Overview of ISDH Civil Money Penalty Program

A program to promote the health and safety of long term care residents through improved quality of care

ISDH MISSION:
To promote and provide essential public health services
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## Acronyms

- **CMP**: Civil money penalty
- **CMS**: Centers for Medicare and Medicaid Services
- **ISDH**: Indiana State Department of Health
Program Description

The ISDH Civil Money Penalty Fund Program for Certified Health Facilities (hereinafter “CMP Program”) is intended to reduce deficient practices at skilled nursing facilities (SNF), nursing facilities (NF), and dually certified nursing facilities (SNF/NF). The CMP Program is also intended to protect the health and property of health facility residents. By reducing deficient practices of nursing homes, the CMP Program promotes improved healthcare for Indiana citizens residing in Indiana health facilities.

Skilled nursing facilities, nursing facilities, and dually certified nursing facilities are terms referring to the federal Medicare/Medicaid certification. Indiana rules refer to them as comprehensive care facilities. These facilities are commonly referred to as nursing homes.

CMP Program History

The CMP fund was created by the United States Social Security Act of 1987. The purpose of the fund was to provide funding for projects designed to reduce deficient practices of certified nursing facilities. The Centers for Medicare and Medicaid Services (CMS) was directed to administer the fund and provide funds to states to be used to reduce deficient practices.

In 1993 the Indiana General Assembly passed legislation establishing a state fund to receive CMP funds and designate the ISDH to administer the fund. The ISDH began receiving CMP funds in 1996. The fund has been administered by the ISDH Healthcare Quality and Regulatory Commission since the fund’s inception.

The first CMP funded project appears to have been a 1998 project on reducing restraints in long term care facilities. The project consisted of a seminar and educational materials. Likely because funds were just beginning to accumulate, it appears that there were only a few small projects developed in the early years of the fund. Projects were developed by the Division of Long Term Care.

In the early 2000s, the fund began to rapidly increase as a result of a number of immediate jeopardy level deficiencies cited at nursing homes. In 2001 and 2002, Indiana received a large amount of CMP funds resulting in over $4 million in reserve. Another large amount was received from 2005 – 2008. As a result of increased availability of funds, the ISDH in 2007 began development of larger scale quality improvement projects. As of July 1, 2014, the ISDH had received over $14.9 million in CMP funds along with $1.4 million in interest income. The ISDH had expended over $7.2 million towards quality improvement projects.

The Patient Protection and Affordable Care Act of 2010 updated provisions pertaining to the collection and uses of CMPs imposed by CMS when nursing homes do not meet
certification requirements for long term care facilities. CMS subsequently released revised regulations and guidance in 2011.

In 2014 CMS began planning for a second civil money penalty fund that will apply to certified home health agencies. CMS is currently developing guidelines and processes for the imposition of civil money penalties against home health agencies. Once CMS begins to impose CMPs against home health agencies, the ISDH’s CMP Program will be expanded to administer CMP funded projects directed at home health agencies. It is not expected to be as large of a fund as the nursing home fund.

**Federal Authority for the CMP Fund**

The United States Social Security Act of 1987 created a fund that returns a portion of civil money penalties collected from health facilities back to the states. The purpose of the CMP fund is to reduce deficient practices at long term care facilities and protect the health and property of facility residents.

The ISDH is the designated state survey agency for the Centers for Medicare and Medicaid Services (CMS). CMS certifies health care facilities such as nursing homes, hospitals, and home health agencies for participation in Medicare and Medicaid programs. The state survey agencies conduct standard and complaint surveys of all Indiana nursing homes. If a nursing home is not in compliance with federal regulations, CMS may impose a civil money penalty (CMP) against the facility based on the deficient practice.

