

Adult Care Home Regional Round Tables

November 4th-7th, 2024

Lacey Hunter, Commissioner

Dawne Altis, Assistant Commissioner

Survey, Certification & Credentialing

Topics for Today

1. State Licensed Only involuntary discharge reporting
2. Changes to Continuing Care Retirement Community certification since July 1, 2024
3. Receivership-what is it and how do you apply for it
4. CMPs, NATCEP and other enforcement remedies
5. Top deficiencies cited
6. Survey consistency

State Licensed Only Discharge Reporting

Involuntary Discharge

Just a reminder for State Fiscal Year 2025 the State Legislature passed a requirement for all assisted living facilities, residential healthcare facilities, home plus and boarding care homes to submit a report to KDADS upon the completion of every involuntary transfer or discharge of a resident.

Any facility that fails to submit a report within 60 days of the completion of the transfer or discharge or resolution of a formal complaint shall be subject to a civil penalty.

KDADS will compile the information into a report for the 2025 Legislature.

The reports shall not include personally identifiable information and shall include:

- (1) The date when notice of transfer or discharge was provided;
- (2) the date when the resident left the facility;
- (3) the type of facility where the resident was transferred or discharged;
- (4) the reason that required the transfer or discharge of the resident pursuant to K.A.R. 26-39-102(d);
- (5) if the resident was transferred or discharged pursuant to K.A.R. 26-39-102(f), the reason that required such transfer or discharge;
- (6) if the resident filed a complaint regarding the notice of transfer or discharge; and
- (7) any other relevant information required by the secretary.

A user guide can be found : <https://www.kdads.ks.gov/home/showpublisheddocument/3958/638629312763930000>

Changes to CCRC

Follow-Up Information

In response to an audit from the Medicaid Inspector General, HB 2784 makes several policy changes related to Continuing Care Retirement Communities.

It creates a statutory definition of what a CCRC is, **"Continuing care retirement community"** means any place or facility that combines a range of housing and services to encompass the continuum of aging care needs provided at an independent living facility, an assisted living facility, a residential healthcare facility, home plus or a skilled nursing care facility within a single place or facility to avoid the need for residents to relocate to a separate place or facility. The provision of community care includes the multiple levels of care provided as part of a continuing care retirement community."

Additionally, effective July 1, 2024, the legislation moves registration of CCRCs from the Kansas Insurance Department to the Kansas Department for Aging & Disability Services.

You can send correspondence related to CCRCs to KDADS.CCRCRegistrations@ks.gov

CCRC Application: [Microsoft Word - Adult Care Home Licensure Application.docx \(ks.gov\)](#)

CCRC Annual Disclosure Statement: [ccrc-annual-disclosure-statement_fillable.pdf \(ks.gov\)](#)

Receivership

Information

39-954. Application for receiver; order appointing; qualifications of persons designated and method of selection, rules and regulations. (a) **The secretary for aging and disability services, the owner of an adult care home, or the person licensed to operate an adult care home** may file an application with the district court for an order appointing the secretary for aging and disability services or the designee of the secretary as receiver to operate an adult care home whenever: (1) Conditions exist in the adult care home that are life threatening or endangering to the residents of the adult care home; (2) the adult care home is insolvent; or (3) the secretary for aging and disability services has issued an order revoking the license of the adult care home.

(b) The secretary for aging and disability services may adopt rules and regulations setting forth the necessary qualifications of persons to be designated receivers and a method for selecting designees.

History: L. 1978, ch. 162, § 1; L. 1985, ch. 151, § 1; L. 2003, ch. 149, § 19; L. 2014, ch. 115, § 143; July 1.

39-955. Filing application for receivership; contents. The application for receivership shall be filed in the Shawnee county district court or the district court in the county where the adult care home is located. The application shall be verified and set forth the specific reasons therefor.

History: L. 1978, ch. 162, § 2; L. 2019, ch. 55, § 30; May 9.

