

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
Dallas Regional Office
1301 Young Street, Room 827
Dallas, Texas 75202



DIVISION OF SURVEY & CERTIFICATION, REGION VI

June 16, 2016

Administrator
Parks Edge Nursing And Rehabilitation Center
5115 East 51st Street
Tulsa, OK 74135

CCN: 375351
Cycle Start Date: **CSD-May 26, 2016**
Facility State ID: NH7219

THIS SERVES AS OFFICIAL NOTICE SENT VIA FACSIMILE PURSUANT TO 42 CFR PART §488. NO HARD COPY TO FOLLOW.

Dear Administrator:

On May 26, 2016, your State Survey Agency (SA) concluded an inspection during a survey at your facility. The SA notified you of its findings in a letter dated May 26, 2016. After a careful review of the facts, the Centers for Medicare & Medicaid Services (CMS) has determined that the above-named facility no longer meets the requirements for participation in the Medicare/Medicaid programs; **although the conditions that represented immediate jeopardy had been removed**, the facility continued to be **not in substantial compliance**. We concur with the findings, which indicate that the facility was **not in substantial compliance** with the following Medicare/Medicaid Requirements at that survey:

F0221 -- S/S: E -- 483.13(a) -- Right to be Free from Physical Restraints
F0323 -- S/S: K -- 483.25(h) -- Free of Accident Hazards/Supervision/Devices
F0431 -- S/S: E -- 483.60(b), (d), (e) -- Drug Records, Label/Store Drugs & Biologicals
F0503 -- S/S: E -- 483.75(j)(1)(i-iv) -- Lab Services - Fac Provided, Referred, Agreement

483.70(a) -- Life Safety from Fire
K0029 -- S/S: E -- NFPA 101 -- Life Safety Code Standard

To participate as providers of services in the Medicare and Medicaid program, skilled nursing facilities must meet all provisions of Section 1819 of the Social Security Act, be in compliance with each of the Medicare/Medicaid Requirements, and be free of hazard to patient health and safety.

ENFORCEMENT REMEDIES

Based on the deficiencies on the Statement of Deficiencies and Plan of Correction (Form CMS 2567), the following remedies are imposed:

- **Termination of Your Medicare and Medicaid Provider Agreement:**
Unless your facility achieves substantial compliance before November 26, 2016, CMS will terminate your facility's provider agreement in accordance with the statutory provisions at §1819(h)(2)(C) and §1919(h)(3)(D) and Federal regulations at 42 CFR §488.12 and §488.456. CMS will arrange to publish notice of this termination in your local newspaper at least fifteen days before the termination date. CMS will also notify the appropriate State officials concerning the impending termination of your

provider agreement. Medicare regulation 42 CFR §489.57 requires that when a provider agreement is terminated by CMS, a new agreement will not be accepted until it has been determined that the reason for termination of the agreement has been removed and there is reasonable assurance that it will not recur. The terminated facility will have to operate for a period of time determined by CMS, during which the reasonable assurance requirement has been satisfied. During this period the facility must fulfill, or make satisfactory arrangements to fulfill, all of the statutory and regulatory responsibilities of the previous agreement.

- **Per-Day Civil Money Penalty:**

CMS is imposing, in accordance with the statutory provisions at §1819(h) and §1919(h) and Federal regulations at 42 CFR §488.430, §488.434, §488.438, a Federal Civil Money Penalty of \$4,550.00 per day for the two (2) days beginning May 24, 2016 and continuing through May 25, 2016 for a total of \$9,100.00, and a Federal Civil Money Penalty of \$50.00 per day beginning May 26, 2016 and continuing until further notice from CMS.

Financial Hardship Consideration

When imposing a CMP, CMS considers the seriousness and pervasiveness of the deficiencies, the degree of facility culpability, facility compliance history, and financial condition. You may request financial hardship consideration if a CMP has been imposed against your facility in the total amount of \$10,000.00 or more. The attached Financial Condition Review document lists the financial documents required for consideration by CMS. The documents and other requested information must be compiled by an independent Certified Public Account (CPA) and sent to CMS by July 1, 2016. Please return the requested documents and/or any additional information via e-mail to Vilma Acosta at vilma.acosta@cms.hhs.gov. Contact Vilma Acosta at (214) 767-4460 if you have any questions.

Waiver of Appeal Rights for a Civil Money Penalty

If you waive your right to a hearing, CMS will reduce the total amount of the CMP by 35%. **August 15, 2016, is the last day to waive your right to a hearing.** The waiver must be submitted in writing on or before this date in order to receive the reduction. You may fax the waiver to Vilma Acosta at (443) 380-6495.

