CMS Manual System

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Department of Health & Human Services (DHHS)
Centers for Medicare & Medicaid Services (CMS)

Transmittal 113 **Date: April 25, 2014**

SUBJECT: New Guidance Added to Chapter 7 – Survey and Enforcement Process for Skilled Nursing Facilities and Nursing Facilities

I. SUMMARY OF CHANGES: This instruction revises and expands current Medicare and Medicaid guidance regarding the imposition and collection of civil money penalties by CMS when nursing homes are not in compliance with Federal participation requirements in accordance with section 6111 of the Affordable Care Act of 2010.

NEW MATERIAL - EFFECTIVE DATE: January 1, 2012
IMPLEMENTATION DATE: January 1, 2012

Disclaimer for manual changes only: The revision date and transmittal number apply to the red italicized material only. Any other material was previously published and remains unchanged. However, if this revision contains a table of contents, you will receive the new/revised information only, and not the entire table of contents.

II. CHANGES IN MANUAL INSTRUCTIONS: (*N/A if manual not updated.*)
(R = REVISED, N = NEW, D = DELETED) – (*Only One Per Row.*)

R/N/D	CHAPTER/SECTION/SUBSECTION/TITLE
R	7/Table of Contents
R	7/7001/Definitions and Acronyms
R	7/7212/7212.2/Purpose
R	7/7212/7212.3/Mandatory Elements of Informal Dispute Resolution
N	7/7213/ Independent Informal Dispute Resolution (Independent IDR)
N	7/7213/7213.1/Introduction
N	7/7213/7213.2/Purpose
N	7/7213/7213.3/Independent Informal Dispute Resolution Requirements
N	7/7213/7213.4/Applicability of the Independent Informal Dispute Resolution Process
N	7/7213/7213.5/Key Elements of Independent Informal Dispute Resolution
N	7/7213/7213.6/Qualifications of an Independent Informal Dispute Resolution Entity or Person(s)
N	7/7213/7213.7/Approval of an Independent Informal Dispute Resolution process
N	7/7213/7213.8/State Budget and Payment for Expenses
N	7/7213/7213.9/Independent Informal Dispute Resolution Recommendation and Final Decision
N	7/7213/7213.10/Additional Elements for Federal Independent Informal Dispute Resolution process
R	7/7305/7305.1.3/When Immediate Jeopardy Exists
N	7/7516/7516.4/Reduction of a Civil Money Penalty by 50 Percent for Self-Reporting and Prompt Correction of Noncompliance
R	7/7528/7528.1/When a Civil Money Penalty Subject to Being Collected and

	Placed in an Escrow Account is Imposed
R	7/7528/7528.2/After Final Administrative Decision
R	7/7528/7528.3/No Hearing Requested
R	7/7528/7528.4/After Request to Waive Hearing
R	7/7528/7528.5/After Substantial Compliance is Achieved
N	7/7528/7528.6/After Effective Date of Termination
R	7/7534/7534.1/Collected From Medicare or Dually-Participating Facility
R	7/7534/7534.2.1/Entities Other Than Nursing Homes May Receive Collected Civil Money Penalty Funds From the State
N	7/7534/7534.4/Collected Amounts From Dually-Participating Facility or Medicare Facility and Held in Escrow
N	7/7535/Use of Civil Money Penalty Funds
R	EXHIBIT 139/MODEL LETTER TO PROVIDER (SEND WITH FORM CMS-2567) (IMMEDIATE JEOPARDY DOES NOT EXIST)
R	EXHIBIT 141/MODEL LETTER NOTIFYING PROVIDER OF RESULTS OF REVISIT
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N	EXHIBIT 147A/NOTICE OF PAYMENT AMOUNT DUE FOR PLACEMENT IN ESCROW (IIDR COMPLETE OR NOT TIMELY REQUESTED-FACILITY IS FILING FORMAL APPEAL)
N	EXHIBIT 354/MODEL LETTER TO INVOLVED RESIDENT, RESIDENT REPRESENTATIVE AND/OR STATE OMBUDSMAN – OPPORTUNITY TO PROVIDE WRITTEN COMMENT (INDEPENDENT INFORMAL DISPUTE RESOLUTION (IDR) HAS BEEN REQUESTED)

III. FUNDING: No additional funding will be provided by CMS; contractor activities are to be carried out within their FY 2012 operating budgets.

IV. ATTACHMENTS:

	Business Requirements
X	**Manual Instruction**
	Confidential Requirements
	One-Time Notification

***Unless otherwise specified, the effective date is the date of service.**

State Operations Manual

Chapter 7 - Survey and Enforcement Process for Skilled Nursing Facilities and Nursing Facilities

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(Rev. 113, Issued, 04-25-14)

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(Rev.113, Issued, 04-25-14, 01-Effective: 01-01-12, Implementation: 01-01-12)

Abbreviated Standard Survey means a survey other than a standard survey that gathers information primarily through resident-centered techniques on facility compliance with the requirements for participation. An abbreviated standard survey may be premised on complaints received; a change in ownership, management, or director of nursing; or other indicators of specific concern. *(42 CFR 488.301)*

Abuse - means the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish. (42 CFR 488.301)

ACO - Automated Survey Processing Environment (ASPEN) Central Office.

Act - the Social Security Act

AEM - Automated Survey Processing Environment (ASPEN) Enforcement Manager.

ASPEN - Automated Survey Processing Environment.

CASPER - Certification and Survey Provider Enhanced Reporting.

Certification of Compliance means that the facility is in at least substantial compliance and is eligible to participate in Medicaid as a nursing facility, or in Medicare as a skilled nursing facility, or in both programs as a dually participating facility.

Certification of Noncompliance means that the facility is not in substantial compliance and is not eligible to participate in Medicaid as a nursing facility, or in Medicare as a skilled nursing facility, or in both programs as a dually participating facility.

CFR - Code of Federal Regulations.

CMP - civil money penalty.

CMPTS - Civil Money Penalty Tracking System.

CMS - Centers for Medicare & Medicaid Services (formerly HCFA).

Deficiency means a skilled nursing facility's or nursing facility's failure to meet a participation requirement specified in the Act or in 42 CFR Part 483 Subpart B. (42 CFR 488.301)

DoPNA or **DPNA -** denial of payment for new admissions.

DPoC - directed plan of correction.

Dually Participating Facility means a facility that has a provider agreement in both the Medicare and Medicaid programs.

Educational programs means programs that include any subject pertaining to the long-term care participation requirements, the survey process, or the enforcement process.

Enforcement action means the process of imposing one or more of the following remedies: termination of a provider agreement; denial of participation; denial of payment for new admissions; denial of payment for all residents; temporary manager; civil money penalty; State monitoring; directed plan of correction; directed in-service training; transfer of residents; closure of the facility and transfer of residents; or other CMS-approved alternative State remedies.

Expanded survey means an increase beyond the core tasks of a standard survey. A standard survey may be expanded at the surveying entity's discretion. When surveyors suspect substandard quality of care they should expand the survey to determine if substandard quality of care does exist.

Extended survey means a survey that evaluates additional participation requirements subsequent to finding substandard quality of care during a standard survey. *(42 CFR 488.301)*

Facility means a skilled nursing facility or nursing facility, or a distinct part of a skilled nursing facility or nursing facility, in accordance with 42 CFR 483.5. *(42 CFR 488.301)* (See §7008 for entities that qualify as skilled nursing facilities and nursing facilities.)

FSES – Fire Safety Evaluation System.

IDR – informal dispute resolution.

IJ – immediate jeopardy.

Immediate family means a husband or wife; natural or adoptive parent, child or sibling; stepparent, stepchild, stepbrother, or stepsister; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law; grandparent or grandchild. *(42 CFR 488.301.)*

Immediate jeopardy means a situation in which the facility's noncompliance with one or more requirements of participation has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident. *(42 CFR 488.301)*

***Independent IDR** – Independent informal dispute resolution*

LSC – Life Safety Code.

MAC means Medicare Area Contractor.

Misappropriation of resident property means the deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident's belongings or money without the resident's consent. *(42 CFR 488.301)*

NATCEP – Nurse Aide Training and Competency Evaluation Program.

Neglect means failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness. *(42 CFR 488.301)*

New admission, for purposes of a denial of payment remedy, means a resident who is admitted to the facility on or after the effective date of a denial of payment remedy and, if previously admitted, has been discharged before that effective date. (See §7506 for examples of what does and does not constitute a new admission for purposes of the remedy.) *(42 CFR 488.401)*
NF – nursing facility.

Noncompliance means any deficiency that causes a facility not to be in substantial compliance. *(42 CFR 488.301)*

No Opportunity to Correct means the facility will have remedies imposed immediately after a determination of noncompliance has been made.

NOTC – no opportunity to correct.

Nurse aide means any individual providing nursing or nursing-related services to residents in accordance with 42 CFR 483.75(e)(1). *(CFR 42 488.301)*

Nursing facility means a Medicaid nursing facility. *(42 CFR 488.301)*

OBRA '87 - the Omnibus Budget Reconciliation Act of 1987.

Opportunity to Correct means the facility is allowed an opportunity to correct identified deficiencies before remedies are imposed.

OTC – opportunity to correct.

Partial extended survey means a survey that evaluates additional participation requirements and verifies the existence of substandard quality of care during an abbreviated standard survey. *(42 CFR 488.301.)*

Past Noncompliance means a deficiency citation at a specific survey data tag (F-tag or K-tag), that meets all of the following three criteria:

1) The facility was not in compliance with the specific regulatory requirement(s) (as referenced by the specific F-tag or K-tag) at the time the situation occurred;
2) The noncompliance occurred after the exit date of the last standard (recertification) survey and before the survey (standard, complaint, or revisit) currently being conducted, and
3) There is sufficient evidence that the facility corrected the noncompliance and is in substantial compliance at the time of the current survey for the specific regulatory requirement(s), as referenced by the specific F-tag or K-tag.

Per day civil money penalty means a civil money penalty imposed for the number of days a facility is not in substantial compliance.

Per instance civil money penalty means a civil money penalty imposed for each instance of facility noncompliance.

PNC – past noncompliance.

PoC - plan of correction. (42 CFR 488.401)
QIES - Quality Improvement and Evaluation System.

Representative-for purposes of educational programs, means family members, legal guardians, friends, and ombudsmen assigned to the facility; *for purposes of Independent IDR, means either the resident's legal representative or the individual filing a complaint involving or on behalf of a resident.*
Self-Reported Noncompliance- *Noncompliance that is reported by a facility to the State Survey Agency before it is identified by the State, CMS, or reported to the State or CMS by an entity other than the facility itself.*

SFF – Special Focus Facility.

Skilled nursing facility means a Medicare-certified nursing facility that has a Medicare provider agreement. *(42 CFR 488.301)*

SMA – State Medicaid Agency.

SNF – skilled nursing facility.

SQC – substandard quality of care.

Standard survey means a periodic, resident-centered inspection that gathers information about the quality of service furnished in a facility to determine compliance with the requirements of participation. *(42 CFR 488.301)*

State survey agency (SA) means the entity responsible for conducting most surveys to certify compliance with the Centers for Medicare and Medicaid Services' participation requirements.

State Medicaid Agency means the entity in the State responsible for administering the Medicaid program.

Substandard quality of care means one or more deficiencies related to participation requirements under 42 CFR 483.13, resident behavior and facility practices, 42 CFR 483.15, quality of life, or 42 CFR 483.25, quality of care, that constitute either immediate jeopardy to resident health or safety (level J, K, or L); a pattern of or widespread actual harm that is not immediate jeopardy (level H or I); or a widespread potential for more than minimal harm, but less than immediate jeopardy, with no actual harm (level F). *(42 CFR 488.301)*

Substantial compliance means a level of compliance with the requirements of participation such that any identified deficiencies pose no greater risk to resident health or safety than the potential for causing minimal harm. Substantial compliance constitutes compliance with participation requirements. *(42 CFR 488.301)*

7212 - Informal Dispute Resolution

(Rev.113, Issued, 04-25-14, 01-Effective: 01-01-12, Implementation: 01-01-12)

7212.2 – Purpose – To Provide Facilities an Opportunity To Informally Dispute Cited Deficiencies After a Survey.

