



Department of Health

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Acting Commissioner

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Executive Deputy Commissioner

January 15, 2015

DAL: DHCBS 15-01
Subject: Revised Complaint Procedures for
CHHAs, LTHHCPs, and Hospices

Dear Administrator:

The purpose of this letter is to inform Certified Home Health Agencies (CHHAs), LongTerm Home Health Care Programs (LTHHCPs), and Hospices of changes in the Department's complaint procedures for federally certified providers. These changes do not apply to Licensed Home Care Services Agencies (LHCSAs).

The Department is revising the complaint procedures for CHHAs, LTHHCPs, and hospices consistent with CMS guidance effective immediately. Centers for Medicare and Medicaid Services (CMS) revised and updated the State Operations Manual (SOM) Chapter 5 – Complaint Procedures as directed in CMS S&C: 14-35 issued on May 20, 2014. The memorandum can be accessed at the following website: <http://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Survey-and-Cert-Letter-14-35.pdf>

Changes to the Department's Complaint Procedures

The changes are primarily in the area of categorizing complaint allegations and the manner in which complaints will be handled by the Department based on the category/priority level of the complaint.

The complaint categories for federal providers include the following: Immediate Jeopardy (IJ), Non IJ - High, Non IJ- Medium and Non IJ- Low.

It is important to note that Administrative Review/Offsite (also known as agency self-investigation report) is no longer a complaint category for federally certified providers.

Non IJ-High is a new category added for home health agencies and hospices for prioritizing complaint allegations. This priority level is assigned if the alleged noncompliance with the applicable Condition of Participation, would not represent an IJ, but would result in a determination of substantial noncompliance. In other words, if the allegation is found to be true and uncorrected, it would result in a determination of at least one condition-level deficiency. The Department is required to conduct an onsite complaint investigation within 45 days of complaint receipt or within 45 days of CMS authorization for an agency with "deemed status".

Non IJ-Medium category is assigned if the alleged noncompliance involves one or more standards within a Condition of Participation, and if found true and uncorrected would not result in a determination of condition-level noncompliance. The Department is required to conduct an onsite investigation no later than when the next onsite survey occurs (either another complaint or a recertification survey). This is a change from the previous 45 day time frame requirement for an onsite investigation. The Department will assess several factors to determine a reasonable and appropriate time frame for scheduling the onsite complaint investigation. For this priority level, the complainant will be sent an acknowledgment letter regardless of when the onsite investigation is scheduled. The agency will be notified by letter of the complaint receipt and the general nature of the complaint. This ensures that the agency is aware of the issue identified and can take corrective measures and minimize the potential for recurrence of the same or similar issues. Upon receipt of this letter, the agency does not need to contact the Department.

Non IJ-Low complaints no longer require an individual investigation of each complaint by the Department. These intakes will be reviewed for tracking of possible trends in the nature of complaints in order to identify common themes suggesting areas for possible focused attention when the next onsite survey occurs. The Department has the discretion to conduct an onsite investigation if trending suggests a number of similar problems. For this category, the complainant will be sent an acknowledgment letter indicating that Federal guidelines do not require an individual investigation and that the information will be considered during the next surveillance visit to the agency. The agency will be notified by letter of the complaint receipt and the general nature of the complaint. Upon receipt of this letter, the agency does not need to contact the Department.

Agencies with Deemed Status

Complaints categorized as IJ or Non IJ- High will be investigated by the Department subject to CMS approval for those agencies with “Deemed Status” by a CMS approved accrediting organization (AO). All complaints categorized at a lower priority level (Non IJ- Medium and Non IJ- Low) will not be investigated by the Department. In all cases, the complainant will be issued an acknowledgment letter by the Department and provided contact information for the applicable accrediting organization, should the individual wish to pursue a complaint with the AO.

Summary

There are changes regarding the triaging, priority levels, and investigation of complaints by the Department for Deemed and Non Deemed federally certified providers. Complaint profiles are reviewed by the Department prior to the next comprehensive evaluation of the care and services provided by the agency. In addition, the Department reserves the right to expand on complaint investigations at any time.

We hope that your agency will use this information as part of our shared effort to ensure the delivery of the highest quality patient care and services. As a reminder, the Department’s complaint procedures prohibit the disclosure of the name of the complainant to you. In addition, the Department will immediately investigate any allegations that an agency has violated the rights of a patient as a result of a complaint made by or on behalf of the patient, and deficiencies will be cited as appropriate.

If you have questions or need further clarification, please contact the Division of Home and Community Based Services at homecare@health.ny.gov.

Sincerely,

A handwritten signature in cursive script that reads "Rebecca Fuller Gray". The signature is written in black ink on a white background.

Rebecca Fuller Gray, Director
Division of Home & Community Based Services
Office of Primary Care and Health Systems
Management