
42 C.F.R. § 488.845

Civil money penalties.

- (a) *Application.* (1) CMS may impose a civil money penalty against an HHA for either the number of days the HHA is not in compliance with one or more conditions of participation or for each instance that an HHA is not in compliance, regardless of whether the HHA's deficiencies pose immediate jeopardy.
- (2) CMS may impose a civil money penalty for the number of days of immediate jeopardy.
- (3) A per-day and a per-instance CMP may not be imposed simultaneously for the same deficiency.
- (b) *Amount of penalty—(1) Factors considered.* CMS takes into account the following factors in determining the amount of the penalty:
- (i) The factors set out at § 488.815.
- (ii) The size of an agency and its resources.
- (iii) Accurate and credible resources, such as PECOS, Medicare cost reports and Medicare/Medicaid claims information that provide information on the operation and resources of the HHA.
- (iv) Evidence that the HHA has a built-in, self-regulating quality assessment and performance improvement system to provide proper care, prevent poor outcomes, control patient injury, enhance quality, promote safety, and avoid risks to patients on a sustainable basis that indicates the ability to meet the conditions of participation and to ensure patient health and safety.
- (2) *Adjustments to penalties.* Based on revisit survey findings, adjustments to penalties may be made after a review of the provider's attempted correction of deficiencies.
- (i) CMS may increase a CMP in increments based on a HHA's inability or failure to correct deficiencies, the presence of a system-wide failure in the provision of quality care, or a determination of immediate jeopardy with actual harm versus immediate jeopardy with potential for harm.
- (ii) CMS may also decrease a CMP in increments to the extent that it finds, pursuant to a revisit, that substantial and sustainable improvements have been implemented even though the HHA is not yet in full compliance with the conditions of participation.
- (iii) No penalty assessment will exceed \$10,000 as adjusted annually under 45 CFR part 102 for each day of noncompliance.
- (3) *Upper range of penalty.* Penalties in the upper range of \$8,500 to \$10,000 as adjusted under 45 CFR part 102 per day of noncompliance are imposed for a condition-level deficiency that is immediate jeopardy. The penalty in this range will continue until compliance can be determined based on a revisit survey.
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(i) \$10,000 as adjusted annually under 45 CFR part 102 per day for a deficiency or deficiencies that are immediate jeopardy and that result in actual harm.

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