

PART XII ENFORCEMENT

141 DEFINITIONS FOR LICENSURE-ONLY NURSING FACILITIES

141.01 Substandard Quality of Care. One or more deficiencies related to the regulatory requirements in §100.03 and 102.01; 116.02; and/or 120, which constitute either immediate jeopardy to resident health or safety, or a pattern or widespread deficiencies at a Level 3 severity, or widespread deficiencies at a Level 2 severity.

141.02 Substandard Facility. A facility which is found to be in violation of any of the regulations in §§100.03 and 102.01; 116.02; and/or 120, on the current licensure visit and has been found to be in violation of any of the afore cited regulations during the previous regular re-licensure visit, or any intervening revisit or complaint investigation.

141.03 Ban on All Admissions. A ban on all admissions to a facility may be imposed by the licensing agency when it has been determined by the licensing agency that the facility is providing substandard quality of care as defined in §§141.01 above.

141.04 Division Director. The Division Director is the Director of the Mississippi Department of Health (otherwise known as the licensing agency), Division of Health Facilities Licensure and Certification.

141.05 Informal Dispute Resolution. Procedures set forth in §§148.01 provide facilities with one opportunity to dispute findings of licensure violations.

141.06 Temporary Manager. If a facility is designated as a substandard facility, the licensing agency may select a temporary manager in order to oversee correction of deficient practices cited as violations by the agency and assure the health and safety of the facility's residents while corrections are being made. A temporary manager may also be appointed to oversee the orderly closure of a facility. No temporary manager shall be appointed pursuant to these regulations unless the licensing agency finds Widespread Level-3 Severity deficiency or deficiencies pursuant to §§141.11 and 141.12 or Isolated, Pattern, or Widespread Level-4 deficiency or deficiencies pursuant to §§141.10, 141.11 and 141.12. Temporary management shall not be imposed unless other less intrusive remedies will not result in compliance, or have failed to cause the facility to achieve compliance.

141.07 State Monitor. In lieu of a temporary manager, the licensing agency may appoint a state monitor to oversee the correction of cited deficiencies in a facility as a safeguard against further harm to residents, or when the potential for harm exists as a result of cited licensure violations at any level of severity or scope.

141.08 Directed Plan of Correction. A Directed Plan of Correction is a plan which the licensing agency, or the temporary manager, develops to require a facility to take action within specified time frames.

141.09 Substantial Compliance. A level of compliance which does not entail the imposition of an enforcement remedy.

141.10 Pattern. Pattern is the scope of licensure violations when more than a limited number of residents are affected, and/or more than a limited number of staff are involved, and/or the situation has occurred in several locations, and/or the same resident(s) have been affected by repeated occurrences of the same deficient practice. The effect of the deficient practice is not found to be pervasive through the facility.

141.11 Widespread. Widespread is the scope of licensure violations when the problems causing the violations are pervasive in the facility and/or represent systemic failure that affected or has the potential to affect a large portion or all of the facility's residents.

141.12 Severity.

1. Level 1 - Potential for causing no more than a minor negative impact on the resident(s).
2. Level 2 - Noncompliance that results in minimal physical, mental, and/or psycho-social discomfort to the resident and/or has the potential (not yet realized) to compromise the resident's ability to maintain and/or reach his/her highest practicable physical, mental and/or psycho-social wellbeing as defined by an accurate and comprehensive resident assessment, plan of care, and provision of services.
3. Level 3 - Noncompliance that results in a negative outcome that has compromised the resident's ability to maintain his/her highest practicable physical, mental and psycho-social well-being as defined by an accurate and comprehensive resident assessment, plan of care, and provision of services.
4. Level 4 - Immediate jeopardy, a situation in which immediate corrective action is necessary because the facility's noncompliance with one or more requirements of participation has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident receiving care in a facility.

141.13 Directed In-Service Training. The purpose of directed in-service training is to provide basic knowledge to achieve compliance and remain in compliance with the requirements of these regulations.

142 DEFINITIONS FOR LICENSED AND CERTIFIED NURSING FACILITIES

142.01 General. The Mississippi Department of Health (otherwise known as the licensing agency), Bureau of Licensure and Certification is authorized to certify healthcare facilities for participation in the Medicare and Medicaid programs, pursuant to the Social Security Act at 42.U.S.C. Sections 1819(h)(2), 1819(g)(2), 1919 (g)(2), 1919(h), and 42 CFR. 488.415, 488.425, 488.310, 488.331, and 488.417(a).