(Rev.113, Issued, 04-25-14, 01-Effective: 01-01-12, Implementation: 01-01-12)

7212.3 - Mandatory Elements of Informal Dispute Resolution

(Rev.113, Issued, 04-25-14, 01-Effective: 01-01-12, Implementation: 01-01-12)

The following elements must be included in each informal dispute resolution process offered:

1. Upon their receipt of the official Form CMS-2567, facilities must be offered *an* informal opportunity, to dispute deficiencies with the entity that conducted the survey.
2. Facilities may not use the informal dispute resolution process to delay the formal imposition of remedies or to challenge any other aspect of the survey process, including the:
    - Scope and severity assessments of deficiencies with the exception of scope and severity assessments that constitute substandard quality of care or immediate jeopardy;

- Remedy(ies) imposed by the enforcing agency;
- Alleged failure of the survey team to comply with a requirement of the survey process;
- Alleged inconsistency of the survey team in citing deficiencies among facilities;
- Alleged inadequacy or inaccuracy of the informal dispute resolution process.

3. Facilities must be notified of the availability of informal dispute resolution in the letter transmitting the official Form CMS-2567. (See Exhibit 139 in this manual for transmission of Form CMS-2567.) Notification of this process should inform the facility:

    - That it may request the opportunity for informal dispute resolution, and that if it requests the opportunity, the request must be submitted in writing along with an explanation of the specific deficiencies that are being disputed. The request must be made within the same 10 calendar day period the facility has for submitting an acceptable plan of correction to the surveying entity;
    - Of the name, address, and telephone number of the person the facility must contact to request informal dispute resolution;
    - How informal dispute resolution may be accomplished in that State, e.g., by telephone, in writing, or in a face-to-face meeting.
    - Of the name and/or the position title of the person who will be conducting the informal dispute resolution, if known.

States should be aware that CMS holds them accountable for the legitimacy of the *informal dispute resolution* process including the accuracy and reliability of conclusions that are drawn with respect to survey findings. This means that while States may have the option to involve outside persons or entities they believe to be qualified to participate in this process, it is the States, not outside individuals or entities that are responsible for informal dispute resolution decisions. So, when an outside entity conducts *the* informal dispute resolution *process*, the results may serve only as a recommendation of noncompliance or compliance to the State. The State will then make the *final* informal dispute resolution decision and notify the facility of that decision. CMS will look to the States to assure the viability of these decision- making processes, and holds States accountable for them.
Since CMS has ultimate oversight responsibility relative to a State's performance, it may be appropriate for CMS to examine specific informal dispute resolution decisions or the overall informal dispute resolution process to determine whether a State is arriving at a correct result. For dually participating or Medicare-only facilities, informal dispute findings are in the manner of recommendations to CMS and, if CMS has reason to disagree with those findings, it may reject the conclusions from informal dispute resolution and make its own binding determinations of noncompliance.

4. Failure to complete informal dispute resolution timely will not delay the effective date of any enforcement action against the facility.

5. When a facility is unsuccessful during the process at demonstrating that a deficiency should not have been cited, the surveying entity must notify the facility in writing that it was unsuccessful.

6. When a facility is successful during the informal dispute resolution process at demonstrating that a deficiency should not have been cited:

- *On the CMS Form-2567, annotate deficiency (ies) citations as "deleted" and/or change deficiency (ies) citation findings, as recommended. A State survey agency manager or supervisor will sign and date the revised CMS Form-2567.*

- *Adjust the scope and severity assessment for deficiencies, if warranted and in accordance with CMS policy.*

- *The State survey agency will promptly recommend to CMS that any enforcement action(s) imposed solely because of deleted or altered deficiency citations be reviewed, changed or rescinded.*

The facility has the option to request a clean (new) copy of the Form CMS-2567. However, the clean copy will be the releasable copy only when a clean (new) plan of correction is both provided and signed by the facility. The original Form CMS-2567 is disclosable when a clean plan of correction is not submitted and signed by the facility. Any Form CMS-2567 and/or plan of correction that is revised or changed as a result of informal dispute resolution must be disclosed to the ombudsman in accordance with §7904.

Deficiencies pending informal dispute resolution should be entered into the Automated Survey Processing Environment system (ASPEN) and the ASPEN Informal Dispute Resolution (IDR) Manager *within ten (10) calendar days of receiving the request for an informal dispute resolution. This information however* will not be uploaded to the Certification and Survey Provider Enhanced Reporting system (CASPER) for posting to the Nursing Home Compare website until informal dispute resolution has been completed.

7. *A f*acility may request informal dispute resolution for each survey that cites deficiencies. However, if informal dispute resolution is requested for deficiencies cited at a subsequent survey, a facility may not challenge the survey findings of a previous survey for which the facility either received informal dispute resolution or had an opportunity for it. The following table indicates when informal dispute resolution may be requested based on the results of a revisit or as a result of the previous informal dispute resolution outcome.

Situation	Eligibility for Informal Dispute Resolution
Continuation of same deficiency at revisit	Yes
New deficiency (i.e., new or changed facts, new tag) at revisit or as a result of an informal dispute resolution	Yes
New *instance* of deficiency (i.e., new facts, same tag) at revisit or as a result of an informal dispute resolution.	Yes
Different tag but same facts at revisit or as a result of an informal dispute resolution	No, unless the new tag constitutes substandard quality of care

8. Written description of the surveying entity's informal dispute resolution process must be made available to a facility upon the facility's request.

9. States are encouraged to include in the informal dispute resolution process at least one person as part of the decision making process who was not directly involved in the survey. This may include, but is not limited to, another surveyor, ombudsman, a member of another survey team, etc.

7213 - Independent Informal Dispute Resolution (Independent IDR)
(Rev.113, Issued, 04-25-14, 01-Effective: 01-01-12, Implementation: 01-01-12)

All regulatory references are in 42 CFR unless otherwise stated.

7213.1 - Introduction
(Rev.113, Issued, 04-25-14, 01-Effective: 01-01-12, Implementation: 01-01-12)

Under sections 1819(h)(2)(B)(ii)(IV) and 1919(h)(2)(B)(ii)(IV) of the Act and regulations at 42 CFR 488.331 and 488.431 SNFs, NFs and SNF/NFs are provided the opportunity to request and participate in an Independent IDR if CMS imposes civil money penalties against the facility and these penalties are subject to being collected and placed in an escrow account pending a final administrative decision.

NOTE: *All CMP funds are subject to escrow. If the nursing home elects not to request an Independent IDR or to appeal, then after any IDR (if requested), CMP amount becomes due and payable in accordance with the process in §7528.3.*

A State survey agency does not need to create any new or additional processes for Independent IDR if its existing process meets the requirements at 42 CFR 488.331 and 488.431 and described throughout §7213.

7213.2 – Purpose
(Rev.113, Issued, 04-25-14, 01-Effective: 01-01-12, Implementation: 01-01-12)

To provide facilities, under certain circumstances, an additional opportunity to informally dispute cited

deficiencies through a process that is independent from the State survey agency or, in the case of Federal surveys, the CMS Regional Office.

7213.3 - Independent Informal Dispute Resolution Requirements
(Rev.113, Issued, 04-25-14, 01-Effective: 01-01-12, Implementation: 01-01-12)

The requirements and specific core elements that must be included in an acceptable Independent IDR process are specified in the regulations at 42 CFR 488.331 and 488.431. CMS retains ultimate authority for the survey findings and imposition of civil money penalties. However, an opportunity for an Independent IDR is provided within 30 calendar days of the notice of imposition of a civil money penalty that is subject to being collected and placed in escrow. An Independent IDR will –

1. *Be completed within 60 calendar days of a facility's request, if an Independent IDR is requested timely by the facility;*

   NOTE: *Independent IDR is completed when a final decision from the Independent IDR process has been made, a written record has been generated and the State survey agency has sent written notice of this decision to the facility. The Independent IDR process is also considered to be completed if a facility does not timely request or chooses not to participate in the Independent IDR process.*

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;*

   NOTE: "*Involved resident" is a resident who was the subject of a complaint or who filed a complaint that led to a deficiency finding that is the subject of Independent IDR. "Representative" means either the resident's legal representative or an individual filing a complaint involving or on behalf of a resident.*

4. *Be approved by CMS and conducted by the State, 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 IDR process is not used, and which has no conflict of interest, such as:*
   a. *A component of an umbrella State agency provided that the component is organizationally separate from the State survey agency, or*
   b. *An independent entity with a specific understanding of Medicare and Medicaid program requirements selected by the State and approved by CMS, and,*

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.*

The Independent IDR process, as established by the State survey agency, must be approved by CMS. If an Independent IDR entity or person provides services in multiple States and/or CMS Regions, each State and its CMS Regional Office (RO) must approve the Independent IDR entity's or person's process and procedures for the State's or RO's jurisdiction. In order to ensure compliance of the Independent IDR process with Federal statute and regulations, each State survey agency will submit its written process and procedures, including any subsequent changes, to the applicable CMS RO for review and prior approval. The Independent IDR process must be in writing and available for review upon request.

7213.4 - Applicability of the Independent Informal Dispute Resolution Process
(Rev.113, Issued, 04-25-14, 01-Effective: 01-01-12, Implementation: 01-01-12)

The Independent IDR process must be offered to a facility when a civil money penalty is imposed and that penalty is subject to being collected and placed in escrow under 42 CFR 488.431(b). Beginning on January 1, 2012, CMS may collect and place imposed civil money penalties in an escrow account on whichever of the following occurs first:

- *The date on which the Independent IDR process is completed, or*
- *The date which is 90 calendar days after the date of the notice of imposition of the civil money penalty.*

The Independent IDR is conducted only upon the facility's timely request. The facility must request an Independent IDR within 10 calendar days of receipt of the offer. The facility's request will be considered timely if the request is dated within 10 calendar days of the receipt of the offer, and, in the case of the request being mailed, the postmark verifies that it was mailed within that same 10 day time period.

1. *A facility may request an Independent IDR for each survey that cites deficiencies for which a civil money penalty has been imposed that is subject to collection and placement in an escrow account. However, when a facility requests an Independent IDR for a survey, the facility cannot raise questions or issues regarding a previous survey, and consideration of such previous survey results is beyond the scope of the independent IDR. The following table indicates when independent informal dispute*

resolution may be requested based on the results of a revisit or as a result of the previous independent informal dispute resolution outcome.

Situation	***Eligibility for Independent Informal Dispute Resolution***
Continuation of same deficiency at revisit which results in the continuation of the imposed civil money penalty	*Yes*
New deficiency resulting in the imposition of a civil money penalty(i.e., new or changed facts, new tag) at revisit or as a result of an independent informal dispute resolution	*Yes*
New instance of deficiency resulting in the imposition of a civil money penalty (i.e., new facts, same tag) at revisit or as a result of an informal dispute resolution.	*Yes*
Different tag but same facts at revisit or as a result of an informal dispute resolution	*No, unless the new tag constitutes substandard quality of care and results in the imposition of a civil money penalty*

The Independent IDR process does not delay the imposition of any remedies, including a civil money penalty. During the Independent IDR process a facility may dispute the factual basis of the cited deficiencies for which it requested Independent IDR. During the Independent IDR process, a facility may not challenge other aspects of the survey process, such as:

- *Scope or severity classifications, with the exception of assessments that constitute substandard quality of care or immediate jeopardy;*
- *Remedy(ies) imposed;*
- *Alleged failure of the survey team to comply with a requirement of the survey process;*
- *Alleged inconsistency of the survey team in citing deficiencies among other facilities;*
- *Alleged inadequacy or inaccuracy of the IDR or Independent IDR process.*

The focus of the Independent IDR process is the deficiency or deficiencies from a survey that led to the imposition of a civil money penalty that is subject to being collected and placed in escrow under §488.431(b). However, while such factors as the scope and severity classification, and the amount of the penalty, are not the subjects of the Independent IDR, State survey agencies and CMS, will take into consideration any changes in deficiency findings that result pursuant to State or CMS review of the completed Independent IDR process. Based on such review, States and CMS will assess whether any changes to scope and severity or civil money penalty amount are warranted.

