

DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services
Center for Clinical Standards and Quality
Survey & Operations Group
Division of San Francisco/Seattle Survey & Enforcement
San Francisco and Seattle Survey Enforcement Branch
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.Kahoochanohano@halemakua.org

November 20, 2024

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: October 18, 2024

Dear Administrator:

On October 18, 2024, a Health Recertification Survey was completed at Hale Makua - Kahului by the Hawaii Dept. Of Health, Office Of Health Care Assurance to determine if your facility was in compliance with the Federal requirements for nursing homes participating in the Medicare and Medicaid programs. The Hawaii Dept. Of Health, Office Of Health Care Assurance found that your facility was not in substantial compliance, with the most serious deficiencies cited on October 18, 2024 as follows:

- F0600 -- S/S: G -- 483.12(a)(1) -- Free From Abuse And Neglect – Past non compliance
- F0697 -- S/S: G -- 483.25(k) -- Pain Management.

The Hawaii Dept. Of Health, Office Of Health Care Assurance 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 Hawaii Dept. Of Health, Office Of Health Care Assurance notified you of the following as well as your appeal rights:

- Mandatory Six Month Termination effective April 18, 2025

Based on the survey findings, CMS is imposing the following additional remedy:

- Federal Civil Money Penalty
- Denial of Payment for New Medicare and Medicaid Admissions effective **December 5, 2024. Thus, the remedy applies to any new Medicare and Medicaid admissions from December 5, 2024 and remains in effect until substantial compliance is achieved with all cited deficiencies in the enforcement cycle.**

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 \$3,035.00 per day for the days beginning October 15, 2024, and remains in effect until substantial compliance is achieved with all cited deficiencies in the enforcement cycle.

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 C.F.R. § 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

Manuel.Bravo@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.); and

CMP PAYMENT

In accordance with 42 C.F.R. §§ 488.331 and 488.431, CMS may collect this imposed CMP and place the monies in an escrow account before a final administrative hearing. The CMP will be collected on the earliest date of the following:

- The date on which an Independent Informal Dispute Resolution ("Independent IDR" or "IIDR") process is completed, if applicable; or
- The date that is 90 calendar days after the date of the notice of imposition of the CMP.

The CMP is due 15 days after the facility timely waives its right to hearing or the time for requesting a hearing has expired, and CMS has not received a hearing request from the facility, or the determination of noncompliance is upheld after a final administrative decision.

You can make payments directly from a bank account through the CMP Pay.gov portal:

<https://www.pay.gov/public/form/start/998675240>. We encourage the use of payment through Pay.gov to avoid delay in processing payment. It is an easy and convenient system that is available 7 days a week - 24 hours a day. You will be asked to provide your CCN and the CMP Case Number.

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

- Your CCN is 125007.
- The start date for this cycle is October 18, 2024.

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 C.F.R. § 488.442 on the unpaid balance of the penalty beginning on the due date. The unpaid balance of 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.**

CMP REDUCTION IF NO APPEAL IS FILED

If CMS does not receive a request for a hearing from a facility, the facility will be deemed to have waived its right to a hearing 60 days from the date of this notice. CMS will then reduce the CMP by 35%.

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). However, a facility may not use both IDR and Independent IDR for the same deficiency citation(s) arising from the same survey unless the IDR process was completed prior to the imposition of the civil money penalty. An incomplete Independent IDR process will not delay the effective date of any enforcement action.

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:

**Hawaii Department of Health
Office of Health Care Assurance
601 Kamokila Blvd., Room 395
Kapolei, Hawaii 96707
Telephone: (808) 692-7420
paula.cerio@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 12,924.00; as 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.

You are notified that, in accordance with Section 1819(f)(2)(B)(iii)(I)(b) of the Social Security Act, if you do not achieve substantial compliance by December 5, 2024, the remedy of denial of payment for new admissions goes into effect and this provision would apply to your facility. Therefore, your facility will be prohibited from offering or conducting a NATCEP for two years from December 5, 2024.

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

This formal notice imposed the following remedy:

- Civil Money Penalty effective October 15, 2024
- Discretionary Denial of Payment for New Admissions effective December 5, 2024.

If you disagree with the findings of noncompliance, that resulted in this letter's imposition of a remedy, 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

Page 5

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 regarding this notice, please contact me at Manuel.Bravo@cms.hhs.gov.

Sincerely,

Linda Harris

Linda Harris, Acting Manager
Long Term Care Enforcement Branch
San Francisco and Seattle Survey & Enforcement
Division

Copies via e-mail to:

State Survey Agency
State Medicaid Agency
United States Department of Justice