



National Association of State Long-Term Care Ombudsman Programs

August 10, 2010

Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
P.O. Box 8012
Baltimore, MD 21244-8012
Re: CMS-2435-P

Electronic Submission

The National Association of State Long-Term Care Ombudsman Programs appreciates the opportunity to provide comment on the proposed Civil Monetary Penalty rule and generally support the language as written. We are pleased with the pace with which CMS is pursuing implementation of the Patient Protection & Affordable Care Act.

We offer our comments as follows:

§ 488.431 Civil money penalties imposed by CMS and independent informal dispute resolution: for SNFs, SNF/NFs, and NF-only facilities.

Comment

Inclusion of an involved resident, or resident representative, and the state ombudsman is important to the integrity of the dispute resolution process. The rule language includes “an involved resident” but many deficiencies leading to CMPs result from the experiences of multiple residents.

Recommendations

Amend paragraph (3) to read as follows:

(3) Includes notification to ~~an~~ involved residents or resident representatives, as well as state ombudsman, to provide opportunity for written comment.

The regulation should require sufficient time for the resident(s) to receive the information and obtain help with providing written comment. The notification to residents should include the name and phone number of the state ombudsman.

Notice to the state ombudsman should include the name of the resident(s) so the state ombudsman can reach out to the resident(s) to facilitate written comment.

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Amend the regulation to provide for resident and ombudsman comment in the traditional IDR process.

Regulations and the State Operations Manual should be updated to reflect how a resident's or ombudsman's comments will be considered. Because citations are based on resident experience and sometimes complaints made by ombudsmen, it is only fair to require that resident and ombudsman comments be given equal consideration as the facility's comments in IDR.

Comment

Requiring nursing facilities who request IIDR to bear the cost of the process is appropriate.

Recommendation

Specify that IIDR, like IDR, shall be limited to the validity of deficiency citations.

Comment

We agree with placement of the CMP in an escrow account.

Recommendation

Change "may" to "shall" so the CMP is always placed in escrow when a facility requests Independent IDR.

§ 488.433 Civil money penalties: Uses and approval of civil money penalties imposed by CMS.

Comment

We are supportive of a portion of federally collected CMPs being used to benefit residents.

Recommendations

Add Office of the State Long-Term Care Ombudsman to the list of uses for CMP funds. A letter issued by CMS in 2009 specifically included ombudsmen as possible recipients of funds (S&C-09-44). Policy clarification previously issued should be incorporated into this regulation.

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In considering activities to initiate or approve, CMS should rely on data that describe resident experience. The Administration on Aging's National Ombudsman Reporting System is one example of data that identify problems in nursing homes and trends. Additionally, for ease of administration, we recommend that some uses be preapproved, such as transportation of private-pay residents when a facility is terminated or support of ombudsman work.

Clarification is needed on the scope of CMS approval – whether approval is required for use of all CMP funds or only the federal portion. States should continue to be afforded discretion in the use of the state portion of CMP funds to select projects that will address quality improvement needs identified in the state.

§ 488.438 Civil money penalties: Amount of penalty.

Comment

We support the language in this section and believe that the identified exceptions are reasonable controls against misuse of the provision.

NASOP looks forward to working with CMS as implementation of these important provisions of the Patient Protection and Affordable Care Act progresses.

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