



Indiana State Department of Health

ISDH Civil Money Penalty Program

**A program to promote the health, safety, and quality of life
of individuals residing in long term care facilities in Indiana**

November 22, 2019

**Indiana State Department of Health
Consumer Services and Health Care Regulation
Commission**

**ISDH Civil Money Penalty Program
Program Overview**

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For information about the Indiana State Department of Health, visit the ISDH Web site at <http://www.in.gov/isdh/>.

For information about the ISDH Civil Money Penalty Program, visit the Nursing Home Civil Money Project Center at <http://www.in.gov/isdh/26655.htm>.

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Acronyms

CMP: Civil money penalty

CMS: Centers for Medicare and Medicaid Services

ISDH: Indiana State Department of Health

Program Description

The ISDH Civil Money Penalty Fund Program for Certified Health Facilities (hereinafter “CMP Program”) is intended to reduce deficient practices at skilled nursing facilities (SNF), nursing facilities (NF), and dually certified nursing facilities (SNF/NF). The CMP Program is also intended to protect the health and property of health facility residents. By reducing deficient practices of nursing homes, the CMP Program promotes improved quality of care, safety, and quality of life for individuals residing in Indiana health facilities.

Skilled nursing facilities, nursing facilities, and dually certified nursing facilities are terms referring to the federal Medicare/Medicaid certification. Indiana state licensing rules refer to them as comprehensive care facilities. These facilities are commonly referred to as nursing homes.

CMP Program History

The CMP fund was created by the United States Social Security Act of 1987. The purpose of the fund was to provide funding for projects designed to reduce deficient practices of certified nursing facilities (nursing homes). The Centers for Medicare and Medicaid Services (CMS) was directed to administer the fund and provide funds to states to be used to reduce deficient practices.

In 1993 the Indiana General Assembly passed legislation establishing a state fund to receive CMP funds and designate the ISDH to administer the fund. The ISDH began receiving CMP funds in 1996. The fund has been administered by the ISDH Healthcare Quality and Regulatory Commission since the fund’s inception.

The first CMP funded project was a 1998 project on reducing restraints in long term care facilities. The project consisted of a seminar and educational materials. Likely because funds were just beginning to accumulate, there were only a few small projects developed in the early years of the fund. Projects were developed by the Division of Long Term Care.

In the early 2000s, the fund began to increase as a result of a number of immediate jeopardy level deficiencies cited at nursing homes. In 2001 and 2002, Indiana received a large amount of CMP funds resulting in over \$4 million in reserve. Another large amount was received from 2005 – 2008. As a result of increased availability of funds, the ISDH in 2007 began development of larger scale quality improvement projects.

As of January 1, 2018, the ISDH had received over \$19.5 million in CMP funds along with \$1.5 million in interest income. The ISDH had expended over \$9.7 million towards quality improvement projects with another \$2 million encumbered for current projects.

The Patient Protection and Affordable Care Act of 2010 updated provisions pertaining to the collection and uses of CMPs imposed by CMS when nursing homes do not meet certification requirements for long term care facilities. CMS subsequently released revised regulations and guidance in 2011.

In 2014 CMS implemented a second civil money penalty enforcement process that applies to federally certified home health agencies. CMS has not developed specific guidelines and processes for the imposition and use of civil money penalties against home health agencies but it is expected to be similar to the nursing home program. The ISDH received its first CMP funds from federal home health agency enforcement actions in December 2015. By January 2018 only a very few small CMPs had been issued against home health agencies. Once enough funds accumulate, the CMP Program will begin to develop CMP funded projects directed at home health agencies. It is expected to be a very small fund.

Federal Authority for the CMP Fund

The United States Social Security Act of 1987 created a fund that returns a portion of civil money penalties collected from health facilities back to the states. The purpose of the CMP fund is to reduce deficient practices at long term care facilities and protect the health and property of facility residents.