While States have discretion to limit participation in the Independent IDR process by attorneys or other parties, notice to the facility should indicate that the Independent IDR, including face-to-face meetings, constitutes an informal administrative process that is not to be construed as a formal evidentiary hearing.
Independent IDR is not intended to be a formal or evidentiary hearing nor are the results of the Independent IDR process an initial determination that gives rise to appeal rights pursuant to 42 CFR 498.3(b). The Independent IDR results are recommendations to the State and CMS and are not subject to a formal appeal.

7213.5- Key Elements of Independent Informal Dispute Resolution
(Rev.113, Issued, 04-25-14, 01-Effective: 01-01-12, Implementation: 01-01-12)

At a minimum, the Independent IDR process must provide for the following:

1. ***Offer of Independent IDR:*** *The opportunity for Independent IDR must be provided within 30 calendar days of CMS's notice of imposition of a civil money penalty that is subject to being collected and placed in an escrow account. The CMS RO will communicate the offer for an Independent IDR in its initial Notice of Imposition of a Penalty letter to a facility. In addition, the CMS notice will provide the State survey agency contact information, including the name, address, and telephone number of the person and/or agency or office that the facility must contact to request an Independent IDR. The Notice of Imposition of a Penalty may be sent by e-mail and/or fax. The Statement of Deficiencies (Form CMS-2567) may be included with the Notice of Imposition of a Penalty letter. The CMS RO must confirm receipt by the facility of such notice letter. A copy of this letter will also be sent to the State survey agency.*

Upon a facility's timely request for an Independent IDR, the State survey agency, or the Independent IDR entity or person (as appropriate) will provide the following information to the facility:

- *Information on the Independent IDR process including where, when and how the process may be accomplished, e.g., by telephone, in writing, or in a face-to-face meeting, and*

- *Contact information, i.e. the name, address, phone number and e-mail of the person(s) who will be conducting the Independent IDR, if appropriate.*

As with the current IDR process, the Independent IDR process will be available to a facility at no charge. Collected civil money penalty funds may not be used to cover State expenses for IDR or Independent IDR. IDR and Independent IDR are part of the survey and certification process.

2. ***Timing:*** *The Independent IDR is conducted only upon the facility's timely request. The facility must request an Independent IDR within 10 calendar days of receipt of the offer. The facility's request will be considered timely if the request is dated within 10 calendar days of the receipt of the CMS offer, and, in the case of the request being mailed, the postmark verifies that it was mailed within that same 10 day time period. The facility must submit its request in writing to the State survey agency, or the approved Independent IDR entity or person, as appropriate. The facility's request should also include copies of any documents, such as facility policies and procedures, resident medical record information that are redacted to protect confidentiality and all patient identifiable information, or other information on which it relies in refuting the survey findings.*

§488.431(a)(1) require that the Independent IDR be completed within 60 days of the facility's request. Every effort must be made to comply with this time frame, however, failure to comply with the Independent IDR process does not invalidate any cited deficiencies or any remedies imposed.

The Independent IDR process should be completed as soon as practicable but no later than 60 calendar days of receipt of the facility's request. The Independent IDR process is considered completed if a facility does not timely request or chooses not to participate in the Independent IDR process or when a final decision has been made, a written record has been generated, AND the State survey agency has sent written notice of this final decision to the facility.

3. ***Opportunity to Comment:*** *Once a facility requests an Independent IDR, the State must notify the involved resident or resident representative, as well as the State's long term care ombudsman, that they have an opportunity to submit written comment. The State should request information from the long-term care ombudsman program, asking for specific information based on the ombudsman program's direct involvement or knowledge and directly related to the deficiency (ies) being disputed by the facility. Information about the facility or provider in general, but not related to the deficiency (ies) at issue, is not relevant to the Independent IDR process. This notification must be done before the Independent IDR review begins and with sufficient time for the resident or their representative to provide comment. At a minimum, this notification must include:*

   - *A brief description of the findings of noncompliance for which the facility is requesting Independent ID, a statement about the CMP imposed based on these findings, and reference to the relevant survey date;*

   - *Contact information for the State survey agency, or the approved Independent IDR entity or person as appropriate regarding when, where and how potential commenters must submit their comments;*

   - *A designated contact person to answer questions/concerns;*

   - *For residents and/or resident representatives, contact information for the State's long term care ombudsman.*

4. ***Written Record:*** *The Independent IDR entity or person must generate a written record as soon as practicable but no later than within 10 calendar days of completing its review. The Independent IDR entity or person will forward the written record to the State survey agency, for retention by the surveying entity. The State survey agency will provide the final decision to the facility as soon as practicable but no later than 10 calendar days of its receipt of the written record. The final Independent IDR decision to the facility shall contain the result for each deficiency challenged and a brief summary of the rationale for that result. The written record from the Independent IDR entity or person shall include:*

   - *List of each deficiency or survey finding that was disputed;*
   - *A summary of the Independent IDR recommendation for each deficiency or finding at issue and the justification for that result;*

   - *Documents submitted by the facility to dispute a deficiency, to demonstrate that a deficiency should not have been cited, or to demonstrate a deficient practice should not have been cited as immediate jeopardy or substandard quality of care; and,*

   - *Any comments submitted by the State's long term care ombudsman and/or residents or resident representatives, as appropriate, taking care to protect confidentiality and protected health information.*

7213.6 - Qualifications of an Independent Informal Dispute Resolution Entity or Person(s)

(Rev.113, Issued, 04-25-14, 01-Effective: 01-01-12, Implementation: 01-01-12)

In order to be approved as an Independent IDR entity or person, whether it is a State agency or an outside organization contracted by the State agency, the entity or person must meet the following requirements:

Expertise and Training: *The entity or person has an understanding of:*

- *Medicare and Medicaid program requirements including, but not limited to:*

  a) 42 CFR Part 483, Subpart B, and Part 488, Subparts A, E and F;
  b) The State Operations Manual (SOM), including;
  1) Chapter 7, Definitions and §§ 7212, 7213 and 7900;
  2) Appendix P, Appendix PP, Appendix Q; and

- *Applicable health care standards of practice, health care management, and/ or life safety code knowledge and experience, relevant to the disputed issues.*

Independence: The entity or person –

- *Has no financial or other conflict of interest;*

- *May be a component of an umbrella State agency provided that the component is organizationally separate from the State survey agency;*

- *May be an independent entity or person with an understanding of specific Medicare and Medicaid program requirements selected by the State and approved by CMS.*

Examples of possible conflict of interest include, but are not limited to, individuals who:

a) Were employed by the State survey agency or the State ombudsman program within the past year;

b) Have a family member who is either a resident or an employee of the facility involved in the Independent IDR;

c) Is currently employed by the facility or organization involved in the Independent IDR;

d) Have worked within the past year as an employee, consultant or volunteer for the facility or a related corporation, involved in the Independent IDR;

e) Have ownership interest or currently serves or within the past year has served on the Board of Directors or Governing Body of a facility or organization involved in the Independent IDR; or

f) Have acted within the past year as legal counsel for or against the facility involved in the Independent IDR.

7213.7 - Approval of an Independent Informal Dispute Resolution Process

(Rev.113, Issued, 04-25-14, 01-Effective: 01-01-12, Implementation: 01-01-12)

A State's Independent IDR process must be approved by CMS. The State must submit all proposed processes, including any process that may have been used by or already existed in the State prior to January 1, 2012, to the CMS RO for approval.

The CMS RO will review and approve all written policies and procedures of the State's Independent IDR process. Any subsequent changes to an approved Independent IDR process must be submitted as soon as possible to the applicable CMS RO for review and approval prior to these changes taking effect.

The State survey agency and the Independent IDR entity or person must enter into a written contract or Memorandum of Understanding (MOU) which ensures that the Independent entity or person meets all of the qualifications and responsibilities set forth in regulations and guidelines specified in Chapter 7, §7213.7 of the SOM and will comply with all applicable Federal record laws and regulations concerning protected health information and the survey process or the Independent IDR process. An Independent IDR entity or person must not disclose to the public any information related to the facility that requested the Independent IDR, including the results of the Independent IDR review.

7213.8 - State Budget and Payment for Expenses

(Rev.113, Issued, 04-25-14, 01-Effective: 01-01-12, Implementation: 01-01-12)

Costs incurred by the State survey agency for conducting Independent IDRs are eligible for federal funding using standard cost allocation principles. If the State has a State law or regulation that obliges the State to offer an Independent IDR, or specifies the manner in which an Independent IDR is to be provided, or who must provide the Independent IDR, then the State must use the existing cost allocation methodology and proportions in place for the State's surveys of Skilled Nursing Facilities (SNF)/Nursing Facilities (NF), with costs allocated between Medicare, Medicaid, and State-only sources, as appropriate. In all other cases, the costs should be allocated between Medicare and Medicaid using the existing cost allocation methodology and proportions in place for the State's surveys of Skilled Nursing Facilities (SNF)/Nursing Facilities (NF), but adjusted for the absence of a State-only share (that is, there would not need to be State-only funds beyond the requirement for State match for the Medicaid portion).

States may not charge facilities for the Independent IDR process required under 42 C.F.R. §488.431. For deficiencies that are the basis for a CMP which is not collected and placed in escrow under §488.431(b), or for deficiencies that lead to the imposition of another remedy that is not a CMP, a State is not required to provide Independent IDR. In situations where the Independent IDR process is not required but is provided by the State directly at its option, the State may choose to charge a facility a user fee for those processes.

7213.9 - Independent Informal Dispute Resolution Recommendation and Final Decision

(Rev.113, Issued, 04-25-14, 01-Effective: 01-01-12, Implementation: 01-01-12)

1. *Upon receipt of the Independent IDR written record, the State survey agency, will review the Independent IDR recommendation(s) and:*

    (a) If the State survey agency, agrees with the Independent IDR recommendation(s) and no changes will be made to the disputed survey findings, the State survey agency will send written notification of the final decision to the facility within 10 calendar days of receiving the written record from the Independent IDR entity or person.

(b) If the State survey agency disagrees with one or more of the recommendations of the Independent IDR entity or person, the complete written record will be sent to the applicable CMS RO for review and final decision. The State survey agency should identify the portion(s) of the Independent IDR recommendation with which it disagrees, the basis for its disagreement including any relevant survey documents that support its recommendation to the CMS RO. As soon as practicable, but no later than 10 calendar days, the CMS RO will review the Independent IDR recommendation and records along with the State's written disagreement of the Independent IDR's recommendation and will provide written notification to the State survey agency of the final decision. The CMS review will be conducted by persons familiar with LTC requirements but who have not had any input or activity with respect to the survey or deficiencies at issue. The State survey agency will then send written notification of the final decision to the facility within 10 calendar days of receiving the final decision from the CMS RO.

NOTE: *Regulations at §488.431(a) (1) require that an Independent IDR will be completed within 60 days of a facility's timely request.* ***Completed*** *means that a final decision from the Independent IDR process has been made, a written record generated AND the State survey agency has sent written notice of the Independent IDR recommendation to the facility. The Independent IDR process is also considered completed if a facility does not timely request or chooses not to participate in the Independent IDR process.*

2. *If the State survey agency agrees with the Independent IDR recommendation(s) or has received a final decision from the CMS RO and changes will need to be made to the disputed survey findings, the State survey agency will , within 10 calendar days of receiving the written record:*

    a) *Change deficiency(ies) citation content findings, as recommended;*

    b) *Adjust the scope and severity assessment for deficiencies, if warranted by CMS policy after taking into consideration recommendations from the Independent IDR regarding the deficiency(ies);*

    c) *Annotate deficiency(ies) citations as "deleted or amended as recommended", where appropriate;*

    d) *Have a State survey agency manager or supervisor sign and date the revised CMS Form-2567;*

    e) *Promptly recommend to CMS that any enforcement action(s) imposed solely because of deleted or altered deficiency citations be reviewed, changed or rescinded as appropriate; and*

    f) *Provide written notification of the final decision to the facility.*

NOTE: *Based on a final Independent IDR recommendation and final State and CMS action, if one or more deficiencies on the Form CMS-2567 have been changed, deleted or altered, the facility has the option to request a clean (new) copy of the Form CMS-2567. However, the clean copy will be the releasable copy only when a clean (new) plan of correction is both provided and signed by the facility. The original Form CMS-2567 is disclosable when a clean plan of correction is not submitted and signed by the facility. Any Form CMS-2567 and/or plan of correction that is revised or changed as a result of informal dispute resolution must be disclosed to the ombudsman in accordance with §7904.*

Deficiencies pending Independent IDR should be entered into the Automated Survey Processing Environment (ASPEN) and the ASPEN Informal Dispute Resolution (IDR) Manager within ten (10) calendar days of

receiving the request for an independent informal dispute resolution. This information however will not be uploaded to the Certification and Survey Provider Enhanced Reporting System (CASPER) for posting to the Nursing Home Compare website until the Independent IDR has been completed. .