Nursing Facility Enforcement

Federal Fees, Fines and Other Remedies

Federal Remedies for certified skilled nursing facility authority begins at [42 CFR 488.400](#) and include three categories:

7400.6.1 - Category 1

(Rev. 63, Issued: 09-10-10, Effective: 09-10-10, Implementation: 09-10-10)

Select at least one remedy from category 1 when there:

- are isolated deficiencies that constitute no actual harm with a potential for more than minimal harm but not immediate jeopardy; or
- is a pattern of deficiencies that constitutes no actual harm with a potential for more than minimal harm but not immediate jeopardy.

EXCEPT when the facility is in substantial compliance, one or more of the remedies in category 1 may be applied to any deficiency.

Nursing Facility Enforcement

Federal Fees, Fines and Other Remedies

CATEGORY 1 remedies include:

- Directed plan of correction (see §7500);
 - State monitoring (see §7504); and
- Directed in-service training (see §7502).

NOTE: As an agent of CMS or the State Medicaid Agency, the State may impose one or more category 1 remedies, as authorized by CMS or the State Medicaid Agency, in accordance with §7314.

Nursing Facility Enforcement

Federal Fees, Fines and Other Remedies

7400.6.2 - Category 2

(Rev. 213; Issued: 02-10-23; Effective: 02-10-23; Implementation: 02-10-23)

Select at least one remedy from category 2 when there are:

- Widespread deficiencies that constitute no actual harm with a potential for more than minimal harm but not immediate jeopardy; or
- One or more deficiencies (regardless of scope) that constitute actual harm that is not immediate jeopardy.

EXCEPT when the facility is in substantial compliance, one or more of the remedies in category 2 may be applied to any deficiency. NOTE: The State Medicaid Agency does not have the statutory authority to impose the remedy of denial of payment for all Medicare and/or Medicaid residents.

Nursing Facility Enforcement

Federal Fees, Fines and Other Remedies

CATEGORY 2 remedies include:

- Denial of payment for all new Medicare and/or Medicaid admissions;
- Denial of payment for all Medicare and/or Medicaid residents, imposed only by the CMS Location;
 - Lower range per day civil money penalties;
 - Per instance civil money penalties.

Nursing Facility Enforcement

Federal Fees, Fines and Other Remedies

7400.6.3 - Selection from Category 3

(Rev. 63, Issued: 09-10-10, Effective: 09-10-10, Implementation: 09-10-10)

Termination or temporary management, or both, must be selected when there are one or more deficiencies that constitute immediate jeopardy to resident health or safety. A civil monetary penalty of \$3,050 - \$10,000 per day or a civil money penalty of \$1,000 - \$10,000 per instance may be imposed in addition to the remedies of termination and/or temporary management.

Temporary management is also an option when there are widespread deficiencies constituting actual harm that is not immediate jeopardy.

Nursing Facility Enforcement

Federal Fees, Fines and Other Remedies

CATEGORY 3 remedies include:

- Temporary management (see §7550);
 - Termination (see §7556);
- Civil money penalties of \$3,050 - \$10,000 per day of noncompliance optional, in addition to the remedies of termination and/or temporary management (See §7510); or
- Civil money penalties of \$1,000 - \$10,000 per instance of noncompliance optional (see §7510).

NOTE: Termination may be imposed by the State Medicaid Agency or the regional office at any time. Transfer of residents or transfer of residents with closure of the facility will be imposed by the State, as appropriate. Although temporary management must be imposed when there is a finding of immediate jeopardy (and termination is not sought), temporary management may be imposed for lesser levels of noncompliance.

Nursing Facility Enforcement

Mandatory Criteria for Immediate Imposition of Federal Remedies

¹ DDPNA = Discretionary Denial of Payment for New Admissions

² This remedy shall **ONLY** be imposed by CMS and may not be imposed by a State Medicaid Agency. A state survey agency may only impose Category 1 remedies if authorized by the CMS *Location*.

