

§ 488.424

(4) Is not an employee of the facility;
(5) Does not function as a consultant to the facility; and

(6) Does not have an immediate family member who is a resident of the facility to be monitored.

(b) A State monitor must be used when a survey agency has cited a facility with substandard quality of care deficiencies on the last 3 consecutive standard surveys.

(c) State monitoring is discontinued when—

(1) The facility has demonstrated that it is in substantial compliance with the requirements, and, if imposed for repeated instances of substandard quality of care, will remain in compliance for a period of time specified by CMS or the State; or

(2) Termination procedures are completed.

[59 FR 56243, Nov. 10, 1994; 60 FR 50119, Sept. 28, 1995]

§ 488.424 Directed plan of correction.

CMS, the State survey agency, or the temporary manager (with CMS or State approval) may develop a plan of correction and CMS, the State, or the temporary manager require a facility to take action within specified timeframes.

§ 488.425 Directed inservice training.

(a) *Required training.* CMS or the State agency may require the staff of a facility to attend an inservice training program if—

(1) The facility has a pattern of deficiencies that indicate noncompliance; and

(2) Education is likely to correct the deficiencies.

(b) *Action following training.* After the staff has received inservice training, if the facility has not achieved substantial compliance, CMS or the State may impose one or more other remedies specified in § 488.406.

(c) *Payment.* The facility pays for directed inservice training.

[59 FR 56243, Nov. 10, 1994; 60 FR 50119, Sept. 28, 1995]

42 CFR Ch. IV (10–1–06 Edition)

§ 488.426 Transfer of residents, or closure of the facility and transfer of residents.

(a) *Transfer of residents, or closure of the facility and transfer of residents in an emergency.* In an emergency, the State has the authority to—

(1) Transfer Medicaid and Medicare residents to another facility; or

(2) Close the facility and transfer the Medicaid and Medicare residents to another facility.

(b) *Required transfer when a facility's provider agreement is terminated.* When the State or CMS terminates a facility's provider agreement, the State arranges for the safe and orderly transfer of all Medicare and Medicaid residents to another facility.

[59 FR 56243, Nov. 10, 1994; 60 FR 50119, Sept. 28, 1995]

§ 488.430 Civil money penalties: Basis for imposing penalty.

(a) CMS or the State may impose a civil money penalty for either the number of days a facility is not in substantial compliance with one or more participation requirements or for each instance that a facility is not in substantial compliance, regardless of whether or not the deficiencies constitute immediate jeopardy.

(b) CMS or the State may impose a civil money penalty for the number of days of past noncompliance since the last standard survey, including the number of days of immediate jeopardy.

[59 FR 56243, Nov. 10, 1994, as amended at 64 FR 13360, Mar. 18, 1999]

§ 488.432 Civil money penalties: When a penalty is collected.

(a) *When facility requests a hearing.* (1) A facility must request a hearing on the determination of the noncompliance that is the basis for imposition of the civil money penalty within the time specified in one of the following sections:

(i) Section 498.40 of this chapter for a
(A) SNF;
(B) Dually participating facility;
(C) State-operated NF; or
(D) Non-State operated NF against which CMS is imposing remedies.

(ii) Section 431.153 of this chapter for a non-State operated NF that is not

subject to imposition of remedies by CMS.

(2)(i) If a facility requests a hearing within the time specified in paragraph (a)(1) of this section, for a civil money penalty imposed per day, CMS or the State initiates collection of the penalty when there is a final administrative decision that upholds CMS's or the State's determination of noncompliance after the facility achieves substantial compliance or is terminated.

(ii) If a facility requests a hearing for a civil money penalty imposed per instance of noncompliance within the time specified in paragraph (a)(1) of this section, CMS or the State initiates collection of the penalty when there is a final administrative decision that upholds CMS's or the State's determination of noncompliance.

(b) When a facility does not request a hearing for a civil money penalty imposed per day. (1) If a facility does not request a hearing in accordance with paragraph (a) of this section, CMS or the State initiates collection of the penalty when the facility—

- (i) Achieves substantial compliance; or
- (ii) Is terminated.

(2) When a facility does not request a hearing for a civil money penalty imposed per instance of noncompliance. If a facility does not request a hearing in accordance with paragraph (a) of this section, CMS or the State initiates collection of the penalty when the time frame for requesting a hearing expires.

(c) When a facility waives a hearing. (1) If a facility waives, in writing, its right to a hearing as specified in § 488.436, for a civil money penalty imposed per day, CMS or the State initiates collection of the penalty when the facility—

- (i) Achieves substantial compliance; or
- (ii) Is terminated.

(2) If a facility waives, in writing, its right to a hearing as specified in § 488.436, for a civil money penalty imposed per instance of noncompliance, CMS or the State initiates collection of the penalty upon receipt of the facility's notification.

(d) Accrual and computation of penalties for a facility that—

(1) Requests a hearing or does not request a hearing are specified in § 488.440;

(2) Waives its right to a hearing in writing, are specified in §§ 488.436(b) and 488.440.

(e) The collection of civil money penalties is made as provided in § 488.442.

[59 FR 56243, Nov. 10, 1994; 60 FR 50119, Sept. 28, 1995, as amended at 64 FR 13360, Mar. 18, 1999]

§ 488.434 Civil money penalties: Notice of penalty.

(a) *CMS notice of penalty.* (1) CMS sends a written notice of the penalty to the facility for all facilities except non-State operated NFs when the State is imposing the penalty.

(2) *Content of notice.* The notice that CMS sends includes—

- (i) The nature of the noncompliance;
- (ii) The statutory basis for the penalty;

(iii) The amount of penalty per day of noncompliance or the amount of the penalty per instance of noncompliance;

(iv) Any factors specified in § 488.438(f) that were considered when determining the amount of the penalty;

(v) The date of the instance of noncompliance or the date on which the penalty begins to accrue;

(vi) When the penalty stops accruing, if applicable;

(vii) When the penalty is collected; and

(viii) Instructions for responding to the notice, including a statement of the facility's right to a hearing, and the implication of waiving a hearing, as provided in § 488.436.

(b) *State notice of penalty.* (1) The State must notify the facility in accordance with State procedures for all non-State operated NFs when the State takes the action.

(2) The State's notice must—

- (i) Be in writing; and

(ii) Include, at a minimum, the information specified in paragraph (a)(2) of this section.

[59 FR 56243, Nov. 10, 1994; 60 FR 50119, Sept. 28, 1995, as amended at 64 FR 13360, Mar. 18, 1999]