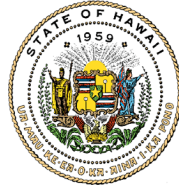


JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



CATHY BETTS
DIRECTOR
KA LUNA HO'ŌKELE

JOSEPH CAMPOS II
DEPUTY DIRECTOR
KA HOPE LUNA HO'ŌKELE

STATE OF HAWAII
KA MOKU'ĀINA O HAWAI'I
DEPARTMENT OF HUMAN SERVICES
KA 'OIHANA MĀLAMA LAWELAWĒ KANAKA
Med-QUEST Division
Health Care Services Branch
P. O. Box 700190
Kapolei, Hawaii 96709-0190

June 13, 2023

MEMORANDUM

MEMO NO.

QI-2322

FFS 23-11

TO: QUEST Integration Health Plans

FROM: Judy Mohr Peterson, PhD *JMP*
Med-QUEST Division Administrator

SUBJECT: PAYMENT SUSPENSION TO PROVIDER – HALE MAKUA - KAHULUI

This memo is to inform Health Plans that Hale Makua - Kahului did not meet the requirements for nursing homes participating in Medicare and Medicaid programs per CMS Notice dated May 25, 2023. On December 9, 2022, February 8, 2023, February 22, 2023, and April 13, 2023, health complaint surveys were completed at Hale Makua - Kahului by the Hawaii Department of Health (State Survey Agency (SSA)) to determine if the facility was in compliance with the Federal requirements for nursing homes participating in the Medicare and Medicaid programs. The SSA found that Hale Makua - Kahului was not in substantial compliance with the Federal requirements for nursing homes participating in the Medicare and Medicaid programs.

The SSA completed a revisit survey at Hale Makua - Kahului and determined that the facility had obtained substantial compliance with all cited deficiencies as of May 19, 2023.

Therefore, per 42 C.F.R. 488.406 (b)(2), and in accordance with the remedy imposed by CMS, the remedy of mandatory denial of payment for new Medicaid admissions was effective from March 9, 2023 - May 18, 2023. For any new admissions from March 9, 2023 - May 18, 2023, Hale Makua - Kahului is ineligible for Medicaid payment from time of admission up to

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June 13, 2023

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May 18, 2023. Payment for these admissions shall resume on May 19, 2023. Hale Makua - Kahului shall not seek payment from Medicaid beneficiaries for their covered services during the ineligible period.

Should you have any questions, please contact Jon Fujii at jfujii@dhs.hawaii.gov

Attachment(s)

CMS Notice, dated May 25, 2023

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
Center for Clinical Standards and Quality
Survey & Operations Group
San Francisco and Seattle Survey & Enforcement Division
90 7th Street, Suite 5-300 (5W)
San Francisco, CA 94103-6707



**THIS SERVES AS OFFICIAL NOTICE SENT VIA ELECTRONICALLY PURSUANT TO
42 CFR Part 488. NO HARD COPY TO FOLLOW**

Sent via E-MAIL to: Teana.Kahoohanohano@halemakua.org

May 25, 2023

CMS Certification Number (CCN): 125007

Administrator
Hale Makua - Kahului
472 Kaulana Street
Kahului, HI 96732

SUBJECT: SURVEY FINDINGS AND IMPOSITION/DISPOSITION OF REMEDIES
Cycle Start Date: December 9, 2022

Dear Administrator:

On December 9, 2022, February 8, 2023, February 22, 2023, and April 13, 2023, health complaint surveys were completed at Hale Makua - Kahului by the Hawaii Department of Health (State Survey Agency (SSA)) to determine if your facility was in compliance with the Federal requirements for nursing homes participating in the Medicare and Medicaid programs. The SSA found that your facility was not in substantial compliance, with the most serious deficiencies at Scope and Severity (S/S) level G, cited on February 22, 2023, as follows:

- F0689 -- S/S: G -- 483.25(d)(1)(2) -- Free Of Accident Hazards/supervision/devices.

In addition, the following deficiency cited on December 9, 2022 constitutes substandard quality of care (SQC):

- F0584 -- S/S: F -- 483.10(i)(1)-(7) -- Safe/clean/comfortable/homelike Environment

The SSA advised you of the deficiencies that led to this determination and provided you with a copy of the Statement of Deficiencies for the surveys referenced above (CMS-2567).

