



STATE OF MARYLAND  
**DHMH**

**Maryland Department of Health and Mental Hygiene**

Office of Health Care Quality

Spring Grove Center · Bland Bryant Building

55 Wade Avenue · Catonsville, Maryland 21228-4663

Martin O'Malley, Governor · Anthony G. Brown, Lt. Governor · Joshua M. Sharfstein M.D., Secretary

May 7, 2013

Ms. Anita Blauch, Administrator  
Western Maryland Health Systems~  
Frostburg Nursing & Rehabilitation Center  
48 Tarn Terrace  
Frostburg, MD 21532

**PROVIDER # 215277**

**RE: NOTICE OF IMMEDIATE JEOPARDY,  
SUBSTANDARD QUALITY OF CARE,  
IMPOSITION OF A CIVIL MONEY PENALTY  
UNDER STATE REGULATIONS AND POSSIBLE  
IMPOSITION OF OTHER REMEDIES**

Dear Ms. Blauch:

On April 22, 2013 through April 26, 2013, a health survey was conducted at your facility by the Office of Health Care Quality to determine if your facility was in compliance with Federal participation requirements for nursing homes participating in the Medicare and/or Medicaid programs. The survey was also conducted for the purposes of State licensure. As documented in the attached form CMS 2567, this survey found that your facility was not in substantial compliance with participation requirements. In fact, conditions at your facility posed immediate jeopardy to the health and safety of residents. The deficiency that forms the basis for the finding of immediate jeopardy is attached. Abatement of the condition(s) that posed immediate jeopardy was confirmed by the survey team on April 24, 2013 at 6:37 PM.

All references to regulatory requirements contained in this letter are found in Title 42, Code of Federal Regulations.

The facility's noncompliance with the following regulations constitutes immediate jeopardy to the health and safety of residents:

F 155 Right To Refuse Treatment; Formulate Advance Directives, 483.10

I. RECOMMENDED REMEDIES

The following remedies will be recommended for imposition by the Center for Medicare and Medicaid Services (CMS) Regional Office if your facility has failed to achieve substantial compliance by June 10, 2013. Informal dispute resolution for the cited deficiencies will not delay the imposition of the enforcement actions recommended on June 10, 2013. A change in the seriousness of the noncompliance on June 10, 2013 may result in a change in the remedy selected. When this occurs, you will be advised of any change in remedy.

If you do not achieve substantial compliance within 3 months after the last day of the survey identifying non-compliance, (i.e., July 26, 2013) the CMS Regional Office and/or State Medicaid Agency must deny payments for new admissions. (§§488.417(a))

We are also recommending to the CMS Regional Office and/or the State Medicaid Agency that your provider agreement be terminated on October 26, 2013 if substantial compliance is not achieved by that time.

II. AUTOMATIC CONSEQUENCES AS A RESULT OF PROVIDING SUBSTANDARD QUALITY OF CARE

Your facility's noncompliance with the following:

**42 CFR 483.10**

constitutes substandard quality of care as defined at §488.301, Sections 1819(g)(5)(C) and 1919(g)(5)(C) of the Social Security Act and 42 CFR 488.325(h) of the Code of Federal Regulations. As a result of providing substandard quality of care, surveyors conducted an extended, or partial extended, survey at your facility. The Federal regulations at 42 CFR §483.151 (b)(2)(iii), 42 CFR §483.151 (b)(3)(i), (ii) and (iii), and 42 CFR §483.151 (e) require that any nursing facility that has been subject to an extended or partial extended survey, a denial of payments for new admissions or a Civil Money Penalty of not less than \$5,000.00, must have the approval for their nurse aide training and competency evaluation program (NATCEP) withdrawn for a period of two years. Therefore your facility is prohibited from operating a nurse aide training program for two years from the last day of the survey. See §483.151.

You have the right to appeal to CMS the loss of your nurse aide training program as a result of a finding of Substandard Quality of Care (SQC); however, your nurse aide training program must cease to operate pending an appeal.

