
42 C.F.R. § 488.1245

Civil money penalties.

(a) *Application.* (1) CMS may impose a civil money penalty against a hospice program for either the number of days the hospice program is not in compliance with one or more conditions of participation or for each instance that a hospice program is not in compliance, regardless of whether the hospice program'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 civil money penalty (CMP) may not be imposed simultaneously for the same deficiency in conjunction with a survey.

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

(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 § 488.1215.

(ii) The size of a hospice program and its resources.

(iii) Evidence that the hospice program 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 hospice program'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, in accordance with a revisit, that substantial and sustainable improvements have been implemented even though the hospice program is not yet in compliance with the conditions of participation.

(iii) No penalty assessment exceeds \$10,000, as adjusted annually under 45 CFR part 102, for each day a hospice program is not in substantial compliance with one or more conditions of participation.

(3) *Upper range of penalty.* Penalties in the upper range of \$8,500 to \$10,000 per day, as adjusted annually under 45 CFR part 102, are imposed for a condition-level deficiency that is immediate jeopardy. The penalty in this

range continues until substantial compliance can be determined based on a revisit survey.

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