



Center for Clinical Standards and Quality/Survey & Certification Group

Ref: S&C: 17-23-NH/HHA/CLIA

DATE: March 31, 2017

TO: State Survey Agency Directors

FROM: Director
Survey and Certification Group

SUBJECT: Notice of Final Rule Adjusting Civil Monetary Penalties (CMPs) for Inflation

Memorandum Summary

- **Adjustment of Civil Monetary Penalties for Inflation:** The Department of Health and Human Services (HHS) has published in the Federal Register on February 3, 2017, a final rule which adjusts for inflation CMP amounts authorized under the Social Security Act.
- The final rule lists the new CMP amounts and ranges and are effective on February 3, 2017.
- The CMPs under the authority of HHS affects multiple areas, but we are highlighting only on those CMPs assessed for Skilled Nursing facilities (SNFs), Nursing Facilities (NFs), SNFs/NFs, Home Health Agencies (HHAs), and Clinical laboratories effective February 3, 2017.

Background

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act) (Sec. 701 of the Bipartisan Budget Act of 2015, Pub. L. 114-74). The 2015 Act amends the Federal Civil Penalties Inflation Adjustment Act of 1990 (the Inflation Adjustment Act) (Pub. L 101-410) which was enacted to improve the effectiveness of federal CMPs and to maintain their deterrent effect. Prior to 2015, CMPs authorized under the Social Security Act were exempt from inflation adjustments under the law.

The 2015 Act requires agencies to:

- Adjust the level of applicable CMPs with an initial “catch-up” adjustment, through interim final rulemaking (IFR); and,
- Make subsequent annual adjustments for inflation.

The 2015 Act provides that “catch-up” adjustments are based on the percentage change between the Consumer Price Index for all Urban Consumers (CPI-U) for the month of October in the year a CMP was originally established, and the CPI-U for October 2015.

The 2015 Act directed agencies to publish the new catch-up adjustments in the Federal Register through interim final rulemaking.

Subsequent annual adjustments are based on the percentage change of the CPI-U for the month of October of a current year exceeds the CPI for the month of October of the previous year. These annual adjustments are scheduled to be published in the Federal Register no later than January 15 of each calendar year beginning in 2017.

The February 3, 2017 final rule provides for an adjustment of CMPs that may be imposed for noncompliance by SNF/NFs, HHAs, and Clinical laboratories. This is reflected in a table showing how all CMPs are increased due to the inflation adjustment from 2016 to 2017 as required by the 2015 Act in new section 45 CFR Part 102. For 2017, CMPs have been increased by a multiplier of 1.01636.

Application and Updated Tools

The 2017 Annual Adjustment is effective February 3, 2017. The adjusted amounts apply to CMPs assessed on or after February 3, 2017, when the violation occurred after November 2, 2015. If the violation occurred on or prior to November 2, 2015, or if the violation occurred after November 2, 2015, but the CMP was assessed prior to February 3, 2017, the CMP amounts in effect before this adjustment will apply.

For SNFs, NFs and SNF/NFs, the CMP Tool instructions and calculations will be updated to reflect these changes. Please note that the final rule only affects specific CMP amounts and not any other related provisions, such as the factors reviewed for assessing CMPs for example.

The final rule can be found at <https://www.gpo.gov/fdsys/pkg/FR-2017-02-03/html/2017-02300.htm> and https://www.federalregister.gov/a/2016-18680?utm_campaign=subscription%20mailing%20list&utm_source=federalregister.gov&utm_medium=email.

CMP amounts will also be posted on the Survey and Certification website: <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Civil-Monetary-Penalties-Annual-Adjustments.html>.

Effective Date: The 2017 Annual Adjustment is effective February 3, 2017. Please refer to the Application instructions, above. This guidance should be immediately communicated to all RO and State Survey Agency survey, certification and enforcement staff, their managers and the State/RO training coordinators.

/s/

David R. Wright

cc: Survey and Certification Regional Office Management
State Medicaid Agencies