

June 27, 2024

The Honorable Chiquita Brooks-LaSure  
Administrator  
Centers for Medicare and Medicaid Services (CMS)  
200 Independence Avenue, S.W.  
Washington, DC 20201

Dear Administrator Brooks-LaSure,

We write to you today with significant concerns about the increased enforcement proposal laid out in CMS's FY 2025 Medicare PPS Proposed Rule for SNFs that would layer civil monetary penalties (CMPs) onto nursing homes as it will not equate to better resident care, only continue to add to the workforce crisis, and displace more of our nation's vulnerable residents. We want to make you aware of our opposition and share why we have this position.

First, there is simply no evidence that imposing CMPs directly improves quality of care in nursing homes. In addition, CMS is imposing CMPs months to years after the facility has already corrected the deficient practice(s), which is not consistent with the statutory intent of CMPs and instead, solely serves as a punishment mechanism on a facility that has already been found by the state survey agency to be in substantial compliance. In fact, six out of the ten CMS Regions have at least one delayed CMP notice that was sent one year after identification of noncompliance. More specifically, there is significant variation in timing of CMP imposition ranging from 0 days to 1,596 days.

More CMPs would divert funds from care and services for residents. It would also further reduce the number of nursing homes eligible to offer training programs that are known to help hire and develop nursing staff, thus exacerbating the workforce crisis this sector faces. Since September 2023, CMP Reinvestment Program funds have been restricted from access for workforce initiatives, which simply does not make sense.

This proposal deviates significantly from CMS's use of CMPs in many other settings including hospitals, home health, and hospice. For instance, CMS does not apply a look back period beyond the last standard survey for any health care setting. Finalizing this policy would cause further inconsistencies across settings and exacerbate the punitive nature of CMPs in nursing homes in a much more extreme manner.

**The proposed revisions to the CMP enforcement mechanism are simply inconsistent with the federal statute, congressional intent, and agency authority, and should be withdrawn.**

Congress intended that nursing home enforcement actions be remedial in nature, rather than punitive. Accordingly, CMS must limit its enforcement mechanisms (including CMPs) to the level necessary to promote compliance with the participation requirements and effect remediation; CMS's proposal to expand CMPs exceeds this threshold, is solely punitive, and contrary to agency authority as delegated by Congress.

We appreciate you looking at this matter promptly and look forward to hearing from you on our noted concerns.

Sincerely,

ADVION (formerly known as National Association for the Support of Long Term Care)

American Association of Post-Acute Care Nursing

American College of Health Care Administrators

American Health Care Association

Association of Jewish Aging Services

LeadingAge

Lutheran Services in America

National Association of State Veterans Homes

National Rural Health Association

Pediatric Complex Care Association

Post Acute Wound & Skin Integrity Council

Senior Care Pharmacy Coalition

Cc: Hon. Xavier Becerra, Secretary, Department of Health and Human Services