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**HEALTH & WELFARE**

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**INFORMATIONAL LETTER #2016-14**

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**DATE:** September 14, 2016

**TO:** ALL IDAHO LONG TERM CARE FACILITIES  
ALL IDAHO FEDERALLY CERTIFIED HOME HEALTH AGENCIES

**FROM:** DEBBY RANSOM, R.N., R.H.I.T., Chief  
Bureau of Facility Standards

**SUBJECT:** **CMS S&C Letter 16-40-NH/HHA/CLIA—  
Notice of Interim Final Rule (IFR) Adjusting Civil Monetary  
Penalties (CMPs)**

The CMS S&C Letter 16-40-NH/HHA/CLIA — Notice of Interim Final Rule (IFR) Adjusting Civil Monetary Penalties (CMPs) is being distributed to all Long Term Care Facilities and federal certified Home Health Agencies in Idaho.

If you have any questions, please contact our office at 208/334-6626.

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DEBBY RANSOM, R.N., R.H.I.T., Chief  
Bureau of Facility Standards

DR/nm  
Attachment



**Center for Clinical Standards and Quality/Survey & Certification Group**

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**Ref: S&C: 16-40-NH/HHA/CLIA**

**DATE:** September 08, 2016

**TO:** State Survey Agency Directors

**FROM:** Director  
Survey and Certification Group

**SUBJECT:** Notice of Interim Final Rule (IFR) Adjusting Civil Monetary Penalties (CMPs)

**Memorandum Summary**

- The Department of Health and Human Services (HHS) has published in the Federal Register on September 6, 2016 an IFR which adjusts for inflation CMP amounts authorized under the Social Security Act. (See **Adjustment of Civil Monetary Penalties for Inflation**)
- The IFR establishes new section 45 CFR Part 102, which lists the new CMP amounts and ranges as adjusted by the IFR for affected regulations. The changes made by the IFR are effective on September 6, 2016.
- The IFR addresses all applicable CMPs under the authority of HHS but we are highlighting only on those CMPs assessed for Skilled Nursing facilities (SNFs), Nursing Facilities (NFs), SNFs/NFs, Home Health Agencies (HHAs), and Clinical laboratories.

**Background**

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act) (Sec. 701 of the Bipartisan Budget Act of 2015, Pub. L. 114-74). The 2015 Act amends the Federal Civil Penalties Inflation Adjustment Act of 1990 (the Inflation Adjustment Act) (Pub. L. 101-410) which was enacted to improve the effectiveness of federal CMPs and to maintain their deterrent effect. Prior to 2015, CMPs authorized under the Social Security Act were exempt from inflation adjustments under the law. The 2015 Act requires agencies to:

- Adjust the level of applicable CMPs with an initial “catch-up” adjustment, through interim final rulemaking (IFR); and,
- Make subsequent annual adjustments for inflation.

The 2015 Act provides that “catch-up” adjustments are based on the percentage change between the Consumer Price Index for all Urban Consumers (CPI-U) for the month of October in the year a CMP was originally established, and the CPI-U for October 2015. The 2015 Act directed agencies to publish the new catch-up adjustments in the Federal Register through an interim final rulemaking.

Subsequent annual adjustments are based on the percentage change of the CPI-U for the month of October of a current year exceeds the CPI for the month of October of the previous year. These annual adjustments are to be published in the Federal Register no later than January 15 of each calendar year beginning in 2017.

Therefore, the IFR includes an initial catch-up adjustment for CMPs that may be imposed for noncompliance by SNF/NFs, HHAs, and Clinical laboratories. This is reflected in a table showing how all CMPs are increased pursuant to the 2015 Act in new section 45 CFR Part 102.

These new CMP amounts apply to any CMP imposed on or after **September 6, 2016** (the effective date of the IFR) for noncompliant conduct that occurred on or after November 2, 2015, regardless of when the noncompliance was identified. For example, if a survey identifying noncompliance is completed July 25, 2016, but the CMP isn't imposed until after September 6, 2016, the new CMP amounts will be used to calculate the penalty imposed on the provider. For SNFs, NFs and SNF/NFs, the CMP Tool instructions and calculations will be updated to reflect these changes. Please note that the IFR only affects specific CMP amounts and not any other related provisions, such as the factors reviewed for assessing CMPs for example.