IDR or Independent IDR requests from the facility should be entered in the ASPEN system within 10 working days of the IDR or Independent IDR request and necessary changes should be entered in the ASPEN system within 10 working days of completion of the IDR or Independent IDR process.
Specific instructions are provided in the current ASPEN Users Guides

7213.10 - Additional Elements for Federal Independent Informal Dispute Resolution Process
(Rev.113, Issued, 04-25-14, 01-Effective: 01-01-12, Implementation: 01-01-12)

In the case where a Federal survey, conducted solely by Federal surveyors, or its contractors, results in the imposition of a civil money penalty (CMP) that is subject to being collected and placed in escrow, the Regional Office will offer the facility the opportunity for an Independent IDR. The Regional Office will follow the applicable elements cited in §7213. The Regional Office should advise the facility that all requests for an Independent IDR should be directed in writing to the Regional Office and an electronic copy of the request should also be sent to the CMS mailbox at CMSQualityAssurance@cms.hhs.gov. The facility should send any and all documentation, such as facility policies and procedures, resident medical record information or other information on which it relies in disputing the survey findings directly to the entity contracted by CMS to provide the Federal Independent IDR process. The facility must also send a copy of the supporting documentation to the CMS Regional Office with its request.

The Regional Office must also inform the involved resident or resident representative as well as the State's long term care ombudsman to submit any written comments directly to the Federal Independent IDR entity. This Independent IDR will be a paper review performed by the Federal Independent IDR entity under contract with CMS, Survey & Certification Group, Division of Nursing Homes. The Independent IDR will be completed within 60 calendar days of the facility's timely request. Upon completion of the review the Federal Independent IDR entity will send all documents submitted by the facility and any comments submitted by the State's long term care ombudsman and/or residents or resident representatives to the respective Regional Office along with its final written record/report.

In the event that any conflict of interest exists between the facility and the contracted Federal Independent IDR entity, or in the event that the Federal Independent IDR entity is unavailable, the Independent IDR will be conducted by CMS Central Office. In this case, the facility should be instructed to send all documentation to:

Centers for Medicare & Medicaid Services
Survey and Certification Group - Division of Nursing Homes
7500 Security Blvd - Mailstop C2-21-16
Baltimore, MD 21244

This Independent IDR will be a paper review performed by a panel of CMS Central Office employees who meet the criteria for an Independent IDR entity. The Independent IDR will be completed within 60 calendar days of the facility's timely request. Upon completion of the review, CMS Central Office will send all documents submitted by the facility and any comments submitted by the State's long term care ombudsman and/or residents or resident representatives to the respective Regional Office along with their final written record/report.

Upon receipt of a facility's request for an Independent IDR the Regional Office should enter the appropriate information into the Automated Survey Processing Environment (ASPEN).

Upon receipt of the Independent IDR written record, the Regional Office, will review the Independent IDR recommendation(s) and:

1. *If the Regional Office agrees with the Independent IDR recommendation(s) and no changes will be made to the disputed survey findings, the Regional Office will send written notification of the final decision to the facility within 10 calendar days of receiving the written record from the Independent IDR entity or person.*

2. *If the Regional Office disagrees with one or more of the recommendations of the Independent IDR entity or person, the complete written record will be sent to CMS Central Office for review and final decision. The Regional Office should identify the Independent IDR recommendation with which it disagrees, the basis for its disagreement and any relevant survey documents to the CMS Central Office. As soon as practicable, but no later than 10 calendar days, the CMS Central Office will review the Independent IDR recommendation and corresponding records along with the Regional Office's written disagreement of the Independent IDR's recommendation and will provide written notification to the CMS Regional Office of the final decision. The CMS Regional Office will then send written notification of the final decision to the facility within 10 calendar days of receiving the final decision from the CMS Central Office.*

NOTE: *The regulations at §488.431(a) (1) require that an Independent IDR will be completed within 60 days of a facility's timely request.* ***Completed*** *means that a final decision from the Independent IDR process has been made, a written record generated AND the CMS Regional Office has sent written notice of the Independent IDR recommendation to the facility.*

3. *If the CMS Regional Office agrees with the Independent IDR recommendation(s) or has received a final decision from the CMS Central Office and changes are to be made to the disputed survey findings, the CMS Regional Office will, within 10 calendar days of receiving the written record:*

    a) *Change deficiency (ies) citation content findings, as recommended;*

    b) *Adjust the scope and severity assessment for deficiencies, if warranted by CMS policy after taking into consideration approvable recommendations from the Independent IDR regarding the deficiency (ies);*

    c) *Annotate deficiency (ies) citations as "deleted or amended as recommended "where appropriate;*

    d) *Have a CMS Regional Office manager or supervisor sign and date the revised CMS Form-2567;*

    e) *Ensure that any enforcement action(s) imposed solely because of deleted or altered deficiency citations will be reviewed, changed or rescinded, as appropriate; and*

    f) *Provide written notification of the final decision to the facility.*

NOTE: *Based on a final Independent IDR recommendation and final State and CMS action, if one or more deficiencies on the Form CMS-2567 have been revised or removed, the facility has the option to request a clean (new) copy of the Form CMS-2567. However, the clean copy will be the releasable copy only when a clean (new) plan of correction is both provided and signed by the facility. The original Form CMS-2567 is disclosable when a clean plan of correction is not submitted and signed by the facility. Any Form CMS-2567 and/or plan of*

correction that is revised or changed as a result of IDR must be disclosed to the ombudsman in accordance with §7904.

Deficiencies pending Independent IDR should be entered into the Automated Survey Processing Environment (ASPEN) and the ASPEN Informal Dispute Resolution (IDR) Manager but will not be uploaded to the Certification and Survey Provider Enhanced Reporting System (CASPER) for posting to the Nursing Home Compare website until the Independent IDR has been completed. .

IDR or Independent IDR requests from the facility and necessary changes should be entered in the ASPEN system within 10 working days of the IDR or Independent IDR request and necessary changes should be entered in the ASPEN system within 10 working days of completion of the IDR or Independent IDR process.

Specific instructions are provided in the current ASPEN Users Guide.

The ASPEN Enforcement Manager (AEM) will be enabled to include the Independent IDR process for enforcement actions with survey cycles that begin on or after January 1, 2012.

7305.1.3 – When Immediate Jeopardy Exists

(Rev.113, Issued, 04-25-14, 01-Effective: 01-01-12, Implementation: 01-01-12)

The surveying entity sends the initial notice to the facility of the following:

a. The nature of the immediate jeopardy, including regulatory cites or initial assessment of immediate jeopardy findings;

b. Requests an allegation of removal of immediate jeopardy, including evidence of steps taken to remove the immediate jeopardy. The plan of correction will usually be deferred until immediate jeopardy has been determined to be removed;

c. Consequences of failure to submit an allegation of removal, e.g., provider agreement termination;

d. Remedies recommended with effective dates;

e. Opportunity for informal dispute resolution;

f. *Opportunity for independent informal dispute resolution if a civil money penalty subject to being collected and placed in an escrow account is imposed;*

g. Disapproval of nurse aide training and competency evaluation program and competency evaluation program and appeal rights if the program loss is based on a finding of substandard quality of care;

h. When substandard quality of care is determined, the facility must provide the State with a list of the physicians of those residents who were found to be subject to the substandard quality of care. The State must notify each attending physician and refer the administrator to the State's licensing board; and,

i. When no formal notification of remedies is being provided in this initial notice, the following language will be inserted in **bold type** in the letter to make it clear that the initial notice is not the notice that triggers the imposition of remedies and that any such determination will be provided in a separate notice: **"Please note that this notice does not constitute formal notice of imposition of alternative remedies or termination of your provider agreement. If it is determined that termination or any**

other remedy is warranted, you will be provided with a separate formal notification of that determination."

j. May serve as the formal notice of the imposition of any category 1 remedy, as authorized by CMS or the State Medicaid Agency, to be effective on (date the State expects correction based on the outside correction date on the facility's approved plan of correction, but no earlier than 2 calendar days from the date of receipt of notice by the facility). Also, if authorized by the regional office, the State may provide formal notice to the facility of imposition of denial of payment for new admissions in the initial notice rather than in the first revisit letter, to be effective on (date the State expects correction based on the outside correction date on the facility's approved plan of correction but no earlier than 2 calendar days from the date of receipt of notice by the facility). (See also §7301, §7313.2, §7314, §7316.2, and §7506.1.)

7516.4 – Reduction of a Civil Money Penalty by 50 Percent for Self-Reporting and Prompt Correction of Noncompliance

(Rev.113, Issued, 04-25-14, 01-Effective: 01-01-12, Implementation: 01-01-12)

CMS will reduce a civil money penalty by 50 percent when a facility self-reports and promptly corrects a deficiency for which a civil money penalty is imposed by CMS provided all of the following conditions are met:

a) The facility must have self-reported the noncompliance 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;

b) Correction of the noncompliance must have occurred on the earlier of either 15 calendar days from the date of the self-reported circumstance or incident that later resulted in a finding of noncompliance or 10 calendar days from the date a civil money penalty was imposed;

c) The facility waives its right to a hearing;

d) 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;

e) The civil money penalty was not imposed for a repeated deficiency that was the basis of a civil money penalty that previously received a 50 percent reduction; and

f) 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.

Correction will be determined by CMS or the State with an on-site visit or based upon an examination of credible written evidence that CMS or the State can verify without an on-site visit.

NOTE: *Under no circumstances will a facility receive both the 50 percent reduction for self-reporting and correcting and the 35 percent reduction for waiving its right to a hearing.*

7528 - When Penalty Is Due and Payable

(Rev.113, Issued, 04-25-14, 01-Effective: 01-01-12, Implementation: 01-01-12)

7528.1 – When a Civil Money Penalty Subject to Being Collected and Placed in an Escrow Account is Imposed

(Rev.113, Issued, 04-25-14, 01-Effective: 01-01-12, Implementation: 01-01-12)

When the Regional Office imposes a civil money penalty that is subject to being collected and placed in an escrow account as specified at 42CFR 488.431, payment is due on whichever of the following occurs first if the facility files an appeal of the enforcement action:

1. *The date on which the independent informal dispute resolution process is completed; or*

2. *The date which is 90 calendar days after the date of the notice of imposition of the penalty.*

NOTE: *Payment is not due until after the facility's opportunity to waive its right to appeal has passed. If there is no appeal, CMS's determination becomes final and the CMP amount becomes due and payable in accordance with the process in §7213.*

NOTE: *The collection of a per day civil money penalty may be a two-step process. Under§488.431(b)(2), in instances when a facility has not achieved substantial compliance at the time a per day civil money penalty can be collected and placed in an escrow account, the penalty amount that has accrued from the effective date of the penalty through the date of collection would be collected. Another collection would occur later in the process for any final balance determined to be due and payable once the facility achieves substantial compliance or is terminated from the program. This two-step process may also occur if a revisit results in a per day civil money penalty being reduced to a scope and severity level below a G and thus not collected and held on an escrow account. In this case, the amount accrued from the effective date of the penalty through the date of the revisit survey would be collected and placed in escrow.*

7528.2 – After Final Administrative Decision

(Rev.113, Issued, 04-25-14, 01-Effective: 01-01-12, Implementation: 01-01-12)

When the regional office imposes a civil money penalty, a final administrative decision includes an Administrative Law Judge decision and review by the Departmental Appeals Board, if the facility requests a review of the Administrative Law Judge decision. Payment of a civil money penalty is due 15 calendar days **after** a final administrative decision, upholding the imposition of the civil money penalty, when:

1. The facility achieved substantial compliance before the final administrative decision; or

2. The effective date of termination occurred before the final administrative decision.

7528.3 – No Hearing Requested

(Rev.113, Issued, 04-25-14, 01-Effective: 01-01-12, Implementation: 01-01-12)

Payment of a civil money penalty is due 15 calendar days **after** the time period for requesting a hearing has expired and a hearing request was not received when:

1. The facility achieved substantial compliance before the hearing request was due; or
2. The effective date of termination occurred before the hearing request was due.

