

§ 488.450

42 CFR Ch. IV (10–1–23 Edition)

(b) The penalty amounts in this section will be adjusted annually under 45 CFR part 102.

(c) Compliance with the requirements at § 483.80(g)(1) and (2) of this chapter will be assessed weekly. Facilities found out of compliance with § 483.80(g)(1) and (2) of this chapter are not required to submit a plan of correction as indicated in § 488.408(f)(1).

(d) This section is in effect during and the Public Health Emergency (PHE), as defined in § 400.200 of this chapter, and will continue for up to one year after the end of the PHE.

[85 FR 54873, Sept. 2, 2020]

§ 488.450 Continuation of payments to a facility with deficiencies.

(a) *Criteria.* (1) CMS may continue payments to a facility not in substantial compliance for the periods specified in paragraph (c) of this section if the following criteria are met:

(i) The State survey agency finds that it is more appropriate to impose alternative remedies than to terminate the facility;

(ii) The State has submitted a plan and timetable for corrective action approved by CMS; and

(iii) The facility, in the case of a Medicare SNF, or the State, in the case of a Medicaid NF, agrees to repay the Federal government payments received under this provision if corrective action is not taken in accordance with the approved plan and timetable for corrective action.

(2) CMS or the State may terminate the SNF or NF agreement before the end of the correction period if the criteria in paragraph (a)(1) of this section are not met.

(b) *Cessation of payments.* If termination is not sought, either by itself or along with another remedy or remedies, or any of the criteria set forth in paragraph (a)(1) of this section are not met or agreed to by either the facility or the State, the facility or State will receive no Medicare or Federal Medicaid payments, as applicable, from the last day of the survey.

(c) *Period of continued payments—(1) Non-compliance.* If the conditions in paragraph (a)(1) of this section are met, CMS may continue payments to a Medicare facility or the State for a

Medicaid facility with noncompliance that does not constitute immediate jeopardy for up to 6 months from the last day of the survey.

(2) *Facility closure.* In the case of a facility closure, the Secretary may, as the Secretary determines appropriate, continue to make payments with respect to residents of a long-term care facility that has submitted a notification of closure during the period beginning on the date such notification is submitted to CMS and ending on the date on which the residents are successfully relocated.

(d) *Failure to achieve substantial compliance.* If the facility does not achieve substantial compliance by the end of the period specified in paragraph (c) of this section,

(1) CMS will—

(i) Terminate the provider agreement of the Medicare SNF in accordance with § 488.456; or

(ii) Discontinue Federal funding to the SNF for Medicare; and

(iii) Discontinue FFP to the State for the Medicaid NF.

(2) The State may terminate the provider agreement for the NF.

[59 FR 56243, Nov. 10, 1994; 60 FR 50119, Sept. 28, 1995, as amended at 76 FR 9511, Feb. 18, 2011; 78 FR 16805, Mar. 19, 2013]

§ 488.452 State and Federal disagreements involving findings not in agreement in non-State operated NFs and dually participating facilities when there is no immediate jeopardy.

The following rules apply when CMS and the State disagree over findings of noncompliance or application of remedies in a non-State operated NF or dually participating facility:

(a) *Disagreement over whether facility has met requirements.* (1) The State's finding of noncompliance takes precedence when—

(i) CMS finds that a NF or a dually participating facility is in substantial compliance with the participation requirements; and

(ii) The State finds that a NF or dually participating facility has not achieved substantial compliance.

(2) CMS's findings of noncompliance take precedence when—

(i) CMS finds that a NF or a dually participating facility has not achieved substantial compliance; and

(ii) The State finds that a NF or a dually participating facility is in substantial compliance with the participation requirements.

(3) When CMS's survey findings take precedence, CMS may—

(i) Impose any of the alternative remedies specified in § 488.406;

(ii) Terminate the provider agreement subject to the applicable conditions of § 488.450; and

(iii) Stop FFP to the State for a NF.

(b) *Disagreement over decision to terminate.* (1) CMS's decision to terminate the participation of a facility takes precedence when—

(i) Both CMS and the State find that the facility has not achieved substantial compliance; and

(ii) CMS, but not the State, finds that the facility's participation should be terminated. CMS will permit continuation of payment during the period prior to the effective date of termination not to exceed 6 months, if the applicable conditions of § 488.450 are met.

(2) The State's decision to terminate a facility's participation and the procedures for appealing such termination, as specified in § 431.153(c) of this chapter, takes precedence when—

(i) The State, but not CMS, finds that a NF's participation should be terminated; and

(ii) The State's effective date for the termination of the NF's provider agreement is no later than 6 months after the last day of survey.

(c) *Disagreement over timing of termination of facility.* The State's timing of termination takes precedence if it does not occur later than 6 months after the last day of the survey when both CMS and the State find that—

(1) A facility is not in substantial compliance; and

(2) The facility's participation should be terminated.

(d) *Disagreement over remedies.* (1) When CMS or the State, but not both, establishes one or more remedies, in addition to or as an alternative to termination, the additional or alternative remedies will also apply when—

(i) Both CMS and the State find that a facility has not achieved substantial compliance; and

(ii) Both CMS and the State find that no immediate jeopardy exists.

(2) *Overlap of remedies.* When CMS and the State establish one or more remedies, in addition to or as an alternative to termination, only the CMS remedies apply when both CMS and the State find that a facility has not achieved substantial compliance.

(e) Regardless of whether CMS's or the State's decision controls, only one noncompliance and enforcement decision is applied to the Medicaid agreement, and for a dually participating facility, that same decision will apply to the Medicare agreement.

§ 488.454 Duration of remedies.

(a) Except as specified in paragraphs (b) and (d) of this section, alternative remedies continue until—

(1) The facility has achieved substantial compliance, as determined by CMS or the State based upon a revisit or after an examination of credible written evidence that it can verify without an on-site visit; or

(2) CMS or the State terminates the provider agreement.

(b) In the cases of State monitoring and denial of payment imposed for repeated substandard quality of care, remedies continue until—

(1) CMS or the State determines that the facility has achieved substantial compliance and is capable of remaining in substantial compliance; or

(2) CMS or the State terminates the provider agreement.

(c) In the case of temporary management, the remedy continues until—

(1) CMS or the State determines that the facility has achieved substantial compliance and is capable of remaining in substantial compliance;

(2) CMS or the State terminates the provider agreement; or

(3) The facility which has not achieved substantial compliance re-assumes management control. In this case, CMS or the State initiates termination of the provider agreement and may impose additional remedies.

(d) In the case of a civil money penalty imposed for an instance of non-compliance, the remedy is the specific