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INFORMATIONAL LETTER #2020-28

DATE: August 14, 2020

TO: LONG TERM CARE FACILITIES (LTC)
HOME HEALTH AGENCIES (HHA)

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

SUBJECT: QSOG-20-03-NH/HHA/CLIA – NOTICE OF FINAL RULE
ADJUSTING CIVIL MONETARY PENALTIES (CMPS) FOR
INFLATION

The CMS QSOG-20-03-NH/HHA/CLIA – Notice of Final Rule Adjusting Civil Monetary Penalties (CMPs) for Inflation is being distributed to all Long Term Care Facilities and Home Health Associations in Idaho.

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

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

DR/lg

Attachment



QSOG Operating Protocols for Excellence

Date	August 14, 2020	Memo No. QSOG-20-03-NH/HHA/CLIA
To	All CMS Locations	Effective: Immediately
From	David R. Wright, Director, Quality, Safety and Oversight Group	
Subject	Notice of Final Rule Adjusting Civil Monetary Penalties (CMPs) for Inflation	
Summary	<p>Adjustment of Civil Monetary Penalties (CMP) for Inflation: On January 17, 2020, the Department of Health and Human Services (HHS) published a final rule in the Federal Register, adjusting CMP amounts for inflation as authorized under the Social Security Act (See Adjustment of Civil Monetary Penalties for Inflation).</p>	
	<p>New CMP Amounts: The final rule lists the new CMP amounts and ranges, effective as of January 17, 2020.</p>	
	<p>Selected Providers Highlighted: The CMPs under the authority of HHS affect multiple areas, 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.</p>	
	<p>Revisions to CMP Analytic Tool for SNFs/NFs: The CMP Analytic Tool used to calculate CMPs for SNFs/NFs has been updated to reflect the adjustments for inflation. Additionally, we have revised the tool to reduce variation in how CMPs are calculated. These changes will take effect on August 14, 2020.</p>	

Program Matter & Discussion

CMP Inflation Adjustment

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act) requires federal agencies to publish annual penalty inflation adjustments. In accordance with the 2015 Act, HHS published its final rule for the required annual inflation-related increases to CMPs for 2020 in the Federal Register on January 17, 2020.

The January 17, 2020, final rule provides for an adjustment of CMPs that may be imposed for noncompliance by SNF/NFs, HHAs, and Clinical laboratories. The final rule only affects specific CMP amounts and not any other related provisions, such as the factors reviewed for assessing CMPs. For 2020, CMPs have been increased by a multiplier of 1.01764. The annual adjustments are based on the percentage increase in the Consumer Price Index for all Urban Consumers (CPI-U) for the month of October of a current year in which the amount of each CMP was most recently established or modified.

This adjustment is reflected in the attached table, showing how CMPs are increased due to the inflation adjustment from 2019 to 2020 as required by the 2015 Act. The January 17, 2020 final rule can be found at <https://www.federalregister.gov/documents/2020/01/17/2020-00738/annual-civil-monetary-penalties-inflation-adjustment>.

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>.

Revisions to CMP Analytic Tool used to calculate SNF/NF CMPs:

In addition to modifying the CMP Analytic tool for the 2020 inflation adjustment noted above, we are making changes to improve consistency among CMS locations in how CMPs are calculated. These changes aim to reduce variation by decreasing the number of options available for specific factors, and by adding parameters and clarifying instructions. We note that these revisions do not change the policies related to when CMPs are imposed, nor reduce CMS' ability to impose CMPs to enforce compliance. Rather, these changes merely seek to reduce variation of CMP amounts between CMS locations when a CMP is imposed.

The CMP Analytic Tool instructions and calculations will be updated to reflect these changes on August 14, 2020.

Effective Date: Effective for all enforcement cycles starting on August 14, 2020. This guidance should be immediately communicated to all Survey and Enforcement Divisions and State Survey Agency survey, certification and enforcement staff, their managers and the State/Survey and Enforcement Division training coordinators. This memorandum is an operational memorandum intended for Central Office and Regional Office Management only and should not be shared with the States or general public.

Contact For questions related to this memorandum, please contact the DNH_Enforcement@cms.hhs.gov.

/s/

David R. Wright

Attachment: LTC-HHA-CLIA Calculations of CMP Adjustments-2020

LTC-HHA-CLIA CALCULATION OF CMP ADJUSTMENTS - 2020

Citation		Description ²	Date of Last Penalty Figure or Adjustment ³	2019 Maximum Adjusted Penalty (\$)	2020 Maximum Adjusted Penalty (\$) ⁴
U.S.C.	CFR ¹				
1395i-3(b)(3)(B)(ii)(1)	42 CFR 1003.210(a)(11)	Penalty for certification of a false statement in assessment of functional capacity of a Skilled Nursing Facility resident assessment.	2019	2,194	2,233
1395i-3(b)(3)(B)(ii)(2)	42 CFR 1003.210(a)(11)	Penalty for causing another to certify or make a false statement in assessment of functional capacity of a Skilled Nursing Facility resident assessment.	2019	10,967	11,160
1395i-3(g)(2)(A)	42 CFR 1003.1310	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.	2019	4,388	4,465

LTC-HHA-CLIA CALCULATION OF CMP ADJUSTMENTS - 2020

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 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].	2019	10,967	11,160
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.	2019	115,624	117,664
	42 CFR 488.446(a)(1),(2),&(3)	Minimum penalty for the first offense of an administrator who fails to provide notice of facility closure.	2019	578	588