SUMMARY OF ENFORCEMENT REMEDIES

As a result of the survey findings, and as authorized by the Centers for Medicare & Medicaid Services (CMS), the SSA notified you of the imposition of the following remedy, as well as your appeal rights:

- Mandatory Denial of Payment for New Admissions effective March 9, 2023

Based on the survey findings, the SSA notified you they were recommending that the CMS impose an additional remedy, as follows:

- Federal Civil Money Penalty

SUBSTANTIAL COMPLIANCE

The SSA completed a revisit at your facility and determined that your facility had obtained substantial compliance with all cited deficiencies within this enforcement cycle as of May 19, 2023. As a result, the following remedy will not go into effect:

- Mandatory Termination effective June 9, 2023

Based on the period of time your facility was not in substantial compliance, the following remedy is being imposed:

- Federal Civil Money Penalty, see below.

DENIAL OF PAYMENT FOR NEW ADMISSIONS

However, based on the period of time your facility was not in substantial compliance, the following remedy has gone into effect:

- Mandatory denial of payment for new Medicare and Medicaid admissions, which was imposed effective March 9, 2023 is no longer in effect as of May 19, 2023. **Thus, the remedy applies to any new Medicare and Medicaid admissions from March 9, 2023 through May 18, 2023.**

Note: Consistent with 42 C.F.R. § 488.452(a)(3), this notice specifically supersedes any notice sent by the SSA reflecting a different denial of payment effective date and imposes the denial of payment for all new Medicare and Medicaid admissions pursuant to 42 C.F.R. § 488.417(b) effective **March 9, 2023 through May 18, 2023**.

In addition, the following remedy is being imposed:

Federal Civil Money Penalty, see below.

CIVIL MONEY PENALTY

In accordance with sections 1819(h)(2)(B)(ii) and 1919(h)(3)(C)(ii) of the Social Security Act and the enforcement regulations specified at 42 C.F.R. Part 488, we are imposing the following:

Federal Civil Money Penalty of \$14,325.00 per instance for the instance on February 22, 2023 described at deficiency F0689 (S/S: G)

The total CMP imposed is: \$14,325.00

The authority for the imposition of remedies is contained in subsections 1819(h) and 1919(h) of the Social Security Act ("Act") and Federal regulations at 42 CFR § 488 Subpart F, Enforcement of Compliance for Long-Term Care Facilities with Deficiencies.

FINANCIAL HARDSHIP CONSIDERATION

If you believe that you have documented evidence that should be considered in establishing the amount

of the CMP, the following documents should be submitted electronically to Yvonne.Pon@cms.hhs.gov within **fifteen (15) calendar days** from the receipt of this notice:

- Written, dated request specifying the reason financial hardship is alleged
- List of the supporting documents submitted
- Current balance sheet
- Current income statements
- Current cash flow statements
- Most recent full year audited financial statements prepared by an independent accounting firm, including footnotes
- Most recent full year audited financial statements of the home office and/or related entities, prepared by an independent accounting firm, including footnotes
- Disclosure of expenses and amounts paid/accrued to the home office and/or related entities
- Schedule showing amounts due to/from related companies or individuals included in the balance sheets. The schedule should list the names of related organizations or persons and indicate where the amounts appear on the balance sheet (e.g., Accounts Receivable, Notes Receivable, etc.)
- If the nursing home requests an extended payment schedule of more than twelve (12) months duration, the provider must submit a letter from a financial institution denying the provider's loan request for the amount of the CMP. This does not apply to CMPs to be held in escrow.

When the CMP is due and payable, it may be placed in an escrow account fifteen days after one of the following, whichever occurs first:

- The date on which an Independent IDR process is completed, if applicable or
- The date which is 90 calendar days after the date of the notice of imposition of the civil money penalty.

CMP CASE NUMBER

Please do not send payment now. A CMP case number will be assigned to your case only when the final CMP is due and payable. At that time you will receive a notice from this office with the CMP case number and payment instructions. If the total amount of the CMP is not received by the due date, interest will be assessed in accordance with the regulations at 42 CFR § 488.442 on the unpaid balance of the penalty beginning on the due date. The Federal rate of interest is **11.50%**. The CMP, and any interest accrued after the due date, will be deducted from sums owing to you **without any further notification from this office.**

Prior to the assignment of a CMP case number, you must ensure that your facility's name, CMS Certification Number (CCN), and the enforcement cycle start date appear on any correspondence pertaining to this CMP.

- Your CMS Certification Number (CCN) is 125007.
- The start date for this cycle is December 9, 2022

CMP REDUCED IF HEARING WAIVED

If you waive your right to a hearing, **in writing**, within **60 calendar days** from receipt of this notice, the amount of your CMP will be reduced by thirty-five percent (35%). To receive this reduction, the written waiver should be sent to the Centers for Medicare & Medicaid Services, Division of Survey and Certification at Yvonne.Pon0@cms.hhs.gov. **Please include your facility name, CCN and the Cycle**

Start Date in the subject line of your email.