Decisions, Responsibilities & Actions (refer to §7304.3)	Within 5 business days from when the initial notice was sent to the facility the survey agency must assure that all cases that meet the criteria outlined in 7304.1 above are entered into ASPEN/AEM and that all of these cases are referred to the CMS <i>Location</i> for their imposition of remedies. The CMS <i>Location</i> must take the necessary action to impose remedies as appropriate, regardless of a State's recommendation for imposition of remedies, based on the seriousness of the deficiencies following the criteria set forth in 42 C.F.R. §488.404 - Factors to be considered in selecting remedies. Civil Money Penalties (CMPs) must be imposed in accordance with instructions in the CMP Tool.
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Mandatory Criteria for Immediate Imposition of Federal Remedies	Immediate Jeopardy is identified on the current survey	Deficiencies of SQC that are <u>not</u> IJ are identified on the current survey	Any G level deficiency is identified on the current survey in 42 C.F.R. §483.13, Resident Behavior and Facility Practices, 42 C.F.R. §483.15, Quality of Life, or 42 C.F.R. §483.25, Quality of Care	Deficiencies of actual harm are identified on the current survey AND deficiencies of immediate jeopardy OR actual harm were identified on any type of survey between the current survey and the last standard survey	Facilities classified as a SFF AND has a deficiency citation of "F" level or higher for the current health survey or G or higher for the current LSC survey
Types of Remedy(ies) that, at a minimum, should be considered for immediate imposition by CMS <u>in addition to</u> the CMPs when immediate jeopardy is cited, mandatory 3-month DPNA for new admissions or mandatory 6-month termination, as required. NOTE: Multiple remedies may be imposed for any situation as appropriate.	<ol style="list-style-type: none"> 1. Termination 2. CMPs <u>must</u> be imposed immediately 3. DDPNA¹ 4. Temp. Mgmt. 5. State Monitoring 6. Directed Plan of Correction 7. Directed In-service 8. Denial of Payment for ALL Individuals² 	<ol style="list-style-type: none"> 1. Termination 2. CMPs 3. DDPNA 4. Directed Plan of Correction 5. Directed In-service Training 6. Denial of Payment for All Individuals 	<ol style="list-style-type: none"> 1. Termination 2. CMPs 3. DDPNA 4. Directed Plan of Correction 5. Directed In-service Training 6. Denial of Payment for All Individuals 	<ol style="list-style-type: none"> 1. Termination 2. CMPs 3. DDPNA 4. Temp. Mgmt. 5. State Monitoring 6. Directed Plan of Correction 7. Directed In-service 8. Denial of Payment for All Individuals 	<ol style="list-style-type: none"> 1. Termination 2. CMPs 3. DDPNA 4. Temp. Mgmt. 5. State Monitoring 6. Directed Plan of Correction 7. Directed In-service 8. Denial of Payment for All Individuals

Nursing Facility Enforcement

Federal Fees, Fines and Other Remedies

7305.2.1 - Who Sends the Formal Notice of Remedies

(Rev. 213; Issued: 02-10-23; Effective: 02-10-23; Implementation: 02-10-23)

A formal notice of remedies is sent by:

- a. The State, in either its initial notice or in its first revisit notice for category 1 remedies and denial of payment for new admissions, when and as authorized by CMS and/or the State Medicaid Agency;
- b. The CMS Location for remedies other than those provided in accordance with 1a. above; for skilled nursing facilities, skilled nursing facilities/nursing facilities, and nursing facilities where the CMS Location is taking the enforcement action; and/or,
- c. The State Medicaid Agency for remedies other than those provided in accordance with a. above for nursing facilities.

Nursing Facility Enforcement

Federal Fees, Fines and Other Remedies

7305.2.3 - Required Time Periods for Formal Notice

(Rev. 63, Issued: 09-10-10, Effective: 09-10-10, Implementation: 09-10-10)

The notice period begins once the facility receives its notice as indicated below.

- a. Immediate Jeopardy – 2 calendar day notice
 - Except for civil money penalties and State monitoring, notice must be given at least 2 calendar days before the effective date of the enforcement action.
- b. No Immediate Jeopardy – 15 calendar day notice
 - Except for civil money penalties and State monitoring, notice must be given at least 15 calendar days before the effective date of the enforcement action.

