

**§ 488.426**

**42 CFR Ch. IV (10–1–23 Edition)**

facility to attend an inservice training program if—

(1) The facility has a pattern of deficiencies that indicate noncompliance; and

(2) Education is likely to correct the deficiencies.

(b) *Action following training.* After the staff has received inservice training, if the facility has not achieved substantial compliance, CMS or the State may impose one or more other remedies specified in § 488.406.

(c) *Payment.* The facility pays for directed inservice training.

[59 FR 56243, Nov. 10, 1994; 60 FR 50119, Sept. 28, 1995]

**§ 488.426 Transfer of residents, or closure of the facility and transfer of residents.**

(a) *Transfer of residents, or closure of the facility and transfer of residents in an emergency.* In an emergency, the State has the authority to—

(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 § 483.70(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 § 483.70(1) of this chapter.

[59 FR 56243, Nov. 10, 1994; 60 FR 50119, Sept. 28, 1995, as amended at 76 FR 9511, Feb. 18, 2011; 81 FR 68872, Oct. 4, 2016]

**§ 488.430 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.

[59 FR 56243, Nov. 10, 1994, as amended at 64 FR 13360, Mar. 18, 1999]

**§ 488.431 Civil money penalties imposed by CMS and independent informal dispute resolution: for SNFS, dually-participating SNF/NFs, and NF-only facilities.**

(a) *Opportunity for independent review.* 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 1864 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:

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

(ii) 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