



Strategies for Dealing with CMS Enforcement Actions

The Centers for Medicare & Medicaid Services (CMS) and State survey agencies have become more aggressive in targeting Skilled-Nursing Facilities (SNF) for alleged deficiencies. Consider these strategies to possibly mitigate, or even altogether avoid, the harsh, often unwarranted and unjustified sanctions, up to and including termination of the Provider Agreement, that CMS might seek to impose.

- 1 Remove Deficiencies**
It might sound simple, but the best defense is a good offense, so be proactive in achieving and maintaining substantial compliance.
- 2 Communicate with CMS**
When a provider is facing unfair or, perhaps, arbitrary and capricious, enforcement actions it should initiate a dialogue with CMS as soon as possible.
- 3 Informal or Independent Informal Dispute Resolution**
You can informally challenge the finding of a deficiency in one of these two mutually exclusive remedies. The pros and cons are unique to each situation.
- 4 File an Administrative Appeal**
You have 60 calendar days from the receipt of the notice of the enforcement action to file an appeal to the Departmental Appeals Board, where the dispute will be heard by an administrative law judge. Where timing is sensitive, you should consider seeking a temporary restraining order.
- 5 Appeal the Appeal**
You have 60 days to appeal an adverse ruling from the administrative law judge to a panel of the Departmental Appeals Board.
- 6 Appeal to District or Circuit Court**
You have 60 days to appeal an adverse decision of the Departmental Appeals Board concerning termination to the federal District Court. You have the same amount of time to appeal an adverse decision concerning Civil Money Penalties to the federal Circuit Court (a level higher than the District Court).
- 7 Bankruptcy**
Believe it or not, recent developments in bankruptcy case law suggest that the injunction that protects the assets of a company in bankruptcy can protect an SNF's Provider Agreement. Financially sound but otherwise imperiled businesses have used various aspects of bankruptcy law as a lifeline for years. Odd as it might seem, bankruptcy planning should be considered as a part of a comprehensive business-saving strategy.

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