A civil money penalty is imposed by CMS for deficient practices based on the CMS scope and severity grid. The two highest severity levels are “immediate jeopardy” and “actual harm”. If an “immediate jeopardy” level violation is cited, CMS will often impose a $3,050 per day civil money penalty from the time when the breach occurred through the time when the breach was corrected. It is not unusual for a penalty to be imposed for a number of days. Once imposed, the facility may get a reduction of the penalty by paying the penalty within a number of days. The facility also has an opportunity to request an informal dispute resolution and administrative law review of the penalty. A portion of collected civil money penalties are then returned to the state to fund the CMP Program.

The CMP fund was created by the United States Social Security Act, 42 U.S.C. § 1396r (1987). The law states at 42 U.S.C. § 1396r(h)(2)(A)(ii) that:

(ii) A civil money penalty assessed and collected, with interest, for each day in which the facility is or was out of compliance with a requirement of subsection (b), (c), or (d). Funds collected by a State as a result of imposition of such a penalty (or as a result of the imposition by the State of a civil money penalty for activities described in subsections (b)(3)(B)(ii)(I), (b)(3)(B)(ii)(II), or (g)(2)(A)(i) shall be applied to the
protection of the health or property of residents of nursing facilities that the State or the Secretary find deficient, including payment for the costs of relocation of residents to other facilities, maintenance of operation of a facility pending correction of deficiencies or closure, and reimbursement of residents for personal funds lost.

CMS adopted regulations concerning the CMP fund. Regulation 42 CFR § 488.442(g) (1994) states:

(g) Penalties collected by the State. Civil money penalties collected by the State must be applied to the protection of the health or property of residents of facilities that the State or CMS finds noncompliant, such as –

(1) Payment for the cost of relocating residents to other facilities;

(2) State costs related to the operation of a facility pending correction of deficiencies or closure; and

(3) Reimbursement of residents for personal funds or property lost at a facility as a result of actions by the facility or by individuals used by the facility to provide services to residents.

In 2002, CMS provided states with broad direction on how CMP funds may be used. According to the CMS referral letter [Ref: SC 02-42], the fund is a state fund administered by the state pursuant to federal law and regulations. The role of CMS is to provide federal oversight to ensure compliance with federal law. The law permits each state to implement its own procedures with respect to the use of CMP funds. The flexibility of the state to use CMP funds is limited by the requirement that the CMP funds are to be focused on deficient practices. CMS guidelines state that projects funded by CMP funds should be limited to funding on hand and should be relatively short-term projects. CMP funds are not to be spent on direct care costs but rather should be used to promote better care through the reduction of deficient practices at health facilities.

Those principles are still in place. Over the years CMS issued a number of new regulations and guidance letters further defining use of CMP funds.

**Authority for Indiana’s CMP fund**

Indiana Code § 16-28-12-2 (1993) established a state fund to receive money collected under 42 U.S.C. § 1396r. The CMP Program was created by the ISDH for the purpose of administering the CMP funds collected pursuant to 42 U.S.C. § 1396r. Indiana Code (IC) 16-28-12-2 states:
1396r(h) fund; investment; use of principal and interest

(a) The 1396r(h) fund is established to receive money collected under this chapter. The state department shall administer the fund.

(b) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested. Interest that accrues from these investments shall be deposited in the fund.

(c) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

(d) The state department shall use the principal and interest in the fund in accordance with 42 U.S.C. 1396r(h)(2)(A)(ii).

As added by P.L.2-1993, SEC.11.

**Goals of the CMP Program**

The purpose of the CMP Program is to improve healthcare quality of care at health care facilities through reduced deficient practices. The goals of the CMP Program are to:

- Use funds appropriately and wisely towards promoting evidence-based care practices in long term care facilities.
- Use funds to address care issues identified through quality and needs assessments as part of a quality assessment and performance improvement process.
- Provide funding and support for education and training programs on health care issues specific to the nursing home resident population designed to reduce deficient practices of health facilities.
- Provide assistance to ensure the health and safety of Indiana nursing home residents during relocations.
- Encourage innovative programs directed towards improving quality of care at long term care facilities.

