

**441—81.38(249A) Action when there is repeated substandard quality of care.**

**81.38(1) General.** If a facility has been found to have provided substandard quality of care on the last three consecutive standard surveys, regardless of other remedies provided:

*a.* Payment for all new admissions shall be denied, as specified in rule 441—81.40(249A).

*b.* The department of inspections and appeals shall impose state monitoring, as specified in rule 441—81.42(249A) until the facility has demonstrated to the satisfaction of the department of inspections and appeals that it is in substantial compliance with all requirements and will remain in substantial compliance with all requirements.

**81.38(2) Repeated noncompliance.** For purposes of this rule, repeated noncompliance is based on the repeated finding of substandard quality of care and not on the basis that the substance of the deficiency or the exact deficiency was repeated.

**81.38(3) Standard surveys to which this provision applies.** Standard surveys completed by the department of inspections and appeals on or after October 1, 1990, are used to determine whether the threshold of three consecutive standard surveys is met.

**81.38(4) Program participation.**

*a.* The determination that a certified facility has repeated instances of substandard quality of care is made without regard to any variances in the facility's program participation (that is, any standard survey completed for Medicare, Medicaid or both programs will be considered).

*b.* Termination would allow the count of repeated substandard quality of care surveys to start over.

*c.* Change of ownership.

(1) A facility may not avoid a remedy on the basis that it underwent a change of ownership.

(2) In a facility that has undergone a change of ownership, the department of inspections and appeals may not restart the count of repeated substandard quality of care surveys unless the new owner can demonstrate to the department of inspections and appeals that the poor past performance no longer is a factor due to the change in ownership.

**81.38(5) Compliance.** Facility alleges corrections or achieves compliance after repeated substandard quality of care is identified.

*a.* If a penalty is imposed for repeated substandard quality of care, it will continue until the facility has demonstrated to the satisfaction of the department of inspections and appeals that it is in substantial compliance with the requirements and that it will remain in substantial compliance for a period of time specified by the department of inspections and appeals.

*b.* A facility will not avoid the imposition of remedies or the obligation to demonstrate that it will remain in compliance when it:

(1) Alleges correction of the deficiencies cited in the most recent standard survey; or

(2) Achieves compliance before the effective date of the remedies.