7528.4 – After Request to Waive Hearing
(Rev.113, Issued, 04-25-14, 01-Effective: 01-01-12, Implementation: 01-01-12)

Payment of a civil money penalty is due 15 calendar days **after** receipt of the facility's written waiver of a right to a hearing when:

1. The facility achieved substantial compliance before receipt of the facility's written waiver of its right to a hearing;
2. A per instance civil money penalty has been imposed. Since no opportunity to correct is available for the noncompliance against which a per instance civil money penalty is imposed, allowing time for the facility to achieve substantial compliance is not a factor in determining when the civil money penalty is due; or
3. The effective date of termination occurred before receipt of the facility's written waiver of its right to a hearing.

7528.5 – After Substantial Compliance is Achieved
(Rev.113, Issued, 04-25-14, 01-Effective: 01-01-12, Implementation: 01-01-12)

Payment of a per day civil money penalty is due 15 calendar days **after** substantial compliance is achieved when:

1. A final administrative decision, upholding the imposition of the civil money penalty, is made before the facility achieved substantial compliance;
2. The facility did not file a timely hearing request before it achieved substantial compliance; or
3. The facility waived its right to a hearing before it achieved substantial compliance.

However, the period of noncompliance covered by the civil money penalty may not extend beyond 6 months from the last day of the standard health survey.

7528.6 – After Effective Date of Termination
(Rev.113, Issued, 04-25-14, 01-Effective: 01-01-12, Implementation: 01-01-12)

Payment of a civil money penalty is due 15 calendar days **after** the effective date of termination, if before the effective date of termination:

1. The final administrative decision was made upholding the imposition of the civil money penalty;
2. The time for requesting a hearing has expired and the facility did not request a hearing; or
3. The facility waived its right to a hearing.

7534 - Disposition of Collected Civil Money Penalty
(Rev.113, Issued, 04-25-14, 01-Effective: 01-01-12, Implementation: 01-01-12)

7534.1 - Collected From Medicare or Dually-Participating Facility
(Rev.113, Issued, 04-25-14, 01-Effective: 01-01-12, Implementation: 01-01-12)

The specific use of CMP funds collected from Long Term Care Facilities as a result of federally imposed CMPs must be approved by CMS on behalf of the Secretary. Sections 1819(h)(2)(B)(ii)(IV)(ff) and 1919(h)(3)(C)(ii)(IV)(ff) of the Act provide that collected CMP funds may be used to support activities that benefit residents, including assistance to support and protect residents of a facility that closes (voluntarily or involuntarily) or is decertified (including offsetting costs of relocating residents to home and community-based settings or another facility), projects that support resident and family councils and other consumer involvement

in assuring quality care in facilities, and facility improvement initiatives approved by the Secretary (including joint training of facility staff and surveyors, technical assistance for facilities implementing quality assurance programs, the appointment of temporary management firms, and other activities approved by the Secretary).

1. *Requests for approval must be sent to the appropriate CMS Regional Office (RO) for review and final approval. No later than 45 calendar days after receiving a request for approval, CMS will respond with either:*

    a) *An approval;*
    b) *A denial, with explanation; or*
    c) *A request for more information. If CMS requests more information within the 45-day period, then the period needed for project approval will be extended. CMS will undertake further review and a final decision will be provided to the State by the CMS Regional Office within 30 calendar days of the date CMS receives the additional information.*

NOTE: *If none of the above three actions occurs within 45 days of confirmed CMS receipt of a complete project description and request for approval package, the State should contact both the Regional Office and QualityAssurance@cms.hhs.gov for priority processing.*

2. *Requests for approval should contain a description of the proposed use/project that includes:*

    a) ***Purpose and Summary:*** *Project title, purpose, and project summary;*
    b) ***Expected Outcomes:*** *Short description of the intended outcomes, deliverables, and sustainability;*
    c) ***Results Measurement:*** *A description of the methods by which the project results will be assessed (including specific measures);*
    d) ***Benefits to NH Residents:*** *A brief description of the manner in which the project will benefit nursing home residents;*
    e) ***Non-Supplanting:*** *A description of the manner in which the project will not supplant existing responsibilities of the nursing home to meet existing Medicare/Medicaid requirements or other statutory and regulatory requirements;*
    f) ***Consumer and other Stakeholder Involvement:*** *A brief description of how the nursing home community (including resident and/or family councils and direct care staff) will be involved in the development and implementation of the project;*
    g) ***Funding:*** *The specific amount of CMP funds to be used for this project, the time period of such use, and an estimate of any non-CMP funds that the State or other entity expects to be contributed to the project;*
    h) ***Involved Organizations:*** *List all organizations that will receive funds through this project (to the extent known), and organizations that the State expects to carry out and be responsible for the project;*
    i) ***Contacts:*** *Name of the State contact person responsible for the project and contact information.*

NOTE: *States must provide information and obtain prior approval from its CMS regional office for any project for which the State wishes to use CMP funds, and CMS reserves the right to disapprove such projects (with prior notice and reconsideration opportunity for the State should CMS disapprove the requested project or use).*

3. *States may contract with, or grant funds to, any entity permitted under State law and approved by CMS provided that the funds are used for CMS approved projects to protect or improve nursing home services for nursing home residents, and provided that the responsible receiving entity is:*

    a) *Qualified and capable of carrying out the intended project(s) or use(s);*

b) Not in any conflict of interest relationship with the entity(ies) who will benefit from the intended project(s) or use(s);
c) Not a recipient of a contract or grant or other payment from Federal or State sources for the same project(s) or use(s);
d) Not paid by a State or Federal source to perform the same function as the CMP project(s) or use(s). CMP funds may not be used to enlarge or enhance an existing appropriation or statutory purpose that is substantially the same as the intended project(s) or use(s).

NOTE: *States may target CMP resources for projects or programs available through various organizations that are knowledgeable, skilled, and capable of meeting the project's purpose in its area of expertise as long as the above criteria are met and the use is consistent with Federal law and policy. Examples of organizations that could qualify include, but are not limited to, consumer advocacy organizations, resident or family councils, professional or State nursing home associations, State Long-term Care Ombudsman programs, quality improvement organizations, private contractors, etc.*

7534.2.1 – Entities Other Than Nursing Homes May Receive Collected Civil Money Penalty Funds from the State

(Rev.113, Issued, 04-25-14, 01-Effective: 01-01-12, Implementation: 01-01-12)

When civil money penalties are collected and returned to the State, the statutory expectation is that these funds are to be used for purposes that will benefit nursing home residents. Aside from this usage condition and any restrictive State-specific laws, States may target these resources for projects or programs available through various interested nursing home stakeholders, e.g., facilities, consumer groups, professional nursing home associations, ombudsmen, quality improvement organizations, etc..

7534.4 – Collected Amounts from a Dually Participating Facility or Medicare Facility and Held in Escrow

(Rev.113, Issued, 04-25-14, 01-Effective: 01-01-12, Implementation: 01-01-12)

A civil money penalty collected from a dually participating facility is apportioned between Medicare and Medicaid commensurate with the relative proportions of Medicare and Medicaid beds at the facility actually in use by residents covered by the respective programs on the date the civil money penalty begins to accrue, per resident census data in the Automated Survey Processing Environment system (ASPEN) at the time of the survey.

After this apportionment is made, ten percent of the Medicare portion of collected civil money penalty funds that are subject to be held in escrow and that remain after a final administrative decision will be deposited with the Department of the Treasury. The remaining ninety percent of the collected civil money penalty funds that are subject to be held in escrow and that remain after a final administrative decision may not be used for survey and certification operations but must be used entirely for activities that protect or improve the quality of care for residents. These activities must be approved by CMS as provided in Sections 1819(h)(2)(B)(ii)(IV)(ff) and 1919(h)(3)(C)(ii)(IV)(ff) of the Act.

7535- Use of Civil Money Penalty Funds

(Rev.113, Issued, 04-25-14, 01-Effective: 01-01-12, Implementation: 01-01-12)

Sections 1819(h)(2)(B)(ii)(IV)(ff) and 1919(h)(3)(C)(ii)(IV)(ff) of the Act incorporate specific provisions of the Patient Protection and Affordable Care Act, (the Affordable Care Act pertaining to the collection and uses of CMPs imposed by CMS when nursing homes do not meet requirements for Long Term Care Facilities.

1. *The Act provides that collected CMP funds may be used to support activities that benefit residents. These include, but are not limited to:*

a) *Assistance to support and protect residents of a facility that closes (voluntarily or involuntarily) or is decertified (including offsetting costs of relocating residents to home and community-based settings or another facility);*
b) *Projects that support resident and family councils and other consumer involvement in assuring quality care in facilities; and*
c) *Facility improvement initiatives approved by the Secretary (including joint training of facility staff and surveyors, technical assistance for facilities implementing quality assurance programs, the appointment of temporary management firms, and other activities approved by the Secretary).*

2. *CMS, States and others are in general agreement about the types of expenditures that should be considered inappropriate for civil money penalty funds. These include, but are not limited to:*

a) *Making capital improvements to a facility;*
b) *Paying for items or services that are already the responsibility of the nursing home;*
c) *Funding projects, items or services that are not related to improving the quality of life and care of nursing home residents;*
d) *Projects for which a conflict of interest or the appearance of a conflict of interest exists;*
e) *Long term projects (greater than 3 years);*
f) *Temporary manager salaries; and*
g) *Supplementary funding of federally required services.*

EXHIBIT 139

(Rev.113, Issued, 04-25-14, 01-Effective: 01-01-12, Implementation: 01-01-12)

MODEL LETTER TO PROVIDER (SEND WITH FORM CMS-2567)
(IMMEDIATE JEOPARDY DOES NOT EXIST)

(**NOTE:** The language provided below should be changed appropriately for surveys conducted by CMS.)

IMPORTANT NOTICE - PLEASE READ CAREFULLY

(Date)

Nursing Home Administrator Name
Nursing Home Name
Address
City, State, ZIP Code

Dear (**Nursing Home Administrator**):

On (**date**) a survey was conducted at your facility by the (**State survey agency**) to determine if your facility was in compliance with Federal participation requirements for nursing homes participating in the Medicare and/or Medicaid programs. This survey found that your facility was not in substantial compliance with the participation requirements.

All references to regulatory requirements contained in this letter are found in Title 42, Code of Federal Regulations.

Plan of Correction (PoC)

A PoC for the deficiencies must be submitted by (**10 days after the facility receives its Form CMS-2567**). Failure to submit an acceptable PoC by, (**date indicated above as the due date for submission of a PoC**) may result in the imposition of remedies by (**20 days after due date for submission of a PoC**).

Your PoC must contain the following:

- What corrective action(s) will be accomplished for those residents found to have been affected by the deficient practice;

- How you will identify other residents having the potential to be affected by the same deficient practice and what corrective action will be taken;

- What measures will be put into place or what systemic changes you will make to ensure that the deficient practice does not recur; and,

- How the corrective action(s) will be monitored to ensure the deficient practice will not recur, i.e., what quality assurance program will be put into place.

