

Civil Money Penalty (CMP) Methodology

Kevin Stansbury

**Division of Compliance Enforcement,
Medicare Parts C & D Oversight and
Enforcement Group, CMS**

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Overview

- Civil Money Penalty (CMP) Authority
- History and Evolution of CMP Methodology
- Calculation of CMP Amount
- CMP Methodology
- Methodology Moving Forward

CMP Authority

- CMS' ability to issue a CMP derives from its authority to either:
 - Terminate a Plan Sponsor
 - 42 C.F.R §§ 422.510 and 423.509
 - Sanction a Plan Sponsor
 - 42 C.F.R. §§ 422.750, 422.752, 423.750, and 423.752.
- In lieu of, or in addition to, terminating a contract or issuing sanctions to suspend enrollment and marketing, CMPs can be imposed
 - 42 C.F.R. §§ 422.752(b) and (c), and 423.752(b) and (c)

CMP Authority (cont.)

- CMPs can be imposed for any of the criteria under the termination authority if a Sponsor:
 1. Failed substantially to carry out the contract;
 2. Is carrying out the contract in a manner inconsistent with the efficient and effective administration of 42 C.F.R. parts 422 or 423; or
 3. Is no longer substantially meeting the applicable conditions of 42 C.F.R parts 422 or 423.

CMP Authority (cont.)

- CMS carefully evaluates program non-compliance to determine if an enforcement action is warranted
- CMPs may be issued as a result of deficiencies detected during routine program audits
- Examples of the types of violations that result in a CMP:
 - Inappropriate delay or denial of access to health services or medications
 - Incorrect premiums charged or unnecessary costs incurred
 - Inaccurate or untimely information provided about health and drug benefits

CMP Authority (cont.)

In determining the amount of the penalty, CMS considers:

- The nature of the conduct;
- The degree of culpability of the sponsoring organization;
- The harm which resulted or could have resulted from the conduct of the sponsoring organization;
- The financial condition of the sponsoring organization; and
- The history of prior offenses by the sponsoring organization or principals of the organization.

CMP Authority (cont.)

CMP amounts:

- Up to \$37,396* per determination
- Up to \$37,396* per enrollee adversely affected (or with the substantial likelihood of being adversely affected)
- Up to \$14,959* for each week that a deficiency remains uncorrected after the week in which CMS issues a CMP

**Amounts adjusted annually for inflation*

CMP Authority (cont.)

- CMS is not required by statute or regulation to develop or publically share any CMP methodology.
- The use of a standard methodology does not limit CMS' authority to impose any penalty that is permissible under the law.

History of CMP Methodology

- Prior to 2014, CMP amounts were determined based on the unique circumstances of individual cases
- 2014 – Pilot CMP Methodology developed and implemented
 - Standard Penalty Amounts – per enrollee and per determination
 - Aggravating/Mitigating Factors
- 2016 – CMP Methodology released for Public Comment and finalized for implementation beginning in 2017
 - Application of enrollment-based penalty caps

Calculation of CMP Amount

- Standard Penalty Amounts
- Aggravating Factors
- Per Enrollee vs. Per Determination Penalties
- Enrollment-Based Thresholds

Standard Penalty

Per Enrollee Penalties

- Inappropriate delay/denial of Part C medical services or Part D drugs: \$200 per enrollee
- Incorrect premiums charged or unnecessary costs incurred: \$200 per enrollee
- Inaccurate or untimely plan benefit information (e.g., ANOC and/or EOC documents) provided: \$25 per enrollee

Standard Penalty (cont.)

Per Determination Penalties

- Invalid data submission (i.e., failure to develop and/or provide valid enrollee universes): CMS will apply the maximum amount permitted under regulation, as adjusted annually, per violation/per contract
- All other violations: \$20,000 per violation/per contract

Aggravating Penalty Amounts

- Once CMS has calculated the standard penalty amount, it applies any aggravating factors.
- Aggravating factors will increase the overall penalty amount for that violation.
- Applies to both Per-Enrollee and Per-Determination penalties.

Per Enrollee Aggravating Factors

Inappropriate delay/denial of Part C medical services or Part D drugs

- Delay/denial of drugs that generally require access to prescription drugs within 24 hours in order to either treat acute conditions or maintain the therapeutic treatment of non-acute conditions: \$100
- Prior offense: \$100 (one prior offense) or \$1,000 (two or more prior offenses)
- Missed adjudication time requirement for expedited coverage decisions: \$100
- Violation was among the top common conditions listed in the annual Part C and Part D Program and Enforcement Report (Annual Audit Report): \$100

Per Enrollee Aggravating Factors (cont.)

Untimely or inaccurate plan benefit information provided

- Prior Offense: \$15 for each prior offense
- For Annual Notice of Change/Evidence of Coverage (ANOC/EOC) documents: Enrollees did not receive ANOC/EOC/errata documents by Dec. 31: \$15

Per Enrollee Aggravating Factors (cont.)

