

TO BE RESCINDED

5160-3-03.2 **Resident protection fund (RPF) for nursing facilities (NFs) 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) 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.
- (7) "Resident protection fund coordinator" means the Ohio department of job and family services (ODJFS) staff member who administers the resident protection fund.

(B) Methods for collection of fines from nursing facilities.

ODJFS shall collect CMP fines and interest through any of the following means:

(1) Lump sum payment.

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

(2) Periodic payments.

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

(3) 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 ODJFS for a period not to exceed twelve months; or

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If the facility is no longer active in the medicaid program, the fine may be referred to the AGO for collection in accordance with section 131.02 of the Revised Code.

(C) Procedure for collection of fines imposed by the Ohio department of health (ODH).

(1) ODH shall provide ODJFS with a copy of the letter issued to a facility regarding a final adjudication order imposing a fine for noncompliance with certification requirements.

(2) The letter ODH prepares shall contain the due date of the fine and the interest rate that will be assessed if not paid by the due date.

(3) The resident protection fund coordinator shall inform the NF, via certified mail, of payment options available.

(4) Not later than ten days after notification, the NF shall select a payment option and advise ODJFS 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, ODJFS shall immediately implement collection from an actively participating facility through medicaid payment offset(s).

(D) Procedure for collection of fines imposed by the centers for medicare and medicaid services (CMS) on a dually participating facility.

(1) If CMS has been unable to collect the fine directly, CMS shall send notification to ODJFS that contains the fine case number, the amount of the fine prorated

to medicaid (determined by NF census on the date the fine begins to accrue), and the date the fine was due. The notification serves to notify ODJFS to collect the fine.

- (2) The resident protection fund coordinator shall inform the NF, via certified mail, of the available payment options outlined in paragraph (B) of this rule.
- (3) Not later than ten days after notification, the NF shall select a payment option and advise ODJFS 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, ODJFS shall immediately implement collection from an actively participating facility by medicaid payment offset(s).
- (5) ODJFS shall retain the fine and any interest collected from the NF in the resident protection fund.
- (6) The resident protection fund coordinator shall notify CMS in writing when the fine has been collected in full.

(E) Uses of the resident protection fund.

Proceeds from all fines, including interest collected, shall be deposited in the state treasury to the credit of the RPF.

Monies in the RPF shall be used for the protection of the health or property of residents of NFs in which ODH finds deficiencies, including the following uses:

- (1) Payment for the costs of relocation of residents to other facilities; or
- (2) Maintenance or operation of a facility pending correction of deficiencies or closure; or
- (3) Reimbursement of residents for the loss of monies managed by the facility under rule 5101:3-3-16.5 of the Administrative Code.

(F) ODJFS 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 RPF.

(G) Procedure for ODJFS to obtain reimbursement or payment from the resident protection fund.

(1) The resident protection fund coordinator shall submit a report to the director of ODJFS setting forth the amount spent or to be spent by ODJFS on the activities listed in paragraph (E) of this rule.

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

(H) Annual report.

The resident protection fund coordinator shall provide an annual report to the directors of ODJFS, 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.

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

Effective:

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Certification

Date

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