STATE OF MARYLAND
DHMH
Maryland Department of Health and Mental Hygiene
Office of Health Care Quality
Spring Grove Center • Bland Bryant Building
55 Wade Avenue • Catonsville, Maryland 21228-4663
Martin O'Malley, Governor – Anthony G. Brown, Lt. Governor – Joshua M. Sharfstein M.D., Secretary

Mr. Raymond Hepner Jr., Administrator
Fairland Center
2101 Fairland Road
Silver Spring, MD 20904

**PROVIDER # 215015**
**RE: NOTICE OF CURRENT DEFICIENCIES, IMPOSITION OF A PER INSTANCE CIVIL MONEY PENALTY UNDER STATE REGULATIONS AND POSSIBLE IMPOSITION OF OTHER REMEDIES**

Dear Mr. Hepner Jr.:

On April 22, 2013, a complaint survey was conducted by the Office of Health Care Quality to determine if your facility was in compliance with Federal requirements for nursing homes participating in the Medicare and/or Medicaid programs. This survey was also conducted for the purpose of State licensure. This survey found that your facility was not in substantial compliance with the participation requirements.

All references to regulatory requirements contained in this letter are found in Title 42, Code of Federal Regulations (C.F.R.), COMAR Title 10, and the State Government Article.

I. PLAN OF CORRECTION (PoC)

A PoC for the deficiencies must be submitted within 10 days after the facility receives its Form CMS 2567. Failure to submit an acceptable PoC within the above time frames may result in the imposition of a civil money penalty twenty (20) days after the due date for submission of the PoC.

Your PoC must contain the following:

- What corrective action will be accomplished for those residents found to have been affected by the deficient practice;
- How you will identify other residents having the potential to be affected by the same deficient practice and what corrective action will be taken;
- What measures will be put into place or what systemic changes you will make to ensure that the deficient practice does not recur;

- How the corrective action(s) will be monitored to ensure the deficient practice will not recur, i.e., what quality assurance program will be put into place;

- Specific date when the corrective action will be completed; and

- **References to a resident(s) by Resident # only** as noted in the attached Resident Roster. This applies to the PoC as well as any attachments to the PoC. It is unacceptable to include a resident(s) name in these documents since the documents are released to the public.

## II. RECOMMENDED REMEDIES

The following remedies will be recommended for imposition by the Center for Medicare and Medicaid Services (CMS) Regional Office if your facility has failed to achieve substantial compliance by June 6, 2013. Informal dispute resolution for the cited deficiencies will not delay the imposition of the enforcement actions recommended on this date. A change in the seriousness of the noncompliance may result in a change in the remedy selected. When this occurs, you will be advised of any change in remedy.

If you do not achieve substantial compliance within 3 months after the last day of the survey identifying non-compliance, (i.e., July 22, 2013) the CMS Regional Office and/or State Medicaid Agency must deny payments for new admissions. (§§488.417(a))

We are also recommending to the CMS Regional Office and/or the State Medicaid Agency that your provider agreement be terminated on October 22, 2013 if substantial compliance is not achieved by that time.

## III. Immediate Imposition of A Per Instance Civil Money Penalty Under Code of Maryland Regulations

Under Maryland Health General Article Sections 19-1401 et.seq. and COMAR 10.07.02.51, the Department of Health and Mental Hygiene has the authority to impose a civil money penalty (CMP) based upon the existence of deficiencies at a comprehensive care facility.

Based upon the deficiencies cited at your facility, I hereby impose a total per instance Civil Money Penalty (CMP) of $5000.00. The deficiencies upon which the CMP is based are enclosed with this letter on Form CMS 2567 and State Form. Of particular concern were the deficiencies cited under COMAR 10.07.02.12 and tag F314 involving Resident #3 who developed pressure sores as a result of the lack nursing care and monitoring.

In determining whether to impose a CMP, the Department took into consideration the following factors:

1. The number, nature, and seriousness of the deficiencies;
2. The extent to which the deficiency or deficiencies are part of an ongoing pattern during the preceding 24 months;
3. The degree of risk to the health, life, or safety of the residents of the nursing facility caused by the deficiency or deficiencies;
4. The efforts made by, and the ability of, the nursing facility to correct the deficiency or deficiencies;
5. The nursing facility's prior history of compliance in general and specifically with reference to the cited deficiencies; and
6. Such other factors as justice may require.

In setting the amount of the CMP, the Department considered the following factors in addition to those factors considered in determining whether to impose a CMP:

(1) Current federal guidelines for civil money penalties; and
(2) Whether the amount of the proposed civil money penalty will jeopardize the financial ability of the nursing facility to continue operating as a nursing facility.

