

§ 488.434

42 CFR Ch. IV (10–1–10 Edition)

subject to imposition of remedies by CMS.

(2)(i) If a facility requests a hearing within the time specified in paragraph (a)(1) of this section, for a civil money penalty imposed per day, CMS or the State initiates collection of the penalty when there is a final administrative decision that upholds CMS's or the State's determination of noncompliance after the facility achieves substantial compliance or is terminated.

(ii) If a facility requests a hearing for a civil money penalty imposed per instance of noncompliance within the time specified in paragraph (a)(1) of this section, CMS or the State initiates collection of the penalty when there is a final administrative decision that upholds CMS's or the State's determination of noncompliance.

(b) When a facility does not request a hearing for a civil money penalty imposed per day. (1) If a facility does not request a hearing in accordance with paragraph (a) of this section, CMS or the State initiates collection of the penalty when the facility—

(i) Achieves substantial compliance; or

(ii) Is terminated.

(2) When a facility does not request a hearing for a civil money penalty imposed per instance of noncompliance. If a facility does not request a hearing in accordance with paragraph (a) of this section, CMS or the State initiates collection of the penalty when the time frame for requesting a hearing expires.

(c) When a facility waives a hearing. (1) If a facility waives, in writing, its right to a hearing as specified in § 488.436, for a civil money penalty imposed per day, CMS or the State initiates collection of the penalty when the facility—

(i) Achieves substantial compliance; or (ii) Is terminated.

(2) If a facility waives, in writing, its right to a hearing as specified in § 488.436, for a civil money penalty imposed per instance of noncompliance, CMS or the State initiates collection of the penalty upon receipt of the facility's notification.

(d) Accrual and computation of penalties for a facility that—

(1) Requests a hearing or does not request a hearing are specified in § 488.440;

(2) Waives its right to a hearing in writing, are specified in §§ 488.436(b) and 488.440.

(e) The collection of civil money penalties is made as provided in § 488.442.

[59 FR 56243, Nov. 10, 1994; 60 FR 50119, Sept. 28, 1995, as amended at 64 FR 13360, Mar. 18, 1999]

§ 488.434 Civil money penalties: Notice of penalty.

(a) *CMS notice of penalty.* (1) CMS sends a written notice of the penalty to the facility for all facilities except non-State operated NFs when the State is imposing the penalty.

(2) *Content of notice.* The notice that CMS sends includes—

(i) The nature of the noncompliance;

(ii) The statutory basis for the penalty;

(iii) The amount of penalty per day of noncompliance or the amount of the penalty per instance of noncompliance;

(iv) Any factors specified in § 488.438(f) that were considered when determining the amount of the penalty;

(v) The date of the instance of noncompliance or the date on which the penalty begins to accrue;

(vi) When the penalty stops accruing, if applicable;

(vii) When the penalty is collected; and

(viii) Instructions for responding to the notice, including a statement of the facility's right to a hearing, and the implication of waiving a hearing, as provided in § 488.436.

(b) *State notice of penalty.* (1) The State must notify the facility in accordance with State procedures for all non-State operated NFs when the State takes the action.

(2) The State's notice must—

(i) Be in writing; and

(ii) Include, at a minimum, the information specified in paragraph (a)(2) of this section.

[59 FR 56243, Nov. 10, 1994; 60 FR 50119, Sept. 28, 1995, as amended at 64 FR 13360, Mar. 18, 1999]