

# Nursing Facility Enforcement

**Requested Information for  
The Robert G. (Bob) Bethell Joint Committee on  
Home and Community Based Services and  
KanCare Oversight  
August 26, 2024**

Lacey Hunter, Commissioner  
Survey, Certification & Credentialing  
Kansas Department for Aging & Disability Services

# Nursing Facility Enforcement

## State Fees, Fines and Other Remedies

Adult Care Home Remedy Authority begins at KSA 39-945 and include:

- Correction Order
- Civil Penalty
- Ban on Admissions
- Licensure Denial, Suspension and Revocation

Note that State Licensed Only facilities are home and community-based settings, as opposed to institutional, that do not accept Medicare or Medicaid and therefore not under the jurisdiction of the federal Centers for Medicare & Medicaid (CMS) like Nursing Facilities that are certified institutionalized settings.

# Nursing Facility Enforcement

## State Civil Penalties

- Maximum finable amount is \$500 per day per deficiency but the maximum assessment shall not exceed \$2,500\*.
- Factors for determining fine amount:
  - (1) The severity of the violation;
  - (2) the good faith effort exercised by the adult care home to correct the violation; and
  - (3) the history of compliance of the ownership of the adult care home with the rules and regulations.

\*If the Secretary for Aging and Disability Services determines that an adult care home is in violation of or has violated any requirements, standards or rules and regulations established under the adult care home licensure act, which violation can reasonably be determined to have resulted in, caused or posed serious physical harm to a resident, the Secretary for Aging and Disability Services in accordance with proceedings under the Kansas Administrative Procedure Act, may assess a civil penalty against the licensee of such adult care home in an amount of not to exceed \$1,000 per day per violation for each day the secretary finds that the adult care home was not in compliance with such requirements, standards or rules and regulations but the maximum assessment shall not exceed \$10,000.

# Nursing Facility Enforcement

## Federal Fees, Fines and Other Remedies

Federal Remedies for certified skilled nursing facility authority begins at [42 CFR 488.400](#) and include three categories based on the potential to cause, or actual caused, harm to residents.

### **7400.6.1 - CATEGORY 1**

(Rev. 63, Issued: 09-10-10, Effective: 09-10-10, Implementation: 09-10-10)

- Isolated deficiencies that constitute no actual harm with a potential for more than minimal harm but not immediate jeopardy; or
- A pattern of deficiencies that constitutes no actual harm with a potential for more than minimal harm but not immediate jeopardy.

EXCEPT when the facility is in substantial compliance, one or more of the remedies in Category 1 may be applied to any deficiency.

# Nursing Facility Enforcement

## Federal Fees, Fines and Other Remedies

### **CATEGORY 1 remedies include:**

- Directed plan of correction (see §7500);
  - State monitoring (see §7504); and
- Directed in-service training (see §7502)

NOTE: As an agent of CMS or the State Medicaid Agency, the State may impose one or more category 1 remedies, as authorized by CMS or the State Medicaid Agency, in accordance with §7314.

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## Federal Fees, Fines and Other Remedies

### **7400.6.2 - CATEGORY 2**

(Rev. 213; Issued: 02-10-23; Effective: 02-10-23; Implementation: 02-10-23)

- Widespread deficiencies that constitute no actual harm with a potential for more than minimal harm but not immediate jeopardy; or
- One or more deficiencies (regardless of scope) that constitute actual harm that is not immediate jeopardy.

EXCEPT when the facility is in substantial compliance, one or more of the remedies in Category 2 may be applied to any deficiency.

NOTE: The State Medicaid Agency does not have the statutory authority to impose the remedy of denial of payment for all Medicare and/or Medicaid residents.

# Nursing Facility Enforcement

## Federal Fees, Fines and Other Remedies

### **CATEGORY 2 remedies include:**

- Denial of payment for all new Medicare and/or Medicaid admissions;
- Denial of payment for all Medicare and/or Medicaid residents, imposed only by the CMS Location;
  - Lower range per day civil money penalties
  - Per instance civil money penalties

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## Federal Fees, Fines and Other Remedies

### **7400.6.3 - CATEGORY 3**

(Rev. 63, Issued: 09-10-10, Effective: 09-10-10, Implementation: 09-10-10)

Termination or temporary management, or both, must be selected when there are one or more deficiencies that constitute *immediate jeopardy to resident health or safety*.

