

POLICY-Substandard Care Deficiencies (Amended)

As a result of sections 1819(a), (b), (c), (d), and 1919(a), (b), (c), and (d) of The Social Security Act, state survey agencies like the West Virginia Department of Health and Human Resources (DHHR), Office of Health Facility Licensure and Certification (OHFLAC) are required to advise state boards responsible for licensing nursing home administrators when a Medicare/Medicaid certified nursing facility is cited for deficiencies which constitute substandard quality of care. Inasmuch as there are no further directives for interpretation as to how state licensing boards will manage such notifications, it is the prerogative of each state's board to define its policy.

In view of the aforementioned circumstance, effective September 8, 2005, it will be the policy of the West Virginia Nursing Home Administrators Licensing Board to pursue the following plan in discharging its duties:

1. Upon notification from OHFLAC, a certified letter will be sent to the administrator of record* for the facility alleged to have offered substandard quality of care indicating same and requesting a response from the administrator to each of the allegations. The administrators reply must be post marked no later than thirty (30) days after receipt of the board's letter. (Refer to Exhibit A.)
2. Upon receipt of the response from the administrator and within ninety (90) days of the day the board receives notification from OHFLAC, under the direction of the chair of the West Virginia Nursing Home Administrators Licensing Board, an assessment by staff, members of the board, a hearing officer, and/or a representative from the Attorney Generals Office will be made of all documents received (i.e., CMS-2567 Statements of Deficiency and Plans of Correction, administrator's response, etc.). From that point a brief written assessment of the facts will be made and filed with the chairman of the board indicating whether or not it is believed nursing home administrator licensing regulations were violated. If the written assessment establishes that the nursing home administrators licensing regulations were violated, the chair of the board will be responsible for seeing that a interview is scheduled with the administrator to assess his/her knowledge and soundness of judgement in being able to adequately discharge the functions of a nursing home administrator (NHA). If it is shown by a preponderance of the evidence that nursing home administrator licensure rules were violated, a written order with findings of fact and conclusions of law will be sent to the administrator with a copy filed in the person's record defining the course of action that will follow. Likewise, if it is shown by a preponderance of the evidence that there were no violations of nursing home administrator licensure rules, a letter will be sent to the administrator so advising with a copy of the correspondence to be retained in the licensee's file.
3. Related to the aforementioned point and establishment of grounds for potential action against a nursing home administrator for violation of nursing home administrators licensure rules, with legal guidance, ie., the West Virginia Attorney General's Office, private counsel, etc., section 6.1 of

Title 21, legislative rule effective July 3, 2003 will be implemented pertinent to suspension, revocation, hearing, and judicial review. Final disposition of the review will be completed as quickly as possible but not to exceed 150 days from date of the first notification of substandard quality of care by the OHFLAC. Proceedings in regard to final disposition will be made in the record and retained in the board's file for the NHA under review.

If within twenty-four months of first being advised by the OHFLAC a second notice is received by the Nursing Home Administrators Licensing Board alleging substandard quality of care in a facility under the direction of the same licensed nursing home administrator, within the same time lines as previously described, at the direction of the chair of the board, the board will conduct a second interview on the issue of substandard quality of care. Facts from the first review will be revisited along with all new allegations of repeat deficiencies. The process identified in previous points 2 and 3 will be replicated relative to section 6.1. Final disposition of the board's action will be recorded and retained in appropriate NHA and/or board files.

From the time the West Virginia Nursing Home Administrators Licensing Board is first advised by OHFLAC of alleged substandard quality of care in a West Virginia licensed nursing facility, all correspondence and records pertinent to the administrator and/or administrators in question will be retained for thirty months. During this period if follow up reviews by OHFLAC do not result in subsequent referrals to the Nursing Home Administrators Licensing Board for matters of substandard quality of care, the board at its discretion may order cases closed with files destroyed. If this occurs, such action will be considered at a duly called board meeting with the decision recorded in board minutes.

* If the administrator of record has been at the facility for less than one year, the previous administrator of record will also be contacted to address in writing each allegation of substandard quality of care.