

Enforcement Updates

Provider Meeting 2016

Objectives

- ❖ Understand the new Mandatory Immediate Imposition of Federal Remedies S&C: 16-31-NH Memo and Chapter 7 changes
- ❖ Understand the new Notice to Interim Final Rule (IFR) Adjusting Civil Monetary Penalties (CMPs) S&C: 16-40-NH/HHA/CLIA
- ❖ Understand Remedies which may be imposed

Mandatory Immediate Imposition of Federal Remedies

- Any deficiency cited at the Immediate Jeopardy (IJ) level will require the immediate imposition of a Civil Monetary Penalty, in addition to any other remedy or remedies.

Criteria for Mandatory Immediate Imposition of Federal Remedies Prior to Facility's Correction of Deficiencies

- (§7304.1) The CMS RO must immediately impose, prior to affording a facility an opportunity to correct deficiencies, one or more federal remedies for a facility in any one or more for the following circumstances:
 - Immediate Jeopardy (IJ); OR
 - Substandard Quality of Care (SQC) deficiencies that are not IJ; OR
 - Any G level deficiency in Resident Behavior and Facility Practices (F221–F226), Quality of Life (QOL) (F240–F258) or Quality of Care (QOC) (F309–F334); OR

Mandatory Immediate Imposition of Federal Remedies continued

- Double G situations (Deficiencies of actual harm or above (G, H, I, J, K, L) on the current survey as well as having deficiencies of actual harm or above on the previous standard health or LSC survey **OR** deficiencies of actual harm or above on any type of survey between the current survey and the last standard survey. These surveys must be separated by a period of substantial compliance.; **OR**
- Classified as a Special Focus Facility (SFF) **AND** has a “F” level or higher deficiency on its current survey.

Mandatory Criteria for Immediate Imposition of Federal Remedies

Mandatory Criteria for Immediate Imposition of Federal Remedies	Immediate Jeopardy	SQC deficiencies that are not IJ	Any G level deficiency identified in Resident Behavior and Facility Practices, QOL, or QOC	Double G (Actual harm identified on current survey AND deficiencies of IJ OR actual harm on any survey between the current survey and last standard survey.)	Special Focus Facility AND "F" level or higher
<p>Types of remedy(ies) that at a minimum should be considered for immediate imposition by CMS <u>in addition to</u> the CMPs when IJ is cited, mandatory 3 month DPNA for new admissions or mandatory 6 month termination as required.</p> <p>NOTE: Multiple remedies may be imposed for any situation as appropriate.</p>	<ol style="list-style-type: none"> 1. Termination 2. CMPs (<u>must</u> be imposed immediately) 3. DDPNA (Discretionary Denial of Payment for New Admissions) 4. Temp. Mgmt. 5. State Monitoring 6. Directed Plan of Correction (DPOC) 7. Directed In-Service 8. Denial of Payment for ALL Individuals *(this remedy can only be imposed by CMS) 	<ol style="list-style-type: none"> 1. Termination 2. CMPs 3. DDPNA 4. DPOC 5. Directed In-Service Training 6. Denial of Payment for ALL Individual* 	<ol style="list-style-type: none"> 1. Termination 2. CMPs 3. DDPNA 4. DPOC 5. Directed In-Service Training 6. Denial of Payment for ALL Individual* 	<ol style="list-style-type: none"> 1. Termination 2. CMPs 3. DDPNA 4. Temp. Mgmt. 5. State Monitoring 6. DPOC 7. Directed In-Service 8. Denial of Payment for ALL Individual* 	<ol style="list-style-type: none"> 1. Termination 2. CMPs 3. DDPNA 4. Temp. Mgmt. 5. State Monitoring 6. DPOC 7. Directed In-Service 8. Denial of Payment for ALL Individual*

Notice of Interim Final Rule (IFR) Adjusting Civil Monetary Penalties (CMPs)

- **S&C: 16-40-NH/HHA/CLIA**

- 11/2/15 President signed into law Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015
 - Prior to 2015, CMPs were exempt from inflation adjustments
 - The 2015 Act requires:
 - Adjustment to the level of applicable CMPs with an initial “catch-up” adjustment, through IFR; and
 - Subsequent annual adjustments for inflation
- *“catch-up” adjustments based on the percentage change between the Consumer Price Index for all Urban Consumers (CPI-U) for the month of October in the year a CMP was originally established (SNFs-1987), and CPI-U for October 2015
- **Effective Dates:**
 - The new CMP amounts apply to any CMP imposed on or after **September 6, 2016** for noncompliance that occurred on or after **November 2, 2015**
 - CMP amounts are required to be adjusted annually, effective **January 15** of each year

Remedy Categories

- **Category 1 (Cat 1)**
 - Directed Plan of Correction (DPOC)
 - State Monitor; and/or
 - Directed In-Service Training
- **Category 2 (Cat 2)**
 - Denial of Payment for New Admissions
 - Denial of Payment for All Individuals imposed by CMS;
 - *Termination; Temporary Management* and/or
 - Civil Monetary Penalties (CMP):
 - WAS \$50 – \$3,000/day NOW \$103 – \$6,188/day
 - WAS \$1,000 – \$10,000/instance NOW \$2,063 – \$20,628/instance

Remedy Categories continued

- **Category 3 (Cat 3)**
 - Temporary Management
 - Termination
 - CMP
 - WAS \$3,050 – \$10,000/day NOW \$6,291 – \$20,628/day
 - WAS \$1,000 – \$10,000/instance NOW \$2,063 – \$20,628/instance

Assessment Factors Used to Determine the Seriousness of Deficiencies Matrix

Immediate Jeopardy to resident health or safety	J POC Required: Cat. 3 <i>Optional: Cat. 1 and Cat.2</i>	K POC Required: Cat. 3 Optional: Cat. 1 and Cat.2	L POC Required: Cat. 3 Optional: Cat. 1 and Cat.2
Actual harm that is not immediate	G POC Required: Cat. 2 Optional: Cat. 1	H POC Required: Cat. 2 Optional: Cat. 1	I POC Required: Cat. 2 Optional: Cat. 1 & Temporary Mgmt.
No actual harm with potential for more than minimal harm that is not IJ	D POC Required: *Cat. 1 Optional: Cat. 2 *required only when decision is made to impose enforcement remedies instead of or in addition to termination	E POC Required: *Cat. 1 Optional: Cat. 2	F POC Required: *Cat. 2 Optional: Cat. 1
No actual harm with potential for minimal harm	A No POC <i>No remedies</i> Commitment to Correct Not on CMS-2567	B POC <i>No remedies</i>	C POC <i>No remedies</i>
	Isolated	Pattern	Widespread

- Once an enforcement remedy is imposed, it is in effect as of the date in the notice letter.
- All remedies remain in effect and continue until the facility is in substantial compliance.

Effective Date for Immediate Imposition of Federal Remedies: For all surveys completed on or after September 1, 2016

