



**E-Mailed:** kfouts@mt.gov  
**CMS Certification No.:** 274086

April 08, 2022

Kyle Fouts, Administrator  
Montana State Hospital  
100 Grant Way  
Warm Springs, Montana 59756

**IMPORTANT NOTICE - PLEASE READ CAREFULLY**

**RE: Involuntary Termination of Medicare Provider Agreement Effective April 12, 2022  
Appeal Rights  
Reinstatement Process**

Dear Administrator:

In accordance with 42 CFR §489.53(a)(1),(3), CMS is terminating Montana State Hospital's provider agreement based on the hospital's failure to comply with Title XVIII of the Social Security Act (the Medicare statute) and to maintain compliance with the Conditions of Participation (CoP). **This involuntary termination is effective: April 12, 2022.**

CMS surveyors conducted a complaint survey at Montana State Hospital on February 8-10, 2022. Based on the survey findings, CMS determined that Montana State Hospital was not in compliance with the Medicare Conditions of Participation for Hospitals. Specifically, CMS found that Montana State Hospital's noncompliance with the CoPs governing Patients Rights and Infection Control placed patients at risk of serious injury, harm, impairment, or death.

On February 18, 2022, CMS issued the Statement of Deficiencies relating to the findings of noncompliance identified during the survey conducted from February 8-10, 2022. Additionally, CMS notified Montana State Hospital that its Medicare provider agreement would terminate on March 13, 2022, based upon its failure to comply with the Conditions of Participation and because the deficiencies placed patients in immediate jeopardy. CMS indicated that the termination would be averted only if Montana State Hospital corrected the Condition-level deficiencies. CMS provided information regarding the procedures that Montana State Hospital could take to appeal CMS's findings of noncompliance.

On February 23-24, 2022, CMS conducted a revisit survey. This survey found that the two previously cited IJs were not corrected and one additional IJ was identified related to the use of psychotropic medications. A second revisit survey conducted on March 9, 2022, found that all three IJs remained. A complaint survey was conducted on March 24-25, 2022, due to an allegation of patient-to-patient assault. The assault allegation was based upon a report that a male patient violently assaulted a female patient while they were not being supervised, resulting in the female patient suffering significant injuries that will require, among other things, reconstructive surgery. Based on the complaint survey's findings, an additional IJ was cited under Patients being free from Abuse. Moreover, the complaint investigation found that the three other previously cited IJ-level deficiencies remained. Overall, Montana State Hospital remained out of compliance with Medicare Conditions of Participation for Hospitals. As such, termination of the provider agreement is authorized under 42 C.F.R. §489.53(a)(1),(3).

The Medicare program will not make payment for covered services furnished to patients whose plan of treatment was established on or after **April 12, 2022**. For Medicare patients whose plans of treatment were established prior to April 12, 2022, payment is available for inpatient hospital services (including inpatient psychiatric hospital services) and post hospital extended care services furnished up to 30 days after the effective date of termination as set forth in 42 C.F.R. § 489.55.

**Termination of your participation in the Medicare program will also result in termination of your Medicaid agreement.** Therefore, CMS is forwarding a copy of this letter to the Montana Department of Public Health and Health Service, Medicaid Division. CMS is also sending a copy of this letter to your Medicare Administrative Contractor (MAC), Noridian Healthcare Solutions, LLC. Please contact your MAC to make arrangements for filing a final cost report.

### **Notice of Termination**

CMS gives the provider notice of termination at least 2 days before the effective date of termination of the provider agreement (42 CFR §489.53(d)(1)).

### **Public Notice**

CMS gives at least 2 days' notice to the public of the termination of its provider agreement (42 CFR §489.53(d)(5)). CMS will post the legal notice of termination **and** will remain on the following website for six months: <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Termination-Notices.html>

### **Appeal Rights**

CMS has previously provided you with your appeal rights relating to the February 8-10, 2022 survey. If you are dissatisfied with the findings of noncompliance identified during the February 24, March 8, and March 24 surveys and the decision to terminate your Medicare provider agreement, you may request a hearing before an administrative law judge (ALJ) of the Departmental Appeals Board in accordance with 42 C.F.R. § 498.40 et. seq. A request for hearing must be filed electronically **no later than sixty (60) calendar days after the date this letter is received**. You should file your request for an appeal (accompanied by a copy of this letter) to the Department Appeals Board Electronic Filing System website (DAB E-file) at <https://dab.efile.hhs.gov>.

**Please note:** all documents must be submitted in Portable Document Format ("pdf :"). You are required to e-file your appeal request unless you do not have access to a computer or internet service. In such circumstances, you may file in writing, but must provide an explanation as to why you cannot file submissions electronically and request a waiver from e-filing in the mailed copy of your request for a hearing. Written request for appeals must be submitted to the following address:

**Department of Health and Human Services  
Departmental Appeals Board, MS 6132  
Civil Remedies Division  
330 Independence Ave, SW  
Cohen Building, Room G-644  
Washington, D.C. 20201**

**Reinstatement after Termination**

In accordance with the Medicare regulation at 42 CFR 489.57, a new Medicare provider agreement will not be accepted unless CMS finds that the reason for termination of the previous agreement has been removed and there is reasonable assurance that it will not recur; and that the provider has fulfilled, or has made satisfactory arrangements to fulfill, all of the statutory and regulatory responsibilities of its previous agreement.

If you have question regarding reimbursement, please contact your Medicare Administrative Contractor (MAC). If you have questions regarding this letter, please contact Benton Williams via e-mail at [Benton.Williams@cms.hhs.gov](mailto:Benton.Williams@cms.hhs.gov).

Sincerely,

Benton Williams  
Acting Division Director  
CMS Kansas City & Denver, Survey & Operations Group

Enclosures: CMS Form 2567-February 10, 2022  
CMS Form 2567-February 24, 2022  
CMS Form 2567-March 9, 2022  
CMS Form 2567-March 25, 2022

Copies via e-mail to:

Montana Department of Public Health and Health Services, Quality Assurance Division, Certification Bureau  
Montana Department of Public Health and Health Services, Medicaid Division  
Charlie Brereton, Chief of Staff, MT DPHHS, and Health Care Policy Advisor to Governor Gianforte  
Adam Meier, Director, MT DPHHS  
Carter Anderson, Inspector General, MT DPHHS  
Noridian Healthcare Solutions, LLC  
CMS Denver Regional Office, Office of the Regional Administrator  
CMS Denver Regional Office, Medicaid  
CMS Denver Regional Office, OPOLE  
Office of the General Counsel, Denver Office