compliance with Federal requirements submit a plan of correction before the provider agreement is effective.

In §§ 488.303(d) and 488.406(a) and (b), we are reordering the list of remedies to separate "transfer of residents" from "closure of the facility in emergency situations or transfer of residents, or both." We are making this change to avoid any misunderstanding that might otherwise occur that would lead to a conclusion that in order for there to be a transfer of residents there must be a facility closure. A transfer of residents may occur when there is no facility closure, as would be the case when a facility's provider agreement is terminated. While we believe that the regulations provided the necessary separation of these two events, we are correcting the text to make certain that there is no chance for ambiguity.

In §§ 488.303(d) and 488.406(b), in reference to the remedies that the State must establish, we are clarifying that, "in addition to termination of the provider agreement," the State must establish certain remedies or approved alternatives to these remedies. The reason for this clarification is that termination is a remedy that States must establish, but it is unlike the other remedies listed, because there are circumstances in which termination is the only option available.

In § 488.330(e)(1)(ii), we are replacing the phrase, "the pendency of any hearing" with "any pending hearing" because it is simpler, more easily understood, and consistent with paragraph (e)(2)(ii).

In §488.335(f), regarding the report of findings that an individual has neglected or abused a resident or misappropriated resident property, we are correcting an unintentional error in the text, which resulted in the implication that it is always the State survey agency that must report the findings. In a particular State, an agency other than the State survey agency may be responsible for reporting the findings, except for reporting to the nurse aide registry. Only the State survey agency may report the findings to the nurse aide registry, and it may not delegate this responsibility, in accordance with § 483.156(b)(2) Therefore, we are revising § 488.335(f) to make this distinction clear. In §§ 488.335(c)(3)(iv) and 488.335(c)(3)(v), we are making conforming changes by removing references to the survey agency.

In § 488.401, in the definition of "plan of correction," we are replacing the term, "certifying agency" with "HCFA or the survey agency" to make clearer the identity of the certifying agency.

Section 488.402(f)(1), regarding notification requirements for all facilities other than non-State operated NFs, provides that HCFA gives the provider notice of the remedy. As currently written, the regulation does not acknowledge that, while we impose all remedies on facilities other than non-State operated NFs, we permit States to send notices of adverse actions in certain cases of minimal noncompliance, but only as we direct. Leaving the regulation in its current published form would give the erroneous impression that HCFA must be the sole entity to provide such notice, which would not comport with program practice under these regulations. Therefore, we are revising § 488.402(f)(1) to specify that, except when the State is taking action against a non-State operated NF, HCFA "or the State (as authorized by HCFA)" gives the provider notice of the remedy.

In § 488.402(f)(7), regarding State monitoring, we are removing an incorrect reference to immediate jeopardy. We do not give a facility notice before we impose State monitoring, even when there is immediate jeopardy. We discussed this in the preamble (59 FR 56171, column two) and failed to correct this error in the text of the regulations.

Section 488.408(d)(3) concerns our option and a State's option to apply remedies in Category 2 to any deficiency. We are correcting an omission by clarifying that HCFA or the State may apply one or more of the remedies in Category 2 to any deficiency except when the facility is in substantial compliance, or when HCFA or the State imposes a civil money penalty for a deficiency that constitutes immediate jeopardy, in which case, the penalty must be in the upper range of penalty amounts, as specified in § 488.438(a).

In § 488.41 $\hat{0}$ (c)(2), we are correcting an inadvertent error. Paragraph (c)(2) provides that when a facility has deficiencies that pose immediate jeopardy, we will or the State must take immediate action to remove the jeopardy and correct the noncompliance through temporary management or terminate the facility's participation under the State plan (and we will terminate the facility's Medicare participation if it is a duallyparticipating facility).

In § 488.412(a)(2), we are changing "State survey agency" to "State" because we inadvertently failed to recognize that, in fact, the submission of plans and timetables for corrective action are as likely to be generated by agencies other than the State survey agency and it was not our intent to limit States' discretion. We are also changing "plan of correction" to "plan and timetable for corrective action" for consistency with terminology used in § 488.450.

In §488.417(c)(1) and (c)(2), with regard to resumption of payments when a facility has repeated instances of substandard quality of care, we clarify that, when the facility is a Stateoperated NF participating in the Medicaid program, HCFA, rather than the State, makes the determination that the facility has achieved substantial compliance and is capable of remaining in substantial compliance. To permit a State to make this determination for a facility that the State itself operates, would be an obvious conflict of interest and inconsistent with the law's directive that the Secretary be the certifying entity for these facilities. We are also clarifying that HCFA makes the determination for all facilities except non-State operated NFs against which HCFA is imposing no remedies, and the State makes the determination for non-State operated NFs against which HCFA is imposing no remedies.

Section 488.422(c)(1) provides that State monitoring is discontinued when the facility demonstrates that it is in substantial compliance with the requirements, and it will remain in compliance for a period of time specified by HCFA or the State, or until termination procedures are complete. We are correcting an inadvertent error in the text by clarifying that the facility only has to demonstrate that it will remain in compliance, in addition to demonstrating that it has achieved substantial compliance, if the remedy was imposed for repeated instances of substandard quality of care.

In §488.426, we are rewording the section title to remove the erroneous implication that closure of a facility can occur without transfer of residents. In paragraph (a), we are revising the heading to more accurately reflect the content of the paragraph. In paragraph (b), we are revising the heading to reflect the content, which is transfer of residents when HCFA or the State terminates the facility's provider agreement, and we are removing the reference to "immediate jeopardy" because we inadvertently failed to recognize in the final rule that provider agreement terminations cause residents to be transferred regardless of whether immediate jeopardy exists. We are also removing paragraph (c) because it would be redundant after the change to paragraph (b).

Section 488.432(a)(1)(i), regarding when a civil money penalty is collected after a facility requests a hearing,