The CMP fund was created by the United States Social Security Act, 42 U.S.C. § 1396r (1987). The law states at 42 U.S.C. § 1396r(h)(2)(A)(ii) that:

(ii) A civil money penalty assessed and collected, with interest, for each day in which the facility is or was out of compliance with a requirement of subsection (b), (c), or (d). Funds collected by a State as a result of imposition of such a penalty (or as a result of the imposition by the State of a civil money penalty for activities described in subsections (b)(3)(B)(ii)(I), (b)(3)(B)(ii)(II), or (g)(2)(A)(i) shall be applied to the protection of the health or property of residents of nursing facilities that the State or the Secretary find deficient, including payment for the costs of relocation of residents to other facilities, maintenance of operation of a facility pending correction of deficiencies or closure, and reimbursement of residents for personal funds lost.

CMS then adopted regulations concerning the CMP fund. Regulation 42 CFR § 488.442(g) (1994) states:

- (g) Penalties collected by the State. Civil money penalties collected by the State must be applied to the protection of the health or property of residents of facilities that the State or CMS finds noncompliant, such as –
 - (1) Payment for the cost of relocating residents to other facilities;
 - (2) State costs related to the operation of a facility pending correction of deficiencies or closure; and
 - (3) Reimbursement of residents for personal funds or property lost at a facility as a result of actions by the facility or by individuals used by the facility to provide services to residents.

The Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L 101-410) was enacted to improve the effectiveness of federal CMPs and to maintain their deterrent effect. On November 2, 2015, the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of the Bipartisan Budget Act of 2015, Pub. L. 114-74) was signed into law.

In the case of nursing homes, a civil money penalty is imposed by CMS for deficient practices based on the CMS scope and severity grid. The two highest severity levels are “immediate jeopardy” and “actual harm”. If a deficiency is cited at those levels, CMS will often impose a per day civil money penalty from the time when the breach occurred through the time when the breach was corrected. It is not unusual for a penalty to be imposed for a number of days. Under the 1990 standards, the amount for an immediate jeopardy level deficiency was \$3,050 a day. Once imposed, the facility may get a reduction of the penalty by paying the penalty within a number of days. The facility also has an opportunity to request an informal dispute resolution and administrative law review of the penalty. Under the 2015 adjustments, the CMP amounts were adjusted for inflation. This resulted in a significant increase in CMP amounts. Once imposed, a portion of collected civil money penalties is returned to the state to fund the CMP Program. CMS uses the other funds as part of its quality improvement initiatives.

The ISDH is the designated state survey agency for the Centers for Medicare and Medicaid Services (CMS). CMS certifies health care facilities such as nursing homes and home health agencies for participation in Medicare and Medicaid programs. The state survey agencies then conduct standard and complaint surveys of certified providers to

determine compliance with regulations. If a nursing home or home health agency is not in compliance with federal regulations, CMS may impose a civil money penalty (CMP) against the provider based on the deficient practice.

There are three categories of federal civil money penalties. CMS requires states to maintain separate accounting for nursing home, home health, and Office of Inspector General (OIG) CMPs.

In 2002, CMS provided states with broad direction on how CMP funds may be used. According to CMS Survey and Certification letter SC 02-42 (2002), the fund is a state fund administered by the state pursuant to federal law and regulations. The role of CMS is to provide federal oversight to ensure compliance with federal law. The law permits each state to implement its own procedures with respect to the use of CMP funds. The flexibility of the state to use CMP funds is limited by the requirement that the CMP funds are to be focused on deficient practices. CMS guidelines state that projects funded by CMP funds should be limited to funding on hand and should be relatively short-term projects. CMP funds are not to be spent on direct care costs but rather should be used to promote better care through the reduction of deficient practices at health facilities. While those principles are still in place, CMS has periodically issued new regulations and guidance letters further defining use of CMP funds. In September 2011, CMS released SC 11-42 (2011) that implemented a new approval process.

Authority for Indiana's CMP fund

Indiana Code § 16-28-12-2 (1993) established a state fund to receive money collected under 42 U.S.C. § 1396r. The CMP Program was created by the ISDH for the purpose of administering the CMP funds collected pursuant to 42 U.S.C. § 1396r. Indiana Code (IC) 16-28-12-2 states:

1396r(h) fund; investment; use of principal and interest

(a) The 1396r(h) fund is established to receive money collected under this chapter. The state department shall administer the fund.

