

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid
Services Western Division of Survey
and Certification Seattle Regional
Office
701 Fifth Avenue, Suite 1600
Seattle, WA 98104



April 1, 2020

SENT VIA E-MAIL TO: Ellie_Basham@lcca.com

Ms. Ellie Basham, Administrator
Life Care Center of Kirkland
10101 Northeast 120th Street
Kirkland, WA 98034

**IMPORTANT NOTICE – PLEASE READ CAREFULLY
NOTICE TO INVOLUNTARY TERMINATE MEDICARE PROVIDER AGREEMENT**

Re: CMS Certification No: 505334
Complaint Survey March 16, 2020
Revisit Complaint Survey March 29, 2020
Removal of Immediate Jeopardy (IJ) Findings
Changes in Enforcement Remedies (Denial of Payments for New Admissions and Civil Money Penalty)
Extension of Date to Terminate Medicare Provider Agreement – Effective September 16, 2020

Dear Ms. Basham:

We notified you on March 18, 2020 that the Centers for Medicare & Medicaid Services (CMS) and the State of Washington Department of Social & Health Services (DSHS) State Survey Agency completed a Complaint survey at your facility on March 16, 2020 and informed you of Immediate Jeopardy (IJ) Disposition. Based on those survey results, CMS determined that Life Care Center of Kirkland (LCC of Kirkland) no longer met the requirements for participation as a provider of services in the Medicare program established under Titles XVIII and XIX of the Social Security Act (the Act).

In addition, CMS notified LCC of Kirkland that termination of the Medicare Provider Agreement would go into effect on April 8, 2020 if LCC of Kirkland failed to remove the IJ findings before that date. Enclosed are the complete survey findings from the March 16, 2020 survey.

On March 28, 2020, CMS conducted a revisit survey solely for the purposes of determining whether the IJ situations were removed. This revisit survey determined the IJs were removed. Therefore, the 23 day termination is rescinded and the termination date has been extended to September 16, 2020. Enclosed are the revisit survey findings from the March 29, 2020 revisit survey.

I. BACKGROUND

On March 16, 2020, CMS and the State of Washington DSHS completed a Complaint Survey at LCC of Kirkland to determine if the facility was in substantial compliance with the Federal requirements for nursing homes participating in the Medicare and/or Medicaid programs. This survey found the most serious deficiencies to be widespread and constituting **Immediate Jeopardy** to resident health or safety. These IJ findings were not removed by the end of the survey.

- 42 C.F.R. § 483.25 – F 684 – S/S: L – Quality of Care;
- 42 C.F.R. § 483.30(d) – F 713 – S/S: L – Physician for Emergency Care, Available 24 Hours; and
- 42 C.F.R. § 483.80(b)(1)-(4)(c) – F 880 – S/S: L – Infection Prevention & Control.

Additionally, the following deficiencies were also cited during the March 16, 2020 survey. However, these deficiencies were not reviewed during the March 29, 2020 revisit survey:

- 42 C.F.R. § 483.70(d)(1)(2) – F0837 – S/S: F – Governing Body;
- 42 C.F.R. § 483.70(h)(1)(2) – F0841 – S/S: F – Responsibilities of Medical Director;
- 42 C.F.R. § 483.20(f)(5), 483.70(i)(1)-(5) – F0842 – S/S: F – Resident Records - Identifiable Information; and
- 42 C.F.R. § 483.75(a)(2)(h)(i) – F0865 – S/S: F – QAPI Program/Plan, Disclosure.

If LCC of Kirkland does not correct all deficiencies and return to full compliance by September 16, 2020, then CMS will terminate your facility from participating in the Medicare/Medicaid program. As a result of the March 29, 2020 survey findings, listed on the attached Statement of Deficiencies (Form CMS-2567), we are updating the imposed remedies on your facility. They are discussed below.

I. OPPORTUNITY TO CORRECT

LCC of Kirkland can avert termination only by correcting its deficiencies. LCC of Kirkland must submit an acceptable plan of correction (PoC) for the March 16, 2020 survey. An authorized representative for the facility must sign, date, and return the Form CMS 2567 containing your POC no later than ten (10) calendar days from the receipt of the Form CMS-2567. Please continue to use ePOC and send copies via email to Patrick Thrift, Branch Manager, at Seattle_LTC@cms.hhs.gov. In addition, please send a copy of all correspondence to the State of Washington DSHS. After we receive your POC, the State of Washington DSHS must then verify the facility's compliance with the Medicare requirements of participation.

II. OTHER REMEDIES

Based upon this certification/finding of noncompliance, we have determined, in accordance with sections 1819(h) and 1919(h) of the Act and the enforcement regulations at 42 C.F.R. Part § 488, including 42 C.F.R. § 488.402 and § 488.406, to update the following remedies:

- Per-Day Civil Money Penalty (CMP): A Federal Civil Money Penalty in the amount of **\$13,585 per day effective February 12, 2020 and continuing through March 27, 2020, for a total of \$611,325**. Please note, the amount of the CMP may be increased or

decreased if CMS finds that the level of noncompliance changes. CMS will send LCC of Kirkland notification of any further enforcement actions as they occur.