**Effective Dates:**

- **“Catch-Up” Adjustment:** These new CMP amounts apply to any CMP imposed on or after **September 6, 2016** for noncompliant conduct that occurred on or after November 2, 2015, regardless of when the noncompliance was identified.
- **Subsequent Annual Adjustments:** CMP amounts are required to be adjusted annually, effective January 15 of each year, and published in the Federal Register.

The IFR can be found at [https://www.federalregister.gov/articles/2016/09/06/2016-18680/adjustment-of-civil-monetary-penalties-for-inflation?utm\\_campaign=subscription+mailing+list&utm\\_medium=email&utm\\_source=federalregister.gov#h-7](https://www.federalregister.gov/articles/2016/09/06/2016-18680/adjustment-of-civil-monetary-penalties-for-inflation?utm_campaign=subscription+mailing+list&utm_medium=email&utm_source=federalregister.gov#h-7). The IFR establishes new section 45 CFR Part 102, which lists new CMP amounts and ranges as adjusted by the IFR.

CMP amounts will also be posted on the Survey and Certification website <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Civil-Monetary-Penalties-Annual-Adjustments.html>.

**Effective Date:** This guidance should be immediately communicated to all RO and State Survey Agency survey, certification and enforcement staff, their managers and the State/RO training coordinators.

/s/

David R. Wright

Attachments: Attachment A- List of CMP Adjustments in 2016

cc: Survey and Certification Regional Office Management  
State Medicaid Agencies

**APPENDIX A**  
**CALCULATION OF CMP ADJUSTMENTS**

Citation		Description <sup>2</sup>	Pre-Inflation Penalty(\$)	Date of Last Penalty Figure or Adjustment <sup>3</sup>	Percentage Increase <sup>4</sup>	Increase (\$) <sup>5</sup>	Maximum Adjusted Penalty (\$)
U.S.C.	CFR <sup>1</sup>						
1395i-3(b)(3)(B)(ii)(1)	42 CFR 483.20(j)(1)(i)	Penalty for certification of a false statement in assessment of functional capacity of a Skilled Nursing Facility resident assessment.	1,000	1987	106.278	1,063	2,063
1395i-3(b)(3)(B)(ii)(2)	42 CFR 483.20(j)(1)(ii)	Penalty for causing another to certify or make a false statement in assessment of functional capacity of a Skilled Nursing Facility resident assessment.	5,000	1987	106.278	5,314	10,314
1395i-3(g)(2)(A)	42 CFR 488.307(c)	Penalty for any individual who notifies or causes to be notified a Skilled Nursing Facility of the time or date on which a survey is to be conducted.	2,000	1987	106.278	2,126	4,126
1396r(h)(3)(C)(ii)(I)	42 CFR 483.151(c)(2)	Grounds to waive disapproval of nurse aide training program - reference to disapproval based	5,000	1987	106.278	5,314	10,314

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U.S.C.	CFR <sup>1</sup>						
		on imposition of CMP "not less than \$5,000" [Not CMP authority but CMP imposition at this level determines eligibility to seek waiver of disapproval of nurse aide training program]					
1320a-7j(h)(3)(A)		Penalty for an administrator of a facility that fails to comply with notice requirements for the closure of a facility.	100,000	2010	8.745	8,745	108,745
		Minimum penalty for the first offense of an administrator who fails to provide notice of facility closure.	500	2010	8.745	44	544
	42 CFR 488.446	Minimum penalty for the second offense of an administrator who fails to provide notice of facility closure.	1,500	2010	8.745	131	1,631
		Minimum penalty for the third and subsequent	3,000	2010	8.745	262	3,262

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U.S.C.	CFR <sup>1</sup>						
		offenses of an administrator who fails to provide notice of facility closure.					
1320b-25(c)(1)(A)		Penalty for failure of covered individuals to report to the Secretary and 1 or more law enforcement officials any reasonable suspicion of a crime against a resident, or individual receiving care, from a long-term care facility.	200,000	2010	8.745	17,490	217,490
1320b-25(c)(2)(A)		Penalty for failure of covered individuals to report to the Secretary and 1 or more law enforcement officials any reasonable suspicion of a crime against a resident, or individual	300,000	2010	8.745	26,235	326,235