(b) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested. Interest that accrues from these investments shall be deposited in the fund.

(c) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

(d) The state department shall use the principal and interest in the fund in accordance with 42 U.S.C. 1396r(h)(2)(A)(ii).

As added by P.L.2-1993, SEC.11.

Goals of the CMP Program

The purpose of the CMP Program is to reduce deficient practices resulting in improved quality of care and quality of life for individuals residing at nursing homes or receiving home health services. The goals of the CMP Program are to:

- Promote evidence-based care
- Encourage conversations on quality of care and quality of life
- Address issues identified through quality and needs assessments as part of a quality assessment and performance improvement process
- Provide education and training programs specific to the nursing home and home health resident populations
- Provide assistance to ensure the health and safety of Indiana nursing home residents during relocations
- Support state infrastructure towards development of innovative programs directed towards improving quality of care and quality of life for nursing home residents

Description of Indiana's CMP Program

States adopted a variety of models for their CMP Program structure. Some states created a new agency for quality improvement projects with its own staff. Some states housed the program as part of the state's Medicaid program. A number of states, like Indiana, linked the program to their CMS Survey and Certification Program that is often a part of the state health agency.

When the CMP fund was created, Indiana housed the fund with the ISDH Health Care Quality and Regulatory Commission (hereafter "Commission"). The fund has remained with the Commission since its inception. The Commission is the designated CMS State Survey Agency for Health Facility Certification.

The CMP Program does not have its own office or staff. Project development and implementation has been a collaborative effort between Commission Directors. In 2014 the Commission designated a position to serve as Director of Healthcare Quality Improvement Projects. That position however has additional program responsibilities beyond the quality improvement projects. Until 2017, CMS did not fund state costs to

administer the CMP Programs. Beginning in June 2017, CMS approved use of some CMP funds to administer the program.

Development of Quality Improvement Projects

PAST PROJECT DEVELOPMENT

The Commission historically has not had a formal process for development of quality improvement projects. Projects were generally created because of frequent issues identified through the survey process or through recommendations from partners. The following are examples of how projects were developed.

In 2004 the Commission began reviewing the CMP Program to determine how the funds should be spent. The Commission requested input from consumer advocate organizations such as Alzheimer's Association, State Long Term Care Ombudsman, Area Agencies on Aging, and Indiana Disability Rights. The ISDH identified a few potential quality improvement projects based on recommendations from these partners. The Alzheimer's Education Project in 2004 was a project that originated from these meetings.

For many years the Division of Long Term Care met quarterly with long term care provider associations to discuss facility survey questions and issues. By 2006 Indiana had the fourth highest numbers of immediate jeopardy level deficiencies in the nation. To address the issues, the Commission began meeting monthly with the long term care provider associations to include the Indiana Health Care Association, Leading Age Indiana, Hoosier Owners and Providers for the Elderly, Indiana Assisted Living Association, and Indiana Center for Assisted Living.

The Commission regularly requests input from the provider associations as to potential quality improvement projects. In 2006 the associations recommended that the ISDH host conferences to bring long term care facility leadership, quality improvement organizations, provider associations, advocate organizations, and state surveyors together to hear best practices and focus on quality issues. In 2007 the ISDH hosted its first Healthcare Quality Leadership Conference on the topic of fall prevention. Each conference is a one-day conference on one quality improvement topic. The ISDH has generally hosted two conferences per year with an average attendance of over 1,000 participants per conference. Through March 2017, the ISDH hosted a total of twenty conferences funded through CMP funds.

Some projects have been the result of federal initiatives. For instance, CMS created its GPRP Initiative to reduce pressure ulcers and use of restraints. The ISDH created a CMP project in 2007 to provide training to nursing home on the reduction of pressure ulcers.

Other projects have been developed to support other state initiatives. In 2009 the Commission received a grant from the Center for Disease Control and Prevention (CDC) to implement an infection prevention program. The CMP Program developed a project to expand and extend the CDC grant and focus on healthcare associated infection prevention at nursing homes. The project began in 2009.