142.02 Substandard Quality of Care. One or more deficiencies related to participation requirements under 42 CFR 483.13, Resident Behavior and Facility Practices, 42 CFR 483.15, Quality of Life, or 42 CFR 483.25, Quality of Care which, constitute either immediate jeopardy to resident health or safety, or a pattern or widespread deficiencies at a Level 3 severity, or widespread deficiencies at Level 2 severity.

142.03 Poor Performing Facility. If a facility is found noncompliant with any deficiency with a scope and severity at the level of actual harm or higher on the current survey and the facility had a deficiency at the level of actual harm or higher on any intervening survey (i.e., any survey between the last standard survey and the current one), the facility will be considered a poor performing facility.

142.04 Immediate Jeopardy (Serious and Immediate to Health and Safety). A situation in which the facility's failure to meet one or more requirements of participation in the Medicare/Medicaid program has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident.

142.05 Ban on All Admissions. A ban on all admissions to a facility shall be imposed by the licensing agency when it has been determined by the licensing agency that the facility is not in compliance with a Level 2, widespread deficiency or Level 3, pattern or widespread deficiency, or any deficiency cited as a Level 4, immediate jeopardy. These deficiencies must be determined as Substandard Quality of Care as defined under §§142.02 or Immediate Jeopardy as defined under §§142.04. The licensing agency will also recommend to the state Medicaid agency denial of payment for new admissions.

142.06 Informal Dispute Resolution. Procedures set forth in §§148.01 provide facilities with one opportunity to dispute survey findings.

142.07 Temporary Manager. A temporary manager may be selected as a remedy when a facility has been determined as having immediate jeopardy or widespread actual harm that does not constitute immediate jeopardy in order to oversee the correction of deficient practices cited by the licensing agency and assure the health and safety of the facility's residents while the corrections are being made. A temporary manager may also be

imposed to oversee orderly closure of a facility. Temporary management shall not be imposed unless other less intrusive remedies will not result in compliance, or have failed to cause the facility to achieve compliance.

142.08 State Monitoring. A State Monitor oversees the correction of cited deficiencies in a facility as a safeguard against further harm to residents when harm or a situation with a potential for harm has occurred.

142.09 Directed Plan of Correction. A Directed Plan of Correction is a plan which the licensing agency, or the temporary manager, develops to require a facility to take action within specified time frames.

142.10 Substantial Compliance. A level of compliance which does not entail the imposition of an enforcement remedy.

142.11 Pattern. Pattern is the scope of deficiencies when more than a limited number of residents are affected, and/or more than a limited number of staff are involved, and/or the situation has occurred in several locations, and/or the same resident(s) have been affected by repeated occurrences of the same deficient practice. The effect of the deficient practice is not found to be pervasive through the facility.

142.12 Widespread. Widespread is the scope of deficiencies when the problems causing the deficiencies are pervasive in the facility and/or represent systemic failure that affected or has the potential to affect a large portion or all of the facility's residents.

142.13 Severity.

1. Level 1 - Potential for causing no more than a minor negative impact on the resident(s).
2. Level 2 - Noncompliance that results in minimal physical, mental, and/or psycho-social discomfort to the resident and/or has the potential (not yet realized) to compromise the resident's ability to maintain and/or reach his/her highest practicable physical, mental and/or psycho-social wellbeing as defined by an accurate and comprehensive resident assessment, plan of care, and provision of services.
3. Level 3 - Noncompliance that results in a negative outcome that has compromised the resident's ability to maintain his/her highest practicable physical, mental and psycho-social well-being as defined by an accurate and comprehensive resident assessment, plan of care, and provision of services.
4. Level 4 - Immediate jeopardy, a situation in which immediate corrective

action is necessary because the facility's noncompliance with one or more requirements of participation has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident receiving care in a facility.

142.14 Directed In-Service Training. The purpose of directed in-service training is to provide basic knowledge to achieve compliance and remain in compliance with requirements of federal guidelines and state regulations, when applicable.

142.15 Bureau Director. The Bureau Director is the Director of the Mississippi Department of Health (otherwise known as the licensing agency), Bureau of Health Facilities Licensure and Certification.

