

§ 488.436 Civil money penalties: Waiver of hearing, reduction of penalty amount.

(a) *Waiver of a hearing.* The facility may waive the right to a hearing, in writing, within 60 days from the date of the notice imposing the civil money penalty.

(b) *Reduction of penalty amount.* (1) If the facility waives its right to a hearing in accordance with the procedures specified in paragraph (a) of this section, CMS or the State reduces the civil money penalty by 35 percent, as long as the civil money penalty has not also been reduced by 50 percent under § 488.438.

(2) If the facility does not waive its right to a hearing in accordance with the procedures specified in paragraph (a) of this section, the civil money penalty is not reduced by 35 percent.

[59 FR 56243, Nov. 10, 1994; 62 FR 44221, Aug. 20, 1997; 76 FR 15127, Mar. 18, 2011]

§ 488.438 Civil money penalties: Amount of penalty.

(a) *Amount of penalty.* (1) The penalties are within the following ranges, set at \$50 increments:

(i) *Upper range.* Penalties in the range of \$3,050–\$10,000 as adjusted annually under 45 CFR part 102 per day are imposed for deficiencies constituting immediate jeopardy, and as specified in paragraph (d)(2) of this section.

(ii) *Upper range.* Penalties in the range of \$50–\$3,000 as adjusted annually under 45 CFR part 102 per day are imposed for deficiencies that do not constitute immediate jeopardy, but either caused actual harm, or caused no actual harm, but have the potential for more than minimal harm.

(2) *Per instance penalty.* When penalties are imposed for an instance of noncompliance, the penalties will be in the range of \$1,000–\$10,000 as adjusted annually under 45 CFR part 102 per instance.

(b) *Basis for penalty amount.* The amount of penalty is based on CMS's or the State's assessment of factors listed in paragraph (f) of this section.

(c) *Decreased penalty amounts.* (1) Except as specified in paragraph (d)(2) of this section, if immediate jeopardy is removed, but the noncompliance continues, CMS or the State will shift the

penalty amount imposed per day to the lower range.

(2) When CMS determines that a SNF, dually-participating SNF/NF, or NF-only facility subject to a civil money penalty imposed by CMS self-reports and promptly corrects the non-compliance for which the civil money penalty was imposed, CMS will reduce the amount of the penalty by 50 percent, provided that all of the following apply —

(i) The facility self-reported the non-compliance to CMS or the State before it was identified by CMS or the State and before it was reported to CMS or the State by means of a complaint lodged by a person other than an official representative of the nursing home;

(ii) Correction of the self-reported noncompliance occurred on whichever of the following occurs first:

(A) 15 calendar days from the date of the circumstance or incident that later resulted in a finding of noncompliance; or

(B) 10 calendar days from the date the civil money penalty was imposed;

(iii) The facility waives its right to a hearing under § 488.436;

(iv) The noncompliance that was self-reported and corrected did not constitute a pattern of harm, widespread harm, immediate jeopardy, or result in the death of a resident;

(v) The civil money penalty was not imposed for a repeated deficiency, as defined in paragraph (d)(3) of this section, that was the basis of a civil money penalty that previously received a reduction under this section; and

(vi) The facility has met mandatory reporting requirements for the incident or circumstance upon which the civil money penalty is based, as required by Federal and State law.

(3) Under no circumstances will a facility receive both the 50 percent civil money penalty reduction for self-reporting and correcting under this section and the 35 percent civil money penalty reduction for waiving its right to a hearing under § 488.436.

(d) *Increased penalty amounts.* (1) Before a hearing requested in accordance with § 488.431(d) or § 488.432(a), CMS or the State may propose to increase the