



CMS Certification Number (CCN): 525412

September 3, 2020
By Fax Only

Birch Hill Health Services
Attn: Administrator
1475 Birch Hill Lane
Shawano, WI 54166

Dear Administrator:

SUBJECT: SURVEY FINDINGS AND IMPOSITION / DISPOSITION OF REMEDIES
Cycle Start Date: June 23, 2020

SURVEY RESULTS

On June 23, 2020, a Focused Infection Control Survey was completed at Birch Hill Health Services by the Wisconsin Department of Health Services (WDHS) to determine if your facility was in compliance with the Federal requirements for nursing homes participating in the Medicare and Medicaid programs. This survey found that your facility was not in substantial compliance, with the most serious deficiency at Scope and Severity (S/S) level D, cited as follows:

- F880 -- S/S: D -- 483.80(a)(1)(2)(4)(e)(f) -- Infection Prevention & Control.

The State agency advised you of the deficiency that led to this determination and provided you with a copy of the survey report (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 WDHS notified you on July 7, 2020, of the imposition of the following remedies, as well as your appeal rights:

- Directed Plan of Correction
- Discretionary Denial of Payment for New Admissions effective August 6, 2020

In addition, CMS is imposing the following remedy:

- Federal Civil Money Penalty

On July 21, 2020, the WDHS conducted a revisit of your facility and found that your facility was in substantial compliance as of July 15, 2020. As a result, the final status of remedies is as follows:

- Directed Plan of Correction was imposed and completed.
- Discretionary Denial of Payment for New Admissions, which was to be effective August 6, 2020, did not go into effect.
- Mandatory termination, which was to be effective December 23, 2020, will not be imposed.

- Civil Money Penalty is imposed, see below.

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 CFR § 488, Subpart F, Enforcement of Compliance for Long-Term Care Facilities with Deficiencies.

CIVIL MONEY PENALTY (CMP)

In determining the amount of the CMP that we are imposing, we have considered your facility's history, including any repeated deficiencies; its financial condition; and the factors specified in the Federal requirement at 42 CFR § 488.404. We are imposing the following CMP:

- Federal Civil Money Penalty of \$15,000 per instance for the instance of noncompliance at F880 (S/S: D) identified in the CMS-2567 survey ending June 23, 2020

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 Tamika J. Brown at Tamika.Brown@cms.hhs.gov within fifteen (15) 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.)
- If the nursing home requests an extended payment schedule of more than twelve (12) months duration, the provider must submit a letter from a financial institution denying the provider's loan request for the amount of the CMP

The CMP is due and payable and may be placed in escrow account fifteen days after one of the following, whichever occurs first:

- The date on which an Independent IDR process is completed, if applicable; or
- The date which is 90 calendar days after the date of the notice of imposition of the CMP.

CMP REDUCED IF HEARING WAIVED

If you waive your right to a hearing, in writing, within 60 calendar days from receipt of this notice, the amount of your CMP will be reduced by thirty-five percent (35%). To receive this reduction, the written waiver should be sent to CMS-Chicago at CMSChicagoLTChearingWaivers@cms.hhs.gov. **Please include your CCN and the Cycle Start**

Date in the subject line of your email.

The failure to request a hearing within 60 calendar days from your receipt of this notice does not constitute a waiver of your right to a hearing for purposes of the 35% reduction.

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, CMS Certification Number (CCN), and the enforcement cycle start date appear on any correspondence pertaining to this CMP.

- Your CMS Certification Number (CCN) is **525412**
- The start date for this cycle is **June 23, 2020**

CMP PAYMENT

When due, the CMP is payable by check to CMS at the following address:

Centers for Medicare & Medicaid Services
Division of Accounting Operations
Mail Stop C3-11-03
Post Office Box 7520
Baltimore, MD 21207

If you use a delivery service, such as Federal Express, **use the following address only:**

Centers for Medicare & Medicaid Services
Division of Accounting Operations
Mail Stop C3-11-03
7500 Security Boulevard
Baltimore, MD 21244

Note that your check must be sent to one of the above addresses--not to CMS-Chicago. 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 CFR § 488.442 on the unpaid balance of the penalty beginning on the due date. The Federal rate of interest is 9.5%. 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.**

NURSE AIDE TRAINING PROHIBITION

Please note that Federal law, as specified in the 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 \$10,697; has 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.

As indicated above, a CMP which to date has accrued in the amount of \$10,697 or more, is being imposed against Birch Hill Health Services. This is to inform you that if you waive your right to a hearing within 60 calendar days of the receipt of this notice, the NATCEP prohibition will **not** go into effect since the reduced amount of the CMP will be less than \$10,697. However, if we do not receive your request to waive your right to a hearing within 60 calendar days of the receipt of this notice, the total amount of the CMP will not be reduced and the prohibition to conduct NATCEP will go into effect and remain in effect for two years from that date. Furthermore, if you request a hearing within 60 calendar days of the receipt of this notice, the prohibition will remain in effect for two years from the date of a final administrative decision which upholds the CMP in the amount of \$10,697 or more.

