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OVERSIGHT AND COMPLAINT PROCESS CALIFORNIA NURSING HOMES

OVERSIGHT

The oversight of nursing facilities belongs primarily with the Federal Health Care Financing Administration (HCFA). The law requires HCFA to contract with state agencies to survey nursing homes participating in MediCare and MediCal.

The California Department of Health Services, Licensing and Certification (L&C) performs this oversight for HCFA. As part of this role, L&C:

1. Licenses nursing homes to do business in California;
2. Certifies to the Federal Government, by conducting reviews of nursing homes, that the homes are eligible for MediCare and MediCal payments; and
3. Investigates complaints about care provided in the licensed homes.

LICENSING AND ANNUAL RECERTIFICATION

The L&C office conducts the initial licensing for the Operator to do business in California. This process requires the potential Operator to meet all the requirements established by HCFA and the State Department of Health Services.

Annual renewal of the license is also conducted by L&C and occurs approximately every 12-15 months.

Facilities must be in compliance with regulations prior to license renewal.

COMPLAINT PROCESS

California state law mandates that a complaint must be investigated within 2 to 10 days, depending on the seriousness of the infraction being alleged. HCFA requires that any complaint involving immediate jeopardy to a resident's health or safety be investigated within 48 hours.

The State and HCFA each has its own enforcement system for classifying deficiencies that determines which remedies, sanctions or other actions should be taken against non-compliant homes.

During standard annual surveys for renewal of a license, L&C typically cites deficiencies using HCFA's classifications and sanctioning scheme. For complaint investigations, L&C generally uses the State's classification and penalty scheme, which allows the imposition of penalties and other actions under State enforcement criteria (Title 22).

The process starts with a complaint to L&C from a family member or from an advocacy organization, such as **FATE** , or the State Ombudsman Program. All complaints should be in writing. Remember that the State will only investigate the allegations in the complaint, i.e., if the complaint is that the resident has bedsores, that is all the State investigates...bedsores.

Upon receipt of the complaint, the State responds in writing to the complainant that the complaint has been received and issues a complaint number. This number is referenced on all documents pertaining to this complaint.

Again, the severity of the complaint determines how quickly the investigators go on site to conduct the investigation. But, in no event, should L&C take more than 10 days to respond to any complaint.

After L&C conducts its investigation, the complainant is notified of the results and is provided with either a copy of the Citation or a copy of the Statement of Deficiencies and Plan of Correction (HCFA Form 2567) or, in some cases, both.

CITATION PROCESS

If the complaint is substantiated, the State will issue either a deficiency or a citation. Deficiencies are normally classified as having potential for minimal harm and are considered to be in substantial compliance with regulations. This is reported to the complainant on a Form 2567, Notice of Deficiencies and Plan of Correction. No civil penalties are imposed. The facility must cite their plan to correct the problem and L&C should return to the facility to ensure that the problem has indeed been corrected.

If a citation is issued, the classifications are as follows:

Class "B" . The violation at the time of occurrence has a direct or immediate relationship to patient health, safety or security. This includes emotional and financial elements, or in the case of a patient's rights violation which produces a situation likely to cause significant humiliation, indignity, anxiety or other emotional trauma, but is not serious enough to be a Class "A".

Class "A" . The violation at the time of occurrence presents an imminent danger to the patient of the facility or a substantial probability that death or serious physical harm would result therefrom. Examples of "serious physical harm" would be part of the body permanently removed, rendered functionally useless, substantially reduced in capacity temporarily or permanently, and/or part of the internal function of the body inhibited in its normal performance to such a degree as to temporarily or permanently cause a reduction in physical or mental capacity, or to shorten life.

Class "AA" . The violation meets the definition of a Class "A" AND was a direct proximate cause of patient harm and/or death resulting from an occurrence the nature of which the regulation violated was designed to prevent.

PENALTIES

Class "B" citations normally do not have penalties assessed, and if there is a penalty assessed, it is non-collectible.

