Ohio Administrative Code

Rule 5160-3-02.2 Nursing facilities (NFs): termination, denial, and non-revalidation of provider agreements.

Effective: June 24, 2016

(A) Written notice.

(1) The Ohio department of medicaid (ODM) may terminate, deny, or not revalidate a NF provider agreement upon thirty days written notice to the NF.

(2) Notices and termination orders must comply with provisions set forth in sections 5164.38 and 5165.77 of the Revised Code.

(B) Reasons for which ODM may terminate, deny, or not revalidate a NF provider agreement.

(1) In accordance with section 5164.33 of the Revised Code, ODM may terminate, deny, or not revalidate a NF provider agreement if ODM determines such an agreement is not in the best interests of the state or the medicaid residents of the NF.

(2) ODM may terminate, deny, or not revalidate a NF provider agreement on the basis of best interest including, but not limited to, the following reasons:

(a) The provider has not fully and accurately disclosed information to ODM as required by the provider agreement or any rule contained in Chapter 5160-3 of the Administrative Code.

(b) The provider has failed to abide by or to have the capacity to comply with the terms and conditions of the provider agreement and/or rules and regulations promulgated by ODM

(c) The provider has been found liable by a court for negligent performance of professional duties.

(d) The provider has failed to file cost reports as required in rule 5160-3-20 of the Administrative Code.

(e) The provider has made false statements or has altered records, documents, or charts. Alteration does not include properly documented correction of records.

(f) The provider has failed to cooperate or provide requested records or documentation for purposes of an audit or review of any provider activity by any federal, state, or local agency.

(g) The provider has been found in violation of section 504 of the Rehabilitation Act of 1973, 29 U.S.C 794 (March 24, 2014), the Civil Rights Act of 1964, 42 U.S.C. 1971 (July 27, 2006) or the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq (March 15, 2011) in relation to the employment of individuals, the provision of services, or the purchase of goods and services.

(h) The attorney general, auditor of state, or any board, bureau, commission, or department has recommended ODM terminate the provider agreement where the reason for the request bears a reasonable relationship to the administration of the medicaid program or the integrity of state and/or federal funds.

(i) In accordance with rule 5160-1-13.1 of the Administrative Code, the provider has violated the prohibition against billing medicaid residents for covered services, or has requested the resident to share in the cost of covered services through deductibles, coinsurance, co-payments, or other similar charges, other than medicaid co-payments as defined in rule 5160-1-09 of the Administrative Code.

(j) The facility has been found by the Ohio department of health (ODH) during a survey of the facility to have an emergency that is the result of a deficiency or cluster of deficiencies, and that constitutes immediate jeopardy.

(k) The provider fails to pay the full amount of a franchise permit fee (FPF) installment when due pursuant to section 5168.52 of the Revised Code.

(C) Reasons for which ODM shall terminate, deny, or not revalidate a NF provider agreement.

(1) ODM shall terminate, deny, or not revalidate a NF provider agreement for, but not limited to, the following reasons:

(a) The provider has been terminated, suspended, or excluded by the medicare program and/or by the United States centers for medicare and medicaid services (CMS) and that action is binding on participation in the medicaid program or renders federal financial participation unavailable for participation in the medicaid program. Under these conditions, medicaid termination and payment sanction dates shall be the same as medicare termination and payment sanction dates.

(b) The facility has been decertified by ODH and/or the United States department of health and human services.

(c) The provider has pled guilty to or been convicted of a criminal activity materially related to either the medicare or medicaid program.

(d) Any license, permit, or certificate that is required by ODM or the terms of the provider agreement has been denied, suspended, revoked, or not renewed.

(2) ODM shall terminate, deny, or not revalidate a NF provider agreement for, but not limited to, the following reasons set forth in Chapters 5164. and 5165. of the Revised Code, and Chapters 5160-1 and 5160-3 of the Administrative Code:

(a) In accordance with division (D) of section 5164.35 of the Revised Code, there has been a conviction of, or the entry of a judgment in either a criminal or civil action against the provider or its owner, officer, authorized agent, associate, manager, or employee in an action brought pursuant to section 109.85 of the Revised Code.

(b) The provider has committed medicaid fraud as defined in rule 5160-1-29 of the Administrative Code.

(c) In accordance with section 5165.073 of the Revised Code, the provider does not comply with the requirements of section 3721.071 of the Revised Code for the installation of fire extinguishing and fire alarm systems.

(d) Any of the scenarios specified under division (B) of section 5165.771 of the Revised Code regarding the special focus facility program apply to the provider.

(e) In accordance with section 5165.106 of the Revised Code, the provider fails to file a cost report required by section 5165.10 of the Revised Code by the date it is due or by the date, if any, to which the due date is extended pursuant to division (D) of section 5165.10 of the Revised Code, unless the provider submits a complete and adequate cost report within thirty days after notice of termination by ODM.

(f) The provider has failed to ensure a nursing facility's full participation in the medicare program as a skilled nursing facility (SNF) pursuant to section 5165.082 of the Revised Code and rule 5160-3-02.4 of the Administrative Code.

(g) In accordance with section 5165.072 of the Revised Code, the provider fails to maintain eligibility for the provider agreement as set forth in section 5165.06 of the Revised Code.

(h) In accordance with division (B)(1) of section 5164.32 of the Revised Code, the provider fails to file a complete application for revalidation within the time and in the manner required by the revalidation process as specified by ODM.

(3) If ODH terminates certification of a nursing facility, ODM shall terminate the facility's provider agreement pursuant to section 5164.38 and section 5165.79 of the Revised Code.

(D) Adjudication order.

(1) In accordance with section 5164.38 of the Revised Code, the director of ODM shall terminate, deny, or not revalidate an existing NF provider agreement by issuing an order pursuant to an adjudication conducted in accordance with Chapter 119. of the Revised Code, unless such action occurred as the result of events described in division (E) of section 5164.38 of the Revised Code.

(2) In accordance with division (E) of section 5165.77 of the Revised Code, if ODM issues a termination order as the result of events set forth in paragraph (B)(2)(j) of this rule, the termination may take effect prior to or during the pendency of the proceeding under Chapter 119. of the Revised Code.

(E) Impact of provider actions on CMS-imposed reasonable assurance periods.

(1) When seeking reentry to the medicaid program, providers are subject to procedures set forth in CMS publication 100-07 entitled "State Operations Manual" at Chapter 7 section 7321 (6/12/14) for SNFs and NFs, to comply with the provisions at 42 CFR 489.57 (October 1, 2015) that govern reinstatement after termination, and require that the reason for termination of the previous agreement has been removed and there is reasonable assurance that it will not recur.

(2) After CMS has initiated involuntary termination action for a dually certified SNF/NF, or after ODH has initiated involuntary termination action for a medicaid-certified NF, a provider of a NF who is permitted to voluntarily terminate, voluntarily withdraw, or undergoes a change of operator, or the subsequent operator of the same facility, shall be subject to reasonable assurance requirements set by CMS when seeking reentry to the medicaid program.

(3) CMS or ODH initiates a termination action when it sends a provider the initial notice certifying noncompliance and proposing termination.