

(iv) The rate of interest assessed on the unpaid balance beginning on the due date, as provided in § 488.442.

(e) In the case of a facility for which the provider agreement has been terminated and on which a civil money penalty was imposed on a per day basis, CMS does or the State must send this penalty information after the—

(1) Final administrative decision is made;

(2) Facility has waived its right to a hearing in accordance with § 488.436; or

(3) Time for requesting a hearing has expired and CMS or the state has not received a hearing request from the facility.

(f) *Accrual of penalties when there is no immediate jeopardy.* (1) In the case of noncompliance that does not pose immediate jeopardy, the daily accrual of per day civil money penalties is imposed for the days of noncompliance prior to the notice specified in § 488.434 and an additional period of no longer than 6 months following the last day of the survey.

(2) After the period specified in paragraph (f)(1) of this section, if the facility has not achieved substantial compliance, CMS terminates the provider agreement and the State may terminate the provider agreement.

(g)(1) In a case when per day civil money penalties are imposed, when a facility has deficiencies that pose immediate jeopardy, CMS does or the State must terminate the provider agreement within 23 calendar days after the last day of the survey if the immediate jeopardy remains.

(2) The accrual of the civil money penalty imposed on a per day basis stops on the day the provider agreement is terminated.

(h)(1) If an on-site revisit is necessary to confirm substantial compliance and the provider can supply documentation acceptable to CMS or the State agency that substantial compliance was achieved on a date preceding the revisit, penalties imposed on a per day basis only accrue until that date of correction for which there is written credible evidence.

(2) If an on-site revisit is not necessary to confirm substantial compliance, penalties imposed on a per day basis only accrue until the date of cor-

rection for which CMS or the State receives and accepts written credible evidence.

[59 FR 56243, Nov. 10, 1994, as amended at 64 FR 13361, Mar. 18, 1999]

EFFECTIVE DATE NOTE: At 76 FR 15128, Mar. 18, 2011, § 488.440 was amended by revising paragraphs (b) and (c), effective Jan. 1, 2012. For the convenience of the user, the revised text is set forth as follows:

**§ 488.440 Civil money penalties: Effective date and duration of penalty.**

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(b) The per day civil money penalty is computed and collectible, as specified in § 488.431, § 488.432, and § 488.442 for the number of days of noncompliance until the date the facility achieves substantial compliance, or, if applicable, the date of termination when —

(1) The determination of noncompliance is upheld after a final administrative decision for NFs-only subject to civil money penalties imposed by the state or for civil money penalties imposed by CMS that are not collected and placed into an escrow account;

(2) The facility waives its right to a hearing in accordance with § 488.436; or

(3) The time for requesting a hearing has expired and CMS or the State has not received a hearing request from the facility.

(c)(1) For NFs-only subject to civil money penalties imposed by the State and for civil money penalties imposed by CMS that may not be placed in an escrow account, the entire penalty, whether imposed on a per day or per instance basis, is due and collectible as specified in the notice sent to the provider under paragraphs (d) and (e) of this section.

(2) For SNFs, dually-participating SNF/NFs, or NFs subject to civil money penalties imposed by CMS, collection is made in accordance with § 488.431.

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**§ 488.442 Civil money penalties: Due date for payment of penalty.**

(a) *When payments are due for a civil money penalty imposed on a per day basis—*(1) *After a final administrative decision.* A civil money penalty payment is due 15 days after a final administrative decision is made when—

(i) The facility achieves substantial compliance before the final administrative decision; or

(ii) The effective date of termination occurs before the final administrative decision.

(2) *When no hearing was requested.* A civil money penalty payment is due 15 days after the time period for requesting a hearing has expired and a hearing request was not received when—

(i) The facility achieved substantial compliance before the hearing request was due; or

(ii) The effective date of termination occurs before the hearing request was due.

(3) *After a request to waive a hearing.* A civil money penalty payment is due 15 days after receipt of the written request to waive a hearing when—

(i) The facility achieved substantial compliance before CMS or the State received the written waiver of hearing; or

(ii) The effective date of termination occurs before CMS or the State received the written waiver of hearing.

(4) *After substantial compliance is achieved.* A civil money penalty payment is due 15 days after substantial compliance is achieved when—

(i) The final administrative decision is made before the facility came into substantial compliance;

(ii) The facility did not file a timely hearing request before it came into substantial compliance; or

(iii) The facility waived its right to a hearing before it came into substantial compliance;

(5) *After the effective date of termination.* A civil money penalty payment is due 15 days after the effective date of termination, if before the effective date of termination—

(i) The final administrative decision was made;

(ii) The time for requesting a hearing has expired and the facility did not request a hearing; or

(iii) The facility waived its right to a hearing.

(6) In the cases specified in paragraph (a)(4) of this section, the period of noncompliance may not extend beyond 6 months from the last day of the survey.

(b) When payments are due for a civil money penalty imposed for an instance of noncompliance. Payment of a civil money penalty is due 15 days after one of the following dates:

(1) The final administrative decision is made;

(2) The time for requesting a hearing has expired and the facility did not request a hearing; or

(3) The facility waived its right to a hearing.