Class "A" and Class "AA" citations always have a penalty assessed. The fines run from \$1,000 to \$100,000 depending on the severity of the infraction. In the event the same violation occurs within a 12-month period, the sanctions may be tripled.

DUE PROCESS

Informal Conference. If a complaint is unfounded, the complainant has the right to request an informal conference in accordance with Section 1420(b) of the California Health and Safety Code. The complainant must notify L&C within 15 days of receipt of the notification that the complaint was unsubstantiated. The facility is also notified by L&C that an informal conference has been requested and is offered the opportunity to participate in the conference.

The complainant at this conference is only allowed to bring up additional information that the L&C office did not previously have. Within 10 days of this conference, the L&C office must notify the complainant of their decision to reopen the

investigation or not. If not reopened, the complainant has the right to appeal the decision to the Director of the L&C Division.

Citation Review Conference (CRC) . If a complaint is substantiated and a citation is issued, the facility has the right to a citation review conference. The facility must notify L&C within 15 days after receipt of a citation that the CRC is being requested.

The complainant also has the right to attend the CRC; however, it has been FATE's experience that one must stay on top of the process, as the L&C office is derelict in notifying the complainant of the due process. A hearing officer presides over the CRC and a determination is made within 30 days after the CRC whether the hearing officer will uphold the citation or not.

APPEAL PROCESS

The facility may contest a Class "A" or "AA" citation after receipt of the citation review conference decision. The facility shall, in writing, notify the L&C office within 15 business days after receipt of the CRC decision of its decision to continue with the due process.

The facility then has to file a civil action in the Municipal or Superior Court in the county in which the long-term care facility is located, no later than 90 days after receipt of the CRC decision. It is the facility's (Licensee's) responsibility to pursue this appeal.

If the facility elects to file a civil action, the citation is defended by the Attorney General's Office, the legal counsel for the Department of Health Services.

The facility also has the right right to pay 50% of the fine imposed prior to requesting a CRC. However, very few facilities elect to pay the citation...most go through the due process for adjudication. And, even if the citation is upheld throughout the entire

process, the State is not aggressively collecting the fines.

WHERE TO OBTAIN INFORMATION ON FACILITIES AND COMPLAINTS

The Department of Health Services is headquartered in Sacramento and maintains Licensing and Certification Offices throughout the State where you may obtain facility information.

The L&C office maintains public records which contains information on deficiencies, citations issued, data on the licensee and in a lot of cases, the name of the Director of Nurses, the Administrator, the Pharmacy Consultant, the Dietician, etc.

You may also obtain a "Facility Profile", which includes information on the Licensee, complaint and citation information, which gives dates complaints were filed, which ones were substantiated, how many resulted in citations and whether the facility paid the fine.

You may also obtain copies of the actual citations and deficiencies. Keep in mind though that the State records are not always accurate or complete. You may also want to search the court records in the County where the nursing home is located to see if any civil actions have been filed by the facility and answered by the Attorney General's Office or if there has been other civil actions filed against the facility by residents or family members.

It is a good idea to contact the Deputy Attorney General who is assigned to the case and perhaps offer assistance by providing information you might have relating to the citation.

ATTORNEY GENERAL'S ROLE

Again, the Attorney General's Office acts as the legal arm for the Department of Health Services and represents them in court actions to uphold citations.

However, there is another division in the Attorney General's Office that also plays an important role and that division is MediCal Fraud and Patient Abuse. This division is responsible for investigating allegations of fraud and abuse. Obviously, these types of allegations are of a criminal nature. When MediCal fraud is committed by the facility, such as billing for services never rendered, it has a direct impact on patient care which causes the abuse. Over the past number of years, the Attorney General's Office has been very lax in investigation and prosecuting nursing home licensees for fraud or abuse.

Knowing the regulatory system and how it works is another vehicle to assist families in order to protect their loved ones in nursing homes. For more information or assistance call:

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