143 BAN ON ADMISSIONS PROCEDURE

143.01 Ban on Admissions. If a facility is found to be providing substandard quality of care or immediate jeopardy exists at a facility, as applicable, written notice of the determination shall be provided by the licensing agency to the facility, along with the notification that a ban on all admissions is to be imposed five calendar (5) days after the receipt of the notice by the facility unless a hearing is requested within that five (5) calendar day period. If a hearing is requested by the facility, the informal dispute resolution procedures established under §§148.01 shall be applied.

If the licensing agency's determination of noncompliance with Substandard Quality of Care or Immediate Jeopardy on the day of the licensure visit/ survey is confirmed, a ban on all admissions shall be imposed until the facility achieves compliance and such compliance is verified by the licensing agency. The licensing agency will verify the facility's corrective actions as soon as possible after the licensing agency receives an allegation of compliance from the facility but no later than fifteen (15) days after the receipt of said notice. If the hearing determines that the facility was not providing Substandard Quality of Care or that Immediate Jeopardy did not exist, as applicable, on the day of the licensure/survey visit, no ban on all admissions will be imposed.

144 STATE MONITORING

144.01 State Monitoring. Monitors are identified by the licensing agency as appropriate professionals to monitor cited deficiencies. A monitor shall meet the guidelines regarding conflicts of interests as follows:

1. The monitor does not currently work, or, within the past two (2) years, has worked as an employee, as employment agency staff at the facility, or as an officer, consultant, or agent for the facility to be monitored.
2. The monitor has no financial interest or any ownership interest in the facility.

3. The monitor has no immediate family member who has a relationship with the facility to be monitored.

4. The monitor has no immediate family member who is a resident in the facility. If a facility has not achieved substantial compliance within five (5) months of the annual licensure visit/standard survey date, the remedy of state monitoring will be imposed as determined by the licensing agency.

144.02 Compensation and Per Diem Costs. All compensation and per diem costs of the State Monitor shall be paid by the facility. The licensing agency shall bill the facility for the costs of the State Monitor after termination of the monitoring services. The costs of the State Monitor for any weekly forty (40) hour period (forty [40] hours per week) shall not exceed the maximum allowable owner/administrator salary of a like sized facility as described in the Mississippi State Medicaid Plan. Within fifteen (15) days of receipt of the bill, the facility shall pay the bill or request an informal dispute resolution procedure to contest the costs for which it was billed.

144.03 Recommendation. If the facility has not achieved substantial compliance within six (6) months from the annual survey date, the licensing agency shall revoke the license of the facility and if applicable shall recommend to the State Medicaid Agency termination of participation in the Medicare/Medicaid programs.

145 DIRECTED IN-SERVICE TRAINING

145.01 Directed In-Service Training. If the remedy of Directed In-Service Training is imposed by the licensing agency for a facility to achieve substantial compliance, guidelines for accepting Plans of Correction to the Statement of Deficiencies shall be as follows:

1. Corporate facilities and consultant firms may only use staff to conduct the directed in-service training when the staff person has not had a direct or indirect involvement in the deficient practice and does not conduct inservices on a routine basis.
2. Corporate facilities and consultant firms may use staff/consultants from other nursing homes of the corporation if that person has not been directly involved in routine in-services of the facility in question. Also, the staff/consultant is and has no history of involvement with a Substandard or Poor Performing Facility.
3. If hospital-owned facilities use hospital staff to conduct the in-service, the staff must not have been involved in the routine in-services and/or care of the residents.

4. All other facilities may use staff or consultants from other facilities if the other facility's staff/consultant is not/has not been involved in a facility that is a Substandard Facility or Poor Performer.

5. Nursing homes with individual private consultants may not use the contracted consultant when directed In-Service is imposed.

146 DIRECTED PLAN OF CORRECTION

146.01 Directed Plan of Correction. Directed Plan of Correction as defined under §§142.09 and 142.09 may be imposed as follows:

The facility will be provided one (1) opportunity to submit an acceptable Plan of Correction. If the licensing agency does not receive an acceptable plan of correction, the licensing agency may impose one or more of the following remedies:

1. Directed Plan of Correction;
2. Revocation of State License; and/or
3. Recommend termination of participation in the Medicaid/Medicare programs if applicable.

