



Center for Medicaid and State Operations/Survey and Certification Group

Ref: S&C-09-44

DATE: June 19, 2009

TO: State Survey Agency Directors

FROM: Director
Survey and Certification Group

SUBJECT: Use of Civil Money Penalty (CMP) Funds by States and Reporting of CMP Funds Returned to the State

Memorandum Summary

The purpose of this memorandum is to:

- Clarify that States may direct collected CMP funds to entities other than nursing homes as long as funds are used in accordance with statutory intent.
- Share innovative practices that States may want to consider when making decisions about how CMP funds can be directed and used to improve the quality of care and life for nursing home residents.
- Announce that the Centers for Medicare & Medicaid Services (CMS) will consider reporting CMP amounts that have been returned to each State.

This memorandum is being issued in response to requests that CMS clarify how CMPs may be directed and used by States, and share suggestions of innovative projects and activities that have already been undertaken with CMP funds in some States. It has also been suggested that CMS publicly report the CMP amounts that have been collected and returned to States.

The information provided in this memorandum clarifies earlier guidance that some States may find helpful when considering their options in directing CMP funds toward efforts that will benefit nursing home residents. It also reiterates the fact that CMS does not have the statutory authority to endorse, approve, disapprove, or otherwise make determinations about suggested uses for CMPs. Instead, States have the authority to determine which activities constitute acceptable and beneficial uses of the funds, and which do not. Guidance provided by this memorandum supplements "S&C-02-42 Use of Civil Money Penalty (CMP) Funds by States," dated August 8, 2002, which remains in effect.

Entities Other than Nursing Homes May Receive Collected CMP Funds from the State

When CMPs are collected and returned to the State, the statutory expectation is that these funds are to be used for purposes that will benefit nursing home residents. Aside from this usage condition and any restrictive State-specific laws, States may target these resources for projects or programs available through various interested nursing home stakeholders, e.g., facilities, consumer groups, professional nursing home associations, ombudsmen, quality improvement organizations, etc. While this is not a new interpretation of how CMP funds can be used by States, some States may not realize that they can look beyond facilities to other sources of valuable projects that could promote the quality of life and quality of care of nursing home residents. Knowledge that they can manage their CMP funds within a broader universe may also motivate and assist some States that have been reluctant or uncertain about how to use these funds in the past, to identify worthwhile projects that can positively impact the lives of facility residents.

The statute provides specific examples for potential use of collected CMPs:

1. For the protection of the health or property of residents, including payment for the cost of relocating residents to other facilities;
2. Maintenance of operation of a facility pending correction or closure; and
3. Reimbursement of residents for personal funds lost.

We understand that there are creative and innovative projects and activities that States have funded to stimulate quality using their CMP funds. Examples of such projects are provided for your information in the attachment to this memorandum.

Questionable Uses of CMP Funds

Given the three examples in the statute about how CMPs could be applied, statutory intent is clear that they should be used for activities that will benefit facility residents. Within that broad criterion, States have a great deal of flexibility in determining what would and would not satisfy statutory intent. However, discussions with regional offices, States, and others over time have resulted in general agreement about the types of expenditures that should be considered inappropriate for CMP funds, e.g., to make capital improvements to a facility; to pay for items, services, etc., that the facility is responsible for and responsible for paying for; to fund projects, items, services, etc., that are not related to improving the quality of life and care of nursing home residents.

Reporting on CMP Funds Returned to the State

It has been suggested that CMS publicly report the amount of CMP funds collected and returned to the States and that proposal is under consideration. We are currently in the process of determining how and when this could be accomplished.

Effective Date: This clarification is effective immediately. Please ensure that all appropriate staff are fully informed within 30 days of the date of this memorandum.

Training: This information should be shared with all appropriate survey and certification managers and staff.

/s/

Thomas E. Hamilton

cc: Survey and Certification Regional Office Management

Attachment:

Promising Practices-Examples of Civil Money Penalty Use

**Promising Practices
Examples of Civil Money Penalty Use**

- Development of the **Wisconsin** Clinical Resource Center access to the American Medical Directors Association Clinical Practice Guidelines (the only place that these have been provided electronically and without charge) for all nurses in Wisconsin nursing homes.
- Start-up of **Ohio's** consumer guide Web site -- <http://www.ltcoho.org/consumer/index.asp>.
- Family and Family Council Support and Development
 - **Maryland** – multi-year grant to National Citizens' Coalition for Nursing Home Reform (NCCNHR) to support the development of family councils in the State, including resources and information such as a DVD on family councils and an informational booklet.
 - **Minnesota** – using CMP funds to host a conference for family members that will highlight quality improvement success stories in MN nursing homes for consumers.
- Support or Relocation of Residents During Facility Closure
 - **Michigan** - funded a CMP project to pull together a workgroup (1½ years) to figure out the underlying factors of facility closure and come up with creative ideas to address closure issues and their impact on residents.
- Improving Resident Care & Quality of Life

New York

- Funded a user-friendly electronic care documentation system for use by nurse aides that simplifies documentation and helps caregivers follow resident conditions and progress of treatment.
- Funded hiring of independent consultants to train nursing home staff on four “life enrichment modules:” Therapeutic Small Group Activities, Soft Sensory Programming (to relate to dementia residents through aromatherapy, music and gentle touch), Roving Cart Activities (provide individualized activities to residents) and a Dignity and Sensitivity Boot Camp (exposes staff to life as their residents experience it).
- Funded a project to improve resident balance and mobility and decrease falls using innovative exercise and balance programs that include Tai Chi and Yoga.
- Funded several projects to enable facilities to substantially improve their residents’ dining experiences. One project funded a fine dining project. The facility committed its own funds for renovations, while the project funds paid for training of all staff in fine dining procedures, steam tables, music systems for the dining rooms, elegant linens, etc. The project incorporated staff, resident, and family satisfaction.

- Culture Change
 - **Louisiana**
 - CMPs funded a workforce and culture change project focusing on achieving staffing stability in nursing homes.
 - Funded a culture change conference in the State.
 - **Illinois** – to the Long-Term Care Ombudsman Program (LTCOP) to promote the Pioneer Movement.
 - **Arkansas** – CMPs used as seed money to build Green Houses.
 - **New York** – funded projects that facilitated nursing homes’ implementation of culture change. One such project funded “wait-staff” style dining with enhanced resident choice, dismantling of the central nurse station and its replacement with a living room, the building of kitchenettes adjacent to resident rooms, etc.
- Support the Enhanced Work of the LTCOP.
 - **Connecticut** is requesting CMP funds to support their VOICES program which brings together presidents of resident councils to bring the problems and concerns residents face to the attention of elected officials and public officials who can influence decisions. It also helps set the agenda for legislative issues of concern.
 - **Michigan** has used CMPs to develop, write, implement, and monitor an ombudsman program process for designating and monitoring local ombudsman programs.
 - **Minnesota** has used CMPs to update and reprint the ombudsman program’s consumer education materials, i.e., resident rights; LTCOP; and to develop a new brochure on the NHQI.