Incorrect premiums charged or unnecessary costs incurred

- Incurred inappropriate out-of-pocket expenses exceeding \$100: \$100
- Prior offense: \$100 (one prior offense) or \$1,000 (two or more prior offenses)
- Violation was among the top common conditions listed in the Annual Audit Report: \$100

Per Determination Aggravating Factors

- Prior offense within the previous two calendar years: \$5,000
- Violation was among the top common conditions in the Annual Audit Report: \$5,000

CMP Calculation

Per Determination:

$$\begin{aligned} &\text{Standard Penalty} \times \text{Number of Contracts} \\ &\quad + \\ &\underline{\text{Aggravating factor(s)} \times \text{Number of Contracts}} \\ &= \text{Total Penalty for the Violation} \end{aligned}$$

CMP Calculation (cont.)

Per Enrollee:

Standard Penalty x Number of Enrollees

+

Aggravating factor(s) x Number of Enrollees

= Total Penalty for the Violation

Maximum Penalty Amount

- Per Determination
 - Adjusted annually
- Per Enrollee
 - CMS applies an Enrollment-Based Limit on each violation within the CMP

Maximum Penalty Amount (cont.)

- CMS will apply the maximum penalty permissible when calculating a per determination penalty for a single deficiency and will apply that amount to all of a sponsor's contracts that are affected by the deficiency.
 - In 2017, the maximum penalty amount that CMS will be permitted to apply under statute and regulation is \$37,396 per determination.
 - If CMS determines that the deficiency is applicable to 10 of a sponsor's contracts, the maximum CMP that can be imposed for the determination is \$373,960.

Enrollment Threshold

Enrollment of Parent Organization	CMP Violation Limit	Percent of Enrollment	Percent of Sponsors
Below 1,000	\$50,000	0.02%	14%
1,000-4,999	\$100,000	0.2%	15%
5,000-19,999	\$200,000	1%	27%
20,000-49,999	\$300,000	2%	16%
50,000-99,999	\$400,000	3%	10%
100,000-249,999	\$500,000	7%	10%
250,000-499,999	\$1,000,000	6%	3%
500,000-2,999,999	\$1,500,000	19%	3%
3,000,000 or more	\$2,000,000	61%	2%

Sample Calculations

Example 1: CMP Calculated on a Per-Enrollee Basis

■ *Standard Penalty*

- Inappropriate delay/denial of Part D drugs/ Part C services: \$200
- Number of affected enrollees: 2,500
- Standard penalty subtotal: **\$200 x 2,500 = \$500,000**

Sample Calculations (cont.)

Aggravating Factors

Aggravating Factor #1

- Violation was among the top conditions identified in the Annual Audit Report: \$100
- Number of affected enrollees: 2,500
- Penalty adjustment: **\$100 x 2,500 = \$250,000**

Aggravating Factor #2

- Delay/denial of Part D drugs that generally require access to prescription drugs within 24 hours in order to either treat acute conditions or maintain the therapeutic treatment of non-acute conditions: \$100
- Number of affected enrollees: 500
- Penalty adjustment: **\$100 x 500 = \$50,000**

Sample Calculations (cont.)

Standard Penalty	\$500,000
Aggravating Factor #1	+ 250,000
Aggravating Factor #2	<u>+ 50,000</u>
Total CMP Amount	\$800,000

Sample Calculations (cont.)

Example 2: CMP Calculated on a Per-Enrollee Basis and Application of the Enrollment-Based Limit

- ***Sponsor with 400,000 enrollees***
- ***Standard Penalty***
 - Inappropriate delay/denial of Part C medical services or Part D drugs: \$200
 - Number of affected enrollees: 6,000
 - Standard penalty subtotal: **\$200 x 6,000 = \$1,200,000**

Sample Calculations (cont.)

■ ***Aggravating Factor #1***

- Violation was among the top conditions in the Annual Audit Report: \$100
- Number of affected enrollees: 6,000
- Penalty adjustment: **\$100 x 6,000 = \$600,000**

■ ***Aggravating Factor #2***

- Delay/denial of Part D drugs that generally require access to prescription drugs within 24 hours in order to either treat acute conditions or maintain the therapeutic treatment of non-acute conditions: \$100
- Number of affected enrollees: 1,580
- Penalty adjustment: **\$100 x 1,580 = \$158,000**

Sample Calculations (cont.)

Penalty exceeds enrollment-based penalty maximum for a plan of 400,000 enrollees

- Penalty adjustment: **(\$958,000)**

Standard Penalty	\$1,200,000
Aggravating Factor #1	+ 600,000
Aggravating Factor #2	+ <u>158,000</u>
Total CMP Amount (uncapped)	1,958,000
Enrollment Based limit	- <u>958,000</u>
Total Capped CMP Amount	\$1,000,000

CMP Methodology Moving Forward

- CMS intends to apply this methodology to CY2018 and beyond, as long as there are no changes to the methodology.
- Any proposed changes will be posted for comment in advance of implementation.
- Once a revised methodology is finalized, CMS will apply it to CMPs imposed in the contract year following publication.

Questions

- For more information please visit the CMS Parts C & D Enforcement Actions Page at:
 - <https://www.cms.gov/Medicare/Compliance-and-Audits/Part-C-and-Part-D-Compliance-and-Audits/PartCandPartDEnforcementActions-.html>
- For questions regarding Parts C and D CMP or other enforcement actions, email our compliance mailbox at:
 - Parts_C_and_D_CP_Guidelines@cms.hhs.gov

