

agreement in accordance with § 488.865 of this part.

(d) *Termination time frame when there is no immediate jeopardy.* CMS terminates an HHA within 6 months of the last day of the survey, if the HHA is not in compliance with the conditions of participation, and the terms of the plan of correction have not been met.

(e) *Transfer of care.* An HHA, if its provider agreement terminated, is responsible for providing information, assistance, and arrangements necessary for the proper and safe transfer of patients to another local HHA within 30 days of termination. The State must assist the HHA in the safe and orderly transfer of care and services for the patients to another local HHA.

§ 488.835 Temporary management.

(a) *Application.* (1) CMS may impose temporary management of an HHA if it determines that an HHA has a condition-level noncompliance and CMS determines that management limitations or the deficiencies are likely to impair the HHA's ability to correct deficiencies and return the HHA to full compliance with the conditions of participation within the timeframe required.

(2) [Reserved]

(b) *Procedures.* (1) CMS notifies the HHA that a temporary manager is being appointed.

(2) If the HHA fails to relinquish authority and control to the temporary manager, CMS terminates the HHA's provider agreement in accordance with § 488.865.

(c) *Duration and effect of sanction.* Temporary management continues until—

(1) CMS determines that the HHA has achieved substantial compliance and has the management capability to ensure continued compliance with all the conditions of participation;

(2) CMS terminates the provider agreement; or

(3) The HHA reassumes management control without CMS approval. In such case, CMS initiates termination of the provider agreement and may impose additional sanctions.

(4) Temporary management will not exceed a period of 6 months from the

date of the survey identifying non-compliance.

(d) *Payment of salary.* (1) The temporary manager's salary—

(i) Is paid directly by the HHA while the temporary manager is assigned to that HHA; and

(ii) Must be at least equivalent to the sum of the following:

(A) The prevailing salary paid by providers for positions of this type in what the State considers to be the HHA's geographic area (prevailing salary based on the Geographic Guide by the Department of Labor (BLS Wage Data by Area and Occupation);

(B) Any additional costs that would have reasonably been incurred by the HHA if such person had been in an employment relationship; and

(C) Any other costs incurred by such a person in furnishing services under such an arrangement or as otherwise set by the State.

(2) An HHA's failure to pay the salary and other costs of the temporary manager described in paragraph (d)(1) of this section is considered a failure to relinquish authority and control to temporary management.

§ 488.840 Suspension of payment for all new patient admissions.

(a) *Application.* (1) CMS may suspend payment for all new admissions if an HHA is found to have condition-level deficiencies, regardless of whether those deficiencies pose immediate jeopardy.

(2) CMS will consider this sanction for any deficiency related to poor patient care outcomes, regardless of whether the deficiency poses immediate jeopardy.

(b) *Procedures—(1) Notices.* (i) Before suspending payments for new admissions, CMS provides the HHA notice of the suspension of payment for all new admissions as set forth in § 488.810(f). The CMS notice of suspension will include the nature of the noncompliance; the effective date of the sanction; and the right to appeal the determination leading to the sanction.

(ii) The HHA may not charge a newly admitted HHA patient who is a Medicare beneficiary for services for which Medicare payment is suspended unless

the HHA can show that, before initiating care, it gave the patient or his or her representative oral and written notice of the suspension of Medicare payment in a language and manner that the beneficiary or representative can understand.

(2) *Restriction.* (i) Suspension of payment for all new admissions sanction may be imposed anytime an HHA is found to be out of substantial compliance.

(ii) Suspension of payment for patients with new admissions will remain in place until CMS determines that the HHA has achieved substantial compliance or is involuntarily terminated with the conditions of participation, as determined by CMS.

(3) *Resumption of payments.* Payments to the HHA resume prospectively on the date that CMS determines that the HHA has achieved substantial compliance with the conditions of participation.

(c) *Duration and effect of sanction.* This sanction ends when—

(1) CMS determines that the HHA is in substantial compliance with all of the conditions of participation; or

(2) When the HHA is terminated or CMS determines that the HHA is not in compliance with the conditions of participation at a maximum of 6 months from the date noncompliance was determined.

§ 488.845 Civil money penalties.

(a) *Application.* (1) CMS may impose a civil money penalty against an HHA for either the number of days the HHA is not in compliance with one or more conditions of participation or for each instance that an HHA is not in compliance, regardless of whether the HHA's deficiencies pose immediate jeopardy.

(2) CMS may impose a civil money penalty for the number of days of immediate jeopardy.

(3) A per-day and a per-instance CMP may not be imposed simultaneously for the same deficiency.

(b) *Amount of penalty—(1) Factors considered.* CMS takes into account the following factors in determining the amount of the penalty:

(i) The factors set out at § 488.815.

(ii) The size of an agency and its resources.

(iii) Accurate and credible resources, such as PECOS, Medicare cost reports and Medicare/Medicaid claims information that provide information on the operation and resources of the HHA.

(iv) Evidence that the HHA has a built-in, self-regulating quality assessment and performance improvement system to provide proper care, prevent poor outcomes, control patient injury, enhance quality, promote safety, and avoid risks to patients on a sustainable basis that indicates the ability to meet the conditions of participation and to ensure patient health and safety.

(2) *Adjustments to penalties.* Based on revisit survey findings, adjustments to penalties may be made after a review of the provider's attempted correction of deficiencies.

(i) CMS may increase a CMP in increments based on a HHA's inability or failure to correct deficiencies, the presence of a system-wide failure in the provision of quality care, or a determination of immediate jeopardy with actual harm versus immediate jeopardy with potential for harm.

(ii) CMS may also decrease a CMP in increments to the extent that it finds, pursuant to a revisit, that substantial and sustainable improvements have been implemented even though the HHA is not yet in full compliance with the conditions of participation.

(iii) No penalty assessment will exceed \$10,000 as adjusted annually under 45 CFR part 102 for each day of non-compliance.

(3) *Upper range of penalty.* Penalties in the upper range of \$8,500 to \$10,000 as adjusted under 45 CFR part 102 per day of noncompliance are imposed for a condition-level deficiency that is immediate jeopardy. The penalty in this range will continue until compliance can be determined based on a revisit survey.

(i) \$10,000 as adjusted annually under 45 CFR part 102 per day for a deficiency or deficiencies that are immediate jeopardy and that result in actual harm.

(ii) \$9,000 as adjusted annually under 45 CFR part 102 per day for a deficiency or deficiencies that are immediate jeopardy and that result in a potential for harm.