147 TEMPORARY MANAGEMENT

147.01 Recommendation for Appointment of Temporary Management. If the licensing agency recommends the appointment of a temporary manager, the recommendation shall specify the grounds upon which such recommendation is based, including an assessment of the capability of the facility's current management to achieve and maintain compliance with all Licensure and/or Certification requirements.

147.02 Notice of Imposition of Temporary Management. A temporary manager may be imposed fifteen (15) days after the facility receives notice of the recommendation from the licensing agency and two (2) days after a facility which is licensed and certified receives notice where a determination that immediate jeopardy exists has been made.

147.03 Conditions of Temporary Management.

- The facility's management must agree to relinquish control to the temporary manager and to pay his/her salary before the temporary manager can be installed in the facility.
- The facility cannot retain final authority to approve changes of personnel or expenditures of facility funds and be considered to have relinquished control to the temporary manager.

- The temporary manager must be given access to all facility bank accounts
- In certified facilities, where immediate jeopardy exists, if a facility refuses to relinquish control to the temporary manager, the facility will be terminated from participation in medicare/medicaid within twenty-three (23) calendar days of the last day of the survey visit if the immediate jeopardy is not removed.
- The temporary manager's salary must be at least equivalent to the prevailing annual salary of nursing home administrators in the facility's geographic area, plus the additional costs that would have reasonably been incurred by the provider if the temporary manager had been in an employment relationship (e.g., the cost of a benefits package, prorated for the amount of time that the temporary manager spends in the facility).
- The licensing agency is responsible for determining what a facility's geographic area is.
- All compensation and per diem costs of the temporary manager shall be paid by the facility. The licensing agency shall bill the facility for the costs of the temporary manager after termination of temporary management. The costs of the temporary manager for any thirty (30) day period shall not exceed the maximum allowable owner/administrator salary of a like size facility as described in the Mississippi State Medicaid State Plan. Within fifteen (15) days of receipt of the bill, the facility shall pay the bill or request an informal dispute resolution procedure to contest the costs for which it was billed.

147.04 Selection of Temporary Manager. The licensing agency shall compile and maintain a list of individuals eligible to serve as temporary managers. The temporary manager must possess a Mississippi nursing home administrator's license. A contractual agreement will be executed between the temporary manager and the licensing agency.

147.05 Eligibility of Temporary Manager. The following individuals are not eligible to serve as temporary managers:

Any individual who has been found guilty of misconduct by any licensing board or professional society in any State; or

1. Any individual who has, or whose immediate family members have, any financial interest in or pre-existing fiduciary duty to the facility to be managed. Indirect ownership interest, such as through a mutual fund, does not constitute financial interest for the purpose of this restriction; or
2. Any individual who currently serves or, within the past two (2) years, has served as a member of the staff of the facility or has a pre-existing fiduciary duty to the facility; or
3. Any individual who does not possess sufficient training, expertise, and experience in the operation of a nursing facility as would be necessary to achieve the objectives of temporary management; or

4. Any individual who at the time of the imposition of temporary management could stand to gain an unfair competitive advantage by being appointed as temporary manager of the facility.

147.06 Condition of Appointment. As a condition of appointment, the temporary manager must agree not to purchase, lease, or manage the facility for a period of two (2) years following the end of the temporary management period.

147.07 No Limitation. Nothing contained in these sections shall limit the right of any facility owner to sell, lease, mortgage, or close any facility in accordance with all applicable laws.

147.08 Authority and Powers Of the Temporary Manager.

1. A temporary manager has the authority to direct and oversee the correction of the deficiencies/licensure violations; to oversee and direct the management, hiring, reassignment and/or discharge of any consultant or employee, including the administrator of the facility; to direct the expenditure of or obligate facility funds in a reasonable and prudent manner; to oversee the continuation of the business and the care of the residents; to oversee and direct those acts necessary to accomplish the goals of the licensure and/or certification requirements; to alter facility procedures; and to direct and oversee regular accountings and the provision of periodic reports to the licensing agency.

2. A temporary manager shall provide reports to the licensing agency by the fifteenth (15th) day of each month showing the facility's compliance status.

3. A temporary manager shall observe the confidentiality of the operating policies, procedures, employment practices, financial information, and all similar business information of the facility, except that the temporary manager shall make reports to the licensing agency as provided for in this section.

