

MEMORANDUM

Texas Department of Human Services * Long Term Care/Policy

TO: LTC-R Regional Directors
Section/Unit Managers

FROM: Marc Gold
Section Manager
Long Term Care-Policy
State Office MC: W-519

SUBJECT: Regional Survey & Certification Letter #98-18

DATE: June 23, 1999

The attached RS&C Letter is being provided to you for information purposes and should be shared with all professional staff.

- RS&C Letter No. 98-19 -- Revision to the Mandatory Criteria of a Poor Performing, Long Term Care Facility; Call Beverly Tucker, Section Manager, LTC-R Policy Liaison, at (512) 438-2631.

If you have any questions, please direct inquiries to the individuals or sections listed above.

~Original Signature on File~

Marc Gold

Attachment

DEPARTMENT OF HEALTH & HUMAN SERVICES
Health Care Financing Administration

Region VI
1301 Young Street, Room 833
Dallas, Texas 75202

October 7, 1998

REGIONAL SURVEY AND CERTIFICATION LETTER NO: 98-19

To: All State Survey Agencies (Action)
All Title XIX Single State Agencies (Information)

Subject: Revision to the Mandatory Criteria of a Poor Performing, Long Term Care Facility

The purpose of this letter is to provide guidance related to a change in the mandatory criteria for determining a long term care facility is a poor performing facility (PPF). Please refer to the attached memorandum which was sent to all state agencies dated September 22, 1998.

On May 29, 1996, HCFA issues Q&A #289 which gave the mandatory and optional criteria for States to use in determining whether a facility was a poor performer. These criteria were:

- **Mandatory Criterion** - The facility is cited for substandard quality of care (SQC) on the current survey and has been cited for SQC or immediate jeopardy on at least one of the previous two standard surveys.
- **Optional Criteria** - If facility did not meet the mandatory criteria and significant noncompliance was found during the current survey, the State could choose to use one of the following optional criteria:
 - The facility has a history of substantiated complaints in the last 2 years; or
 - The facility does not have any or has an ineffective quality assurance program, as evidenced by the fact that a deficiency was cited at 42 CFR 483.75(o)-Quality Assessment and Assurance.

The attached memorandum dated September 22, 1998, broadens the mandatory criterion for a poor performer. The revised mandatory criterion states: "If the facility is found out of compliance on the current survey; the scope and severity of the deficiency(ies) is at the level of actual harm or higher (G, H, I, J, K, L on the grid); and the facility has been cited at the level of actual harm or higher at the previous standard or intervening survey, the facility will be considered as a poor performer." Based on the designation, the facility will not be given an opportunity to correct deficiencies before the imposition of remedies. **At a minimum, the revised Federal criterion is mandatory.**

Please note that the following is an exception to the new mandatory criterion: **The "G" box on the grid which represents isolated actual harm will be phased in early next year.** As a result, it will not be part of the mandatory criterion established by HCFA until sometime in the future.

An outcome of this revised criterion is that substandard quality of care (SQC) on the current survey is no longer a requirement for a facility to be designated as a poor performer. Therefore, a facility may have a deficiency(ies) which represent SQC at "widespread potential for more than minimal harm with no actual harm" (**F on the grid**) and the State would not required to designate the provider as a poor performer.

However, States will be able to establish optional criteria which are more stringent than the revised mandatory

criterion. The Dallas Regional Office encourages State Survey Agencies in Region VI to develop optional criteria considering such factors as substandard quality of care deficiencies at "F" on the current survey along with yo-yo compliance history, substantiated complaints, and/or lack of an effective quality assurance program.

If you have any questions concerning the information provided, please contact Theresa Bennett at 214/767-4406.

Sincerely,

~Signature on File~

Molly Crawshaw, Acting Chief
Survey and Certification Operations Branch
Division of Medicaid and State Operations

Enclosure

DEPARTMENT OF HEALTH & HUMAN SERVICES

Health Care Financing Administration
Center for Medicaid and State Operations
7500 Security Boulevard
Baltimore, MD 21244-1850

DATE: September 22, 1998

FROM: Acting Director
Disabled and Elderly Health Programs Group
Center for Medicaid and State Operations

SUBJECT: Change in Mandatory Criteria Used to Make "Poor Performing Facility" Determination

TO: Associate Regional Administrators
State Agency Directors

Over the past two months we have taken the first steps to implement changes to improve oversight and quality of nursing home care. One of these changes is the modification of the mandatory criteria used to make a determination that a nursing home is a "poor Performing facility."

The current definition of "poor performing facility" is found at Section 7304.B of the State Operations Manual (SOM). The broad terms used in the SOM definition spurred much discussion, prompting the release of Q and A #289 describing the specific criteria to be used to make the "poor performing" determination. The Q & A provided both mandatory and optional criteria, essentially giving States flexibility to adopt more stringent criteria while requiring at a minimum that the mandatory Federal criteria be used.

To strengthen enforcement, the mandatory "poor performing facility" criteria are being revised. Under the revised criteria, if a facility is found out of compliance with any deficiency with a Scope and Severity (S/S) at the level of actual harm or higher (boxes G, H, I, J, K, L) on the current survey AND the facility had a deficiency at the level of actual harm or higher at the previous standard survey or any intervening survey (i.e., any survey between the last standard survey and the current one), the facility will be considered a poor performing facility and will not be given an opportunity to correct deficiencies prior to the imposition of remedies. The States will retain their ability to establish optional criteria that are more stringent than the Federal criteria; however, the Federal criteria are a mandatory minimum.

I recognize that this revision will result in an increase in the State and Federal enforcement workload. As stated during the August meeting with Administrator DeParle and Deputy Administrator Hash, we will be working on the related resources issues. We also plan to streamline the current processes so that the additional administrative burden is lessened.

Because there are existing resource limitations, we will phase in implementation of the new "poor performing facility" criteria. Initially, we will use noncompliance falling within boxes H, I, J, K, or L on the current survey AND noncompliance at the last standard survey or any intervening survey that fell within boxes H, I, J, K, or L as the "poor performing facility" criteria. Early next year, we will add S/S box G noncompliance (isolated deficiencies that constitute actual harm). At present, we will use the box H, I, J, K, or L deficiency at the current survey AND on the last standard survey or any intervening survey as the mandatory Federal criteria for the poor performing facility determination.

If you or your staff have any questions, please feel free to contact Julie Moyers of my staff at (410) 786-6772 or by

e-mail.

/s/

Richard P. Brummel