CMS Authority to Terminate Medicare and Medicaid Participation

1. Noncompliance with Conditions of Participation (CoPs), Conditions for Coverage, or Requirements for SNFs - The RO is delegated authority to terminate Medicare participation of all providers and suppliers because of noncompliance with the applicable regulatory requirements, or Conditions of Participation (CoPs) or Conditions for Coverage (CfCs).

2. Violations of Provider Agreements, Quality Improvement Organization (QIO) Sanctions, or Program Abuse - The Secretary's authority to terminate provider agreements is delegated to the Associate Regional Administrator and may be redelegated to the Branch Chief, but other components may also be authorized to find that termination is in order. Accordingly, the RO handles terminations on grounds other than noncompliance with the CoPs in accordance with Section §3032 of the State Operations Manual.

3. "Look Behind" Cancellation of Medicaid Intermediate Care Facility/Individuals with Intellectual Disabilities (ICF/IID) Agreements - The ROs are authorized to cancel the approval of an ICF/IID to participate in the Medicaid program when the ICF/IID fails to comply substantially with regulatory CoPs. (See §1910(b) of the Social Security Act.)

4. Termination of Nursing Facility (NF) Medicaid Agreements - The ROs are, under certain circumstances, authorized to terminate a NF's participation in the Medicaid program. (See §1919(h) of the Social Security Act and Chapter 7 of the State Operations Manual)

Termination Procedures–

State Agency Documentation Requirements

All documents to support a proposed termination must be complete, accurate, and logical in sequence. Each document must be dated and signed by the preparer or indicate the date of receipt in the State Agency (SA). The documentation must be supported by a complete current survey report or, in the case of an HHA, required CMS forms.

The SA reviews the current survey report or required forms to ensure that all items are properly completed. If there are any changes or erasures, the SA initials the item and explains the basis for the modification in the explanatory remarks column.

The SA includes the following information in the explanatory remarks column for each item "not met":

- A description of the deficiency;

- Whether the deficiency existed during the previous survey and whether compliance was achieved, and then not sustained; and

- Current Plans of Correction (PoCs), if any.

In addition, the SA includes with the package an estimate of whether there is a prospect of compliance with **all** eligibility requirements within the time limits and the basis for this opinion.

Previous Survey Reports

The SA reviews previous survey reports for consistency. If a deficiency is reported on the current survey report that has obviously existed for some time, explain why it was not reported previously; e.g., serious structural defects, inadequate fire escapes.

The SA explains any conclusions that might be questioned, especially if certain requirements are being weighed heavily. For example:

- The majority of standards are "not met," yet the Condition is found in compliance; or

- A Condition is found not in compliance based upon the relationship of standards or other deficiencies not being met.

Record of Contacts With Providers/Suppliers

The SA includes in documentation copies of communications and written reports of oral communications with providers/suppliers including the date of contact, the person involved, the purpose, and the content of the communication. Also, the SA includes reports of investigations of complaints.

Notification to Provider/Supplier of Deficiencies and Recommendation of Termination

The SA includes in the file a copy of the letter notifying the provider/supplier of the deficiencies found on the survey and advising that failure to correct will result in a recommendation for termination and includes copies of any other SA notices to the provider/supplier.

Additional SA Communications With Providers/Suppliers

After the SA forwards the certification of noncompliance, it clears any further communications to the provider/supplier with the RO. Unrecorded visits, surveys, or correctional allegations that were not reported before final termination action could cause embarrassment or even result in failure to sustain the termination action. Even after final termination action, any additional contacts may be pertinent to proper handling of the case. The SA notifies the RO of any such contacts.

Notice of Termination (Medicare)

The RO notifies the provider/supplier of its termination by letter at least 15 calendar days before the effective date of the termination. In the case of a hospital with an emergency department having deficiencies that pose an immediate jeopardy to the health or safety of individuals who present themselves to the hospital for emergency services, CMS gives the hospital a preliminary notice that its provider agreement will be terminated in 23 calendar days if it does not correct the identified deficiencies or refute the finding. CMS gives a final notice of termination, and concurrent notice to the public, at least 2, but not more than 4, calendar days before the effective date of termination of the provider agreement. For skilled nursing facilities (SNFs) and nursing facilities (NFs), CMS gives notice of termination, and concurrent notice to the public, at least 2 calendar days, one of which must be a working day, before the effective date of termination of the provider agreement, for a facility with immediate jeopardy circumstances, and at least 15 calendar days before the effective date of termination for a facility with nonimmediate jeopardy deficiencies. (42 CFR 488.456). The notice states the reasons for, and the effective date of, the termination and explains the extent to which services may continue after that date. The notice also contains information regarding the provider's/supplier's right to appeal the termination. (See 42 CFR 489.53) The only suppliers requiring public termination notices are RHCs (42 CFR 405.2404), ASCs (42 CFR 416.35),

and FQHCs (42 CFR 405.2442). Public notices for other suppliers are optional at the discretion of the RO.