APPEAL RIGHTS

The WDHS previously advised of your right to appeal the noncompliance that resulted in the imposition of the following remedy:

- Directed Plan of Correction

Please refer to that notice and note the deadline for that appeal.

This formal notice imposed the following remedy:

- Federal Civil Money Penalty

If you disagree with the findings of noncompliance which resulted in this imposition, you or your legal representative may request a hearing before an administrative law judge of the Department of Health and Human Services, Departmental Appeals Board (DAB). Procedures governing this process are set out in Federal regulations at 42 CFR § 498.

You are required to file your appeal electronically at the Departmental Appeals Board Electronic Filing System Web site (DAB E-File) at <https://dab.efile.hhs.gov/>. To file a new appeal using DAB EFile, you first need to register a new account by: (1) clicking Register on the DAB E-File home page; (2) entering the information requested on the "Register New Account" form; and (3) clicking Register Account at the bottom of the form. If you have more than one representative, each representative must register separately to use DAB E-File on your behalf.

The e-mail address and password provided during registration must be entered on the login screen at https://dab.efile.hhs.gov/user_sessions/new to access DAB E-File. A registered user's access to DAB EFile is restricted to the appeals for which he is a party or authorized representative. Once registered, you may file your appeal by:

- Clicking the **File New Appeal** link on the Manage Existing Appeals screen, then clicking **Civil Remedies Division** on the File New Appeal screen.
- Entering and uploading the requested information and documents on the "File New Appeal-Civil Remedies Division" form.

At minimum, the Civil Remedies Division (CRD) requires a party to file a signed request for hearing and the underlying notice letter from CMS that sets forth the action taken and the party's

appeal rights. A request for a hearing should identify the specific issues and the findings of fact and conclusions of law with which you disagree, including a finding of substandard quality of care, if applicable. It should also specify the basis for contending that the findings and conclusions are incorrect. The DAB will set the location for the hearing. Counsel may represent you at a hearing at your own expense.

All documents must be submitted in Portable Document Format ("PDF"). Any document, including a request for hearing, will be deemed to have been filed on a given day, if it is uploaded to DAB E-File on or before 11:59 p.m. ET of that day. A party that files a request for hearing via DAB E-File will be deemed to have consented to accept electronic service of appeal-related documents that CMS files, or CRD issues on behalf of the Administrative Law Judge, via DAB E-File. Correspondingly, CMS will also be deemed to have consented to electronic service. More detailed instructions for using DAB E-File in cases before the DAB's Civil Remedies Division can be found by clicking the button marked **E-Filing Instructions** after logging-in to DAB E-File.

For questions regarding the E-Filing system, please contact E-File System Support at **OSDABImmediateOffice@hhs.gov**.

Please note that **all** hearing requests must be filed electronically unless you have no access to the internet or a computer. In those circumstances, you will need to provide an explanation as to why you are unable to file electronically and request a waiver from e-filing with your written request. Such a request should be made to:

Department of Health and Human Services
Departmental Appeals Board, MS 6132
Civil Remedies Division
330 Independence Avenue, SW
Cohen Building, Room G-644
Washington, D.C. 20201

A request for a hearing must be filed no later than 60 days from the date of receipt of this notice.

INFORMAL DISPUTE RESOLUTION (IDR)

The State agency offered you an opportunity for 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)

In accordance with 42 CFR § 488.431, when a CMP subject to being collected and placed in an escrow account is imposed, you have one opportunity to question cited deficiencies through an Independent IDR process. You may also contest scope and severity assessments for deficiencies which resulted in a finding of SQC or immediate jeopardy. To be given such an opportunity, you are required to send your written request, along with the specific deficiencies being disputed, and an explanation of why you are disputing those deficiencies (or why you are disputing the scope and severity assessments of deficiencies which have been found to constitute SQC or immediate jeopardy) to: www.health.state.mn.us/divs/fpc/profinfo/ltc/ltc_idr.cfm. 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 CMP. This request must be sent within 10 calendar days of receipt of this offer. An incomplete Independent IDR process will not delay the effective date of any enforcement action.

CONTACT INFORMATION

If you have any questions regarding this matter, please contact Tamika J. Brown, Principal Program Representative, at (312) 353-1502. Information may also be faxed to (443) 380-6614.

Sincerely,



Beth A. Karpiak
Long Term Care Branch Manager
CMS-Chicago, Survey & Operations Group

cc: Wisconsin Department of Health Services
Wisconsin Division of Medicaid Services
Wisconsin LTC Ombudsman
MetaStar
Maximus
U.S. Department of Justice, Eastern District of Wisconsin