



Center for Clinical Standards and Quality/Survey & Certification Group

Ref: S&C: 14-28-NH

DATE: May 9, 2014

TO: State Survey Agency Directors

FROM: Director
Survey and Certification Group

SUBJECT: Publication of Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for FY 2015 – Nursing Home Civil Monetary Penalties - *Informational Only*

Memorandum Summary

Publication of Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for FY 2015 – Nursing Home Civil Monetary Penalties: A notice of proposed rule-making (NPRM) regarding Nursing Home Civil Monetary Penalties was published Tuesday, May 6, 2014. The proposed rule provides clarification of statutory requirements under Section 6111 of the Affordable Care Act regarding the approval and use of Civil Money Penalties (CMPs) imposed by The Centers for Medicare & Medicaid Services (CMS) against nursing facilities.

A proposed rule “FY 2015 SNF PPS for Nursing Home Civil Monetary Penalties” was published on May 6, 2014. The document can be found at <http://www.gpo.gov/fdsys/pkg/FR-2014-05-06/pdf/2014-10319.pdf>. The public has until June 30, 2014, to comment on the proposed regulatory document.

A. Background

Sections 6111 of the *Patient Protection and Affordable Care Act* (Affordable Care Act), amended Sections 1819(h) and 1919(h) of the Social Security Act incorporating additional provisions pertaining to the imposition and collection of civil money penalties (CMPs). The amended sections 1819(h)(2)(B)(ii)(IV)(ff) and 1919(h)(3)(C)(ii)(IV)(ff) of the Act specify that some portion of collected CMPs may be used to support activities that benefit residents, including assistance to support and protect residents of a facility that closes (voluntarily or involuntarily) or is decertified (including offsetting costs of relocating residents to home and community-based settings or another facility), projects that support resident and family councils and other consumer involvement in assuring quality care in facilities, and facility improvement initiatives approved by the Secretary (including joint training of facility staff and surveyors, technical assistance for facilities implementing quality assurance programs, the appointment of temporary management firms, and other activities approved by the Secretary). These changes were implemented in a final rule published on March 18, 2011 entitled “Medicare and Medicaid Programs; Civil Money Penalties for Nursing Homes.” The March 18, 2011 rule specified, at 42 CFR §488.433, we specify that CMP funds may not be used for survey and certification

operations but must be used entirely for activities that protect or improve the quality of care for residents and that these activities must be approved by CMS.

B. New Proposed Rule

The new proposed rule would further clarify statutory requirements as specified in Section 6111 of the Affordable Care Act regarding the approval and use of CMPs imposed by CMS.

Specifically, it will:

- Continue to specify that CMP funds may not be used for state management operations but add exception that would permit States to use CMP funds for reasonable costs that are consistent with managing projects utilizing CMP funds;
- Clarify CMS’s expectations that States must obtain prior approval for use of these CMP funds;
- Outline specific requirements that must be included in proposals submitted for CMS approval;
- Further clarify that CMPs funds may not be used for projects that have been disapproved by CMS;
- Specify that States are responsible for having an acceptable plan to solicit, accept, monitor and track projects utilizing CMP funds and make the results of all approved projects publicly available on at least an annual basis;
- Specify that State plans must ensure that a core amount of civil money penalty funds will be held in reserve for emergencies, especially for relocation of residents in the event of involuntary termination from Medicare and Medicaid; and
- Specify that if a State is not spending collected CMPs in accordance with the law or not at all, that CMS has authority to take appropriate steps to ensure that these funds are used for their intended purpose, such as withholding future disbursements of CMP amounts, until such time as the State program operates in accord with CMS requirements.

If you have any questions regarding this memorandum, please contact Lorelei Chapman at Lorelei.Chapman@cms.hhs.gov.

Effective Date: Public comments are due no later than June 30, 2014.

/s/

Thomas E. Hamilton

cc: Survey and Certification Regional Office Management