- Extend the Date of Termination of your facility's Medicare provider agreement until 12:01 a.m. Pacific Time on **September 16, 2020**. This action is mandated by the Act at §§ 1819(h) and 1919(h) and Federal regulations at 42 CFR § 488.456 and § 489.53.
- Loss of Nurse Aide Training and Competency Evaluation Program (NATCEP) 42 U.S.C. 1395i-3(f)(2)(B).
- Denial of Payment for New Admissions, effective March 21, 2020, and ends at 11:59 p.m. Pacific Time on March 27, 2020.

These remedies will continue in effect until the effective date of the termination of your Medicare provider agreement, or the facility is found back in substantial compliance.

III. IDR AND IDR RIGHTS

A. INFORMAL DISPUTE RESOLUTION

CMS has established an informal dispute resolution (IDR) process to give providers one opportunity to informally refute deficiencies cited at a Federal survey, in accordance with the regulation at 42 CFR § 488.331(a)(2).

To request an IDR, please fax and email your request identifying the specific deficiencies being disputed, along with an explanation of why you are disputing them and all supporting documentation, to:

Patrick Thrift, Branch Manager
Fax: (443) 380-7546
Email: Patrick.Thrift@cms.hhs.gov

Please note, email requests for IDR that include any resident personal identifiable information (PII) or personal health information (PHI), must be sent encrypted.

An IDR may be used to dispute survey findings, but it cannot be used to challenge any aspect of the survey process, including the following:

- Scope and Severity assessments of deficiencies, except for the deficiencies constituting immediate jeopardy and substandard quality of care (SQC);
- Remedies imposed;
- Alleged failure of the surveyor to comply with a requirement of the survey process;
- Alleged inconsistency of the surveyor in citing deficiencies among facilities; or
- Alleged inadequacy or inaccuracy of the IDR process.

You must submit your request for IDR and materials within ten (10) calendar days from the receipt of this notice. We will advise you in writing of the outcome of the IDR. Should the IDR result in a change to the Statement of Deficiencies, we will send you a revised Form CMS-2567 reflecting the changes.

An IDR, including any face-to-face meetings, constitutes an informal administrative process that in no way is to be construed as a formal evidentiary hearing. If you wish to be accompanied by counsel for your IDR, then you must indicate that in your written request for informal dispute resolution, so that CMS may also have counsel present.

B. INDEPENDENT INFORMAL DISPUTE RESOLUTION (INDEPENDENT IDR)

In accordance with 42 CFR § 488.431, when a civil money penalty subject to being collected and placed in an escrow account is imposed, you have one opportunity to question cited deficiencies through an Independent IDR process. You may also contest scope and severity assessments for deficiencies which resulted in a finding of substandard quality of care (SQC) or immediate jeopardy.

To request an IIDR, please fax and email your request in addition to supporting documents, including the specific deficiencies being disputed and an explanation of why you are disputing those deficiencies, to the following:

Patrick Thrift, Branch Manager
Fax: (443) 380-7546
Email: Patrick.Thrift@cms.hhs.gov

In accordance with 42 CFR §488.431, the facility must request independent IDR in writing within ten (10) calendar days of receipt of CMS's offer. However, a facility may not use both IDR and independent IDR for the same deficiency citation(s) arising from the same survey unless the IDR process was completed prior to the imposition of the civil money penalty.

Please note, email requests for IIDR that include any resident personal identifiable information (PII) or personal health information (PHI) must be sent encrypted.

In addition, all supporting documents must also be faxed or mailed directly to the following:

Christina Compher
Healthcare Management Solutions, LLC
1000 Technology Drive, Suite 1310
Fairmont, WV 26554
Direct Line: (615) 967-1169
Fax: (304) 368-0389

LCC of Kirkland may not use both IDR and independent IDR for the same deficiency citation(s) arising from the same survey unless the IDR process was completed prior to the imposition of the civil money penalty. An incomplete Independent IDR process will not delay the effective date of any enforcement action.

Neither IDR not Independent IDR are to be construed as a formal evidentiary hearing. They are informal administrative processes to discuss deficiencies. You will be advised verbally of our decision relative to the informal dispute, with written confirmation to follow.

IV. APPEAL RIGHTS

Our March 18, 2020 letter informed you of your appeal rights for the March 16, 2020 immediate jeopardy findings. We now inform you of your right to appeal the March 16, 2020 non-IJ findings and the March 29, 2020 survey findings 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 (DAB).

Procedures governing this process are set out in 42 CFR § 498.40, et. seq. You may appeal the finding(s) 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 sixty (60) days from the date of receipt of this letter. We remind you that, as indicated above, since this notice is being sent to you by email and facsimile, your appeal must be filed no later than sixty (60) days from the date indicated on this notice. See 42 C.F.R. § 498.40(a) (2).