(c) *Deduction of penalty from amount owed.* The amount of the penalty, when determined, may be deducted from any sum then or later owing by CMS or the State to the facility.

(d) *Interest—(1) Assessment.* Interest is assessed on the unpaid balance of the penalty, beginning on the due date.

(2) *Medicare interest.* Medicare rate of interest is the higher of—

(i) The rate fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date of the notice of the penalty amount due (published quarterly in the FEDERAL REGISTER by HHS under 45 CFR 30.13(a)); or

(ii) The current value of funds (published annually in the FEDERAL REGISTER by the Secretary of the Treasury, subject to quarterly revisions).

(3) *Medicaid interest.* The interest rate for Medicaid is determined by the State.

(e) *Penalties collected by CMS.* Civil money penalties and corresponding interest collected by CMS from—

(1) Medicare-participating facilities are deposited as miscellaneous receipts of the United States Treasury; and

(2) Medicaid-participating facilities are returned to the State.

(f) *Collection from dually participating facilities.* Civil money penalties collected from dually participating facilities are deposited as miscellaneous receipts of the United States Treasury and returned to the State in proportion commensurate with the relative proportions of Medicare and Medicaid beds at the facility actually in use by residents covered by the respective programs on the date the civil money penalty begins to accrue.

(g) *Penalties collected by the State.* Civil money penalties collected by the State must be applied to the protection of the health or property of residents of facilities that the State or CMS finds noncompliant, such as—

(1) Payment for the cost of relocating residents to other facilities;

(2) State costs related to the operation of a facility pending correction of deficiencies or closure; and

(3) Reimbursement of residents for personal funds or property lost at a facility as a result of actions by the facility or by individuals used by the facility to provide services to residents.

[59 FR 56243, Nov. 10, 1994; 60 FR 50119, Sept. 28, 1995, as amended at 64 FR 13361, Mar. 18, 1999]

EFFECTIVE DATE NOTE: At 76 FR 15128, Mar. 18, 2011, § 488.442 was amended by removing and reserving paragraph (b) and revising paragraphs (a), (e)(1), and (f), effective Jan. 1, 2012. For the convenience of the user, the revised text is set forth as follows:

**§ 488.442 Civil money penalties: Due date for payment of penalty.**

(a) *When payments are due for a civil money penalty.* (1) Payment for a civil money penalty is due in accordance with § 488.431 of this chapter for CMS-imposed penalties and 15 days after the State initiates collection pursuant to § 488.432 of this chapter for State-imposed penalties, except as provided in paragraphs (a)(2) and (3) of this section.

(2) *After a request to waive a hearing or when a hearing was not requested.* Except as provided for in § 488.431, a civil money penalty is due 15 days after receipt of a written request to waive a hearing in accordance with § 488.436 or 15 days after the time period for requesting a hearing has expired and a hearing request was not received when:

(i) The facility achieved substantial compliance before the hearing request was due; or

(ii) The effective date of termination occurs before the hearing request was due.

(3) *After the effective date of termination.* A civil money penalty payment is due 15 days after the effective date of termination, if that date is earlier than the date specified in paragraph (a)(1) of this section.

(b) [Reserved]

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(e) \* \* \*

(1) Medicare-participating facilities are deposited and disbursed in accordance with § 488.433; and

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(f) *Collection from dually participating facilities.* Civil money penalties collected from dually participating facilities are deposited and disbursed in accordance with § 488.433 and returned to the State in proportion commensurate with the relative proportions of Medicare and Medicaid beds at the facility actually in use by residents covered by the re-

spective programs on the date the civil money penalty begins to accrue.

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**§ 488.444 Civil money penalties: Settlement of penalties.**

(a) CMS has authority to settle cases at any time prior to a final administrative decision for Medicare-only SNFs, State-operated facilities, or other facilities for which CMS's enforcement action prevails, in accordance with § 488.330.

(b) The State has the authority to settle cases at any time prior to the evidentiary hearing decision for all cases in which the State's enforcement action prevails.

**§ 488.446 Administrator sanctions: long-term care facility closures.**

Any individual who is or was the administrator of a facility and fails or failed to comply with the requirements at § 483.75(r) of this chapter—

(a) Will be subject to a civil monetary penalty as follows:

(1) A minimum of \$500 for the first offense.

(2) A minimum of \$1,500 for the second offense.

(3) A minimum of \$3,000 for the third and subsequent offenses.

(b) May be subject to exclusion from participation in any Federal health care program (as defined in section 1128B(f) of the Act); and

(c) Will be subject to any other penalties that may be prescribed by law.

[76 FR 9511, Feb. 18, 2011]

**§ 488.450 Continuation of payments to a facility with deficiencies.**

(a) *Criteria.* (1) CMS may continue payments to a facility not in substantial compliance for the periods specified in paragraph (c) of this section if the following criteria are met:

(i) The State survey agency finds that it is more appropriate to impose alternative remedies than to terminate the facility;

(ii) The State has submitted a plan and timetable for corrective action approved by CMS; and

(iii) The facility, in the case of a Medicare SNF, or the State, in the case of a Medicaid NF, agrees to repay the