The failure to request a hearing within 60 calendar days from your receipt of this notice does not constitute a waiver of your right to a hearing for purposes of the 35% reduction.

INFORMAL DISPUTE RESOLUTION (IDR)

The SSA offered you an opportunity for informal dispute resolution (IDR) following its survey visits. A request for IDR will not delay the effective date of any enforcement action. However, IDR results will be considered when applicable.

INDEPENDENT INFORMAL DISPUTE RESOLUTION (INDEPENDENT IDR)

Because we are now imposing a CMP that is subject to immediate collection and placement in escrow, 42 CFR § 488.431 requires us to notify you that you may also have a right to an Independent Informal Dispute Resolution (IIDR). Deficiencies for which you elect IDR are not also eligible for IIDR; therefore you will need to choose.

An IIDR allows you to present written arguments and documentation that explain why you believe the deficiencies are incorrect. You may also contest scope and severity assessments for deficiencies which resulted in a finding of Substandard Quality of Care or immediate jeopardy. IIDR also requires the SSA to notify the involved resident(s) or the appropriate resident representative(s), who were involved in the deficiency; as well as to notify the State Long Term Care Ombudsman. As part of the IIDR process, these parties will be given the opportunity to comment on the relevant deficiencies.

A request for an IIDR must be postmarked within **10 calendar days** of the date of this notice. Your IIDR request must identify which deficiencies are being disputed, and provide all documentation you will use to dispute the survey findings. To be given such an opportunity, you are required to send your written request, i.e. why you are disputing the scope and severity assessments of deficiencies which have been found to constitute SQC or immediate jeopardy, to the SSA to:

**Keith Ridley, Chief
Hawaii Department of Health
Office of Health Care Assurance
601 Kamokila Blvd., Room 395
Kapolei, Hawaii 96707
Telephone: (808) 692-7420
Keith.Ridley@doh.hawaii.gov**

Upon receipt of your IIDR request, the SSA will provide information on the next steps in the IIDR process. If you request IIDR, the CMP may be collected on the day the IIDR is completed, or 90 days from the date of this letter, whichever is earliest.

NURSE AIDE TRAINING PROHIBITION (NATCEP)

Federal law, as specified in the Social Security Act at § 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 which, within the previous two years, has operated under a § 1819(b)(4)(C)(ii)(II) or § 1919(b)(4)(C)(ii) waiver (i.e., waiver of full-time registered professional nurse); 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 \$11,995.00; 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 and/or had its residents transferred to other facilities.

Because your facility was subject to an extended survey as a result of a finding of substandard quality of care, this provision applies to your facility. Therefore, your facility is prohibited from offering or conducting a NATCEP for two years.

You will receive further details about the denial of approval of nurse aide training from the State. In light of the foregoing, you may finish any nurse assistant training class you are presently conducting; you may not, however, start another such class.

APPEAL RIGHTS

If you disagree with the determination to impose remedies made on the basis of noncompliance identified in this notice, you or your legal representative may request a hearing before an administrative law judge of the U.S. Department of Health and Human Services, Departmental Appeals Board (DAB). The appeal rights are set forth at 42 C.F.R. § 498.5 and the procedures for requesting a hearing are set forth at §498.40, et seq. You must file your hearing request electronically by using the DAB's Electronic Filing System (DAB E-File) at <https://dab.efile.hhs.gov/>, unless you obtain a waiver from the DAB (see DAB Civil Remedies Division Procedures, § 6(a)(i)(1)). Your appeal must be filed no later than 60 days from the date of receipt of this letter.

If you elect to dispute deficiencies through the Informal Dispute Resolution (IDR) process (see the state letter accompanying the CMS Form-2567 for additional details and deadlines), this will not extend the 60 day period to file your appeal before the Departmental Appeals Board. Filing an appeal will not stop the imposition of any enforcement remedy.

If you experience problems with, or have questions about DAB e-File, please contact e-File System Support at OSDABImmediateOffice@hhs.gov. If you have questions about using the DAB e-file System, please visit: https://dab.efile.hhs.gov/appeals/to_crd_instructions?locale=en.

CONTACT INFORMATION

If you have any questions, please contact Yvonne.Pon@cms.hhs.gov

Sincerely,

Yvonne Pon -S
Pon -S

Digitally signed by
Yvonne Pon -S
Date: 2023.05.25
07:33:35 -0700

for

James Bossenmeyer

Acting Director

San Francisco/Seattle Survey & Enforcement Division

Survey & Operations Group

Centers for Medicare and Medicaid Services

U.S. Department of Health & Human Services

Copies via e-mail to:

State Survey Agency
State Medicaid Agency
USDOJ
MAC