



CMS Certification Number (CCN): 555020 (before termination effective April 14, 2022)

May 18, 2023

Roland Pickens
Interim Chief Executive Officer
Laguna Honda Hospital & Rehabilitation Center
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Dear Mr. Pickens:

The Centers for Medicare & Medicaid Services (CMS) received Laguna Honda Hospital & Rehabilitation Center's (Laguna Honda) *second* request to continue to receive extended federal funding as a decertified skilled nursing facility while Laguna Honda pauses its Revised Closure Plan to transfer and discharge its residents. Previously, on February 1, 2023, CMS extended this pause from February 2, 2023 to May 19, 2023 in response to Laguna Honda's *first* request for an extension. On May 3, 2023, Laguna Honda requested this second extension of the pause on transfers and discharges pursuant to Paragraphs 7 and 14 of the November 10, 2022 Settlement and Systems Improvement Agreement (Agreement), by and between CMS, the California Department of Public Health (CDPH), and the City and County of San Francisco on behalf of Laguna Honda.

After Laguna Honda requested a second extension, on May 8, 2023, CDPH cited the facility for violating 42 C.F.R. § 483.25(d)(1)-(2) (F-tag 689) at the immediate jeopardy level during an ongoing complaint survey. The immediate jeopardy existed from at least May 8, 2023 through May 12, 2023. Specifically, the survey findings documented that Laguna Honda failed to ensure that one resident with a history of two suicide attempts had an adequate care plan that had been communicated to staff to ensure that staff monitored the resident and provided adequate interventions to address the resident's previous methods of attempting self-harm. Laguna Honda abated the immediate jeopardy on May 12, 2023 and has represented that it is attempting to enact an Action Plan to correct the regulatory violation and implement system improvements to prevent future violations and ensure resident health and safety. As of the date of this letter, the complaint survey is ongoing.

CMS initially endeavored to provide Laguna Honda with its decision on the second extension request by May 8, 2023, as Laguna Honda requested. Laguna Honda's immediate jeopardy violation, however, delayed CMS's decision on this subject while CMS waited to receive reasonable assurance from Laguna Honda that the facility's immediate jeopardy had been abated.

Despite Laguna Honda's serious regulatory violation that occurred the very same week that it requested a second extension of the pause on resident transfers and discharges, CMS recognizes that Laguna Honda has made significant quality improvements as required by the Agreement in other areas. Therefore, based on CMS's review of Laguna Honda's second extension request,

Laguna Honda's detailed plan to address the immediate jeopardy citation found during the most recent complaint survey, and CMS's desire to provide Laguna Honda with additional time to attempt to make more quality improvements pursuant to the Agreement, CMS agrees to provide Laguna Honda extended federal funding while the facility continues to pause resident transfers and discharges, until **September 19, 2023**, under the terms of the Agreement and as further specified below.

CMS will continue federal funding under the terms of the Agreement while Laguna Honda pauses resident transfers and discharges until **September 19, 2023**.

Pursuant to Paragraphs 7 and 14 of the Agreement, CMS exercises its discretion to extend Laguna Honda's time to implement transfers and discharges of residents under its Revised Closure Plan from May 19, 2023, to the new date of **September 19, 2023**. In doing so, CMS reserves all its rights under the Agreement and expects Laguna Honda to continue to abide by its obligations under the Agreement.

CMS also proposes to extend the term of the Agreement to March 19, 2024, which would extend both federal funds and the quality improvement and monitoring provisions of the Agreement.

Additionally, CMS proposes to extend the duration of the Agreement to provide Laguna Honda additional time to make quality improvements pursuant to the Agreement and in light of Laguna Honda's representation that it intends to apply for recertification during the summer of 2023. This modification would extend both federal funding and the Agreement's terms about federal oversight and system improvements at Laguna Honda. If Laguna Honda and CDPH both agree to this extension, then the new expiration of the Agreement would be **March 19, 2024**.

CMS further expects and advises Laguna Honda of the following:

- Laguna Honda will cooperate in convening a summer 2023 meeting where all principals of the Parties to the Agreement and Laguna Honda's union leadership will participate in a conversation with the Secretary of the U.S. Department of Health & Human Services, including:
 - The City and County of San Francisco, Laguna Honda, CDPH, Laguna Honda's union leadership, and CMS;
- Laguna Honda will receive no additional pauses on any aspect of the implementation of its Revised Closure Plan, including transfer and discharge obligations, or any further extension of federal payments;
- Other than CMS's present offer to extend the duration of the Agreement to March 19, 2024, CMS will not consider any other amendments to the Agreement or any further extensions;
- The proposed extension does not modify the Agreement's provisions governing CMS's ability to terminate the Agreement early under certain enumerated circumstances, including the results of the monitoring surveys and any complaint surveys completed

during this period. Thus, to ensure that funding will not be terminated under Paragraph 3 of the Agreement, Laguna Honda must ensure that no immediate jeopardy occurs at its facility for the duration of the Agreement and proposed Amendment;

- Laguna Honda will continue to receive, and accept, support from California's consultants;
- Laguna Honda's newly hired permanent Administrator will be in place on June 26, 2023;
- Laguna Honda will continue to make significant efforts to foster culture change among front-line workers providing bedside care and other quality improvement initiatives as outlined in its May 14, 2023 letter to HHS;
- CMS will continue its installation of a Facilitator on site at the facility, retain its authority to survey Laguna Honda, and continue all oversight and enforcement authority permitted by the Agreement and federal law;
- California will submit a plan for resident transfers and placements by July 31, 2023, and this plan will include:
 - A State-led crisis response team
 - State-hired temporary management installed at the facility
 - Partnerships with other facilities to temporarily expand capacity
 - Principles drawing on best practices from COVID-19 response
- Laguna Honda will complete a Root Cause Analysis for its recent immediate jeopardy violation of 42 C.F.R. § 483.25(d)(1)-(2) (F-tag 689) involving failures to implement policies to prevent resident suicide. It will enact an Action Plan to implement improvement solutions based on the findings of the Root Cause Analysis, consistent with and as required by the Agreement.

As CMS previously communicated to Laguna Honda, the continued pause on transfers and discharges does not prevent Laguna Honda from transferring and discharging residents when it can do so safely and consistent with CMS's requirements for long term care facilities under 42 C.F.R. Part 483, Subpart B. This includes, but is not limited to, instances when residents or their representatives request a transfer and when residents have been assessed as no longer requiring skilled nursing care. In instances where Laguna Honda has assessed residents as no longer requiring skilled nursing care, CMS expects that Laguna Honda will promptly and appropriately transfer or discharge the resident(s). We note that pursuant to 42 C.F.R. § 409.30, SNF care is covered by Medicare only if the beneficiary meets the requirements of this section and only for days when the beneficiary needs and receives skilled nursing care of the level described in §§ 409.31 through 409.35.

To contractually extend the duration of the Agreement and federal funding to March 19, 2024, please have the City Attorney's Office of San Francisco reach out to the U.S. Department of Health & Human Services, Office of the General Counsel (OGC), Region IX.

Sincerely,

James Bossenmeyer
Acting Director
San Francisco and Seattle Survey & Enforcement Division

Cc:
California Department of Public Health