



Ohio Revised Code

Section 5165.77 Emergency remedies.

Effective: September 29, 2013

Legislation: House Bill 59 - 130th General Assembly

(A) If the department of health finds during a survey that an emergency exists at a nursing facility, as the result of a deficiency or cluster of deficiencies that creates immediate jeopardy, the department of medicaid or a contracting agency shall impose one or more of the remedies described in division (A)(1) of this section and, in addition, may take one or both of the actions described in division (A)(2) of this section.

(1) The department or agency shall impose one or more of the following remedies:

- (a) Appoint, subject to the continuing consent of the provider, a temporary manager of the facility;
- (b) Apply to the common pleas court of the county in which the facility is located for a temporary restraining order, preliminary injunction, or such other injunctive or equitable relief as is necessary to close the facility, transfer one or more residents to other nursing facilities or other appropriate care settings, or otherwise eliminate the condition of immediate jeopardy. If the court grants such an order, injunction, or relief, it may appoint a special master empowered to implement the court's judgment under the court's direct supervision.
- (c) Issue an order terminating the facility's participation in the medicaid program;
- (d) Regardless of whether the provider consents, appoint a temporary manager of the facility.

(2) The department or agency may do one or both of the following:

- (a) Issue an order denying medicaid payments to the facility for all medicaid eligible residents admitted after the effective date of the order;
- (b) Impose remedies under sections 5165.72 to 5165.74 of the Revised Code appropriate to the severity and scope of the deficiency or cluster of deficiencies, except that the department or agency



shall not impose a fine for the same deficiency for which the department or agency has issued an order under division (A)(2)(a) of this section.

(B) If the department of health, department of medicaid, or a contracting agency finds on the basis of a survey or other visit to the facility by representatives of that department or agency that an emergency exists at a facility that is not the result of a deficiency or cluster of deficiencies that constitutes immediate jeopardy, the department of medicaid or contracting agency may do either of the following:

(1) Appoint, subject to the continuing consent of the provider, a temporary manager of the facility;

(2) Apply to the common pleas court of the county in which the facility is located for a temporary restraining order, preliminary injunction, or such other injunctive or equitable relief as is necessary to close the facility, transfer one or more residents to other nursing facilities or other appropriate care settings, or otherwise eliminate the emergency. If the court grants such an order, injunction, or relief, it may appoint a special master empowered to implement the court's judgment under the court's direct supervision.

(C)(1) Prior to acting under division (A)(1)(b), (c), (d), or (2), or (B)(2) of this section, the department of medicaid or contracting agency shall give written notice to the facility specifying all of the following:

(a) The nature of the emergency, including the nature of any deficiency or deficiencies that caused the emergency;

(b) The nature of the action the department or agency intends to take unless the department of health determines that the facility, in the absence of state intervention, possesses the capacity to eliminate the emergency;

(c) The rationale for taking the action.

(2) If the department of health determines that the facility does not possess the capacity to eliminate the emergency in the absence of state intervention, the department of medicaid or contracting



agency may immediately take action under division (A) or (B) of this section. If the department of health determines that the facility possesses the capacity to eliminate the emergency, the department of medicaid or contracting agency shall direct the facility to eliminate the emergency within five days after the facility's receipt of the notice. At the end of the five-day period, the department of health shall conduct a follow-up survey that focuses on the emergency. If the department of health determines that the facility has eliminated the emergency within the time period, the department of medicaid or contracting agency shall not act under division (A)(1)(b), (c), (d), or (2)(a), or (B)(2) of this section. If the department of health determines that the facility has failed to eliminate the emergency within the five-day period, the department of medicaid or contracting agency shall take appropriate action under division (A)(1)(b), (c), (d), or (2), or (B)(2) of this section.

(3) Until the written notice required by division (C)(1) of this section is actually delivered, no action taken by the department of medicaid or contracting agency under division (A)(1)(b), (c), (d), or (2), or (B)(2) of this section shall have any legal effect. In addition to the written notice, the department of health survey team shall give oral notice to the facility, at the time of the survey, concerning any recommendations the survey team intends to make that could form the basis of a determination that an emergency exists.

(D) The department of medicaid or contracting agency shall deliver a written order issued under division (A)(1) of this section terminating a nursing facility's participation in the medicaid program to the facility within five days after the exit interview. If the facility alleges, at any time prior to the later of the twentieth day after the exit interview or the fifteenth day after it receives the order, that the condition of immediate jeopardy for which the order was issued has been eliminated, the department of health shall conduct a follow-up survey to determine whether the immediate jeopardy has been eliminated. The order shall take effect and the facility's participation shall terminate on the twentieth day after the exit interview, unless the facility has eliminated the immediate jeopardy or did not receive notice from the department of medicaid or contracting agency within five days after the exit interview. In the latter case, the order shall take effect and the facility's participation shall terminate on the fifteenth day after the facility received the order.

(E) Any action taken by the department of medicaid or a contracting agency under division (A)(1)(c), (d), or (2)(a) of this section is subject to appeal under Chapter 119. of the Revised Code,



except that the department or agency may take such action prior to and during the pendency of any proceeding under that chapter. No action taken by a facility under division (C) of this section to eliminate an emergency cited by the department of health shall be considered an admission by the facility of the existence of an emergency.