PLEASE DO NOT SEND PAYMENT AT THIS TIME. CMS will notify you of the total amount due and where payment is to be sent.

Collection of a Civil Money Penalty and Deposit in Escrow

In accordance with 42 CFR §488.331 and §488.431, CMS will collect this imposed civil money penalty and place the monies in an escrow account before a final administrative hearing. The civil money penalty will be collected on the earliest date of the following:

- Completion of an Independent Informal Dispute Resolution (IIDR); or
- Ninety (90) days from the date of this Notice Letter.

Opportunity for Independent Informal Dispute Resolution (IIDR)

You have ten (10) calendar days from the date of this notice letter to request an Independent Informal Dispute Resolution (IIDR). To request an IIDR and a copy of your SA's IIDR Process please contact:

HHSC IDR Unit
1106 Clayton Ln/Suite 300W
Austin, Texas 78723

Phone: 512-706-7268
Fax: 512-706-7275
e-mail: IDR@hhsc.state.tx.us

Please be advised you are not required to request an IIDR. You may choose to continue an Informal Dispute Resolution (IDR) request already made to your State Survey Agency. You may not use both dispute resolution processes at §488.331 and §488.431 for the same deficiency citation arising from the same survey unless the IDR at §488.331 was completed prior to CMS imposing the civil money penalty. The IIDR process will generate a written record. The SA is not required to adopt the IIDR recommendations. If your SA disagrees with the IIDR recommendation, your IIDR will be referred to the CMS Regional Office. The CMS Regional Office may adversely modify the survey findings upon its review of the IIDR. The IIDR process is not a formal evidentiary hearing and does not grant further appeal rights.

For additional guidance, please refer to the Survey and Certification Memorandum S&C 12-08-NH.

- **Denial of Payment for New Admissions (DPNA):**

Payment will be denied for all NEW Medicare and Medicaid admissions, beginning June 30, 2016, in accordance with the statutory provisions at §1819(h)(2)(D) and §1919(h)(2)(C) and Federal regulations at 42 CFR §488.417. Under CMS's authority, the SA sent you notice of this remedy in their June 15, 2016, letter. CMS will notify your Medicare payer the date the denial of payment begins. DPNA will continue until the day before your facility achieves substantial compliance or your provider agreement is terminated. *[You may not bill new Medicare/Medicaid residents or their responsible parties for services normally covered by Medicare, Medicaid or Medicare Managed Care Organizations during DPNA.]*

FILING AN APPEAL

If you disagree with the determination of noncompliance (and/or substandard quality of care resulting in the loss of your Nurse Aide Training and Competency Evaluation Program (NATCEP), if applicable), you or your legal representative may request a hearing before an administrative law judge of the U.S. Department of Health and Human Services, Departmental Appeals Board. Procedures governing this process are set out in 42 CFR §498.40, et. seq. You may appeal the finding of noncompliance that led to an enforcement action, but not the enforcement action or remedy itself. A request for a hearing should identify the specific issues, and the findings of fact and conclusions of law with which you disagree. It should also specify the basis for contending that the findings and conclusions are incorrect. You may have counsel represent you at a hearing (at your own expense). Requests for a hearing submitted by U.S. mail or commercial carrier are no longer accepted unless you do not have access to a computer or internet service. **You must file your hearing request electronically by using the Departmental Appeals Board's Electronic Filing System (DAB E-File) at <https://dab.efile.hhs.gov> no later than August 15, 2016 (60 days from the date of receipt of this letter via fax).**

When using DAB E-File for the first time, you will need to create an account by a) clicking Register on the DAB E-File home page; b) entering the requested information on the Register New Account form; and c) clicking Register Account at the bottom of the form. Each representative authorized to represent you must register separately to use the DAB E-File on your behalf.

The e-mail address and password given 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 E-File is restricted to the appeals for which he/she is a party or an authorized representative. You can file a

new appeal by a) clicking the *File New Appeal* link on the Manage Existing Appeals screen; then b) clicking *Civil Remedies Division* on the File New Appeal screen; and c) entering and uploading the requested information and documents on the File New Appeal-Civil Remedies Division form.

The Civil Remedies Division (CRD) requires all hearing requests to be signed and accompanied by the notice letter from CMS that addresses the action taken and your appeal rights. All submitted documents must be in Portable Document Format (PDF). Documents uploaded to DAB E-File on any day on or before 11:59p.m. ET will be considered to have been received on that day. You will be expected to accept electronic service of any appeal-related documents filed by CMS or that the CRD issues on behalf of the Administrative Law Judge (ALJ) via DAB E-File. Further instructions are located at: https://dab.efile.hhs.gov/appeals/to_crd_instructions. Please contact the Civil Remedies Division at (202) 565-9462 if you have questions regarding the DAB E-Filing System. If you experience technical issues with the DAB E-Filing System, please contact E-File System Support at OSDABImmediateOffice@hhs.gov or call (202) 565-0146 before 4:00p.m. ET.