**Description of Indiana’s CMP Program**

States adopted a variety of models for their CMP Program structure. Some states created a new agency for quality improvement projects with its own staff. Some states housed the program as part of the state’s Medicaid program. Other states, like Indiana, linked the program to their CMS Survey and Certification Program that is often a part of the state health agency.
When the CMP fund was created, Indiana housed the fund with the ISDH Health Care Quality and Regulatory Commission (hereafter “Commission”). The fund has remained with the Commission since its inception. The Commission is the designated CMS State Survey Agency for Health Facility Certification.

The CMP Program does not have its own staff. Project development and implementation has been a collaborative effort between the Assistant Commissioner, Director of Program Development, Director of Long Term Care, Director of Education and Quality, and Program Director for Health Care Data and Technology. In 2014 the Commission designated a position to serve as Director of Healthcare Quality Improvement Projects.

**Development of Quality Improvement Projects**

**PAST PROJECT DEVELOPMENT**

The Commission historically has not had a formal process for development of quality improvement projects. Projects were generally created because of frequent issues identified through the survey process or through recommendations from partners. The following are examples of how projects were developed.

In 2004 the Commission began reviewing the CMP Program to determine how the funds should be spent. The Commission requested input from consumer advocate organizations to include the Alzheimer’s Association, State Long Term Care Ombudsman, Area Agencies on Aging, and United Senior Action. The ISDH identified a few potential quality improvement projects based on recommendations from these partners. The Alzheimer’s Education Project in 2004 was a project that originated from these meetings.

For many years the Division of Long Term Care met quarterly with long term care provider associations to discuss facility survey questions and issues. By 2006 Indiana had the fourth highest numbers of immediate jeopardy level deficiencies in the nation. To address the issues, the Commission began meeting monthly with the long term care provider associations to include the Indiana Health Care Association, Leading Age Indiana, Hoosier Owners and Providers for the Elderly, Indiana Assisted Living Association, Indiana Hospice and Palliative Care Organization, and Indiana Center for Assisted Living.

The Commission regularly requests input from the provider associations as to potential quality improvement projects. In 2006 the associations recommended that the ISDH put together a conference to bring long term care facility leadership, quality improvement organizations, provider associations, advocate organizations, and state surveyors together to hear best practices and focus on quality issues. In 2007 the ISDH hosted the first Healthcare Quality Leadership Conference on the topic of fall prevention. Each conference is a one-day conference on one quality improvement topic. The ISDH has generally hosted two conferences per year with an average attendance of over 1,000 participants per conference.
Quality improvement projects have often been developed through the support of advisory groups. In 2007 the Commission developed a pressure ulcer prevention project. As part of that project, an advisory group was created to advise the ISDH on the project and assist in implementation. That project ended in 2010.

In 2009 the Commission received a grant from the Center for Disease Control and Prevention (CDC) to implement an infection prevention program. The pressure ulcer advisory group was expanded to include the healthcare associated infection initiative. The group included hospital epidemiologists, hospital infection preventionists, hospital and long term care provider associations and providers, commercial representatives, and ISDH staff from Epidemiology Resource Center and Health Care Quality and Regulatory Commission. The project ended in 2011.

CURRENT PROJECT DEVELOPMENT PROCESS

Healthcare quality improvement has evolved significantly in recent years. The approach to healthcare quality began to change with publication of the Institute of Medicine’s *To Err is Human* in 1999 and continued through Dr. Peter Provonost’s *Safe Patients, Smart Hospitals*. The focus of healthcare quality improvement has shifted to promoting evidence-based practices, utilizing process improvement, and assessing quality through outcome measures.

CMS is leading an initiative to improve the approach to healthcare quality. The Quality Assurance and Performance Improvement (QAPI) initiative is a comprehensive, structured quality improvement program to assess the quality of care provided to patients / residents and improve the quality of care. The QAPI initiative is a step in moving the quality process from one based on assessment of inadequacies to one that focuses on improvement. While quality assurance continues to play a role, facilities are expected to engage in continuous performance improvement.