Remedies will be recommended for imposition by the (**Centers for Medicare & Medicaid Services (CMS) Regional Office and/or the State Medicaid Agency**) if your facility has failed to achieve substantial compliance by (**the date certain**). Informal dispute resolution for the cited deficiencies will not delay the imposition of the enforcement actions recommended (**or revised, as appropriate**) on (**the date certain**). A change in the seriousness of the noncompliance on (**the date certain**) may result in a change in the remedy selected. When this occurs, you will be advised of any change in remedy.

RECOMMENDED REMEDIES

USE FOR CATEGORY 1 REMEDIES WHEN NO OTHER REMEDIES ARE RECOMMENDED - USE IN LIEU OF PREVIOUS PARAGRAPH:

Based on the deficiencies cited during your survey, we are imposing, as authorized by the CMS Regional Office or the State Medicaid Agency, the following remedies:

ADD TO PARAGRAPH APPLICABLE REMEDIES:

[__] Directed plan of correction effective (**15 days from the date of receipt of this notice**)(§488.424)

[__] State monitoring effective (**give date**) (§488.422)

[__] Directed in-service training effective (**15 days from the date of receipt of this notice**) (§488.425)

USE UNLESS ONLY CATEGORY 1 REMEDIES ARE IMPOSED OR IF REMEDIES ARE BEING IMPOSED IMMEDIATELY:

The remedies which will be recommended if substantial compliance has not been achieved by (date certain) include the following:

ADD TO PARAGRAPH THE APPLICABLE REMEDIES:

[__] Denial of payment for new admissions effective (**date certain + 20 days**). [§488.417(a)]

[__] Civil money penalty ($50 - $3,000 per day), effective (**the date the facility was first found out of compliance**). (This remedy is generally reserved for situations of serious noncompliance as described in §7510.) (§488.430)

[__] Temporary management effective (**date certain + 20 days**) (this remedy may be used for actual harm/widespread) (§488.415)

[__] State monitoring effective (**date certain + 5 days**) (§488.422)

[__] Directed plan of correction effective (**date certain +20 days**) (§488.424)

[__] Directed in-service training effective (**date certain + 20 days**) (§488.425)

[__] Specify alternative State remedies effective (**date certain + 20 days**) (**State law**)

USE IF REMEDY(IES) IMPOSED IMMEDIATELY (POOR PERFORMING FACILITIES):

Based on the deficiencies cited during your survey, we are recommending to the CMS Regional Office and/or (**State Medicaid Agency**) that:

[__] A civil money penalty be imposed effective (**the date the facility was first found out of compliance**). If the Regional Office or the State Medicaid Agency decides to impose the recommended civil money penalty, a notice of imposition will be sent to you. The penalty will continue to accrue until the deficiencies are corrected and your facility is found to be in substantial compliance, or your provider agreement is terminated

[__] [Recommended remedy(ies)] be imposed effective (**the date of the final notice plus 15 days**), except for State monitoring, which can be imposed immediately.

USE IF DENIAL OF PAYMENT FOR NEW ADMISSIONS WAS NOT A REMEDY INDICATED IN THE PREVIOUS LIST:

If you do not achieve substantial compliance within 3 months after the last day of the survey identifying noncompliance, the CMS Regional Office and/or State Medicaid Agency must deny payments for new admissions.

We are also recommending to the CMS Regional Office and/or State Medicaid Agency that your provider agreement be terminated on (**no later than 6 months from the last day of survey**) if substantial compliance is not achieved by that time.

USE IF SUBSTANDARD QUALITY OF CARE (SQC) IS IDENTIFIED:

Your facility's noncompliance with the following (**cite regulations**) has been determined to constitute SQC as defined at §488.301. Sections 1819(g)(5)(C) and 1919(g)(5)(C) of the Social Security Act and 42 CFR 488.325(h) require that the attending physician of each resident who was found to have received SQC as well as the State board responsible for licensing the facility's administrator be notified of the SQC. In order for us to satisfy these notification requirements, and in accordance with §488.325(g), you are required to provide the following information to this agency within 10 working days of your receipt of this letter:

The name and address of the attending physician of each resident found to have received SQC, as identified below:

List of affected residents:

_____

_____

_____

_____

Please note that, in accordance with §488.325(g), your failure to provide this information timely will result in termination of participation or imposition of alternative remedies.

USE IF SUBSTANDARD QUALITY OF CARE (SQC) HAS BEEN IDENTIFIED ON 3 CONSECUTIVE STANDARD SURVEYS:

The finding(s) of SQC found during this survey constitute(s) 3 repeated findings of SQC, i.e., findings of SQC on the last 3 consecutive standard surveys of this facility. As a result, regardless of other remedies, (**CMS and/or the State Medicaid Agency**) must deny payment for all new admissions, effective on (**last day of survey + 20 days**) and impose State monitoring, effective (**last day of survey + 5 days**).

Allegation of Compliance

If you believe these deficiencies have been corrected, you may contact (**name, title, address, and telephone and fax number of survey agency representative**) with your written credible allegation of compliance. If you choose and so indicate, the PoC may constitute your allegation of compliance. We may accept the written allegation of compliance and presume compliance until substantiated by a revisit or other means. In such a case, neither the CMS Regional Office nor the State Medicaid Agency will impose the previously recommended remedy(ies) at that time.

If, upon the subsequent revisit, your facility has not achieved substantial compliance, we will recommend that the remedies previously mentioned in this letter be imposed by the (**CMS Regional Office or the State Medicaid Agency**) beginning on (**the date the facility was first found out of compliance, i.e., last date of survey**) and continue until substantial compliance is achieved. Additionally, the CMS Regional Office or State Medicaid Agency may impose a revised remedy(ies), based on changes in the seriousness of the noncompliance at the time of the revisit, if appropriate.

Informal Dispute Resolution (IDR)

In accordance with §488.331, you have one opportunity to question cited deficiencies through *an* IDR process. You may also contest scope and severity assessments for deficiencies which resulted in a finding of SQC or immediate jeopardy. To be given such an opportunity, you are required to send your written request, along with the specific deficiencies being disputed, and an explanation of why you are disputing those deficiencies (or why you are disputing the scope and severity assessments of deficiencies which have been found to constitute SQC or immediate jeopardy) to (**name, title, address and telephone number and fax number of the person** *who* **will be conducting the IDR process**). This request must be sent during the same 10 calendar days you have for submitting a PoC for the cited deficiencies. An incomplete IDR process will not delay the effective date of any enforcement action.

Independent Informal Dispute Resolution (Independent IDR)

*In accordance with §488.431, when a civil money penalty subject to being collected and placed in an escrow account is imposed, you have one opportunity to question cited deficiencies through an Independent IDR process. You may also contest scope and severity assessments for deficiencies which resulted in a finding of SQC or immediate jeopardy. To be given such an opportunity, you are required to send your written request, along with the specific deficiencies being disputed, and an explanation of why you are disputing those deficiencies (or why you are disputing the scope and severity assessments of deficiencies which have been found to constitute SQC or immediate jeopardy) to (**name, title, address and telephone number and fax number of the person who will be conducting the Independent IDR process**). This request must be sent during the same 10 calendar days you have for submitting a PoC for the cited deficiencies. An incomplete Independent IDR process will not delay the effective date of any enforcement action.*

ADD TO THE ABOVE PARAGRAPH IF THE SURVEY WAS CONDUCTED BY CMS:

IDR *and Independent IDR are* in no way to be construed as a formal evidentiary hearing. *They are* informal administrative process*es* to discuss deficiencies. If you will be accompanied by counsel, you must indicate this in your request for IDR *or Independent IDR* so that we may also have counsel present. You will be advised verbally of our decision relative to the informal dispute, with written confirmation to follow.
If you have any questions concerning the instructions contained in this letter, please contact (**name, title, address, phone number, and fax number of appropriate survey agency official**).

Sincerely yours,
(**Name and Title**)

Enclosure

cc: CMS Regional Office
and/or State Medicaid Agency

MODEL LETTER NOTIFYING PROVIDER OF RESULTS OF REVISIT

(**NOTE:** The language provided below should be changed appropriately for surveys conducted by CMS.)

IMPORTANT NOTICE - PLEASE READ CAREFULLY

(**Date**)

Nursing Home Administrator Name
Facility Name
Address
City, State, ZIP

Dear (**Nursing Home Administrator**):

On (**date**) we conducted a revisit to verify that your facility had achieved and maintained compliance. We had presumed, based on your allegation of compliance, that your facility was in substantial compliance as of (**date certain or earlier date**). However, based on our revisit conducted (**date**), we found that your facility is not in substantial compliance with the following participation requirement(s):

LIST PARTICIPATION REQUIREMENTS THAT ARE DEFICIENT

As a result of our finding that your facility is not in substantial compliance, we will recommend that the following remedy(ies) be imposed:

USE IF THERE HAS BEEN NO CHANGE IN THE SERIOUSNESS OF THE NONCOMPLIANCE:

[__] Remedy(ies) recommended in the initial letter.

USE IF THERE HAS BEEN A CHANGE IN THE SERIOUSNESS OF THE NONCOMPLIANCE RESULTING IN A CHANGE IN THE REMEDY(IES) TO BE RECOMMENDED:

[__] (Any other remedy(ies), other than those recommended in the initial letter.) The change in the seriousness of the noncompliance on (the revisit) has resulted in a change in the remedy(ies) we will recommend from those previously mentioned to you in the initial letter.

If the (**Regional Office or State Medicaid Agency**) decides to impose the recommended remedy(ies), that office will send you a notice of the imposition of the remedy(ies).

Informal Dispute Resolution (IDR)

In accordance with 42 CFR §488.331, you have one opportunity to question cited deficiencies through an IDR process. As a result of the revisit, you may also contest the continuation of cited deficiencies, new deficiencies, and the scope and severity assessment for deficiencies which result in a finding of substandard quality of care or immediate jeopardy. A second IDR will not be offered on the existence of the deficiency(ies) as of the date of the first survey. To be given an opportunity for IDR, you are required to send your written request, along with the specific deficiencies being disputed, and an explanation of why you are disputing those deficiencies (or why you are disputing the scope and severity assessments of deficiencies which have been found to constitute substandard quality of care or immediate jeopardy) to (**name, title, address, and telephone number and fax number of the person who will be conducting the IDR process**). \

This request must be sent during the same 10 calendar days you have for submitting a PoC for the cited deficiencies. An incomplete IDR process will not delay the effective date of any enforcement action.

Independent Informal Dispute Resolution (Independent IDR)

*In accordance with 42 CFR §488.431, when a civil money penalty subject to being collected and placed in an escrow account is imposed, you have an opportunity to question cited deficiencies through an Independent IDR process. You may also contest scope and severity assessments for deficiencies which resulted in a finding of Substandard Quality of Care (SQC) or immediate jeopardy. To be given such an opportunity, you are required to send your written request, along with the specific deficiencies being disputed, and an explanation of why you are disputing those deficiencies (or why you are disputing the scope and severity assessments of deficiencies which have been found to constitute SQC or immediate jeopardy) to (**name, title, address and telephone number and fax number of the person who will be conducting the Independent IDR process**). This request must be sent during the same 10 calendar days you have for submitting a PoC for the cited deficiencies. An incomplete Independent IDR process will not delay the effective date of any enforcement action.*

If you have any questions, please contact (**name, title, address, fax number, and telephone number of regional office contact**).

Sincerely yours,
(**Name and Title**)

Enclosure

cc: CMS Regional Office
and/or State Medicaid Agency

EXHIBIT 142

(Rev.113, Issued, 04-25-14, 01-Effective: 01-01-12, Implementation: 01-01-12)

MODEL LETTER TO PROVIDER (IMPOSITION OF REMEDIES) (IMMEDIATE JEOPARDY DOES NOT EXIST

(**NOTE:** The language provided below should be changed appropriately for surveys conducted by CMS.)

IMPORTANT NOTICE - PLEASE READ CAREFULLY

(**Date**)

Nursing Home Administrator Name
Facility Name
Address
City, State, ZIP Code

Dear (**Nursing Home Administrator**):

On (**date**), a survey was conducted at your facility by the (**State survey agency**) to determine if your facility was in compliance with the Federal participation requirements for nursing homes participating in the Medicare and/or Medicaid programs. This survey found that your facility was not in substantial compliance with the participation requirements.

