



## Center for Medicaid, CHIP and Survey & Certification

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### *CMCS Informational Bulletin*

**DATE:** July 12, 2010

**FROM:** Cindy Mann, Director  
Center for Medicaid, CHIP and Survey and Certification (CMCS)

**SUBJECT: Publication of Proposed Rule “Civil Money Penalties for Nursing Homes CMS-2435-P”**

We wish to alert you to the recent publication of a proposed rule “Civil Money Penalties for Nursing Homes.” The Notice of Proposed Rule-Making (NPRM) was published in the Federal Register on Monday, July 12, 2010. The public has 30 days to comment on the proposed regulatory document.

Sections 6111 of the Patient Protection and Affordable Care Act (the Affordable Care Act) (Pub. L. 111-148), enacted on March 23, 2010, amended sections 1819(h) and 1919(h) of the Social Security Act to incorporate specific provisions pertaining to the imposition and collection of civil money penalties (CMPs) when facilities do not meet Medicare and Medicaid participation requirements. These new provisions are intended to improve efficiency and effectiveness of the nursing home enforcement process, particularly as it relates to civil money penalties imposed by CMS. These proposed regulations would:

- After the conclusion of any informal dispute resolution, permit CMS to collect and place CMPs into an escrow account pending the resolution of any formal appeal.
- Provide an opportunity for an Independent Informal Dispute Resolution (IDR) when a CMP has been imposed. Per day CMPs would be effective and continue to accrue but would not be collected during the time that a CMP is subject to the Independent IDR process.
- Provide for the collection of the CMP upon the earlier of: 1) completion of an Independent IDR, or 2) 90 days after notice of the imposition of the CMP.
- Establish that when a facility is successful in a formal appeal, the applicable portion of any CMP amount being held in escrow will be returned to the facility with interest.
- Establish new authority for CMS to reduce a CMP it imposes by 50 percent when CMS determines that a facility has self-reported and promptly corrected its noncompliance, and waived its right to a hearing. Noncompliance constituting immediate jeopardy, a pattern

of harm, widespread harm, or resulting in a resident's death would not be eligible for this CMP reduction. In addition, the reduction would not apply for facilities that have repeated noncompliance for which a penalty reduction under this provision was received during the previous year. A facility receiving this 50% reduction may not also receive the 35% reduction for waiving its right to a hearing under current regulations.

- Provide a facility with the opportunity to participate in an Independent IDR if a CMP is imposed against the facility. The IIDR must be requested by the facility within 30 days of notice of the imposition of the CMP and must be completed within 60 days of the imposition of the CMP.
- Provide that a portion of the CMP attributable to Medicare, which is currently conveyed to the U.S. Treasury, may instead be used for the protection or benefit of nursing home residents. Establish new acceptable uses of CMPs collected by CMS. Additionally, the specified use of such funds must be approved by CMS.

The proposed rule can be found on the *Federal Register* website at <http://edocket.access.gpo.gov/2010/pdf/2010-16927.pdf>.

**CMCS CONTACT:** If you have any questions regarding this bulletin, please contact Lorelei Chapman at [Lorelei.Chapman@cms.hhs.gov](mailto:Lorelei.Chapman@cms.hhs.gov)