Ohio Revised Code

Section 5165.85 Termination of participation for failure to correct deficiency within six months.

Effective: September 29, 2013
Legislation: House Bill 59 - 130th General Assembly

(A) If a nursing facility notifies the department of medicaid or a contracting agency, at any time during the six-month period following the exit interview of a survey that was the basis for citing a deficiency or deficiencies, that the deficiency or deficiencies have been substantially corrected in accordance with the plan of correction submitted and approved under section 5165.69 of the Revised Code, the department of health shall conduct a follow-up survey to determine whether the deficiency or deficiencies have been substantially corrected in accordance with the plan.

(B) The department of medicaid or a contracting agency shall terminate a nursing facility's participation in the medicaid program whenever the facility has not substantially corrected, within six months after the exit interview of the survey on the basis of which it was cited, a deficiency or deficiencies in accordance with the plan of correction submitted under section 5165.69 of the Revised Code, as determined by the department of health on the basis of a follow-up survey.

(C) Unless the facility has substantially corrected the deficiency or deficiencies in accordance with the plan of correction, as determined by the department of health on the basis of a follow-up survey, the department of medicaid or contracting agency shall deliver to the facility, at least thirty days prior to the day that is six months after the exit interview, a written order terminating the facility's participation in the medicaid program. The order shall take effect and the facility's participation shall terminate on the day that is six months after the exit interview. The order shall not take effect if, after it is delivered to the facility and prior to the effective date of the order, the department of health determines on the basis of a follow-up survey that the facility has corrected the deficiency or deficiencies.

An order issued under this section is subject to appeal under Chapter 119. of the Revised Code; however, the order may take effect prior to or during the pendency of any hearing under that chapter. In that case, the department of medicaid or contracting agency shall provide the facility an opportunity for a hearing in accordance with section 5165.87 of the Revised Code.

(D) Except as provided in division (E) of this section, whenever the department of medicaid or a contracting agency terminates a facility's participation in the medicaid program pursuant to this section, the provider shall repay the department the federal share of all medicaid payments made by the department to the facility during the six-month period following the exit interview of the survey that was the basis for citing the deficiency or cluster of deficiencies. The provider shall repay the department within thirty days after the department repays to the federal government the federal share of medicaid payments made to the facility during that six-month period.

(E) A provider is not required to repay the department of medicaid if either of the following is the case:

(1) The facility has brought an appeal under Chapter 119. of the Revised Code of termination of its participation in the medicaid program, except that the provider shall repay the department of medicaid within thirty days after the facility exhausts its right to appeal under that chapter.

(2) The facility complied with the plan of correction approved by the department of health and the obligation to repay resulted from the department's failure to provide timely verification to the United States department of health and human services of the facility's compliance with the plan of correction.

(F) If a provider's obligation to repay the department of medicaid under division (D) of this section results from disallowance of federal financial participation by the United States department of health and human services, the provider shall not be required to repay the department of medicaid until the federal disallowance becomes final.

(G) Any fines paid under sections 5165.60 to 5165.89 of the Revised Code during any period for which the facility is required to repay the department of medicaid under division (D) of this section shall be offset against the amount the provider is required to repay the department for that period.

(H) Prior to a change of ownership of a facility for which a provider has an obligation to repay the department of medicaid under division (D) of this section that has not become final, or has become final but not been paid, the department may do one or more of the following:

(1) Require the provider to place money in escrow, or obtain a bond, in sufficient amount to indemnify the state against the provider's failure to repay the department after the change of ownership occurs;

(2) Place a lien on the facility's real property;

(3) Use any method to recover the medicaid payments that is available to the attorney general to recover payments on behalf of the department of medicaid.