As a result of the survey findings listed on the Statement of Deficiencies and Plan of Correction (Form CMS-2567) which was forwarded to you after the survey, the (**State survey agency**) notified you that it would recommend to the Centers for Medicare & Medicaid Services (CMS) and/or the State Medicaid agency that the following remedies be imposed if you did not submit an acceptable plan of correction by (**survey date plus 10 days**) or did not achieve substantial compliance by (**date certain**).

(**List remedies.**)

USE THESE 2 PARAGRAPHS IF CREDIBLE ALLEGATION OF COMPLIANCE WAS RECEIVED:

On (**date(s)**), you submitted a plan of correction and credible allegation of compliance to the (**State survey agency**), and based on the presumption of substantial compliance, the (**State survey agency**) suspended its recommendations for enforcement action. However, on (**date**), a revisit was made to verify correction, and found that you were not in substantial compliance.

Because you did not correct deficiencies as alleged, the following remedies, which were to have been recommended on (**date certain**), will be imposed (**15 days after presumed receipt of this notice**), and a civil money penalty will be imposed retroactive to (**date of the survey**).

(**List remedies.**)

In accordance with 42 CFR§488.431, when a civil money penalty subject to being collected and placed in an escrow account is imposed, you have an opportunity to dispute the cited deficiencies through an Independent IDR process. You may also contest scope and severity assessments for deficiencies which resulted in a finding of Substandard Quality of Care (SQC) or immediate jeopardy. To be given such an opportunity, you are required to send your written request, along with the specific deficiencies being disputed, and an explanation of why you are disputing those deficiencies (or why you are disputing the scope and severity assessments of deficiencies which have been found to constitute SQC or immediate jeopardy) to (name, title, address and telephone number and fax number of the person who will be conducting the Independent IDR process). This request must be sent during the same 10 calendar days you have for submitting a PoC for the cited deficiencies. An incomplete Independent IDR process will not delay the effective date of any enforcement action.

(Name)

USE *THESE 2* PARAGRAPH*S* IF NO CREDIBLE ALLEGATION OF COMPLIANCE WAS RECEIVED:

As a result of your failure to come into compliance as evidenced by your failure to submit an acceptable plan of correction by (**survey date plus 10 days**) either containing a credible allegation of compliance or in addition to a separate allegation of compliance, the following remedies previously recommended by the (**State survey agency**) will be imposed (**15 days after presumed receipt of this notice**).

(**List remedies.**)

*In accordance with 42 CFR §488.431, when a civil money penalty subject to being collected and placed in an escrow account is imposed, you have one opportunity to question cited deficiencies through an Independent IDR process. You may also contest scope and severity assessments for deficiencies which resulted in a finding of SQC or immediate jeopardy. To be given such an opportunity, you are required to send your written request, along with the specific deficiencies being disputed, and an explanation of why you are disputing those deficiencies (or why you are disputing the scope and severity assessments of deficiencies which have been found to constitute SQC or immediate jeopardy) to (**name, title, address and telephone number and fax number of the person who will be conducting the Independent IDR process**). This request must be sent during the same 10 calendar days you have for submitting a PoC for the cited deficiencies. An incomplete Independent IDR process will not delay the effective date of any enforcement action.*

USE THIS PARAGRAPH IF UPON REVISIT IMMEDIATE JEOPARDY WAS FOUND:

The (**State survey agency**) conducted a revisit on (**date**), and found that conditions in your facility had deteriorated to the point that immediate jeopardy to residents now exists. As a result of the change in the seriousness of your noncompliance, the remedy category from which an enforcement response must be selected has changed. The remedies to which you will now be subject are as follows: (**list remedies and their effective dates** - refer to language in Exhibit 143, "Imposition of Remedies, Immediate Jeopardy Exists.")

If you disagree with this determination, you or your legal representative may request a hearing before an administrative law judge of the Department of Health and Human Services, Departmental Appeals Board. Procedures governing this process are set out in 42 CFR 498.40, et seq. A written request for a hearing must be filed no later than 60 days from the date of receipt of this letter. Such a request may be made to:

Centers for Medicare and Medicaid Services
Associate Regional Administrator
Division of Health Standards and Quality
(**Street Address**)

At your option you may instead submit a hearing request directly (accompanied by a copy of this letter) to:

Departmental Appeals Board
Civil Remedies Division
Attention: Gerald P. Choppin
Room 637-D
HHH Building
200 Independence Avenue, S.W.
Washington, D.C. 20201

(**Date)**

Send a copy of your request to this office.

A request for a hearing should identify the specific issues, and the findings of fact and conclusions of law with which you disagree. It should also specify the basis for contending that the findings and conclusions are incorrect. You may be represented by counsel at a hearing at your own expense.

If you have any questions, please contact (**name, title, address, fax number, and telephone number of regional office contact**).

Sincerely yours,
(**Name and Title**)

Enclosure

cc: State Survey Agency
and/or State Medicaid Agency

EXHIBIT 143

(Rev.113, Issued, 04-25-14, 01-Effective: 01-01-12, Implementation: 01-01-12)

MODEL LETTER TO PROVIDER (IMPOSITION OF REMEDIES)
(IMMEDIATE JEOPARDY EXISTS)

NOTE: This letter would follow the SA's notice as required by §7309. The language provided below should be changed appropriately for surveys conducted by CMS.)

IMPORTANT NOTICE - PLEASE READ CAREFULLY

(**Date**)
Nursing Home Administrator Name
Facility Name
Address
City, State, ZIP Code

Dear (**Nursing Home Administrator**):
On (**date**) a survey was conducted at your facility by the (**State survey agency**) to determine if your facility was in compliance with Federal participation requirements for nursing homes participating in the Medicare and/or Medicaid programs. This survey found that your facility was not in substantial compliance with the participation requirements, and the conditions in your facility constituted immediate jeopardy to resident health or safety.

As a result of the survey findings, the (**State survey agency**) notified you (**date, method**) that it would recommend to the (**Centers for Medicare & Medicaid Services(CMS) Regional Office and/or the State Medicaid agency**) that (**temporary management or termination, and other remedies, if applicable**) be imposed.

All references to regulatory requirements contained in this letter are found in Title 42, Code of Federal Regulations.

Plan of Correction (PoC)
A PoC for the deficiencies must be submitted by (**10 days after the facility receives its Form CMS-2567**). Failure to submit an acceptable PoC by (**date indicated above as the due date for submission of a PoC**) may result in the imposition of (**list remedies**) by (**20 days after due date for submission of a PoC**).

Your PoC must contain the following:

- What corrective action(s) will be accomplished for those residents found to have been affected by the deficient practice;
- How you will identify other residents having the potential to be affected by the same deficient practice and what corrective action will be taken;
- What measures will be put into place or what systemic changes you will make to ensure that the deficient practice does not recur; and,
- How the corrective action(s) will be monitored to ensure the deficient practice will not recur, i.e., what quality assurance program will be put into place.

A change in the seriousness of the noncompliance to non-immediate jeopardy may result in a change in the remedy selected. When this occurs, you will be advised of any change in remedy.

Allegation of Compliance
If you believe these deficiencies have been corrected, you may contact (name, title, address, and telephone and fax number of survey agency representative) with your written credible allegation of compliance.

Informal Dispute Resolution (IDR)
In accordance with 42 CFR §488.331, you have one opportunity to question cited deficiencies and to specifically contest scope and severity assessments for deficiencies which result in a finding of substandard quality of care (SQC) or immediate jeopardy through an IDR process. To be given such an opportunity, you are required to send your written request, along with the specific deficiencies being disputed, and an explanation of why you are disputing those deficiencies (or why you are disputing the scope and severity assessments of deficiencies which have been found to constitute SQC or immediate jeopardy) to (**name, title, address, and telephone number and fax number of the person who will be conducting the IDR process**). This request must be sent during the same 10 calendar days you have for submitting a PoC for the cited deficiencies. An incomplete IDR process will not delay the effective date of any enforcement action.

Independent Informal Dispute Resolution (Independent IDR)

*In accordance with 42 CFR §488.431, when a civil money penalty subject to being collected and placed in an escrow account is imposed, you have an opportunity to question cited deficiencies through an Independent IDR process. You may also contest scope and severity assessments for deficiencies which resulted in a finding of Substandard Quality of Care (SQC) or immediate jeopardy. To be given such an opportunity, you are required to send your written request, along with the specific deficiencies being disputed, and an explanation of why you are disputing those deficiencies (or why you are disputing the scope and severity assessments of deficiencies which have been found to constitute SQC or immediate jeopardy) to (**name, title, address and telephone number and fax number of the person who will be conducting the Independent IDR process**). This request must be sent during the same 10 calendar days you have for submitting a PoC for the cited deficiencies. An incomplete Independent IDR process will not delay the effective date of any enforcement action.*

ADD TO THE ABOVE PARAGRAPH IF THE SURVEY WAS CONDUCTED BY CMS:

IDR *and Independent IDR* in no way *are* to be construed as a formal evidentiary hearing. *They are* informal administrative process*es* to discuss deficiencies. If you will be accompanied by counsel, you must indicate this in your request for IDR *or Independent IDR* so that we may also have counsel present. You will be advised verbally of our decision relative to the informal dispute, with written confirmation to follow.

Appeal Rights

If you disagree with this determination, you or your legal representative may request a hearing before an administrative law judge of the Department of Health and Human Services, Departmental Appeals Board. Procedures governing this process are set out in §498.40, et seq. A written request for a hearing must be filed no later than 60 days from the date of receipt of this letter. Such a request may be made to:

Centers for Medicare & Medicaid Services
Associate Regional Administrator
Division of Health Standards and Quality
(**Street Address**)

At your option, you may instead submit a hearing request directly (accompanied by a copy of this letter) to:
Departmental Appeals Board
Civil Remedies Division
Attention: Gerald P. Choppin
Room 637-D

HHH Building
200 Independence Avenue, S.W.
Washington, D.C. 20201

Send a copy of your request to this office.

A request for a hearing should identify the specific issues, and the findings of fact and conclusions of law with which you disagree. It should also specify the basis for contending that the findings and conclusions are incorrect. You may be represented by counsel at a hearing at your own expense.

USE THESE 3 PARAGRAPHS IF IMPOSING TEMPORARY MANAGEMENT:

We concur with the (**State survey agency**)'s recommendation. As a result, a temporary manager will be installed in your facility on (**date that is no sooner than 2 days after receipt of the notice and no later than 10 days after the survey date**). You are expected to relinquish to the temporary manager the authority to hire, terminate or reassign staff, obligate facility funds, alter facility procedures, and otherwise manage the facility to correct the deficiencies identified in its operation.

You will be responsible for paying the salary and related costs of the temporary manager, which will be set by the (**State survey agency**).
If you refuse to relinquish authority to the temporary manager or to pay his/her salary, your facility will be terminated on (**date that does not exceed 23 calendar days from the survey date**), if the immediate jeopardy is not removed prior to this date.

If you relinquish authority to the temporary manager, the temporary management will end when your facility has achieved substantial compliance and is capable of remaining in substantial compliance, or
when your facility's provider agreement is terminated. Termination will occur on (**date that is 23 calendar days from the last day of the survey**) if the immediate jeopardy is not removed.

USE THESE 2 PARAGRAPHS IF IMPOSING TERMINATION:

We concur with the (**State survey agency**)'s recommendation. Your (**Medicare or Medicaid**) provider agreement will be terminated on (**date that is no sooner than 2 days after receipt of the notice and no later than 23 days after the survey date**) if the immediate jeopardy to resident health or safety is not removed. (**NOTE**: If Medicaid, add: We will notify the State Medicaid Agency to terminate your Medicaid provider agreement.)

We are required to provide the general public with notice of an impending termination and will publish a notice in (**paper's name**) prior to the effective date of termination.

USE THIS PARAGRAPH IF IMPOSING A CIVIL MONEY PENALTY (CMP)

In addition to (**temporary management or termination**), a CMP has been imposed in the amount of (**amount**) per day commencing on (**the date that the facility was first found out of compliance**).

