



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

September 27, 2016

RE: DAL-NH-16-04
Section 12 - State Enforcement Actions

Dear Nursing Home Administrator:

On July 22, 2016 the Center for Clinical Standards and Quality/ Survey Group for the Centers for Medicare and Medicaid Services (CMS) issued S&C 16-31-NH which provides advance guidance relating to revisions to the State Operations Manual's policy on the Immediate Imposition of Federal Remedies. This S&C notifies State agencies that CMS is implementing a new national policy that requires the use of federal enforcement remedies under specified circumstances. This guidance is effective for all surveys completed on or after September 1, 2016.

The New York State Department of Health's Division of Nursing Homes and ICF/IID Surveillance ("the Department") can recommend State level enforcement actions against nursing homes found to be noncompliant with State regulations, pursuant to Section 12 of the Public Health Law. The Department will initiate State level enforcement for the following categories of deficiencies effective for all surveys completed on or after September 1, 2016.

- All Immediate Jeopardy (IJ) identified on the current survey; or
- Deficiencies of Substandard Quality of Care (SQC) that are not IJ identified on the current survey; or
- Any deficiencies of actual harm (levels G, H and I) on the current survey; or
- A facility is classified as a Special Focus Facility (SFF) **AND** has a deficiency citation at level "F" or higher on its current survey.

In addition, the Department may also initiate State level enforcements for repeat deficiencies at level D to F identified on the current survey and any survey within the last two calendar years where the facility demonstrates:

- Failure to accept ultimate responsibility and accountability; or
- Failure to supervise and monitor performance of all staff; or
- Poor or no understanding of the systems required by and components of effective health care delivery with quality outcomes for residents.

Repeat deficiency means a citation that is cited on the current survey and is substantially the same as or similar to, a finding of a citation cited on the most recent previous standard survey or on any intervening survey since the most recent standard survey. This does not mean that the deficiencies must be cited in the same F tag, nor does it mean that two citations in the same F tag are, by default, substantially the same or similar.

Should you have any questions, please contact the Division of Nursing Homes and ICF/IID Surveillance at (518) 408-1267.

Sincerely,

A handwritten signature in cursive script that reads "Shelly Glock".

Shelly Glock
Director
Division of Nursing Homes and ICF/IID Surveillance
Center for Health Care Provider Services and Oversight

cc: Mr. D. Sheppard
Mr. K. Servis
Mr. M. Hennessey