If you disagree with this determination, you or your legal representative may request a hearing before an Administrative Law Judge of the Department of Health and Human Services, Departmental Appeals Board. Procedures governing this process are set out in 42 CFR 498.40, et

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seq. A written request for a hearing must be filed no later than 60 days from the date of receipt of this letter. Such a request may be made to:

Department of Health & Human Services  
Departmental Appeals Board, MS 6132  
Civil Remedies Division  
Attention: Theodore Kim, Division Director  
330 Independence Avenue, S.W.  
Washington, D.C. 20201

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 be represented by counsel at a hearing at your own expense.

Should you choose to exercise your right to appeal, please forward a copy of that appeal to:

Mr. James C. Newman, Chief Counsel  
Office of the General Counsel  
Public Ledger Building, Suite 418  
150 South Independence Mall West  
Philadelphia, PA 19106

In addition, Sections 1819(g)(5)(C) and 1919(g)(5)(C) of the Social Security Act and 42 CFR 488.325(h) require that the attending physician of each resident who was found to have received substandard quality of care as well as the State board responsible for licensing the facility's administrator be notified of the substandard quality of care. In order for us to satisfy these notification requirements, and in accordance with §488.325(g), you are required to provide the following information to this agency within 10 working days of your receipt of this letter (see the attached form to be used to provide this information). Residents affected include: Resident(s)#55. Please refer to the Resident by number only.

### III. IMMEDIATE IMPOSITION OF A PER INSTANCE CIVIL MONEY PENALTY UNDER CODE OF MARYLAND REGULATIONS

Under Maryland Health General Article Sections 19-1401 et seq. and COMAR 10.07.02.51, the Department of Health and Mental Hygiene has the authority to impose a civil money penalty (CMP) based upon the existence of deficiencies at a comprehensive care facility.

Based upon the deficiencies cited at your facility, I hereby impose a per instance Civil Money Penalty (CMP) of \$5000. The deficiencies upon which the CMP is based are enclosed with this letter on Form CMS 2567 and State Form which is incorporated by reference. Of

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particular concern were the deficiencies cited under F155, COMAR 10.07.09.08 C (11) and COMAR 10.07.09.09 L and the facility staff's failure to honor the resident's right to refuse treatment.

In determining whether to impose a CMP, the Department took into consideration the following factors:

1. The number, nature, and seriousness of the deficiencies;
2. The extent to which the deficiency or deficiencies are part of an ongoing pattern during the preceding 24 months;
3. The degree of risk to the health, life, or safety of the residents of the nursing facility caused by the deficiency or deficiencies;
4. The efforts made by, and the ability of, the nursing facility to correct the deficiency or deficiencies;
5. The nursing facility's prior history of compliance in general and specifically with reference to the cited deficiencies; and
6. Such other factors as justice may require.

In setting the amount of the CMP, the Department considered the following factors in addition to those factors considered in determining whether to impose a CMP:

Current federal guidelines for civil money penalties; and whether the amount of the proposed civil money penalty will jeopardize the financial ability of the nursing facility to continue operating as a nursing facility.

The facility may request a hearing on the decision to impose this CMP. Any hearing will be held in accordance with State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland, and COMAR 28.02.01 and 10.01.03. Any request for a hearing must be submitted in writing to Paul J. Ballard, Office of the Attorney General, 300 West Preston Street, Suite 302, Baltimore, Maryland, 21201, no later than 30 days after receipt of this notice. The request shall include a copy of this letter. If the informal dispute resolution process referenced elsewhere in this letter does not result in settlement of this matter, this matter will be referred to the Office of Administrative Hearings to hold a hearing and issue a proposed decision within 10 working days of the hearing. The aggrieved person may file exceptions as provided in COMAR 10.01.03.35. A final decision by the Secretary shall be issued in accordance with COMAR 10.01.03.35. If you do not request a hearing within 30 days after the receipt of this notice, the imposition of the CMP will become final at that time.

