) Notice of the civil money penalty recommended.

(b) The specific type of civil money penalty recommendation and applicable number of days recommended.

(2) The state medicaid agency shall notify the nursing facility, as provided in 42 C.F.R. §§488.402(f) and 488.434, of all of the following:

(a) The total civil money assessment.

(b) The nursing facility's appeal rights.

(c) The date and method of collection.

(3) A nursing facility may only appeal the existence of a deficiency or the number of days considered to be in violation. The amount of the civil money penalty shall not be subject to appeal.

(4) Appeals shall be through the state medicaid agency. To the extent possible, the state medicaid agency shall coordinate the enforcement appeal hearings with any state licensure appeals processes afforded by the state survey agency.

(5) Within 30 calendar days of the notice of appeal rights, a nursing facility may elect to waive the right to appeal. The waiver shall be in writing and be received by the state medicaid agency appeals section within 30 days of the notice of appeal rights. Waiver of the right to appeal shall reduce the total civil money penalty amount by 35%.

History: 1998-2000 AACCS.

**R 330.11016 Civil money penalty collection.**

Rule 11016. (1) A civil money penalty shall be collected through voluntary transmittal.

(2) A civil money penalty shall be paid by check made payable to the "State of Michigan." A penalty shall be paid within 30 calendar days of receipt of the initial notice of penalty or within 15 days of the issuance of appeal results. A repayment schedule shall not be allowed.

(3) If voluntary transmittal of the full penalty amount does not occur, the civil money penalty shall be recovered by gross adjustment against the next available medicaid warrant.

History: 1998-2000 AACCS.

**R 330.11017 Civil money penalty not allowable medicaid cost.**

Rule 11017. A civil money penalty is not an allowable medicaid cost.

History: 1998-2000 AACCS.