

## TO BE RESCINDED

**5160-3-03.2          Nursing facilities (NFs): resident protection fund and collection of fines.****(A) Definitions.**

- (1) "Certification requirements" means the requirements with which a facility must be in compliance in order to be eligible to participate in the medicaid or medicare programs.
- (2) "Deficiency" means a facility's failure to meet a participation requirement in the medicaid or medicare program.
- (3) "Dually participating facility" means a facility that has a provider agreement in both the medicaid and medicare programs.
- (4) "Fines" means civil monetary 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.
- (5) "Interest rate" means the 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.
- (6) "Noncompliance" means failure to substantially meet all applicable certification requirements.

**(B) Procedure for collection of fines imposed by the centers for medicare and medicaid services (CMS) and the Ohio department of health (ODH).**

- (1) ODH shall provide the Ohio department of medicaid (ODM) with a copy of the letter issued to a medicaid-only facility regarding imposition of a fine for noncompliance with certification requirements. ODM shall attempt to collect the fine.
- (2) If CMS has been unable to collect a CMP fine directly and notifies ODM, ODM shall attempt to collect the fine.
- (3) ODM shall 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If the facility is no longer active in the medicaid program, the fine may be referred to the AGO for collection in accordance with section 131.02 of the Revised Code.

(4) Not later than ten days after notification, the NF shall select a payment option and advise ODM in writing.

(5) If the NF fails to adhere to the terms of the payment agreement or fails to select a payment option within ten days, ODM shall immediately implement collection from an actively participating facility by medicaid payment offset(s).

(6) ODM shall retain the fine and any interest collected from the NF in the resident protection fund.

(7) ODM shall 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, shall be deposited in the state treasury to the credit of the resident protection fund.

(2) Monies in the resident protection fund shall be used in accordance with 42 CFR 488.433 and 488.442 (October 1, 2014) for activities that protect or improve the quality of care or quality of life for residents of NFs in which deficiencies are found. All activities and plans for utilizing civil monetary penalty funds must be approved in advance by CMS in accordance with 42 CFR 488.433.

(D) ODM shall 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 shall be deposited to the credit of the resident protection fund.

(E) Procedure for ODM to obtain reimbursement or payment from the resident protection fund.

(1) ODM shall prepare a report setting forth the amount spent or to be spent by ODM on the activities listed in paragraph (C) of this rule.

(2) Upon approval of the report by the medicaid director, ODM shall submit a request to the treasurer of state to transfer funds from the resident protection fund to ODM.

(F) Annual report.

ODM shall provide an annual report to the directors of ODH and the Ohio department of aging (ODA). The report shall include the following information:

(1) A list of all fines deposited in the fund, and the names and addresses of the NFs that paid the fines; and

(2) A list, by type, of all expenditures of the resident protection fund.

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

Effective: 8/15/2020

Five Year Review (FYR) Dates: 5/18/2020

CERTIFIED ELECTRONICALLY

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Certification

08/05/2020

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Date

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