4. The temporary manager shall be liable for gross, willful or wanton negligence, intentional acts or omissions, unexplained shortfalls in the facility's funds, and breaches of fiduciary duty. The temporary manager shall be bonded in an amount equal to the facility's total revenues for the month preceding the appointment of the temporary manager.

147.09 Authority of Temporary Manager. The temporary manager shall not have the authority to do the following:

1. To cause or direct the facility or its owner to incur debt or to enter into any contract with a duration beyond the term of the temporary management of the facility;

2. To cause or direct the facility to encumber its assets or receivables, or the premises on which it is located, with any lien or other encumbrances;
3. To cause or direct the sale of the facility, its assets, or the premises on which it is located;
4. To cause or direct the facility to cancel or reduce its liability or casualty insurance coverage;
5. To cause or direct the facility to default upon any valid obligations previously undertaken by the owners or operators of the facility, including but not limited to, leases, mortgages, and security interests; and
6. To incur capital expenditures in excess of two-thousand dollars (\$2,000.00) without the permission of the owner of the facility and the licensing agency.

147.10 Duration of Temporary Manager. Temporary management shall continue until a license is revoked and or the facility is terminated from participation in the Medicare or Medicaid programs, or the facility achieves substantial compliance and is capable of remaining in substantial compliance. The licensing agency may replace any temporary manager whose performance, in the discretion of the licensing agency, is deemed unsatisfactory. No formal procedure is required for such removal or replacement but written notice of any action shall be given to the facility, including the name of any replacement manager.

A facility subject to temporary management may petition the licensing agency for replacement of a temporary whose performance it considers unsatisfactory. The licensing agency shall respond to a petition for replacement within three (3) business days after receipt of said petition.

Otherwise, the licensing agency shall not terminate temporary management until it has determined that the facility has the management capability to ensure continued compliance with all licensure and/or certification requirements or until the facilities license is revoked or the facility's participation in the medicare/medicaid program is terminated.

148 INFORMAL DISPUTE RESOLUTION

148.01 Informal Dispute Resolution.

1. The purpose of the informal dispute resolution (IDR) process is to comply with 42 CFR 488.331 by giving licensed facilities an additional opportunity to refute cited deficiencies/licensure violations after any survey, or after notification of billing issues in situations involving state

monitors or temporary managers. The IDR is not intended to be an evidentiary hearing since licensed facilities are afforded such at the federal level. Licensed facilities may not use the IDR to delay the formal imposition of remedies or to challenge any other aspect of the survey process, including:

- a. The scope and severity assessments of deficiencies with the exception of scope and severity assessments that constitute substandard quality of care or immediate jeopardy;
- b. Remedies imposed by the licensing agency;
- c. Alleged failure of the survey team to comply with a requirement of the survey process;
- d. Alleged inconsistency of the survey team in citing deficiencies among facilities; and
- e. Alleged inadequacy or inaccuracy of the informal dispute resolution process.

2. All requests for an IDR must follow the procedures set forth herein.

3. All official statements of deficiencies/licensure violations requiring a response from the licensed facility, and billing statements for state monitors or temporary managers, shall be mailed by the licensing agency via certified mail, return receipt requested. Each official statement of deficiencies/licensure violations shall be accompanied by a copy of these Informal Dispute Resolution Procedure Regulations.

4. The licensed facility shall notify the Division Director that it requests an IDR. The request shall be in writing and must be received in the office of the licensing agency no later than ten (10) calendar days after the licensed facility's receipt of the official statement of deficiencies/licensure violations or billing statement. The request shall specify which deficiencies/licensure violations or charges are disputed. The request shall also specify whether the licensed facility requests that the IDR

(1) in person;

(2) via a telephone conference or by other electronic means (i.e., via video teleconference, if such service is available to all parties); or

(3) by means of a written response to the official statements of deficiencies/licensure violations. The request must also designate a licensed facility representative for purposes of further communications regarding the IDR.

5. Every IDR shall be conducted by the licensing agency. If the IDR will be conducted in person, it shall be conducted at offices designated by the licensing agency.

6. The licensing agency shall notify the licensed facility representative by telephone or facsimile of the date, time, location, and format of the IDR. The IDR shall be held within ten (10) working days after the receipt by the licensing agency of the request.

