
PROMISING PRACTICES IN STATE SURVEY AGENCIES

Achieving Better Outcomes Using Survey & Certification Enforcement Strategies

Alabama

Summary

To address serious compliance issues in nursing homes and other licensed facilities, the Bureau of Provider Standards at the Alabama Department of Public Health utilizes facility consent agreements as an enforcement technique aimed at reducing the need to issue license revocations. A facility consent agreement is a contract between the state and the facility under which the facility agrees to comply with certain stipulations in order to avoid license revocation and discharge of its residents. In addition to reducing the need for facility closure and transfer of residents, this program also often eliminates the need for resource-intensive revocation hearings and their associated costs.

Introduction

This report describes the structure and functioning of Alabama's facility consent agreement practice, its impact, and lessons learned that might benefit other agencies considering similar enforcement approaches. The information presented is based on interviews with agency management staff.

Background

Prior to implementing the facility consent agreement process, the Alabama Bureau of Provider Standards addressed serious compliance issues by issuing a notice of revocation. The notice led to a hearing in which a formal determination was made as to whether a facility's license would be revoked, often resulting in the need to discharge and transfer all of the facility's residents. The facility consent agreement practice is an effort by the Bureau of Provider Standards to reduce the need for revocation hearings, facility closure, and resident discharge or transfer by establishing agreements with facilities to address compliance issues before proceeding with (and with the goal of eliminating the need for) revocation.

Intervention

When state survey findings reveal a pattern of poor facility compliance over time, the Bureau of Provider Standards issues a letter notifying the

facility that license revocation is being considered. Facility representatives are invited to attend a meeting with Bureau staff to discuss the issues of concern. At the meeting, the facility is given the option of signing a consent agreement – a document that details the requirements with which the facility must comply to avoid license revocation proceedings and a specific timeframe for doing so. The agreement indicates that failure to comply with the requirements and stipulations within the specified timeframe will result in the immediate institution of revocation proceedings. According to agency management staff, nearly all facilities sign the facility consent agreement when given the option. Once the agreement is signed by both the facility and the state, the agreement becomes a binding contract. At that point, contract law (rather than administrative law) comes into play, and the facility's license may be revoked as a result of its failure to meet the terms of the signed agreement. A facility that fails to meet the terms of the agreement has no further recourse for disputing the state's findings that predate the signing of the consent agreement.

Facility consent agreements typically include language stating that the state reserves the right to perform unannounced surveys at any time should they find that conditions warrant it, and that the provider license may be revoked as a result of those findings. The majority of facility

consent agreements in Alabama pertain to cases involving facilities with serious care problems and a history of poor compliance. Specific examples of care problems addressed include resident abuse, resident falls with fractures, medication re-supply deficiencies, operation of unlicensed facilities, and failure to meet specified staffing requirements. The goal in utilizing the facility consent agreement mechanism is to compel the facility to correct the problems or to mandate transfer of the facility to a new operator.

Implementation

The facility consent agreement process in Alabama evolved over time through a history of issuing revocation notices to providers with serious compliance issues and conducting hearings to determine the outcome. For most of these cases, a settlement was reached prior to actually going to hearing or trial; the agreement reached in these cases was typically referred to as a settlement agreement. A consent agreement is essentially a settlement agreement that is negotiated earlier in the process, before a revocation hearing is ordered, and sometimes even before the revocation letter is sent. A consent agreement is offered as an alternative to the time- and resource-intensive process of a revocation hearing. Alabama's facility consent agreement process evolved through the realization that a good deal of time and resources can be saved by settling revocation-level compliance issues before embarking upon and preparing for the revocation hearing process.

Impact

The Bureau of Provider Standards has found facility consent agreements to be a highly

effective and efficient means of enforcement in cases involving serious compliance issues. By eliminating the need for a revocation hearing – and the associated surveyor and attorney time required to prepare for a contested case hearing – substantial state resources are saved. Furthermore, because the majority of facilities (approximately 75-80 percent) comply with the terms of the consent agreements, the need for facility closure and resident relocation is minimized. From the Bureau's perspective, facility consent agreements consistently result in positive outcomes – with either correction of care problems or transfer of the facility to a new operator.

Lessons Learned

A key factor in the success of the facility consent agreement process is the state's ability to convince the provider that the state is prepared to move forward with the revocation hearing if the consent agreement is not signed, and that strong evidence exists in favor of the need for revocation.

Another important consideration is that in order to issue facility consent agreements, the state agency needs to be represented by legal counsel, preferably in-house counsel, if feasible.

Contact Information

For further information regarding the facility consent agreement process, please contact Rick Harris, Director, Bureau of Provider Standards, Alabama Department of Public Health, by e-mail at rharris@adph.state.al.us or by phone at 334/206-5366.

This document is part of an issue brief on effective enforcement practices in State Survey Agencies. The issue brief is one of a series by the Division of Health Care Policy and Research, University of Colorado Health Sciences Center, for the U.S. Centers for Medicare & Medicaid Services (CMS) highlighting promising practices in State Survey Agencies. The entire series is available online at CMS' Web site, <http://www.cms.hhs.gov/SurvCertPromPractProj>. The issue briefs are intended to share information about practices used in State Survey Agencies and are not an endorsement of any practice.