

ESRD NETWORK 13

Serving Arkansas, Louisiana & Oklahoma Renal Communities



SANCTION AND ALTERNATIVE SANCTION RECOMMENDATION POLICY

Network 13 will:

- (A) Recommend sanction to CMS for facilities/providers that consistently fail to comply with Network goals and/or are not providing appropriate medical care;
- (B) Provide documentation throughout the process to support the recommendation and associated investigation;
- (C) Track and trend dialysis facility data to monitor facility non-compliance and return to compliance;
- (D) Refer to the QIO or the state/jurisdiction Inspector General's office any information collected while conducting contract activities that indicates that a physician may be failing to meet his/her obligation to provide quality care or is involved in Medicare fraud.

AUTHORITY

Section §1881(c)(2)(G) of the Social Security Act (the Act) provides that a Network shall identify facilities and providers that are not cooperating toward meeting the Network goals and assist such facilities/providers in developing appropriate plans for correction. Networks are to report facilities that continue to be non-compliant and those that are not providing appropriate medical care to the Secretary via CMS.

Code of Federal Regulations (CFR) 42 CFR, Subpart U, §405.2100-405.2184, describes the Conditions for Coverage for suppliers of end stage renal disease services, and the Medicare State Operations Manual, Pub. 100-07 provides guidance for ensuring compliance by certified facilities/providers with these Conditions. At a minimum, facilities/providers are expected to provide data to the Network to assist CMS in maintaining accurate and complete data on ESRD patients, participate in Network activities, and pursue Network goals. CFR 405.2134 stipulates that a facility/provider must participate in Network activities and pursue Network goals. 42 CFR 405.2081 provides clarifications on the basis for sanction/alternative sanction, while 42 CFR 405.2182 and 2184 provide information on appeal rights for termination of coverage due to sanction/alternative sanction.

Section §1881(c)(3) provides that based upon information/data provided by the Network on a facility/provider's consistent failure to cooperate with the Network plans or goals or to follow the recommendations of the Network Medical Review Board (MRB), the Secretary may terminate or withhold certification until a determination is made and validated that the provider/facility is making reasonable and appropriate efforts to cooperate with the Network. Based upon a facility/provider's failure to cooperate, the Network can recommend sanction by providing supporting information/data to the Secretary's designee, the CMS Regional Office (RO), utilizing the processes outlined in this chapter.

PROCESS

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Mission Statement: "To assess and improve the quality of care provided to individuals with End Stage Renal Disease."

ESRD Network 13 will inform all facilities of criteria and standards developed by the Network or the Centers for Medicare & Medicaid Services for use in the Clinical Performance Measures projects, Network Quality Improvement Projects or other Network/CMS quality improvement initiatives. Notification will include a description of the nature of the participation required by the facility, the time frame for that participation and requirements for participation.

Facilities will also be informed of the Network's process for addressing patients' concerns, complaints and grievances, including the appropriate Network contact for patient inquiries and the Network's toll free patient telephone number. This information will be provided to the facilities at least annually.

Network staff will maintain records of submission of all required written materials (including CMS forms, Network Patient Activity Reports, lab data collection and other quality improvement project data collection forms) to the Network office.

Monitoring facility cooperation/compliance with Network goals (and, as appropriate, return to compliance) will be accomplished through the following processes:

- (A) Review of Network and Facility specific data related to FF, lab data collection and other QI projects by Network Staff and Quality Improvement Committee Members, quarterly or as appropriate to identify potential facility non-compliance,
- (B) Development, dissemination and review of semi-annual Trends Report to include urban area, state and Network comparisons which will be reviewed regularly as appropriate for the specific activity,
- (C) Review of trend analysis of facility level complaints and grievances,
- (D) Other measures as appropriate including communication with the SSA as directed by CMS.

If a facility is consistently late, or fails to submit required information, Network staff will make contact with the appropriate facility staff member and document all activities related to working with that facility to resolve the issue.

NOTIFICATION

ESRD Network 13 will recommend a sanction only if the Network has worked with the facility for at least three months, has exhausted all reasonable efforts to gain facility compliance, and has fully documented that the facility:

- (A) Has consistently failed to cooperate with Network plans or goals as specified in the Network's contract with CMS; or
- (B) Has consistently failed to follow recommendations of the Medical Review Board, which have been approved by CMS; or
- (C) Did not permit the Network Medical Review Board, without just cause, to conduct an onsite review; or
- (D) Has failed to submit data as required to prepare the Network Annual Report.

In the event the Network identifies a facility that is not consistently cooperating with the Network in meeting the goals and/or not providing appropriate medical care, the Network may consider

recommending a sanction to the CMS Regional Office (RO). Documentation of the details of the situation shall include actions taken by the Network and the response (or lack of response) by the facility and that the facility has been and continues to be out of compliance with Network goals and plan. The proposal will first be discussed with the Network's CMS Project Officer. The CMS Regional Office has the responsibility for the actual implementation of a sanction or alternative sanction. The RO will make the final determination whether to sanction the facility.

Notification and documentation of non-compliance provided to the RO will include, at a minimum, the following:

- (A) Evidence that the facility was notified in writing of the Network's goals and objectives;
- (B) Description and details of the goal(s), objective(s) that the facility has failed to meet;
- (C) Actions the Network has taken to inform the facility that it was not complying with Network goals, objectives, or plans
- (D) Evidence to demonstrate that the facility was given an opportunity to make corrections;
- (E) Description of follow-up actions taken to resolve the problem (e.g., documentation of phone calls or site visits to the facility asking for specific information) that demonstrate the Network's attempts to work with the facility to resolve the problem; and
- (F) Documentation of the facility's failure to submit an action plan, submission of an unacceptable action plan, or failure to carry out an approved action plan.

Documentation to support the Network's recommendation for a sanction can be in the form of copies of written correspondence between the facility and the Network, written notes, and/or dated contact reports of telephone conversations.

REFERRAL

At any time information is collected while conducting contract activities that indicates a physician may be failing to meet his/her obligations to provide quality care or may be involved in Medicare fraud, the Network will review the information with its Medical Review Board for referral to the QIO or state Office of the Inspector General.

RESOURCES

(Rev. 9; Issued: 04-18-08; Effective Date: 04-01-08; Implementation Date: 05-19-08)

The following resources can be used to clarify the sanction process and the roles of all parties involved, as outlined above:

1. Section §1881(c)(2)(G) of the Act
2. Section §1881(c)(3) of the Act
3. 42 CFR, Subpart U, §405.2100-2184
4. Medicare State Operations Manual, Publication 100-07, Internet-Only Manuals.

Reviewed: 04/24/02, 04/30/03, 02/24/05, 05/25/07, 4/14/10

Revised: 02/06/04, 3/22/10

Approved by MRB: 4/10

Approved by BOD: 6/3/10