



Background and Overview

The Centers for Medicare and Medicaid services (CMS) published the sanction regulations below in the April 15, 2008 Conditions for Coverage for ESRD. Under contract with CMS, the ESRD Networks' responsibilities for sanctions or alternative sanction recommendations and referrals include the following:

- Recommending to CMS sanctions or alternative sanctions for facilities/providers that do not comply with Network goals and/or are not providing appropriate medical care;
- Providing the necessary documentation to support the recommendation; and,
- Referring to the QIO or the State Office of the Inspector General information collected while conducting contract activities that indicate that a physician may be failing to meet his/her obligation to provide quality care or involved in Medicare fraud.

Role of the Network

The Southeastern Kidney Council (SKC), as the Network 6 contractor, is charged by Congress and CMS to protect ESRD Medicare beneficiaries by monitoring and improving care provided and ensuring facilities meet the Network goals. SKC believes that beneficiaries are best served by prompt identification and resolution of quality issues through a collaborative, collegial approach. SKC provides on-going technical assistance and education for ESRD providers to support them in providing the highest level of care possible. When facilities are identified as having opportunities to improve, the Network provides intensive technical assistance to address and resolve the issues. If quality issues continue despite this intensive intervention and the facility fails to meet Network goals, SKC will pursue sanctions to protect the beneficiaries.

The SKC is committed to rapid identification and correction of problems, internally and as we work with facilities. The rate at which interventions proceed and sanctions are requested is based on the severity of the issue and the rate at which the facility improves. Generally, this will not exceed one year, but may be much shorter for critical issues or repeat issues.

SKC will refer any regulatory issues that are identified to the State Survey Agency. SKC will refer all issues that are specific to the physician(s) or involve Medicare fraud to the Quality Improvement Organization (QIO), state Medical Board and/or the Office of the Inspector General (OIG)

42 CFR Parts 405, 410, 413 et al. Medicare and Medicaid Programs; Conditions for Coverage for End Stage Renal Disease Facilities; Final Rule

Subpart H—Termination of Medicare Coverage and Alternative Sanctions for End-Stage Renal Disease (ESRD) Facilities

Sec.

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Subpart H—Termination of Medicare Coverage and Alternative Sanctions for End-Stage Renal Disease (ESRD) Facilities



§ 488.604 Termination of Medicare coverage.

- (a) Except as otherwise provided in this subpart, failure of a supplier of ESRD services to meet one or more of the conditions for coverage set forth in part 494 of this chapter will result in termination of Medicare coverage of the services furnished by the supplier.
- (b) If termination of coverage is based solely on a supplier's failure to participate in network activities and pursue network goals, as required at § 494.180(i) of this chapter, coverage may be reinstated when CMS determines that the supplier is making reasonable and appropriate efforts to meet that condition.
- (c) If termination of coverage is based on failure to meet any of the other conditions specified in part 494 of this chapter, coverage will not be reinstated until CMS finds that the reason for termination has been removed and there is reasonable assurance that it will not recur.

§ 488.606 Alternative sanctions.

- (a) *Basis for application of alternative sanctions.* CMS may, as an alternative to termination of Medicare coverage, impose one of the sanctions specified in paragraph (b) of this section if CMS finds that—
 - (1) The supplier fails to participate in the activities and pursue the goals of the ESRD network that is designated to encompass the supplier's geographic area; and
 - (2) This failure does not jeopardize patient health and safety.
- (b) *Alternative sanctions.* The alternative sanctions that CMS may apply in the circumstances specified in paragraph (a) of this section include the following:
 - (1) Denial of payment for services furnished to patients first accepted for care after the effective date of the sanction as specified in the sanction notice.
 - (2) Reduction of payments, for all ESRD services furnished by the supplier, by 20 percent for each 30-day period after the effective date of the sanction.
 - (3) Withholding of all payments, without interest, for all ESRD services furnished by the supplier to Medicare beneficiaries.
- (c) *Duration of alternative sanction.* An alternative sanction remains in effect until CMS finds that the supplier is in substantial compliance with the requirement to cooperate in the network plans and goals, or terminates coverage of the supplier's services for lack of compliance.

§ 488.608 Notice of alternative sanction and appeal rights: Termination of coverage.

- (a) *Notice of alternative sanction.* CMS gives the supplier and the general public notice of the alternative sanction and of the effective date of the sanction. The effective date of the alternative sanction is at least 30 days after the date of the notice.
- (b) *Appeal rights.* Termination of Medicare coverage of a supplier's ESRD services because the supplier no longer meets the conditions for coverage of its services is an initial determination appealable under part 498 of this chapter.

§ 488.610 Notice of appeal rights: Alternative sanctions. If CMS proposes to apply an alternative sanction specified in § 488.606(b), the following rules apply:

- (a) CMS gives the facility notice of the proposed alternative sanction and 15 days in which to request a hearing.
- (b) If the facility requests a hearing, CMS provides an informal hearing by a CMS official who was not involved in making the appealed decision.
- (c) During the informal hearing, the facility—
 - (1) May be represented by counsel;
 - (2) Has access to the information on which the allegation was based; and
 - (3) May present, orally or in writing, evidence and documentation to refute the finding of failure to participate in network activities and pursue network goals.
- (d) If the written decision of the informal hearing supports application of the alternative sanction, CMS provides the facility and the public, at least 30 days before the effective date of the alternative sanction, a written notice that specifies the effective date and the reasons for the alternative sanction.







