

5160-3-03.2

Nursing facilities (NFs): resident protection fund and collection of fines.

(A) Definitions.

(1) "Fines" means civil money penalties (CMPs) and other assessments imposed against a NF as a remedy for deficiencies or a cluster of deficiencies that were not substantially corrected before a survey.

(2) "Interest" means the interest rate determined by the tax commissioner on the fifteenth day of October each year by rounding the federal short-term rate to the nearest whole number per cent and adding three per cent. This is the interest rate per annum used in computing the interest that accrues during the following calendar year.

(B) Procedure for collection of fines imposed by the centers for medicare and medicaid services (CMS).

(1) If CMS has been unable to collect a CMP fine directly and notifies the Ohio department of medicaid (ODM), ODM will attempt to collect the fine.

(2) ODM will inform the NF, via certified mail, of the following available payment options:

(a) Lump sum payment.

A lump sum payment, including any interest accrued, from the provider;
or

(b) Periodic payments.

Periodic payments, including any interest accrued, in accordance with a schedule approved by ODM for a period not to exceed twelve months; or

(c) Medicaid payment offset.

Following the date on which the fine plus interest becomes due, an appropriate reduction to medicaid payments made to the provider for care rendered to medicaid eligible residents in accordance with a schedule approved by ODM for a period not to exceed twelve months; or

(d) Attorney general's office (AGO).

If the facility is no longer active in the medicaid program, the fine may be referred to the AGO for collection in accordance with section 131.02 of the Revised Code.

- (3) Not later than ten days after notification, the NF is responsible for selecting a payment option and advising ODM in writing.
- (4) If the NF fails to adhere to the terms of the payment agreement or fails to select a payment option within ten days, ODM will immediately implement collection from an actively participating facility by medicaid payment offset(s). If a facility is not actively participating in the medicaid program, the fine will be referred to the AGO for collection.
- (5) The fine and any interest collected from the NF will be retained in the resident protection fund.
- (6) ODM will notify CMS in writing when the CMP fine has been collected in full.

(C) Uses of the resident protection fund.

- (1) Proceeds from all fines, including interest collected, are deposited in the state treasury to the credit of the resident protection fund.
- (2) Monies in the resident protection fund may only be used in accordance with 42 CFR 488.433 and 488.442 (October 1, 2019) for activities that protect or improve the quality of care or quality of life for residents of NFs.

(D) Management of the resident protection fund.

ODM will provide budgetary, accounting, and other related management functions for the resident protection fund. When medicaid payment offset is used as a means of collection, the amount equal to the reduction in medicaid payments will be deposited to the credit of the resident protection fund.

(E) Disbursement of funds.

Upon CMS approval of disbursement of monies in accordance with paragraph (C) (2) of this rule, a purchase order will be created by ODM against which invoices or intrastate transfer vouchers are submitted, or, in the event of an emergency at a nursing facility, a state issued payment card will be used.

(F) The provisions of this rule are applicable only to the extent that monies are available in the resident protection fund.

Replaces: 5160-3-03.2
Effective: 8/15/2020
Five Year Review (FYR) Dates: 08/15/2025

CERTIFIED ELECTRONICALLY

Certification

08/05/2020

Date

Promulgated Under: 119.03
Statutory Authority: 5162.02
Rule Amplifies: 5162.66
Prior Effective Dates: 01/01/1995, 07/01/2002, 07/01/2005, 01/01/2009,
03/22/2015