

(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 and disbursed in accordance with § 488.433; 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 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 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; 76 FR 15128, Mar. 18, 2011]

§ 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 Federal government payments received under this provision if corrective action is not taken in accordance with the approved plan and timetable for corrective action.