(1) Transfer Medicaid and Medicare residents to another facility; or
(2) Close the facility and transfer the Medicaid and Medicare residents to another facility.

(b) Required transfer when a facility’s provider agreement is terminated. When the State or CMS terminates a facility’s provider agreement, the State will arrange for the safe and orderly transfer of all Medicare and Medicaid residents to another facility, in accordance with §483.75(r)(1) of this chapter.

(c) Required notifications when a facility’s provider agreement is terminated. When the State or CMS terminates a facility’s provider agreement, CMS determines the appropriate date for notification, in accordance with §483.75(r)(3)(i) of this chapter.

§488.431 Civil money penalties: Basis for imposing penalty.

(a) CMS or the State may impose a civil money penalty for either the number of days a facility is not in substantial compliance with one or more participation requirements or for each instance that a facility is not in substantial compliance, regardless of whether or not the deficiencies constitute immediate jeopardy.

(b) CMS or the State may impose a civil money penalty for the number of days of past noncompliance since the last standard survey, including the number of days of immediate jeopardy.

§488.430 Civil money penalties: Basis for imposing penalty.

(a) CMS retains ultimate authority for the survey findings and imposition of civil money penalties, but provides an opportunity for independent informal dispute resolution within 30 days of notice of imposition of a civil money penalty that will be placed in escrow in accordance with paragraph (b) of this section. An independent informal dispute resolution will—

(1) Be completed within 60 days of facility’s request if an independent informal dispute resolution is timely requested by the facility.

(2) Generate a written record prior to the collection of the penalty.

(3) Include notification to an involved resident or resident representative, as well as the State’s long term care ombudsman, to provide opportunity for written comment.

(4) Be approved by CMS and conducted by the State under section 1861 of the Act, or by an entity approved by the State and CMS, or by CMS or its agent in the case of surveys conducted only by federal surveyors where the State independent dispute resolution process is not used, and which has no conflict of interest, such as:

(1) A component of an umbrella State agency provided that the component is organizationally separate from the State survey agency.

(2) An independent entity with a specific understanding of Medicare and Medicaid program requirements selected by the State and approved by CMS.

(5) Not include the survey findings that have already been the subject of an informal dispute resolution under §488.331 for the particular deficiency citations at issue in the independent process under §488.431, unless the informal dispute resolution under §488.331 was completed prior to the imposition of the civil money penalty.

(b) Collection and placement in escrow account.

(1) For both per day and per instance civil money penalties, CMS may collect and place the imposed civil money penalties in an escrow account on whichever of the following occurs first:

(i) The date on which the independent informal dispute resolution process is completed under paragraph (a) of this section.

(ii) The date that is 90 days after the date of the notice of imposition of the penalty.

(2) For collection and placement in escrow accounts of per day civil money penalties, CMS may collect the portion of the per day civil money penalty that has accrued up to the time of collection as specified in paragraph (b)(1) of this section. CMS may make additional
§ 488.432 Civil money penalties: When a penalty is collected.

(a) When facility requests a hearing. (1) A facility must request a hearing on the determination of the noncompliance that is the basis for imposition of the civil money penalty within the time specified in one of the following sections:

(A) Section 498.40 of this chapter for a civil money penalty imposed per day.

(B) Section 431.153 of this chapter for a non-State operated NF that is not subject to imposition of remedies by CMS.

(2) If the administrative law judge reverses deficiency findings that comprise the basis of a civil money penalty in whole or in part, the escrowed amounts continue to be held pending expiration of the time for CMS to appeal the decision or, where CMS does appeal, a Departmental Appeals Board decision affirming the reversal of the pertinent deficiency findings. Any collected civil money penalty amount owed to the facility based on a final administrative decision will be returned to the facility with applicable interest as specified in section 1878(f)(2) of the Act.

(76 FR 15126, Mar. 18, 2011)

Effective Date Note: At 76 FR 15126, Mar. 18, 2011, § 488.431 was added, effective Jan. 1, 2012.

§ 488.432 Civil money penalties: When a penalty is collected.

(a) When facility requests a hearing. (1) A facility must request a hearing on the determination of the noncompliance that is the basis for imposition of the civil money penalty within the time specified in one of the following sections:

(A) Section 498.40 of this chapter for a civil money penalty imposed per day.

(B) Section 431.153 of this chapter for a non-State operated NF that is not subject to imposition of remedies by CMS.

(2) If the administrative law judge reverses deficiency findings that comprise the basis of a civil money penalty in whole or in part, the escrowed amounts continue to be held pending expiration of the time for CMS to appeal the decision or, where CMS does appeal, a Departmental Appeals Board decision affirming the reversal of the pertinent deficiency findings. Any collected civil money penalty amount owed to the facility based on a final administrative decision will be returned to the facility with applicable interest as specified in section 1878(f)(2) of the Act.

(76 FR 15126, Mar. 18, 2011)

Effective Date Note: At 76 FR 15126, Mar. 18, 2011, § 488.431 was added, effective Jan. 1, 2012.

§ 488.433 Maintenance of escrowed funds.

CMS will maintain collected civil money penalties in an escrow account pending the resolution of any administrative appeal of the deficiency findings that comprise the basis for the civil monetary penalty imposition. CMS will retain the escrowed funds on an ongoing basis and, upon a final administrative decision, will either return applicable funds in accordance with paragraph (d)(2) of this section or, in the case of an unsuccessful administrative appeal, will periodically disburse the funds to States or other entities in accordance with § 488.433.

(d) When a facility requests a hearing. (1) A facility must request a hearing on the determination of the noncompliance that is the basis for imposition of the civil money penalty as specified in § 498.40 of this chapter.

(2) If the administrative law judge reverses deficiency findings that comprise the basis of a civil money penalty in whole or in part, the escrowed amounts continue to be held pending expiration of the time for CMS to appeal the decision or, where CMS does appeal, a Departmental Appeals Board decision affirming the reversal of the pertinent deficiency findings. Any collected civil money penalty amount owed to the facility based on a final administrative decision will be returned to the facility with applicable interest as specified in section 1878(f)(2) of the Act.

(76 FR 15126, Mar. 18, 2011)

Effective Date Note: At 76 FR 15126, Mar. 18, 2011, § 488.431 was added, effective Jan. 1, 2012.