Nursing Facility Enforcement

Federal Fees, Fines and Other Remedies

Lower Range of Penalty Amounts for Per Day Civil Money Penalty

Penalties in the range of \$50 to \$3,000 per day may be imposed when immediate jeopardy does not exist, but the deficiencies either caused actual harm, or caused no actual harm, but have the potential for more than minimal harm. A civil money penalty may not be less than \$50.00 per day.

Upper Range of Penalty Amounts for Per Day Civil Money Penalty

Penalties in the range of \$3,050 to \$10,000 per day may be imposed for deficiencies constituting immediate jeopardy. Penalties may also be in the upper range of penalty amounts for deficiencies when immediate jeopardy does not exist if a penalty in the lower range of penalty amounts was previously imposed and the deficiencies in the same regulatory grouping are repeated. Repeated deficiencies are defined in §7516.3.

Range of Per Instance Penalty Amounts

Penalties in the range of \$1,000 to \$10,000 per instance(s) may be imposed for noncompliance that constitutes actual harm, or for noncompliance that has the potential for more than minimal harm. The terminology “per instance” is not used to suggest that only one instance of noncompliance may be assigned a civil money penalty. There can be more than one instance of noncompliance identified during a survey where the State utilizes the per instance civil money penalty as an enforcement remedy. The total dollar amount of the civil money penalty for the instance or multiple instances of noncompliance may not exceed \$10,000 for that specific survey, and may not be less than \$1,000 per instance.

Nursing Facility Enforcement

CMP Analytic Tool and User Guide

Overview



All CMS locations are required to use the following CMP Analytic Tool and Instructions:

(1) to choose the appropriate type of CMP to be imposed; and

(2) to calculate the CMP amount, when the CMS location determines that a CMP is an appropriate remedy to impose.

The CMS location must complete all sections of the tool that apply to the type of CMP selected. Please refer to the [CMP Analytic Tool User's Guide](#) for information about using this tool. Though remedies are usually imposed on Level 3 and Level 4 deficiencies, depending upon the circumstances, CMS locations may impose CMPs for level 2 deficiencies based on the factors listed in 42 CFR 488.404 and 488.438(f).

CMPs, NATCEP and other Enforcement Remedies

NATCEP

The Centers for Medicare and Medicaid Services (CMS) recently directed Kansas Department for Aging and Disability Services (KDADS) to change the way the Nurse Aide Training and Competency Evaluation/Competency Evaluation Program (NATCEP/CEP) disapproval criteria is applied to findings of past noncompliance (PNC). KDADS was informed that a PNC deficiency that meets Substandard Quality of Care (SQC) requirements, as defined in 42 CFR 488.301, is considered a triggering event for NATCEP/CEP disapprovals.

For questions or more information regarding this direction from CMS please reach out to Patricia Purdon at patricia.purdon@ks.gov

Adult Care Home Enforcement

Fees, Fines and Other Remedies

Adult Care Home Remedy Authority begins at KSA 39-945 and include:

- Correction Order
- Civil Penalty
- Ban on Admissions
- Licensure Denial, Suspension and Revocation

Adult Care Home Enforcement

Civil Penalties

- Maximum finable amount is \$500 per day per deficiency but the maximum assessment shall not exceed \$2,500*.
- Factors for determining fine amount:
 - (1) The severity of the violation;
 - (2) the good faith effort exercised by the adult care home to correct the violation; and
 - (3) the history of compliance of the ownership of the adult care home with the rules and regulations.

*If the secretary for aging and disability services determines that an adult care home is in violation of or has violated any requirements, standards or rules and regulations established under the adult care home licensure act which violation can reasonably be determined to have resulted in, caused or posed serious physical harm to a resident, the secretary for aging and disability services in accordance with proceedings under the Kansas administrative procedure act, may assess a civil penalty against the licensee of such adult care home in an amount of not to exceed \$1,000 per day per violation for each day the secretary finds that the adult care home was not in compliance with such requirements, standards or rules and regulations but the maximum assessment shall not exceed \$10,000.

