



Center for Clinical Standards and Quality/Quality, Safety & Oversight Group

Admin Info: 18-15-NH

DATE: August 27, 2018

TO: State Survey Agency Directors

FROM: Director
Quality, Safety & Oversight Group (*formerly Survey & Certification Group*)

SUBJECT: Civil Money Penalty (CMP) Reinvestment State Plans

Memorandum Summary

- **CMP State Plans:** In accordance with 42 CFR 488.433(e), States must submit their CMP Reinvestment State Plans to their Centers for Medicare & Medicaid Services (CMS) Regional Office (RO) by October 31, 2018, and on an annual basis thereafter.
- **CMS Regional Offices (RO):** Will have the assistance of the Civil Money Penalty Reinvestment Program (CMPRP) contractor to review CMP Reinvestment State Plans in a similar method to their review of CMP projects submitted by States.
- **CMP Reinvestment Resource Webpage:** Will provide resources for States to refer to when submitting their CMP State Plans to their CMS RO.

Background

A CMP is the monetary penalty CMS may impose against skilled nursing facilities (SNFs) and dually-certified SNF/NF (nursing facility) for either the number of days or for each instance a facility is not in substantial compliance with one or more Medicare and Medicaid participation requirements.

After CMPs are collected, a portion is provided back to the State. Federal law and regulation at 42 CFR 488.433(a)-(b) provides that CMP funds may be used to support activities that protect or improve the quality of care or quality of life for residents. This may include any of the following:

- Assistance to support and protect residents of a facility that closes or is decertified;
- Time-limited expenses incurred in the process of relocating residents to home and community-based settings or another facility when a facility is closed or downsized pursuant to an agreement with the State Medicaid Agency;
- Projects that support resident and family councils and other consumer involvement in assuring quality care in facilities;
- Facility improvement initiatives such as joint training of facility staff and surveyors or technical assistance for facilities implementing quality assurance and performance improvement programs;

- Development and maintenance of temporary management or receivership capability. A temporary manager's salary must be paid by the facility unless CMS stops or suspends payments to the facility under 42 CFR Part 489.55 during the temporary manager's duty period, and CMS determines that extraordinary action is necessary to protect the residents until relocation efforts are successful; and
- Expenses incurred by a State related to CMP uses (i.e., administrative expenses related to administering, monitoring, and evaluating CMP projects).

According to 42 CFR 488.433(e), "the State must maintain an acceptable plan, approved by CMS, for the effective use of civil money funds, including a description of methods by which the State will":

- Solicit, accept, and monitor projects (including funding for State administration);
- Make CMP project information publicly available (i.e., amount awarded for each approved project, what entities received project funding, results of projects, and other key information);
- Ensure a certain amount of CMP funds are held in reserve for emergencies; and
- Ensure a reasonable amount of CMP funds are awarded as specified in §488.433(a)-(d).

§488.433(f) specifies that if a State does not spend its CMP funds in accordance with §488.433(a)-(e); fails to use its funds to improve the quality of care or quality of life of nursing home residents; or fails to maintain a CMS-approved CMP State Plan, then CMS can withhold CMP disbursements to the State until a State Plan is submitted and approved by CMS.

Requirement to Submit State Plan

By October 31, 2018, and on an annual basis, States must submit a CMP Reinvestment State Plan (hereafter referred to as "CMP State Plan") to their CMS RO. CMP State Plans will be reviewed by CMS or its contractors for compliance with §488.433(e). If there are issues with the CMP State Plan, States will be contacted for possible revisions. As part of the CMP State Plan, an annual CMP Project Tracking Sheet must be submitted by each State.

For further information on CMP State Plans please see our CMP Reinvestment Resource webpage at: <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/LTC-CMP-Reinvestment.html>. Available resources will be uploaded to the webpage within the next week and include:

- CMP State Plan Resource Guide,
- CMP State Plan Submission Template,
- CMP Project Tracking Sheet, and
- Sample CMP State Plan.

CMS has launched the CMPRP, a three-year effort to drive improvements in quality of care for nursing home residents. A contract was awarded to a team led by Deloitte Consulting, LLP in September 2017 to lead the CMPRP. Beginning in March 2018, the CMPRP began assisting CMS ROs with review of CMP projects submitted by States. Therefore, States may have already received communications from the CMPRP if they submitted a CMP project to their CMS RO for review.

The CMPRP contractor will also assist CMS ROs with review of CMP State Plans, consequently ROs are able to forward these to the CMPRP mailbox: CMP-info@cms.hhs.gov just as they are doing for CMP project review. States may receive communications from the CMPRP contractor if clarification is needed on their CMP State Plan, otherwise States will receive communication from their CMS RO when their CMP State Plan has been approved.

As specified at §488.433(f), if a State does not spend its CMP funds in accordance with §488.433(a)-(e); fails to use its funds to improve the quality of care or quality of life of nursing home residents; or fails to maintain a CMS-approved CMP State Plan, then CMS can withhold CMP disbursements to the State until a State Plan is submitted and approved by CMS. There may be several scenarios where this might occur, for example:

- If CMS has information that a State is using federal CMP funds for projects or activities that are not in conformance with our law or regulations, which may also include situations where a State is approving projects without obtaining prior CMS RO approval.
- If a State has a significant fund balance and they have not solicited any requests for proposed projects within the past year, nor have they submitted any project for approval to the CMS RO within the past year.
- If a State fails to submit an acceptable plan for the use of civil money penalty funds.

In these instances, when the CMS RO receives information that a State has misspent CMP funds, fails to make use of funds to benefit the quality of care or life for residents, or fails to maintain an acceptable plan for the use of CMP funds that is approved by CMS, the CMS RO should contact the State to confirm that this information is accurate. If the State is not in compliance with §488.433(a)-(f), the CMS RO will notify the CMS Central Office and CMS Office of Financial Management to withhold Medicaid CMP disbursements until an acceptable CMP State Plan and CMP spending practices are reviewed and approved by the CMS RO.

Contact: If you have any questions about this communication, please send an email to: QualityAssurance@cms.hhs.gov.

Effective Date: Immediately. This policy should be communicated with all survey and certification staff, their managers and the State/Regional Office training coordinators within 30 days of this memorandum.

/s/

David R. Wright

cc: Survey and Certification Regional Office Management