The IDR shall be conducted by a three (3) person panel, known as the IDR Panel, consisting of a representative Ombudsman (not of the survey district being reviewed) as appointed by the State Ombudsman, a member of the medical community (physician or nurse practitioner), and a member of the Licensure staff who is SMQT qualified and who does not survey nor have supervisory capacity over the district of the related survey. In the event of a position vacancy, an alternate member may serve on the IDR panel as directed by the State Health Officer or his designee.

7. At the IDR, the licensed facility representative shall present any additional documentation or statements in support of its contention that a cited deficiency/licensure violation or billing charge may be incorrect. Additional employees of the licensed facility may participate in the IDR, including consultants utilized by the licensed facility as may be required by the regulations (i.e., dietary consultant, social work consultant, and others). Because the IDR is intended to be informal

(1) IDR participants should be able to speak freely concerning deficiencies/licensure violations;

(2) cross-examination of the IDR participants is not allowed, and

(3) legal counsel for the licensed facility is not allowed to participate in the IDR.

8. The Bureau Director shall designate staff members from the survey/licensure visit team which performed the survey/licensure visit in question to attend the IDR and present any additional documentation or statements in support of the cited deficiency/licensure violation. In the case of billing disputes, the staff members who prepared the bill will present the any additional documentation or statements in support of the charges. Any other staff members as required and designated by the Bureau Director may attend the IDR.

9. At the conclusion of the IDR, a written report shall be prepared and forwarded to the Bureau Director, indicating the final determination regarding the validity of any disputed deficiencies/licensure violations.

The decision of the IDR Panel regarding the disputed deficiencies/licensure violations shall be mailed, via certified mail, to the licensed facility representative within ten (10) calendar days of the conclusion of the IDR. Facilities which are licensed but not certified may appeal the decision of the IDR Panel regarding the disputed licensure violations if the violations are at a scope and severity level of G or above and enforcement remedies have been imposed by the licensing agency. The decision of the ICR Panel regarding the disputed deficiencies/licensure violations may be appealed pursuant to the administrative procedures outlined in §108.01 of these regulations.

10. If the IDR Panel determines that a deficiency/licensure violation should not have been cited, the following steps shall be taken:

- a. The official statement of deficiencies/licensure violations shall be marked “deleted,” signed, and dated by the branch manager for the district where the facility is located.
- b. A revised copy of the official survey/licensure violation form shall be issued to the licensed facility which shows the adjusted scope and severity assessment to reflect the outcome of the IDR.
- c. Any enforcement action imposed solely on an incorrect deficiency/licensure violation citation shall be rescinded.

11. If the IDR Panel determines that any charges for state monitoring or temporary management are inaccurate or disallowed, a revised copy of the bill will be issued to the licensed facility.

148.02 Effect of Informal Dispute Resolution Procedures on Corrective Plans and Enforcement Actions. A request for an IDR does not stay the obligation of the licensed facility to submit an acceptable Plan of Correction to the licensing agency within ten (10) calendar days of the licensed facility’s receipt of the official statement of deficiencies. The licensing agency’s failure to complete the IDR timely will not delay the effective date of any enforcement action against a licensed facility. A licensed facility may not seek a delay of any enforcement action against it on the grounds that an IDR has not been completed before the effective date of the enforcement.

A licensed facility may not use this procedure to challenge any other aspect of the survey/licensure process, including but not limited to:

1. Classification of deficiencies (i.e., scope and severity of harm assessments);
2. Remedy imposed or recommended by the licensing agency;

3. Failure of the survey/licensure team to comply with the survey/licensure process;
4. Inconsistency of the survey/licensure team in citing deficiencies/licensure violations among facilities; or
5. Inadequacy or inaccuracy of the informal dispute resolution process.

148.03 Post Informal Dispute Resolution Survey Procedures. If a follow up survey/licensure visit is conducted regarding deficiencies/licensure violations which have been the subject of an informal dispute resolution procedure, and the follow-up survey/licensure visit indicates that the facility has not corrected the deficiencies/licensure violation which was the subject of the informal dispute resolution procedure, the facility shall not be entitled to another informal dispute resolution procedure hearing.

However, if a follow-up survey is conducted and deficiencies are discovered which were not cited on the original official statement of deficiencies/licensure violations the facility is entitled to utilize the informal dispute resolution procedure with regard to any previously uncited deficiencies.