Top Cited Deficiencies

State Licensed Only

10/1/2024
1:58:11PM

HEALTH RESURVEY DEFICIENCY DATA
January 1 - September 30, 2024

TAG			
5105	Negotiated Service Agreement	40	4.4%
5230	Infection Control Policies	40	4.4%
3310	Infection Control Policies	33	3.6%
3085	Negotiated Service Agreement	32	3.5%
3280	Disaster and Emergency Preparedness	31	3.4%
3211	OVER THE COUNTER DRUGS	29	3.2%
3299	Facility Food Storage	27	3.0%
5116	NSA revisions	23	2.5%
3298	Food Preparation	22	2.4%
5215	Disaster and Emergency Preparedness Education	21	2.3%
5251	Resident Records Documentation of Incidents	21	2.3%

10/1/2024
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HEALTH RESURVEY DEFICIENCY DATA
July 1 - September 30, 2024

TAG			
3085	Negotiated Service Agreement	14	4.6%
3211	OVER THE COUNTER DRUGS	12	3.9%
3299	Facility Food Storage	12	3.9%
3310	Infection Control Policies	12	3.9%
5230	Infection Control Policies	12	3.9%
3280	Disaster and Emergency Preparedness	11	3.6%
5105	Negotiated Service Agreement	11	3.6%
3215	Medication Storage	10	3.3%
3261	Resident Record Documentation of Incidents	9	2.9%
3298	Food Preparation	9	2.9%
3320	CONSTRUCTION	9	2.9%

Survey Consistency

State Licensed Only

January 1 - September 30, 2024

SUMMARY		
	N	%
SURVEYS:	251	
ZERO DEF SRVYS:	73	29.1%
G+ SRVYS:	21	8.4%
DEF:	911	
DEF/SURVEY:	3.6	
G+ DEF:	23	2.5%
G+ DEF/SURVEY:	0.09	

Top Cited Deficiencies

Nursing Facilities

10/1/2024
12:25:08PM

HEALTH RESURVEY DEFICIENCY DATA
January 1 - September 30, 2024 TOP 10

TAG			
0689	Free of Accident Hazards/Supervision/Devices	76	5.4%
0880	Infection Prevention & Control	73	5.2%
0812	Food Procurement,Store/Prepare/Serve-Sanitary	66	4.7%
0657	Care Plan Timing and Revision	59	4.2%
0758	Free from Unnec Psychotropic Meds/PRN Use	51	3.6%
0550	Resident Rights/Exercise of Rights	44	3.1%
0851	Payroll Based Journal	42	3.0%
0756	Drug Regimen Review, Report Irregular, Act On	41	2.9%
0761	Label/Store Drugs and Biologicals	41	2.9%
0757	Drug Regimen is Free from Unnecessary Drugs	36	2.6%

10/1/2024
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HEALTH RESURVEY DEFICIENCY DATA
July 1 - September 30, 2024 TOP 10

TAG			
0689	Free of Accident Hazards/Supervision/Devices	24	5.5%
0657	Care Plan Timing and Revision	19	4.4%
0880	Infection Prevention & Control	19	4.4%
0812	Food Procurement,Store/Prepare/Serve-Sanitary	17	3.9%
0851	Payroll Based Journal	16	3.7%
0758	Free from Unnec Psychotropic Meds/PRN Use	15	3.5%
0756	Drug Regimen Review, Report Irregular, Act On	13	3.0%
0761	Label/Store Drugs and Biologicals	13	3.0%
0883	Influenza and Pneumococcal Immunizations	11	2.5%
0550	Resident Rights/Exercise of Rights	10	2.3%
0623	Notice Requirements Before Transfer/Discharge	10	2.3%
0686	Treatment/Svcs to Prevent/Heal Pressure Ulcer	10	2.3%
0690	Bowel/Bladder Incontinence, Catheter, UTI	10	2.3%

Survey Consistency

Nursing Facilities

January 1 - September 30, 2024

SUMMARY		
		%
SURVEYS:	132	
ZERO DEF SRVYS:	1	0.8%
G+ SRVYS:	23	17.4%
DEF:	1408	
DEF/SURVEY:	10.7	
G+ DEF:	43	3.1%
G+ DEF/SURVEY:	0.33	
SUB F DEF:	0	0.00%

Staff Contacts

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