The CMP will continue to accrue until the deficiencies are corrected and your facility is found to be in substantial compliance, or your provider agreement is terminated. The CMP will not be collected until after it has stopped accruing and a final administrative decision upholding its imposition has been made, if a hearing is requested. If you

waive your right to a hearing within 60 calendar days from (**the date the CMP stops accruing**), the amount of your CMP will be reduced by 35%.

USE THIS PARAGRAPH IF SUBSTANDARD QUALITY OF CARE IS IDENTIFIED:

Your facility's noncompliance with the following (**cite regulations**) has been determined to constitute substandard quality of care as defined at §488.301. Sections 1819(g)(5)(C) and 1919(g)(5)(C) of the Social Security Act, as well as implementing regulations at §488.325(h), require that the attending physician of each resident who was found to have received substandard quality of
care as well as the State Board responsible for licensing the facility's administrator, be notified of the substandard quality of care.

In order for us to satisfy these notification requirements, and in accordance with §488.325(g), you are required to provide the following information to this agency within 10 working days of your receipt of this letter:

The name and address of the attending physician of each resident found to have received substandard quality of care, as identified below:
List of affected residents:

_____
_____
_____
_____
_____

Please note that, in accordance with §488.325(g), your failure to provide this information timely will result in termination of participation or imposition of alternative remedies.

USE THIS PARAGRAPH IF SUBSTANDARD QUALITY OF CARE HAS BEEN IDENTIFIED ON 3 CONSECUTIVE STANDARD SURVEYS:

The finding(s) of substandard quality of care found during this survey constitute(s) 3 repeated findings of substandard quality of care, i.e., findings of substandard quality of care on the last 3 consecutive standard surveys of this facility. As a result, regardless of other remedies, (**CMS and/or the State Medicaid Agency**) must deny payment for all new admissions, effective on (**last day of survey + 20 days**) and impose State monitoring, effective (**last day of survey + 5 days**).
If you have any questions, please contact (**name, title, address, phone number and fax number of appropriate survey agency official**).

Sincerely yours,

(**Name and Title**)

cc: CMS Regional Office
and/or State Medicaid Agency

EXHIBIT 144

(Rev.113, Issued, 04-25-14, 01-Effective: 01-01-12, Implementation: 01-01-12)

NOTICE OF IMPOSITION OF A CIVIL MONEY PENALTY (INSERT TO FORMAL NOTICE)

As a result of the survey findings listed on the attached Statement of Deficiencies and Plan of Correction (Form CMS-2567), the (**name of State survey agency**) recommended that the (**State Medicaid Agency or Centers for Medicare & Medicaid Services (CMS)**) impose a civil money penalty on (**facility name**). In accordance with Sections 1819(h) and 1919(h) of the Social Security Act and the enforcement regulations specified at 42 Code of Federal Regulations (CFR), part 488, we are imposing a civil money penalty effective on (date) in the amount of (dollar amount) for each day that (facility name) is not in substantial compliance with the participation requirements. We considered (**list the applicable factors specified in the regulation at 42 CFR 488.438(f)**) in determining the amount of the civil money penalty that we have imposed for each day of noncompliance.

The civil money penalty continues to accrue at the amount specified above until you have made the necessary corrections to achieve substantial compliance with the participation requirements or your provider agreement is terminated. However, the amount of the civil money penalty (**Select the appropriate statement: may be increased if we find that the noncompliance cited above worsens from a situation in which immediate jeopardy did not exist to a situation in which immediate jeopardy exists; or would be decreased if we find that immediate jeopardy has been removed but the noncompliance continues.**)

If you disagree with the determination to impose the CMP, you may request Independent Informal Dispute Resolution. Procedures governing this process are set out in 42 CFR §488.431. You must file a written request for Independent IDR within 10 days from the date of receipt of this letter.

If you would like to waive your right to a hearing, you must do so in writing within 60 calendar days from the date of this notice. If you waive your right to a hearing in accordance with the requirements specified at 42 CFR §488.436, the amount of the civil money penalty will be reduced by thirty-five percent. You will be notified of the total amount due, based on the revised daily amount, after you have achieved substantial compliance or your provider agreement is terminated.

EXHIBIT 147

(Rev.113, Issued, 04-25-14, 01-Effective: 01-01-12, Implementation: 01-01-12)

NOTICE OF PAYMENT AMOUNT DUE AND PAYABLE

(**Date**)

Provider Name
Address
City, State, ZIP Code

Dear (**Provider Name**):

Re: Civil Money Penalty Case Number:

By letter dated [date of CMP imposition notice], and in accordance with the statutory provisions of §1819(h) and/or 1919(h) of the Social Security Act, and the regulations at Title 42 of the Code of Federal Regulations, §488.430 *to §488.444, we advised you that the Centers for Medicare & Medicaid Services (CMS) had imposed* a civil money penalty (CMP) on (**facility name**) for *not meeting the Federal requirements for nursing homes participating in the (**Medicare or Medicare and Medicaid)** programs*. This *notice* is to inform you that the *CMP* imposed *for (**dates for which the CMP was imposed)*** is due and payable on (***due*** **date**).

The total *CMP* amount due is (**total dollar amount**). This total represents a *CMP* in the amount of (***specify per instance amount, or specify dollar amount per day/number of days)***.
*(**Also include, if applicable**, an explanation of how the amount was calculated. For example, take into consideration a change in the amount reflecting a shift from immediate jeopardy to non-immediate jeopardy or vice versa). (**OPTIONAL:** If hearing is waived: This total amount reflects a thirty-five percent (35%) reduction in the CMP amount due since you waived your right to a hearing on the noncompliance, as specified at 42 C.F.R. § 488.436).*

You should pay the full CMP amount by certified check. Please note that, in accordance with the regulations at 42 C.F.R. § 488.442, CMS will assess interest on any unpaid balance of the penalty beginning on the due date. The rate of interest is [specify the current Federal Treasury rate of interest].

To ensure proper crediting of your payment, please include your CMS Certification Number and the CMP case number, shown above, on your certified check. Make the certified check payable to the Centers for Medicare & Medicaid Services and send your certified check to:

Centers for Medicare & Medicaid Services
Division of Accounting Operations
Civil Money Penalty
Post Office Box 7520
Baltimore, Maryland 21207-0520

If you use a delivery service, such as Federal Express, ***use the following address only****:*

Centers for Medicare & Medicaid Services
Division of Accounting Operations
Civil Money Penalty
7500 Security Boulevard, Mail Stop C3-11-03
Baltimore, Maryland 21244

Do not send your original CMP payment check to this Regional Office. Otherwise, your payment will be considered late and offset may be initiated and/or interest may be imposed. Please send only a copy of your payment check to this Regional Office.

If CMS does not receive a certified check for the full amount by the CMP due date, both the CMP and any interest accrued after the payment due date will be deducted from sums owing to you from Medicare and/or Medicaid ***without any further notification from this office.***

If you need further assistance, please contact [name] at [telephone number]. All correspondence should be directed to [name/telephone number].

Sincerely,

(**Name and Title**)

cc: State Survey Agency
And/or State Medicaid Agency
Medicare Area Contractor

EXHIBIT 147A
(Rev.113, Issued, 04-25-14, 01-Effective: 01-01-12, Implementation: 01-01-12)

NOTICE OF PAYMENT AMOUNT DUE FOR PLACEMENT IN ESCROW (IIDR COMPLETE OR NOT TIMELY REQUESTED-FACILITY IS FILING FORMAL APPEAL)

*(**Date**)*

Provider Name
Address
City, State, ZIP Code

*Dear (**Provider Name**):*

*RE: CMS Certification Number (**CMS Certification Number**):*

Civil Money Penalty Case Number:

*In accordance with the statutory provisions of §1819(h) and/or §1919(h) of the Social Security Act, and the regulations at Title 42 of the Code of Federal Regulations, §488.430, a civil money penalty in the amount of (**dollar amount per day or per instance**) was imposed on (**facility name**) for noncompliance with the participation requirements. This is to inform you that the civil money penalty imposed on (**effective date of the penalty**) is due on (**date**). Since you have filed a request for a formal appeal, the civil money penalty for your facility will be placed in an escrow account and held there pending a final administrative decision. 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 Social Security Act. In situations where CMS enters into a settlement arrangement/agreement with a nursing home, the facility will not receive any interest payment for any CMP funds held in escrow by CMS.*

*The total amount of the civil money penalty due is (**total dollar amount**). This total represents the imposition of a civil money penalty in the amount of (**dollar amount**) per day for (**number of days of noncompliance**) [and (**dollar amount**) per day for (**number of days of noncompliance at a different range of penalty amounts**)].*

*The civil money penalty is due on (**insert the earlier of the date the Independent IDR process is completed or the date which is 90 days after the notice of imposition**). The civil money penalty is payable by check to **the Centers for Medicare & Medicaid Services.***

*You should pay the full CMP amount by certified check. In order to return any applicable amount owed to the facility based on a final administrative decision, we must have a completed W-9 form on file. Please include this with your payment. Please note that, in accordance with the regulations at 42 C.F.R. § 488.442, CMS will assess interest on any unpaid balance of the penalty beginning on the due date. The rate of interest is [**specify the current Federal Treasury rate of interest**].*

To ensure proper crediting of your payment, please include your CMS Certification Number and the CMP case number, shown above, on your certified check. Make the certified check payable to the Centers for Medicare & Medicaid Services and send your certified check to:

Centers for Medicare & Medicaid Services
Division of Accounting Operations
Civil Money Penalty
Post Office Box 7520

Baltimore, Maryland 21207-0520

If you use a delivery service, such as Federal Express, ***use the following address only****:*

Centers for Medicare & Medicaid Services
Division of Accounting Operations
Civil Money Penalty
7500 Security Boulevard, Mail Stop C3-11-03
Baltimore, Maryland 21244

Do not send your original CMP payment check to this Regional Office. Otherwise, your payment will be considered late and offset may be initiated and/or interest may be imposed. Please send only a copy of your payment check to this Regional Office.

If CMS does not receive a certified check for the full amount by the CMP due date, both the CMP and any interest accrued after the payment due date will be deducted from sums owing to you from Medicare and/or Medicaid ***without any further notification from this office.***

If you need further assistance, please contact [name] at [telephone number]. All correspondence should be directed to [name/telephone number].

Sincerely yours,
(Name and Title)

Enclosure
cc: State Survey Agency and/or State Medicaid Agency

EXHIBIT 354
(Rev.113, Issued, 04-25-14, 01-Effective: 01-01-12, Implementation: 01-01-12)

MODEL LETTER TO INVOLVED RESIDENT, RESIDENT REPRESENTATIVE AND/OR STATE OMBUDSMAN – OPPORTUNITY TO PROVIDE WRITTEN COMMENT (INDEPENDENT INFORMAL DISPUTE RESOLUTION (IDR) HAS BEEN REQUESTED)

*(**NOTE:** The language provided below should be changed appropriately for surveys conducted by CMS.)*

IMPORTANT NOTICE - PLEASE READ CAREFULLY

(Date)

Name
Address
City, State, ZIP Code

*Dear (**Resident, Resident Representative and/or State Ombudsman**):*

*On (**date**) a survey was conducted at (**Name and address of Nursing Home**) by the (**State survey agency**) to determine compliance with Federal requirements for nursing homes participating in the Medicare and/or Medicaid programs. The (**Name of Nursing Home**) has requested an Independent Informal Dispute Resolution regarding these survey results.*

*During this survey, findings were identified that involved the care or services provided to (**Involved resident and/or Resident representative**). We are writing to inform you that you have an opportunity to provide written comment regarding these findings. Specifically, (**provide a brief description of the findings of noncompliance for which the facility is requesting Independent IDR**).*

*Please provide any written comments no later than (**date**) directly to (**name and address of the appropriate agency, entity or person**).*

*If you have any questions, please contact (**name, title, address, phone number and fax of the appropriate official**)*

Sincerely yours,
*(**Name and Title**)*

Enclosure

cc: CMS Regional Office
and/or State Medicaid Agency