A civil monetary penalty of \$3,050 - \$10,000 per day or a civil money penalty of \$1,000 - \$10,000 per instance may be imposed in addition to the remedies of termination and/or temporary management.

Temporary management is also an option when there are widespread deficiencies constituting actual harm that is not immediate jeopardy.

# Nursing Facility Enforcement

## Federal Fees, Fines and Other Remedies

### **CATEGORY 3 remedies include:**

- Temporary management (see §7550);
  - Termination (see §7556);
- Civil money penalties of \$3,050 - \$10,000 per day of noncompliance optional, in addition to the remedies of termination and/or temporary management (See §7510); or
- Civil money penalties of \$1,000 - \$10,000 per instance of noncompliance optional (see §7510)

NOTE: Termination may be imposed by the State Medicaid Agency or the regional office at any time. Transfer of residents or transfer of residents with closure of the facility will be imposed by the State, as appropriate. Although temporary management must be imposed when there is a finding of immediate jeopardy (and termination is not sought), temporary management may be imposed for lesser levels of noncompliance.

# Nursing Facility Enforcement

## Mandatory Criteria for Immediate Imposition of Federal Remedies

Decisions, Responsibilities & Actions (refer to §7304.3)	Within 5 business days from when the initial notice was sent to the facility the survey agency must assure that all cases that meet the criteria outlined in 7304.1 above are entered into ASPEN/AEM and that all of these cases are referred to the CMS <i>Location</i> for their imposition of remedies. The CMS <i>Location</i> must take the necessary action to impose remedies as appropriate, regardless of a State's recommendation for imposition of remedies, based on the seriousness of the deficiencies following the criteria set forth in 42 C.F.R. §488.404 - Factors to be considered in selecting remedies. Civil Money Penalties (CMPs) must be imposed in accordance with instructions in the CMP Tool.
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Mandatory Criteria for Immediate Imposition of Federal Remedies	Immediate Jeopardy is identified on the current survey	Deficiencies of SQC that are <u>not</u> IJ are identified on the current survey	Any G level deficiency is identified on the current survey in 42 C.F.R. §483.13, Resident Behavior and Facility Practices, 42 C.F.R. §483.15, Quality of Life, or 42 C.F.R. §483.25, Quality of Care	Deficiencies of actual harm are identified on the current survey AND deficiencies of immediate jeopardy OR actual harm were identified on any type of survey between the current survey and the last standard survey	Facilities classified as a SFF AND has a deficiency citation of "F" level or higher for the current health survey or G or higher for the current LSC survey
Types of Remedy(ies) that, at a minimum, should be considered for immediate imposition by CMS <u>in addition to</u> the CMPs when immediate jeopardy is cited, mandatory 3-month DPNA for new admissions or mandatory 6-month termination, as required. NOTE: Multiple remedies may be imposed for any situation as appropriate.	1. Termination 2. CMPs <u>must</u> be imposed immediately 3. DDPNA <sup>1</sup> 4. Temp. Mgmt. 5. State Monitoring 6. Directed Plan of Correction 7. Directed In-service 8. Denial of Payment for ALL Individuals <sup>2</sup>	1. Termination 2. CMPs 3. DDPNA 4. Directed Plan of Correction 5. Directed In-service Training 6. Denial of Payment for All Individuals	1. Termination 2. CMPs 3. DDPNA 4. Directed Plan of Correction 5. Directed In-service Training 6. Denial of Payment for All Individuals	1. Termination 2. CMPs 3. DDPNA 4. Temp. Mgmt. 5. State Monitoring 6. Directed Plan of Correction 7. Directed In-service 8. Denial of Payment for All Individuals	1. Termination 2. CMPs 3. DDPNA 4. Temp. Mgmt. 5. State Monitoring 6. Directed Plan of Correction 7. Directed In-service 8. Denial of Payment for All Individuals

<sup>1</sup> DDPNA = Discretionary Denial of Payment for New Admissions

<sup>2</sup> This remedy shall ONLY be imposed by CMS and may not be imposed by a State Medicaid Agency. A state survey agency may only impose Category 1 remedies if authorized by the CMS *Location*.