If you do not have access to a computer or internet service, you may call the Civil Remedies Division at (202) 565-9462 to request a waiver from e-filing and provide an explanation as to why you cannot file electronically or you may mail a written request for a waiver along with your written request for a hearing. A written request for a hearing must be filed no later than August 15, 2016 (60 days from the date of receipt of this letter via fax), by mailing to the following address:

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

In addition, please email or fax a copy of your request to Vilma Acosta at vilma.acosta@cms.hhs.gov or at (443) 380-6495.

If you choose, you may waive your right to a hearing. Your waiver of the right to a hearing should be sent to Vilma Acosta. In accordance with §498.20, the failure to request a hearing will render the survey findings and imposed remedies final and binding.

If you have any questions, please contact Vilma Acosta at (214) 767-4460.

Sincerely,

Ginger Odle
Manager, Enforcement Branch

Enclosures

cc: State LTC Sanctions
State Medicaid Agency
MAC
Department of Justice

TRANSMITTAL FORM

DATE: June 16, 2016

TO: United States Attorney
NORTHERN DISTRICT OF OKLAHOMA
110 W. 7th St./Suite 300
Tulsa, OK 74119

Attention: Chief, Civil Division

SUBJECT: Imposition of a Civil Money Penalty--Arkansas

FROM: Associate Regional Administrator
Division of Survey and Certification/Enforcement Branch, Region VI

This is to notify you of our imposition of civil money penalty (CMP) action(s) in accordance with sections 1819(h) and/or 1919(h) of the Social Security Act, the Enforcement Regulations specified at 42 CFR 488, and the Federal Register dated November 10, 1994. Under the Act, the Centers for Medicare and Medicaid Services (CMS) may impose a civil money penalty only following an agreement with the Attorney General.

As referenced in the attachment, evidence of non-compliance (with Federal participation requirements for skilled nursing facilities) was determined by the State. Because of the survey findings, CMS seeks to impose, among other remedies, a Civil Monetary Penalty (CMP). Attached are copies of the relevant notices we sent to the effected provider(s).

Under the terms of the agreement between the Department of Justice (DOJ) and the Department of Health and Human Services (DHHS), your office has fourteen days to review the matter. After that time, CMS will be free to collect or accept payments of the CMP. The CMP would continue to accrue at the specified amount until the facility makes the necessary corrections to achieve substantial compliance with Program participation requirements or until the facility's provider agreement is terminated.

If you have any questions, please contact Judy Thomas at (214) 767-6214. Thank you for your cooperation in this matter.

Gerardo Ortiz

Attachment

LIST OF PROVIDERS W/CMP IMPOSED

375351

CSD-May 26, 2016

Parks Edge Nursing And Rehabilitation Center
5115 East 51st Street
Tulsa, OK 74135

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
Dallas Regional Office
1301 Young Street, Room 827
Dallas, Texas 75202



DIVISION OF SURVEY & CERTIFICATION, REGION VI

MEMORANDUM

DATE: June 16, 2016

FROM: Vilma Acosta
for: Associate Regional Administrator
Division of Survey and Certification

SUBJECT: Imposition of Civil Money Penalties
Recommendations for Action
Northern District of Texas

As required by the Memorandum of Understanding, CMS has notified you that Civil Money Penalties have been (or may be) imposed against certain facilities. File and case review led to CMS' decision to recommend that the Department of Justice **consider acting under the False Claims Act. CMS will continue to pursue collection of the CMPs as appropriate, unless you notify us otherwise.**

CCN	Cycle Start Date	Provider Name - Owner
375351	May 26, 2016	Parks Edge Nursing And Rehabilitation Center - Parks Edge Nursing And Rehabilitation Center, Inc.

RATIONALE:

Parks Edge Nursing And Rehabilitation Center (Tulsa, OK)

On May 26, 2016, an immediate jeopardy was identified at Parks Edge Nursing And Rehabilitation Center of Tulsa, OK. This is a 126-bed nursing home. The immediate jeopardy involved facility's failure to ensure bed rails were not an accident hazard for a resident who became entrapped between the bed rail and the mattress. A resident had been found hanging halfway out of bed with her head resting on the floor. The resident's legs and feet were between the bed rail on the bed and the mattress. The facility continued to use the bed rails after the resident had become entrapped in the bed rail.

The IJ was removed during the survey.

The deficiencies are attached for your review.