The ISDH is following this QAPI approach to the development of CMP funded projects. The Commission is monitoring quality of care and services through performance indicators drawing data from multiple sources. Sources of performance indicators include:

- CMS Midwest Division Survey and Certification Reports
- CMS Nursing Home Compare
- CMS National Partnership to Improve Dementia Care in Nursing Homes
- Quality indicator data from CMS designated quality improvement organization
- ISDH review of survey data to identify deficiency rates and trends
- ISDH Medical Error Reports
- Quality improvement project data and reports
- CDC healthcare associated infection reports

The Commission continues to meet monthly with long term care provider associations to discuss survey issues and quality of care. The Commission requests provider
associations to recommend quality improvement projects. The Commission periodically meets and corresponds with quality improvement organizations, academic programs, state agencies, and community organizations to discuss healthcare quality issues. The Commission also participates on a number of task forces and advisory groups.

In 2014 the Commission developed the advanced education and regional collaborative projects. For previous projects the Commission worked with its project contractor to establish a project advisory group. In lieu of multiple advisory groups, the Commission created one advisory group to offer recommendations on healthcare quality improvement projects as well as advise on quality issues and future project development. The ISDH Healthcare Quality Advisory Group includes advocate organizations, academic organizations, healthcare organizations, provider associations, healthcare providers, state agencies, and quality improvement organizations. While the membership of the advisory group is flexible, the following are some of the participating organizations:

- University of Indianapolis, Center for Aging and Community (serves as chair and coordinator for the group)
- Alzheimer’s Association of Greater Indiana
- Indiana Long Term Care Ombudsman
- United Senior Action
- Indiana Association of Area Agencies on Aging
- IUPUI SPEA
- CMS designated quality improvement organization
- Indiana Wound Care Society
- Association of Professionals in Infection Control
- Indiana Hospital Association / Indiana Patient Safety Center
- Indiana Medical Directors Association
- Long term care provider associations
- Long term providers
- Certified LEAN Six Sigma project directors

The ISDH encourages recommendations of potential projects directed at the reduction of deficient practices and improved healthcare outcomes in long term care facilities. While the ISDH does not have specific expectations as to project topics, it is likely that most projects would need to incorporate the following components into the project:

a. A discussion of abuse and neglect of health facility residents. Each project will likely need to include a section on abuse and neglect as it relates to the specific topic of the course. The discussion would include suggestions as to best practices to prevent the abuse and neglect of health facility residents with regard to the specific course topic and emphasize reporting requirements and procedures for those persons witnessing abuse or neglect of health facility residents. The discussion would include how the course topic relates to reducing deficient practices of F-tags F223, 224, 225, and 226.
b. A discussion of the role of family members of the resident in addressing the quality of life and care of residents with regard to the specific topic of the course. The discussion would include best practices as to communication between the facility and family members and how the course topic relates to reducing deficient practices of F-tags F240, 241, 242, 243, and 244.

c. A discussion of “best practices” in caring for health facility residents with regard to the specific topic of the program. “Best practices” are successful programs and practices implemented by health care providers to reduce deficient practices and ensure the quality of life and care for health facility residents. Each program will include a best practices section for that specific topic.

While each project will determine appropriate content based on the project topic, past educational and training programs have generally included the following curricular areas:

- Overview of medical background and care issues
- Review of health care literature / experiences on issue
- Regulatory review
- Common care problems encountered by health facilities
- Staffing issues
- Documentation issues
- Abuse and neglect issues and awareness
- Role of resident and family
- Culture change
- Best practices
- Discussion of quality care for health facility residents

The Commission reviews quality data and recommendations from the various groups on an ongoing basis. Based on quality assurance and performance improvement data and recommendations, the Commission selects projects to develop and implement. Factors considered include:

