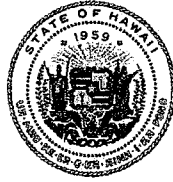


JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



CATHY BETTS
DIRECTOR
KA LUNA HO'OKELE

JOSEPH CAMPOS II
DEPUTY DIRECTOR
KA HOPE LUNA HO'OKELE

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

August 04, 2023

MEMORANDUM

MEMO NO.

QI-2330 (Replaces QI 2322)
FFS 23-16 (Replaces FFS 23-11)

TO: QUEST Integration Health Plans

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

SUBJECT: RESCINDED PAYMENT SUSPENSION TO PROVIDER – HALE MAKUA - KAHULUI

The purpose of this memo is to inform Health Plans that this memo replaces QI 2322 and FFS 23-11 previously issued on June 13, 2023, and that mandatory denial of payment to Hale Makua – Kahului for new Medicare and Medicaid admissions is rescinded.

The Centers for Medicare & Medicaid Services' (CMS) letter dated July 18, 2023, supersedes and replaces previous CMS Imposition of Remedy notice dated May 25, 2023, in which CMS approved a certification/finding of noncompliance and imposed remedies based thereon. Subsequently, CMS determined that Hale Makua - Kahului was in compliance with the Federal requirements for nursing homes participating in the Medicare and Medicaid programs.

As a result of this revised decision, CMS exercised its discretion and determined that the remedy should not go into effect. Mandatory denial of payment for new Medicare and Medicaid admissions from March 9, 2023 through May 18, 2023 is rescinded.

Should you have any questions, please contact Megan Hironaka at mhironaka@dhs.hawaii.gov.

Attachment(s)
CMS Notice, dated July 18, 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

July 18, 2023

CMS Certification Number (CCN): 125007

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

SUBJECT: Notice of Reopening and Revision of Initial Determination
Cycle Start Date: December 9, 2022

Dear Administrator:

This letter supersedes and replaces the Centers for Medicare & Medicaid Services' (CMS) previous Imposition of Remedy notice to you dated May 25, 2023 in which CMS approved a certification/finding of noncompliance and imposed remedies based thereon. As you were previously informed, 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).

REOPENING AND REVISION OF INITIAL DETERMINATION

CMS has reopened and revised the initial determination described in its May 25, 2023 notice letter in accordance with CMS' authority under 42 C.F.R. §§ 498.30 and 498.32. We have carefully reviewed the survey findings documenting your facility's return to substantial compliance after the complaint survey completed on December 9, 2022 and the documentation that supports those findings. Based on this review, CMS has since revised the date that your facility returned to substantial compliance and the resulting remedies imposed as follows:

Determination of Substantial Compliance

CMS is exercising its discretion and hereby determines that your facility obtained substantial compliance effective January 23, 2023 with the deficiency findings identified in the complaint survey completed on December 9, 2022. Accordingly, CMS has also revised the previously-noticed remedies imposed as a result of the findings of the December 9, 2022 and February 22, 2023 surveys. As a result of this revision, the mandatory denial of payment for new admissions initially imposed in the May 25, 2023 notice has been changed as follows:

- **Mandatory denial of payment for new Medicare and Medicaid admissions is rescinded effective January 23, 2023.** The remedy did not go into effect on March 9, 2023 through May 18, 2023.

Based on the determinations of your facility's return to substantial compliance after the February 8, 2023, February 22, 2023, and April 13, 2023 surveys, the following remedy did not go into effect:

- Mandatory Termination effective June 9, 2023

Based on the February 22, 2023 survey findings, CMS is notifying you that the following remedy is being imposed:

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.Pon@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
Date: 2023.07.18
07:28:28 -07'00'

for

Dustin Collins, Acting Branch Manager
Long-Term Care Branch II
San Francisco 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