LTC-HHA-CLIA CALCULATION OF CMP ADJUSTMENTS - 2020

		Minimum penalty for the second offense of an administrator who fails to provide notice of facility closure.	2019	1,735	1,766
		Minimum penalty for the third and subsequent offenses of an administrator who fails to provide notice of facility closure.	2019	3,468	3,529
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.	2019	231,249	235,328

LTC-HHA-CLIA CALCULATION OF CMP ADJUSTMENTS - 2020

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 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.	2019	346,872	352,991
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LTC-HHA-CLIA CALCULATION OF CMP ADJUSTMENTS - 2020

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.	2019	231,249	235,328
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	2019	110	112
		Maximum	2019	6,579	6,695
	42 CFR 488.408(d)(1)(iv)	Penalty per instance of Category 2 noncompliance by a Skilled Nursing Facility.			
		Minimum	2019	2,194	2,233
		Maximum	2019	21,933	22,320

LTC-HHA-CLIA CALCULATION OF CMP ADJUSTMENTS - 2020

	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	2019	6,690	6,808
		Maximum	2019	21,933	22,320
	42 CFR 488.408(e)(1)(iv)	Penalty per instance of Category 3 noncompliance by a Skilled Nursing Facility.			
		Minimum	2019	2,194	2,233
		Maximum	2019	21,933	22,320
	42 CFR 488.408(e)(2)(ii)	Penalty per day and per instance for a Skilled Nursing Facility that has Category 3 noncompliance with Immediate Jeopardy:.			
		Minimum Per Day	2019	6,690	6,808
		Maximum Per Day	2019	21,933	22,320
		Minimum Per Instance	2019	2,194	2,233
Maximum Per Instance		2019	21,933	22,320	

LTC-HHA-CLIA CALCULATION OF CMP ADJUSTMENTS - 2020

	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	2019	6,690	6,808
		Maximum	2019	21,933	22,320
	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	2019	110	112
		Maximum	2019	6,579	6,695
	42 CFR 488.438(a)(2)	Penalty per instance of a Skilled Nursing Facility that fails to meet certification requirements.			
		Minimum	2019	2,194	2,233
		Maximum	2019	21,933	22,320
1395cc(g)	42 CFR 1003.210(a)(5)	Penalty for improper billing by Hospitals, Critical Access Hospitals, or Skilled Nursing Facilities.	2019	5,317	5,411

LTC-HHA-CLIA CALCULATION OF CMP ADJUSTMENTS - 2020

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	2019	6,417	6,530
		Maximum	2019	21,039	21,410
	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	2019	106	108
		Maximum	2019	6,311	6,422
1395l(h)(5)(D)	42 CFR 402.105(d)(2)(i)	Penalty for knowingly, willfully, and repeatedly billing for a clinical diagnostic laboratory test other than on an assignment-related basis.	2019	15,975	16,257

LTC-HHA-CLIA CALCULATION OF CMP ADJUSTMENTS - 2020

		(Penalties are assessed in the same manner as 42 U.S.C. 1395u(j)(2)(B), which is assessed according to 1320a-7a(a))			
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Citation		Description ²	Date of Last Penalty Figure or Adjustment ³	2019 Maximum Adjusted Penalty (\$)	20120 Maximum Adjusted Penalty (\$) ⁴
U.S.C.	CFR ¹				
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.	2019	4,388	4,465
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.	2019	21,039	21,410
	42 CFR 488.845(b)(3)	Penalty per day for home health agency's noncompliance (Upper Range).			

LTC-HHA-CLIA CALCULATION OF CMP ADJUSTMENTS - 2020

		Minimum	2019	17,883	18,198
		Maximum	2019	21,039	21,410
	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.	2019	21,039	21,410
	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.	2019	18,934	19,268
	42 CFR 488.845(b)(3)(iii)	Penalty for an isolated incident of noncompliance in violation of established HHA policy.	2019	17,883	18,198

LTC-HHA-CLIA CALCULATION OF CMP ADJUSTMENTS - 2020

	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	2019	3,157	3,213
		Maximum	2019	17,883	18,198

	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	2019	1,052	1,071

LTC-HHA-CLIA CALCULATION OF CMP ADJUSTMENTS - 2020

		Maximum	2019	8,415	8,563
	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	2019	2,104	2,141
		Maximum	2019	21,039	21,410

		Penalty for each day of noncompliance (Maximum).	2019	21,039	21,410
	42 CFR 488.845(d)(1)(ii)	Penalty for each day of noncompliance (Maximum).	2019	21,039	21,410

LTC-HHA-CLIA CALCULATION OF CMP ADJUSTMENTS - 2020

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.	2019	156	159
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.	2019	20,134	20,489
1395dd(d)(1)	42 CFR 1003.510	Penalty for a hospital or responsible physician dumping patients needing emergency medical care, if the hospital has 100 beds or more.	2019	109,663	111,597

LTC-HHA-CLIA CALCULATION OF CMP ADJUSTMENTS - 2020

		Penalty for a hospital or responsible physician dumping patients needing emergency care, if the hospital has less than 100 beds	2019	54,833	55,800
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¹Some HHS components have not promulgated regulations regarding their civil monetary penalty-specific statutory authorities.

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

³Statutory or Inflation Act Adjustment.

⁴The cost of living multiplier for 2020, based on the Consumer Price Index for all Urban Consumers (CPI-U) for the month of October 2019, not seasonally adjusted, is 1.01764, as indicated in OMB Memorandum M-20-05, "Implementation of Penalty Inflation Adjustments for 2019, Pursuant to the Federal Civil Penalties Adjustment Act Improvements Act of 2015" (December 16, 2019).