# Nursing Facility Enforcement

## Federal Fees, Fines and Other Remedies

### **7305.2.1 - Who Sends the Formal Notice of Remedies**

(Rev. 213; Issued: 02-10-23; Effective: 02-10-23; Implementation: 02-10-23)

A formal notice of remedies is sent by:

- a) The State, in either its initial notice or in its first revisit notice for category 1 remedies and denial of payment for new admissions, when and as authorized by CMS and/or the State Medicaid Agency;
- b) The CMS Location for remedies other than those provided in accordance with 1a. above; for skilled nursing facilities, skilled nursing facilities/nursing facilities, and nursing facilities where the CMS Location is taking the enforcement action; and/or,
- c) The State Medicaid Agency for remedies other than those provided in accordance with a. above for nursing facilities.

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## Federal Fees, Fines and Other Remedies

### **7305.2.3 - Required Time Periods for Formal Notice**

(Rev. 63, Issued: 09-10-10, Effective: 09-10-10, Implementation: 09-10-10)

The notice period begins once the facility receives its notice as indicated below.

- a) Immediate Jeopardy – 2 calendar day notice
  - Except for civil money penalties and State monitoring, notice must be given at least 2 calendar days before the effective date of the enforcement action.
- b) No Immediate Jeopardy – 15 calendar day notice
  - Except for civil money penalties and State monitoring, notice must be given at least 15 calendar days before the effective date of the enforcement action.

# Nursing Facility Enforcement

## Federal Fees, Fines and Other Remedies

### Lower Range of Penalty Amounts for Per Day Civil Money Penalty

Penalties in the range of \$50 to \$3,000 per day may be imposed when immediate jeopardy does not exist, but the deficiencies either caused actual harm, or caused no actual harm, but have the potential for more than minimal harm. A civil money penalty may not be less than \$50.00 per day.

### Upper Range of Penalty Amounts for Per Day Civil Money Penalty

Penalties in the range of \$3,050 to \$10,000 per day may be imposed for deficiencies constituting immediate jeopardy. Penalties may also be in the upper range of penalty amounts for deficiencies when immediate jeopardy does not exist if a penalty in the lower range of penalty amounts was previously imposed and the deficiencies in the same regulatory grouping are repeated. Repeated deficiencies are defined in §7516.3.

### Range of Per Instance Penalty Amounts

Penalties in the range of \$1,000 to \$10,000 per instance(s) may be imposed for noncompliance that constitutes actual harm, or for noncompliance that has the potential for more than minimal harm. The terminology “per instance” is not used to suggest that only one instance of noncompliance may be assigned a civil money penalty. There can be more than one instance of noncompliance identified during a survey where the State utilizes the per instance civil money penalty as an enforcement remedy. The total dollar amount of the civil money penalty for the instance or multiple instances of noncompliance may not exceed \$10,000 for that specific survey, and may not be less than \$1,000 per instance.

# Nursing Facility Enforcement

## CMP Analytic Tool and User Guide

### Overview



All CMS locations are required to use the following CMP Analytic Tool and Instructions:

- (1) to choose the appropriate type of CMP to be imposed; and
- (2) to calculate the CMP amount, when the CMS location determines that a CMP is an appropriate remedy to impose.

The CMS location must complete all sections of the tool that apply to the type of CMP selected. Please refer to the [CMP Analytic Tool User's Guide](#) for information about using this tool. Though remedies are usually imposed on Level 3 and Level 4 deficiencies, depending upon the circumstances, CMS locations may impose CMPs for level 2 deficiencies based on the factors listed in 42 CFR 488.404 and 488.438(f).