The DAB 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 11:59 p.m. Eastern Time 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 the E-File System Support at OSDABImmediateOffice@cms.hhs.gov, or call (202) 565-0146 before 4:00 p.m. Eastern Time.

V. CMP REDUCED IF HEARING WAIVED

In lieu of requesting a hearing to challenge the certification/finding(s) of noncompliance noticed herein (that is, the certification/finding(s) of noncompliance based on the determination that LCC of Kirkland was not in substantial compliance with controlling Medicare participation requirements at 42 C.F.R. Part § 483 as documented during the survey completed on March 16, 2020), you may choose to waive your right to such a hearing. **A decision to exercise this waiver option must be made in writing within sixty (60) calendar days from the date of this notice. See 42 C.F.R. § 488.436.** To receive this reduction, please send a written waiver to Seattle_LTC@cms.hhs.gov, Attention: Nancy Hines. Please include your CCN and the Cycle Start Date in the subject line of your email.

If we timely receive notice that you have elected to waive your right to appeal the civil money penalty and agree to pay the reduced amount of the CMP, we will send you written payment instructions.

However, if you request a hearing, the full amount of the civil money penalty is due and will be collected and held in an escrow account, pending the final administrative decision. See 42 C.F.R. § 488.431(b). We will send you payment instructions by separate written notice. CMS will retain the escrowed funds on an on-going basis and, upon a final administrative decision, will either return applicable funds in accordance with 42 C.F.R. § 488.431(d)(2) or, in the case of an unsuccessful administrative appeal, will periodically disburse the funds to States or other entities in accordance with 42 C.F.R. § 488.433.

If you neither submit a written request for a hearing nor formally waive your right to appeal, you will be assessed the full amount of the civil money penalty. We will send you payment instructions by separate written notice.

Waiving your hearing rights would constitute an acceptance of this office's determination that your facility was not in substantial compliance as documented during the March 16, 2020 survey, and an acceptance of all enforcement remedies under 42 C.F.R. § 488.406 resulting from the certification/finding(s) of noncompliance not being challenged (i.e. the certification/finding(s) of noncompliance based on the March 16, 2020 survey). By your waiver, therefore, you would accept all of the enforcement remedies that are being imposed by this office as a result of our determination that your facility was not in substantial compliance with 42 C.F.R. Part § 483 participation requirements as documented during the March 16, 2020 survey. The total amount of the affected civil money penalty, however, would be reduced by thirty-five percent (35%) in accordance with 42 C.F.R. § 488.436(b).

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.

The failure to request a hearing within sixty (60) calendar days from your receipt of this notice does not constitute a waiver of your right to a hearing for purposes of the 35% reduction.

VI. FINANCIAL HARDSHIP CONSIDERATION

If you believe this CMP would impose a financial hardship on the facility, you may request financial hardship consideration. On September 6, 2016, the Department of Health and Human Services (HHS) published an Interim Final Rule in the Federal Register which adjusts for inflation of Civil Money Penalty (CMP) amounts authorized under the Social Security Act. See 45 CFR § 102.1 et seq. The CMP imposed in this letter reflects the adjusted amounts.

In determining the amount of the CMP, we considered the factors specified at 42 CFR § 488.438(f), such as: the facility's history of noncompliance with program participation requirements, including repeated deficiencies; its financial condition; the seriousness of the deficiencies in light of factors set forth at 42 CFR §488.404; and the facility's degree of culpability.

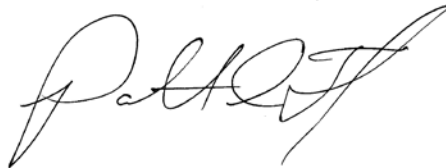
If you believe that you have documented evidence that should be considered in establishing the

amount of the CMP, the following documents should be submitted electronically to Seattle_LTC@cms.hhs.gov, Attention: Manuel Bravo, within ten (10) days from the receipt of this notice:

- Written, dated request specifying the reason financial hardship is alleged;
- List of the supporting documents submitted;
- Current balance sheet;
- Current income statements;
- Current cash flow statements;
- Most recent full year audited financial statements prepared by an independent accounting firm, including footnotes;
- Most recent full year audited financial statements of the home office and/or related entities, prepared by an independent accounting firm, including footnotes;
- Disclosure of expenses and amounts paid/accrued to the home office and/or related entities; and
- A schedule showing amounts due to/from related companies, or individuals included in the balance sheets. The schedule should list the names of related organizations or persons, and indicate where the amounts appear on the balance sheet (e.g., Accounts Receivable, Notes Receivable, etc.).

Please direct any questions or correspondence related to this matter to CMS at Seattle_LTC@cms.hhs.gov, Attention: Patrick Thrift. You can reach him by telephone at (206) 615-3811.

Sincerely,



Patrick Thrift
Branch Manager
Seattle Long Term Care
Survey & Enforcement Division
Survey & Operations Group

Copies sent via email to:
State of Washington DSHS
State Medicaid Agency
US-DHHS Office of the General Counsel