The CMP payment is due 15 calendar days after the time period for requesting a hearing has expired and a request for a hearing was not received; or 15 calendar days after receipt of a written request from the facility to waive its right to a hearing and reduce the amount of the CMP by 40 percent, provided the written request is received by the Department within 30 calendar days of the Department's order imposing the civil money penalty. COMAR 10.07.02.54(A).

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If Western Maryland Health Systems Frostburg Nursing & Rehabilitation Center files a timely request for a hearing, the nursing facility shall deposit the amount of the CMP in an interest-bearing escrow account. The nursing facility shall bear any costs associated with establishing the escrow account, and the account shall be titled in the name of the nursing facility and the Department of Health and Mental Hygiene as joint owners. COMAR 10.07.02.54(B).

When the Secretary issues the final decision of the Department, the funds in the escrow account, plus accrued interest if applicable, shall be distributed in accordance with COMAR 10.07.02.54C.

#### IV PLAN OF CORRECTION (PoC)

Based on the findings of this survey, an opportunity to correct the identified deficiencies will not be afforded prior to our recommendation of the imposition of remedies by the CMS and the State Medicaid agency. A PoC for the deficiencies must be submitted within 10 days after the facility receives its Form CMS 2567. Failure to submit an acceptable PoC within the above time frames may result in the imposition of additional remedies.

Your PoC must contain the following:

- What corrective action will be accomplished for those residents found to have been affected by the deficient practice;
- How you will identify other residents having the potential to be affected by the same deficient practice and what corrective action will be taken;
- What measures will be put into place or what systemic changes you will make to ensure that the deficient practice does not recur; and;
- How the corrective action(s) will be monitored to ensure the deficient practice will not recur, i.e., what quality assurance program will be put into place.
- Date by which corrective action will be completed; and
- **References to a resident(s) by only Resident #.** This applies to the PoC as well as any attachments to the PoC. It is unacceptable to include resident names in documents since the documents are released to the public.

#### V. INFORMAL DISPUTE RESOLUTION

In accordance with '488.331, you have one opportunity to question cited deficiencies through an informal dispute resolution process. You may also contest scope and severity

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assessments for deficiencies which resulted in a finding of SQC or immediate jeopardy. To be given such an opportunity, you are required to send your written request, along with the specific deficiency(ies) being disputed, and an explanation of why you are disputing the deficiency(ies), (or why you are disputing the scope and severity assessments of deficiencies which have been found to constitute SQC or immediate jeopardy) to me, Dr. Patricia Tomsko Nay, MD, Medical Director and Acting Director, Office of Health Care Quality, Bland Bryant Building, 55 Wade Avenue, Catonsville, Maryland 21228, phone 410-402-8201, fax 410-402-8234. This request must be sent within 10 days of receipt of this letter. Informal dispute resolution for the cited deficiencies will not delay the imposition of any enforcement action.

VI. LICENSURE ACTION

As you are aware, the cited Federal deficiencies have a counter part in State regulations. These deficiencies are cited on the enclosed State Form. Please provide a plan of correction and credible evidence of compliance for these deficiencies within 10 days of receipt of this letter. In the event a revisit determines that substantial compliance has not been achieved, appropriate administrative action may be taken against your State license.

In the event a revisit reveals that corrections have not been achieved, a mandated staffing pattern may be imposed in accordance with COMAR 10.07.02.07G(3) to assist you in the delivery of an adequate level of resident care.

If you have any questions concerning the instructions contained in this letter, please contact me at (410) 402-8201 or by fax at (410) 402-8234.

Sincerely,



Vanessa Leuthold  
Program Manager  
Office of Health Care Quality

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Enclosures: CMS 2567  
State Form  
Attending Physicians' Form

cc: Paul Ballard, Esq.  
Jane Sacco  
Sam Colgain  
Tim Hock  
Ruby Potter  
Patricia A. Hannigan  
Margie Heald  
Alice Hedt  
Earl E. Stoner  
File II