

CMS Issues Final Rule Expanding Civil Monetary Penalties for Nursing Homes

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By Patrick Formato

On March 18, 2011, the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services published the Final Rule regarding Civil Monetary Penalties for Nursing Homes. The Final Rule expands current Medicare and Medicaid regulations regarding the imposition and collection of civil monetary penalties by CMS when nursing homes are not in compliance with Medicare/Medicaid conditions of participation. The Final Rule serves to implement the provisions of Section 6111 of the Affordable Care Act. The key provisions of the Final Rule are as follows:

1. Establishment of an Escrow Account- The Final Rule amends current regulations which tolled CMS' ability to collect civil money penalties until the completion of administrative appeals. Under the Final Rule, CMS **may** collect and place in escrow accounts civil money penalties on whichever occurs first: (i) the date on which the independent informal dispute resolution process is completed; or (ii) the date which is 90 days after the date of the notice of imposition of the penalty.
2. Independent Informal Dispute Resolution – The Final Rule creates a new Independent Informal Dispute Resolution (“IDR”) process. A nursing home is entitled to such an IDR process if CMS chooses to collect and place CMPs in escrow. The IDR process is an additional option for nursing homes and does not replace the current IDR process.
3. Self-Reporting – The Final Rule includes a 50% reduction in CMPs if the nursing home self-reported, and promptly corrected, the non-compliance. This reduction is not available if the non-compliance constituted a pattern of harm; widespread harm; immediate jeopardy or resulted in the death of a resident; or if it is a repeat deficiency which was the basis of a CMP that previously received a reduction.

A nursing home cannot receive both a 50% reduction for self-reporting and a 35% reduction for a waiver of hearing.

4. Effective Date – January 1, 2012.

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If you have any questions pertaining to the Civil Monetary Penalties for Nursing Homes Final Rule, please contact [Patrick Formato](#), Esq. at (516) 328-2300 or your attorney contact in our firm.