- Existence of an identified need for the project
- Interest in and support for the project by healthcare partners
- State resources that would be required to successfully complete the project
- Link to state or federal healthcare priorities or outcomes
- Availability of performance indicators to assess project outcomes
- Likelihood of success of project in achieving project outcomes
- Cost of the project versus benefit
- Availability of evidence-based standards
- Whether duplicative of other projects
- Timing of project in terms of potential number of ongoing projects and availability of facilities to dedicate resources
Approval of CMP Projects

Effective January 1, 2012, CMS requires prior CMS approval for any new project, grantee, or use of federally imposed CMP funds. [See CMS SC 12-13-NH, December 16, 2011] State requests for approval submitted to CMS must include the following project information:

- Purpose and summary
- Expected outcomes
- Outcome measurement
- Benefits to nursing home residents
- Non-supplanting
- Consumer and stakeholder involvement
- Funding
- Involved organizations
- State contacts

Funding of CMP Projects

For CMP funded projects, the Commission develops the project and requests approval for use of CMP funds from CMS. The Commission will then release a request for proposals for entities to provide specified services. State procurement procedures require a contract process. While a grant process might be used, the processes for a contract versus grant do not significantly differ for this type of procurement. The ISDH generally has been directed to utilize the state contracting process.

The following is the process for funding of CMP projects:

1. The Commission selects a project to develop and implement based on its quality assurance and performance improvement process.
2. The Commission completes a project proposal.
3. The project proposal is submitted to the ISDH Commissioner’s Office for approval.
4. The project proposal is submitted to the CMS Region V Office for approval. By its policy and procedure, CMS has 45 days to review.
5. The ISDH completes the state contract process to select a project coordinator:
   a. The ISDH releases a request for proposals (or request for bids if under $75,000).
   b. Proposals are reviewed and scored.
   c. A proposal is recommended for selection.
   d. The Department of Administration issues a notice of award.
   e. The ISDH completes a contract with the selected project coordinator.
   f. Once the contract is signed, work on the project may begin.

Transparency of CMP Program

The State of Indiana places great importance in transparency of state government. The Indiana Transparency Portal [www.in.gov/itp] provides information on state contracts, state budget, and agency performance measures.
In its December 2011 survey letter, CMS indicated that state survey agencies would be required to submit an annual transparency report. CMS also indicated that there would be public reporting of uses of CMP funds. Reporting requirements have not yet been finalized by CMS.

To provide transparency of the ISDH CMP Program, a web page was created for the program. The Civil Money Penalty (CMP) Project Center includes information on the CMP program, information on each project, and an accounting of funds. The link to the web page is found on the Healthcare Quality Resource Center page at http://www.in.gov/isdh/24555.htm.

References


SC 14-30-NH Grant Solicitation for the Reinvestment of Federal Civil Money Penalty (CMP)) Funds to Benefit Nursing Home Residents – May 16, 2014

SC 13-57-NH Escrow and Independent Informal Dispute Resolution (Independent IDR) Process for Nursing Homes – Applicable to All Civil Money Penalties (CMPs) – August 30, 2013


SC 11-16-NH Publication of Final Rule “Civil Money Penalties for Nursing Homes Centers for Medicare & Medicaid Services (CMS) – 2435-F” – March 18, 2011

SC 11-12-NH Relationship Between Civil Money Penalty Funds Paid by Nursing Homes and the Money Follows the Person Demonstration - March 11, 2011

SC 09-44 Use of Civil Money Penalty (CMP) Funds by States and Reporting of CMP Funds Returned to the State – June 19, 2009 [Superseded by SC 12-13-NH]
SC 02-42 Use of Civil Money Penalty (CMP) funds by States – August 8, 2002 [Superseded by SC 12-13-NH]

CMS Regulations

42 CFR § 488.431 – 488.442

CMS State Operations Manual (SOM)

SOM § 7535 Use of Civil Money Penalty Funds

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