

CMS Rule Opens Way To Reduced Civil Penalties For SNFs

Enables Facilities To Use Informal Dispute Resolution Process

July 15, 2010 - The Centers for Medicare & Medicaid Services (CMS) issued a proposed rule on July 12 that would revise and expand the way the agency assesses and collects civil monetary penalties (CMPs) from nursing facilities failing to meet Medicare and Medicaid program participation requirements.

Included in the 23-page proposal, which was mandated by the 2010 health care reform law, is a provision that would allow nursing facilities to cut the amount of a CMP by up to half (50 percent) if the facility self-reports its deficiency before it is discovered by CMS or a state agency and makes subsequent corrections within 10 days.

Under current regulations, CMPs range from \$50 to \$10,000 per day of noncompliance.

The proposed penalty reduction would not apply if “the secretary [of Health and Human Services] has re-

duced a civil money penalty imposed in the preceding year under this provision with respect to a repeat deficiency or the penalty is imposed on the facility for a deficiency that is found to result in a pattern of harm...,” the proposal said.

Overall, CMS said it believes Congress wants the new rule to improve the efficiency and effectiveness of the nursing facility enforcement process. To that end, the rule would include these other provisions as well:

- Allow CMS to establish an escrow account for CMPs pending the resolution of any formal appeal in order to reduce the delay in the administrative appeals process. CMS noted that facilities, under current practice, can avoid paying a CMP for years while the appeals process runs its course;

- Provide for the opportunity for an independent Informal Dispute Resolution (IDR) if a CMP has been imposed

against a facility. “This process is to be offered to a facility not later than 30 days after the imposition of the CMP and must generate a written record prior to the collection of the penalty,” the proposed rule said. CMS said the IDR would be an additional option for nursing facilities and that existing informal dispute processes would remain on the books as well;

- Ensure that the IDR be completed within 60 days of notice of imposition of CMP if the IDR is requested in a timely fashion by the facility; and

- Establish that when a facility is successful in a formal appeal, the applicable portion of any penalty amount being held in escrow be returned to the facility with interest.

Comments on the proposed rule are due by 5:00 p.m. (EST) on Aug. 11. Read the rule and instructions on how to comment at www.gpoaccess.gov/fr/.

—Patrick Connoles