



Center for Clinical Standards and Quality/Survey & Certification Group

Ref: S&C: 13-57-NH

DATE: August 30, 2013

TO: State Survey Agency Directors

FROM: Director
Survey and Certification Group

SUBJECT: Escrow and Independent Informal Dispute Resolution (Independent IDR) Process
for Nursing Homes – Applicable to All Civil Money Penalties (CMPs)

Memorandum Summary

Applicability of CMP, Escrow, IDR: CMPs imposed pursuant to all standard or complaint surveys that begin on or after October 1, 2013, that initiate an enforcement action in which a CMP is imposed where the highest level of deficiency is less than a “G” level, will be subject to collection and escrow in accordance with 42 C.F.R. §488.431. CMPs based on surveys in which a deficiency is cited for actual harm or immediate jeopardy (“G” or higher) are already subject to escrow.

Net Effect: Previously, CMS phased in the escrow requirement by limiting it to CMPs imposed for actual harm or immediate jeopardy. Effective October 1, 2013 every CMP imposed for a deficiency in a nursing home will be subject to escrow and the nursing home may request an independent informal dispute resolution.

A. Background

Section 6111 of the Affordable Care Act added new section (IV) (aa) to sections 1819(h)(2)(B) (ii) and 1919(h)(2)(B)(ii) of the Social Security Act (Act). This new section provided for timely collection and escrow of CMPs. The provision also afforded facilities with the opportunity to request an Independent IDR if the Centers for Medicare and Medicaid Services (CMS) imposes a CMP against the facility and the CMP amounts are subject to being collected and placed in an escrow account.

B. Applicability

The Independent IDR process must be offered to a facility when a CMP is imposed and that CMP is to be collected and placed in an escrow account, in accordance with 42 C.F.R. §488.331 and 42 C.F.R. §488.431(b). CMS may collect and place imposed CMPs in an escrow account on whichever of the following occurs first:

- The date on which the Independent IDR process is completed, or
- The date which is 90 calendar days after the date of the notice of imposition of the CMP.

S&C Memorandum 12-08, issued on December 2, 2011¹, provided guidance to States for the new CMP escrow and independent IDR system. At that time CMS phased in the new CMP collection and escrow provisions by applying the escrow only to CMPs that were imposed based on surveys that found one or more deficiencies cited for actual harm or immediate jeopardy to resident health or safety (that is, deficiencies cited at a scope and severity (S/S) level of “G” or above).

Effective October 1, 2013, CMPs imposed pursuant to all standard or complaint surveys that begin on or after October 1, 2013, that initiate an enforcement action in which a CMP is imposed where the highest level of deficiency is less than a “G” level, will also be subject to collection and escrow in accordance with 42 C.F.R. §488.431. Any revisit survey conducted on or after October 1, 2013 that is associated with a standard or complaint survey completed prior to October 1, 2013 will not be subject to escrow and the independent IDR requirement will not apply to that CMP. CMPs based on surveys in which a deficiency is cited for actual harm or immediate jeopardy (“G” or higher) are already subject to escrow, accounting for about 80-85 percent of all CMPs.

The escrow of any CMP also creates an opportunity for the facility to request to participate in the Independent IDR process. The offer of Independent IDR must be included in all CMP imposition notices. The standard IDR process remains available as an alternative.

States may not charge facilities for the Independent IDR process required under 42 C.F.R. §488.431

Additional instructions and guidance will be forthcoming in revisions to the SOM, Chapter 7 – Survey and Enforcement Process for Skilled Nursing Facilities and Nursing Facilities.

Contact: Please contact your appropriate Regional Office contact if you have questions. The central office contact for policy matters is Lorelei Chapman at Lorelei.Chapman@cms.hhs.gov.

Effective Date: October 1, 2013. This policy should be communicated with all survey and certification staff, their managers and the State/Regional Office training coordinators within 30 days.

/s/
Thomas E. Hamilton

cc: Survey and Certification Regional Office Management

¹ S&C:12-08 superseded the earlier S&C:12-02 that had been issued October 14, 2011.