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U.S.C.	CFR <sup>1</sup>						
		receiving care, from a long-term care facility if such failure exacerbates the harm to the victim of the crime or results in the harm to another individual.					
1320b-25(d)(2)		Penalty for a long-term care facility that retaliates against any employee because of lawful acts done by the employee, or files a complaint or report with the State professional disciplinary agency against an employee or nurse for lawful acts done by the employee or nurse.	200,000	2010	8.745	17,490	217,490
1395i-3(h)(2)(B)(ii)(I)	42 CFR 488.408(d)(1)(iii)	Penalty per day for a Skilled Nursing Facility that has a Category 2 violation of certification requirements.					
		Minimum	50	1987	106.278	53	103
		Maximum	3,000	1987	106.278	3,188	6,188

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U.S.C.	CFR <sup>1</sup>						
	42 CFR 488.408(d)(1)(iv)	Penalty per instance of Category 2 noncompliance by a Skilled Nursing Facility.					
		Minimum	1,000	1987	106.278	1,063	2,063
		Maximum	10,000	1987	106.278	10,628	20,628
	42 CFR 488.408(e)(1)(iii)	Penalty per day for a Skilled Nursing Facility that has a Category 3 violation of certification requirements.					
		Minimum	3,050	1987	106.278	1,063	6,291
		Maximum	10,000	1987	106.278	10,628	20,628
	42 CFR 488.408(e)(1)(iv)	Penalty per instance of Category 3 noncompliance by a Skilled Nursing Facility.					
		Minimum	1,000	1987	106.278	1,063	2,063
		Maximum	10,000	1987	106.278	10,628	20,628
	42 CFR 488.408(e)(2)(ii)	Penalty per instance for a nursing facility's failure to meet Category 3 certification, which results in immediate jeopardy.					

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U.S.C.	CFR <sup>1</sup>							
		Minimum Per Day	3,050	1987	106.278	1,063	6,291	
		Maximum Per Day	10,000	1987	106.278	10,628	20,628	
		Minimum Per Instance	1,000	1987	106.278	1,063	2,063	
		Maximum Per Instance	10,000	1987	106.278	10,628	20,628	
	42 CFR 488.438(a)(1)(i)	Penalty per day of a Skilled Nursing Facility that fails to meet certification requirements. These amounts represent the upper range per day.						
		Minimum	3,050	1987	106.278	3,241	6,291	
		Maximum	10,000	1987	106.278	10,628	20,628	
	42 CFR 488.438(a)(1)(ii)	Penalty per day of a Skilled Nursing Facility that fails to meet certification requirements. These amounts represent the lower range per day.						
		Minimum	50	1987	106.278	53	103	
		Maximum	3,000	1987	106.278	3,188	6,188	
	42 CFR 488.438(a)(2)	Penalty per instance of a Skilled Nursing Facility that fails to meet certification requirements.						
		Minimum	1,000	1987	106.278	1,063	2,063	
		Maximum	10,000	1987	106.278	10,628	20,628	

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U.S.C.	CFR <sup>1</sup>							
1395cc(g)	42 CFR Part 1003	Penalty for improper billing by Hospitals, Critical Access Hospitals, or Skilled Nursing Facilities.	2,000	1972	150	3,000	5,000	
263a(h)(2)(B) & 1395w-2(b)(2)(A)(ii)	42 CFR 493.1834(d)(2)(i)	Penalty for a clinical laboratory's failure to meet participation and certification requirements and poses immediate jeopardy.						
		Minimum	3,050	1988	97.869	2,985	6,035	
		Maximum	10,000	1988	97.869	9,787	19,787	
	42 CFR 493.1834(d)(2)(ii)	Penalty for a clinical laboratory's failure to meet participation and certification requirements and the failure does not pose immediate jeopardy.						
		Minimum	50	1988	97.869	49	99	
		Maximum	3,000	1988	97.869	2,936	5,936	
1395l(h)(5)(D)	42 CFR 402.105(d)(2)(i)	Penalty for knowingly, willfully, and repeatedly billing	10,000	1998	45.023	4,502	14,502	