The facility may request a hearing on the decision to impose a CMP. Any hearing will be held in accordance with State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland, and COMAR 28.02.01 and 10.01.03. Any request for a hearing must be submitted in writing to Paul J. Ballard, Office of the Attorney General, 300 West Preston Street, Suite 302, Baltimore, Maryland 21201, no later than 30 days after receipt of this notice. The request shall include a copy of this letter. If the informal dispute resolution process referenced elsewhere in this letter does not result in settlement of this matter, this matter will be referred to the Office of Administrative Hearings to hold a hearing and issue a proposed decision within 10 working days of the hearing. The aggrieved person may file exceptions as provided in COMAR 10.01.03.35. A final decision by the Secretary shall be issued in accordance with COMAR 10.01.03.35. If you do not request a hearing within 30 days after the receipt of this notice, the imposition of the CMP will become final at that time.

The CMP payment is due 15 calendar days after the time period for requesting a hearing has expired and a request for a hearing was not received; or 15 calendar days after receipt of a written request from the facility to waive its right to a hearing and reduce the amount of the CMP by 40 percent, provided the written request is received by the Department within 30 calendar days of the Department's order imposing the civil money penalty. COMAR 10.07.02.54(A). If you wish to reduce the amount of the CMP by 40 percent, please make your check payable to the Department of Health and Mental Hygiene and submit to the attention of Debra Munford, Survey Coordinator, at the Office of Health Care Quality.

If Fairland Center files a timely request for a hearing, the nursing facility shall deposit the amount of the CMP in an interest-bearing escrow account. The nursing facility shall bear any costs associated with establishing the escrow account, and the account shall be titled in the name of the nursing facility and the Department of Health and Mental Hygiene as joint owners. COMAR 10.07.02.54(B).

When the Secretary issues the final decision of the Department, the funds in the escrow account, plus accrued interest if applicable, shall be distributed in accordance with COMAR 10.07.02.54C.

## IV. ALLEGATION OF COMPLIANCE

If you believe the deficiencies identified in CMS Form 2567 have been corrected, you may contact Debra Munford, Survey Coordinator at the Office of Health Care Quality, Bland Bryant Building, 55 Wade Avenue, Catonsville, Maryland 21228 with your written credible allegation of compliance **(i.e. attached lists of attendance at provided training and/or revised statements of policies/procedures and/or staffing patterns with revisions or additions)**. If you choose and so indicate, the PoC may constitute your allegation of compliance. We may accept the written allegation of compliance and presume compliance until substantiated by a revisit or other means. In such a case, neither the CMS Regional Office nor the State Medicaid Agency will impose the previously recommended remedy(ies) at that time.

If, upon the subsequent revisit, your facility has not achieved substantial compliance, we will recommend that the remedies previously mentioned in this letter be imposed by the CMS Regional Office or the State Medicaid Agency beginning on April 22, 2013 and continue until substantial compliance is achieved. Additionally, the CMS Regional Office or State Medicaid Agency may impose a revised remedy(ies), based on changes in the seriousness of the noncompliance at the time of the revisit, if appropriate.

## V. INFORMAL DISPUTE RESOLUTION

In accordance with §§488.331, you have one opportunity to question cited deficiencies through an informal dispute resolution process. To be given such an opportunity, you are required to send your written request, along with the specific deficiency (ies) being disputed, and an explanation of why you are disputing those deficiencies, to Dr. Tricia Nay, Acting Director, Office of Health Care Quality, Bland Bryant Building, 55 Wade Avenue, Catonsville, Maryland 21228, or by fax at 410-402-8234. This request must be sent during the same 10 days you have for submitting a PoC for the cited deficiencies. An incomplete informal dispute resolution process will not delay the effective date of any enforcement action.

## VI. LICENSURE ACTION

As you are aware, the cited Federal deficiencies have a counter part in State regulations. These deficiencies are cited on the enclosed State Form. Please provide a plan of correction and credible evidence of compliance for these deficiencies within 10 days of receipt of this letter. In the event a revisit determines that substantial compliance has not been achieved, appropriate administrative action may be taken against your State license.

A review of the deficiencies reveals a lack of nursing care and monitoring to prevent pressure

sores. Therefore, this letter will serve as notification pursuant to COMAR 10.07.02.07G(3) that the cited deficiencies in the area of must be corrected no later than July 22, 2013.

If you have any questions concerning the instructions contained in this letter, please contact Debra Munford, Health Facilities Survey Coordinator at 410-402-8201 or by fax at 410-402-8234.

Sincerely yours,

Tricia Tomsko Nay, MD

Tricia Tomsko Nay, Medical Director
Office of Health Care Quality

Enclosures: CMS 2567
State Form

cc: Jane Sacco
Ruby Potter
Pat Hannigan
Alice Hedt
Paul Ballard
File II