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To: Medicare and Medicaid Certified Nursing Facility Providers

Re: Provider Letter #02-40 - **Denial of Payment for New Admissions**

The purpose of this letter is to clarify when the Denial of Payment for New Admissions remedy may be imposed and to remind providers to not submit claims for new admissions admitted on or after the denial of payment goes into effect.

What is Denial of Payment for New Admissions?

Denial of Payment for New Admissions (DPNA) is an enforcement remedy that may be applied when facilities are found not to be in substantial compliance with the requirements for participation in the Medicare and Medicaid programs. **When DPNA is imposed, a provider will not be reimbursed for services provided to Medicare and/or Medicaid residents admitted to the facility on or after the date the denial of payment went into effect.**

What is the statutory basis for DPNA?

The use of DPNA as a remedy is specified in Section 1919(h)(2)(C) and (D) of the Social Security Act, and in the Code of Federal Regulations (CFR) at 42 CFR §488.417(a) and §488.417(b). Further guidelines are provided in Section 7506 of the State Operations Manual (SOM).

How will I know when DPNA is imposed?

Providers will be notified in writing when DPNA is imposed. The Centers for Medicare and Medicaid Services (CMS) will provide notice of imposition for all Medicare and dually certified nursing facilities. The Texas Department of Human Services (DHS), Long Term Care-Regulatory (LTC-R), Facility Enrollment Section in State Office, on behalf of the State Medicaid Agency, will provide notice of imposition for all Medicaid-only certified nursing facilities.

When is DPNA imposed?

1. **The optional DPNA remedy at 42 CFR §488.417(a)** may be imposed any time a facility is found to be out of compliance and has significant problems, and/or has been engaging in cyclical non-compliance. Notice of imposition will be provided at least two days before the effective date in immediate jeopardy cases, and at least 15 days before the effective date in non-immediate jeopardy cases. If this remedy is imposed, **do not bill DHS for new Medicaid admissions on or after the date the denial of payment goes into effect.**

2. **The mandatory DPNA remedy at 42 CFR §488.417(b) must** be imposed

- when a facility has failed to make substantial corrections to deficiencies within three months of the last day of the survey that identified the non-compliance, or
- when substandard quality of care (SQC) has been identified on the last three consecutive standard surveys.

The effective date of this remedy is three months from the last day of the survey, or three months from the exit date of the third consecutive standard survey, whichever applies. If this remedy is imposed, **do not bill DHS for new Medicaid admissions on or after the date the denial of payment goes into effect.**

When can a provider resume billing for new Medicare and/or Medicaid admissions?

A provider may resume billing for new Medicare and/or Medicaid admissions when the LTC-R Regional Office confirms substantial compliance. CMS or DHS will resume payment to the facility prospectively from the date it is determined that substantial compliance is achieved. If DHS finds that a facility corrected deficiencies and was in substantial compliance before the date DHS confirmed compliance, the remedy may be lifted as of that date.

Where can I find the definition of a *New Admission*?

The definition of a *New Admission* is found at 42 CFR §488.401. As used in this subpart, a "*New Admission* means a resident who is admitted to the facility on or after the effective date of the denial of payment remedy and, if previously admitted, has been discharged before that effective date. Residents admitted before the effective date of the denial of payment, and taking temporary leave, are not considered new admissions, nor subject to the denial of payment."

Are there guidelines for determining which readmitted residents are subject to denial of payment?

Yes. These guidelines are found in Section 7506 (E) of the SOM. **A resident's status on the effective date of the DPNA is the controlling factor in determining whether a readmitted resident is subject to denial of payment.**

The following readmitted residents are subject to the DPNA remedy:

- Medicare and Medicaid residents who were admitted and discharged before the effective date of the DPNA are considered new admissions if they are readmitted on or after the effective date.
- Medicare and Medicaid residents admitted on or after the effective date of the DPNA are considered new admissions. If readmitted after being discharged, they continue to be considered new admissions. ("Discharged" means the resident leaves the facility with no expectation of return.)
- Medicare or Medicaid residents admitted on or after the effective date of the DPNA who take temporary leave are not considered new admissions when they return, but continue to be subject to DPNA.
- Private pay residents admitted after the effective date of the DPNA who then become eligible for Medicare or Medicaid.

The following readmitted residents are **not** subject to the DPNA remedy:

- Medicare and Medicaid residents admitted before and discharged on or after the effective date of the DPNA are not considered new admissions if subsequently readmitted.
- Medicare and Medicaid residents admitted before the effective date of the DPNA who take temporary leave before, on, or after the effective date of the DPNA are not considered new admissions upon return. (“Temporary leave” refers to residents who leave temporarily for any reason. If residents are not subject to denial of payment when they went on temporary leave, then upon return, they are not considered new admissions. The term “temporary leave” is used to justify a resumption of any interrupted payment with reentry to the facility.)
- Private pay residents in the facility prior to the effective date of the DPNA who become eligible for Medicare or Medicaid after the effective date of the DPNA.

Who can I contact for questions regarding the imposition of DPNA?

Please direct sanction-related questions to the LTC-R Sanctions Unit in Facility Enrollment at (512) 438-2630. Policy and procedure questions may be directed to Sandy Lyons, RNC, Program Specialist in Professional Services, LTC-R, at (512) 438-4122.

Evelyn Delgado
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Long Term Care-Regulatory

ED:mg

c: Merrie Duflot, W-409
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Regional Administrators