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U.S.C.	CFR <sup>1</sup>						
		for a clinical diagnostic laboratory test other than on an assignment-related basis.					
1395bbb(c)(1)	42 CFR 488.725(c)	Penalty for any individual who notifies or causes to be notified a home health agency of the time or date on which a survey of such agency is to be conducted.	2,000	1987	106.278	2,126	4,126
1395bbb(f)(2)(A)(i)	42 CFR 488.845(b)(2)(iii)	Penalty for each day a home health agency is not in compliance with statutory requirements.	10,000	1988	97.869	9,787	19,787
	42 CFR 488.845(b)(3)	Penalty per day for home health agency's noncompliance (Upper Range).					
		Minimum	8,500	1988	97.869	8,319	16,819
		Maximum	10,000	1988	97.869	9,787	19,787

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U.S.C.	CFR <sup>1</sup>						
	42 CFR 488.845(b)(3)(i)	Penalty for a home health agency's deficiency or deficiencies that cause immediate jeopardy and result in actual harm.	10,000	1988	97.869	9,787	19,787
	42 CFR 488.845(b)(3)(ii)	Penalty for a home health agency's deficiency or deficiencies that cause immediate jeopardy and result in potential for harm.	9,000	1988	97.869	8,808	17,808
	42 CFR 488.845(b)(3)(iii)	Penalty for an isolated incident of noncompliance in violation of established HHA policy.	8,500	1988	97.869	8,319	16,819
	42 CFR 488.845(b)(4)	Penalty for a repeat and/or condition-level deficiency that does not constitute immediate jeopardy, but is directly related to poor quality patient care outcomes (Middle Range).					
		Minimum	1,500	1988	97.869	1,468	2,968

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U.S.C.	CFR <sup>1</sup>						
		Maximum	8,500	1988	97.869	8,319	16,819
	42 CFR 488.845(b)(5)	Penalty for a repeat and/or condition-level deficiency that does not constitute immediate jeopardy and that is related predominately to structure or process-oriented conditions (Lower Range).					
		Minimum	500	1988	97.869	489	989
		Maximum	4,000	1988	97.869	3,915	7,915
	42 CFR 488.845(b)(6)	Penalty imposed for instance of noncompliance that may be assessed for one or more singular events of condition-level noncompliance that are identified and where the noncompliance was corrected during the onsite survey.					
		Minimum	1,000	1988	97.869	979	1,979
		Maximum	10,000	1988	97.869	9,787	19,787

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U.S.C.	CFR <sup>1</sup>						
		Penalty for each day of noncompliance (Maximum).	10,000	1988	97.869	9,787	19,787
	42 CFR 488.845(d)(1)(ii)	Penalty for each day of noncompliance (Maximum).	10,000	1988	97.869	9,787	19,787
1395b-7(b)(2)(B)	42 CFR 402.105(g)	Penalty for any person who knowingly and willfully fails to furnish a beneficiary with an itemized statement of items or services within 30 days of the beneficiary's request.	100	1997	47.177	47	147
1395nn(g)(5)	42 CFR 411.361	Penalty for any person that fails to report information required by HHS under Section 1877(f) concerning ownership, investment, and compensation arrangements.	10,000	1998	45.023	4,502	14,502

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U.S.C.	CFR <sup>1</sup>						
1395dd(d)(1)	42 CFR Part 1003	Penalty for a hospital or responsible physician dumping patients needing emergency medical care, if the hospital has 100 beds or more.	50,000	1987	106.278	53,139	103,139
		Penalty for a hospital or responsible physician dumping patients needing emergency care, if the hospital has less than 100 beds	25,000	1987	106.278	26,570	51,570

<sup>1</sup>Some HHS components have not promulgated regulations regarding their civil monetary penalties-specific statutory authorities.

<sup>2</sup>The description is not intended to be a comprehensive explanation of the underlying violation; the statute and corresponding regulation, if applicable, should be consulted.

<sup>3</sup>Statutory, or non-Inflation Act Adjustment

<sup>4</sup>Based on the lesser of the CPI-U multiplier for October 2015, or 150%

<sup>5</sup>Rounded to the nearest dollar