

(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 correction 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; 76 FR 15128, Mar. 18, 2011]

§ 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]

(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 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;

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(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.

(2) CMS or the State may terminate the SNF or NF agreement before the end of the correction period if the criteria in paragraph (a)(1) of this section are not met.

(b) *Cessation of payments.* If termination is not sought, either by itself or along with another remedy or remedies, or any of the criteria set forth in paragraph (a)(1) of this section are not met or agreed to by either the facility or the State, the facility or State will receive no Medicare or Federal Medicaid payments, as applicable, from the last day of the survey.

(c) *Period of continued payments—(1) Non-compliance.* If the conditions in paragraph (a)(1) of this section are met, CMS may continue payments to a Medicare facility or the State for a Medicaid facility with noncompliance that does not constitute immediate jeopardy for up to 6 months from the last day of the survey.

(2) *Facility closure.* In the case of a facility closure, the Secretary may, as the Secretary determines appropriate, continue to make payments with respect to residents of a long-term care facility that has submitted a notification of closure during the period beginning on the date such notification is submitted to CMS and ending on the date on which the residents are successfully relocated.

(d) *Failure to achieve substantial compliance.* If the facility does not achieve substantial compliance by the end of the period specified in paragraph (c) of this section,

(1) CMS will—

(i) Terminate the provider agreement of the Medicare SNF in accordance with § 488.456; or

(ii) Discontinue Federal funding to the SNF for Medicare; and