

**Survey Protocol for Compliance with Liability Notices and Beneficiary
Appeal Rights**

Sub-Task 5C—Resident Review

Liability Notices and Beneficiary Appeal Rights

Medicare-participating long term care facilities are obligated to inform Medicare Part A and B beneficiaries about specific rights related to billing, and to submit bills to the Fiscal Intermediary (FI) or Medicare Administrative Contractor (MAC) when requested by the beneficiary. In a Medicare-participating long term care facility, verify compliance with these requirements.

Listed below are the requirements of the Skilled Nursing Facility (SNF).

1. If a SNF provider believes on admission or during a resident's stay that Medicare will not pay for skilled nursing or specialized rehabilitative services and that an otherwise covered item or service may be denied as not reasonable and necessary, the facility must notify the resident or his/her legal representative in writing and explain:
 - Why these specific services may not be covered;
 - The beneficiary's potential liability for payment for the non-covered services;
 - The beneficiary right to have a claim submitted to Medicare; and
 - The beneficiary's standard claim appeal rights that apply if the claim is denied by Medicare.

This notice requirement may be fulfilled by use of either the Skilled Nursing Facility Advanced Beneficiary Notice (SNFABN) (CMS form 10055) or one of the five uniform Denial Letters found in §358 of the Skilled Nursing Facility Manual. The SNFABN and the Denial Letters inform the beneficiary of his/her right to have a claim submitted to Medicare and advises them of the standard claim appeal rights that apply if the claim is denied by Medicare. These claims are often referred to as "demand bills"¹ and are reviewed by FI or MAC.

The SNF:

- Must keep a copy of the SNFABN or Denial Notice on file;
- Must file a claim when requested by the beneficiary; and
- May not charge the resident for Medicare covered Part A services while a decision is pending.

¹ See Ch. 1, §60.3 of the Medicare Claims Processing Manual for detailed instructions on submitting institutional demand bills.

2. The SNF must issue the Notice of Medicare Provider Non-coverage (CMS form 10123) when there is a termination of all Medicare Part A services for coverage reasons. The Notice of Medicare Provider Non-coverage informs the beneficiary of his/her right to an expedited review of a service termination by the Quality Improvement Organization (QIO). The Notice to Medicare Provider Non-coverage is sometimes referred to as an “Expedited Appeal Notice” or a “Generic Notice.” The SNF should not issue this notice if the beneficiary exhausts the Medicare covered days as the number of SNF benefit days is set in law and the QIO cannot extend the benefit period. Thus, a service termination due to the exhaustion of benefits is not considered a termination for “coverage” reasons.

The SNF:

- Must keep a copy of the Notice of Medicare Provider Non-coverage on file;
- Must file a claim when requested by the beneficiary; and
- May not charge the resident for Medicare covered Part A services while a decision is pending.

Failure to provide written liability of payment and/or appeal notice(s), to submit the bill (if requested by a resident), or to charge the resident for Medicare covered Part A services while a decision is pending may constitute a violation of the facility’s provider agreement. Refer to S&C-09-20 or go to <http://www.cms.hhs.gov/bni/> for more details about liability notices and resident appeal rights.

Procedure to Determine Compliance

1. During the entrance conference, obtain a list of Medicare beneficiaries who requested demand bills in the past six months. From the list, randomly select one resident’s file to determine if the facility submitted the bill to the FI or MAC within the required timeframe. In general, Medicare claims must be filed within one full calendar year following the year in which the services were provided.² If the facility failed to submit the bill to the FI or MAC within the required timeframe or charged the resident while the decision was pending, the facility is in violation of the provider agreement with respect to resident billing requirements. Cite tag F492, 42 C.F.R. § 483.75(b), Compliance with Federal, State and local laws and professional standards and refer to 42 C.F.R. § 489.21, Specific limitations on charges.

Note: If no Medicare beneficiaries requested a demand bill in the past six months, this portion of the review is complete and the surveyor should continue with the closed record review.

2. During closed record review, review three charts of discharged Medicare beneficiaries from the SNF. If the current closed record review sample does not include three Medicare beneficiaries discharged from the SNF, expand the sample. Look for a copy of

² For more information refer to 42 C.F.R. § 424.44 and the Medicare Claims Processing Manual, Chapter 1 - General Billing Requirements, section 70.1.

appropriate liability and appeal notice(s). If the facility failed to provide the resident the appropriate liability and/or appeal notice(s), the facility is in violation of the notice requirements. Cite tag F156, 42 C.F.R. 483.10, Resident rights.

If the record indicates the resident requested the facility submit the bill for appeal, determine if the facility submitted the bill to the FI or MAC within the required timeframe. In general, Medicare claims must be filed within one full calendar year following the year in which the services were provided.³ If the facility failed to submit the bill to the FI or MAC within the required timeframe or charged the resident while the decision was pending, the facility is in violation of the provider agreement with respect to resident billing requirements. Cite tag F492, 42 C.F.R. § 483.75(b), Compliance with Federal, State and local laws and professional standards and refer to 42 C.F.R. § 489.21, Specific limitations on charges.

³ For more information refer to 42 C.F.R. § 424.44 and the Medicare Claims Processing Manual, Chapter 1 - General Billing Requirements, section 70.1.