CURRENT PROJECT DEVELOPMENT PROCESS

Healthcare quality improvement has evolved significantly in recent years. The approach to healthcare quality began to change with publication of the Institute of Medicine's *To Err is Human* in 1999 and continued through Dr. Peter Pronovost's *Safe Patients, Smart Hospitals* in 2010 and Dr. Atul Gawande's *Being Mortal* in 2015. The focus of healthcare quality improvement has shifted to promoting evidence-based practices, utilizing process improvement, assessing quality through outcome measures, and focusing on quality of life and person-centered support.

CMS is leading an initiative to improve the approach to healthcare quality. The Quality Assurance and Performance Improvement (QAPI) initiative is a comprehensive, structured quality improvement program to assess the quality of care provided to patients / residents and improve the quality of care. The QAPI initiative is a step in moving the quality process from one based on assessment of inadequacies to one that focuses on improvement. While quality assurance continues to play a role, facilities are expected to engage in continuous performance improvement.

The ISDH is following this QAPI approach to the development of CMP funded projects. The Commission is monitoring quality of care and services through performance indicators drawing data from multiple sources. Sources of performance indicators include:

- CMS Midwest Division Survey and Certification Reports
- CMS Nursing Home Compare
- CMS National Partnership to Improve Dementia Care in Nursing Homes
- Quality indicator data from CMS designated quality improvement organization
- ISDH review of survey data to identify deficiency rates and trends
- ISDH Medical Error Reports
- Quality improvement project data and reports
- CDC healthcare associated infection reports

The Commission continues to meet monthly with long term care provider associations to discuss survey issues and quality of care. The Commission requests provider associations to recommend quality improvement projects. The Commission periodically meets and corresponds with quality improvement organizations, academic programs,

state agencies, and community organizations to discuss issues and priorities. The Commission also participates on a number of task forces and advisory groups.

The ISDH encourages recommendations of potential project ideas directed at the reduction of deficient practices, improved healthcare outcomes, and improved quality of life. While the ISDH does not have specific expectations as to project topics, it is likely that most projects would need to incorporate the following components into the project:

- a. A discussion of abuse and neglect of residents. Each project will likely need to include a section on abuse and neglect as it relates to the specific topic of the course. The discussion would include suggestions as to best practices to prevent abuse and neglect of health facility residents with regard to the specific course topic and emphasize reporting requirements and procedures for those persons witnessing abuse or neglect of health facility residents.
- b. A discussion of the role of family members of the resident in addressing the quality of life and care of residents with regard to the specific topic of the course. The discussion would include best practices as to communication between the facility and family members.
- c. A discussion of “best practices” in caring for health facility residents with regard to the specific topic of the program. “Best practices” are successful programs and practices implemented by health care providers to reduce deficient practices and ensure the quality of life and care for health facility residents.
- d. A discussion of person-centered support focusing on improving the quality of life of residents.

While each project will determine appropriate content based on the project topic, past educational and training programs have generally included the following curricular areas:

- Overview of medical background and care issues
- Review of health care literature / experiences on issue
- Regulatory review
- Common care problems encountered by health facilities
- Staffing issues
- Documentation issues
- Abuse and neglect issues and awareness
- Role of resident and family

Culture change / person-centered support
Quality of life
Best practices
Involving health facility residents

Approval of CMP Projects

Effective January 1, 2012, CMS requires prior CMS approval for any new project, grant, or use of federally imposed CMP funds. [See CMS SC 12-13-NH, December 16, 2011, and SC 11-42-NH, September 30, 2011] State requests for approval submitted to CMS must include the following project information:

- Purpose and summary
- Expected outcomes
- Outcome measurement
- Benefits to nursing home residents
- Non-supplanting
- Consumer and stakeholder involvement
- Funding
- Involved organizations
- State contacts

Transparency of CMP Program

The State of Indiana places great importance in transparency of state government. The Indiana Transparency Portal [www.in.gov/itp] provides information on state contracts, state budget, and agency performance measures.

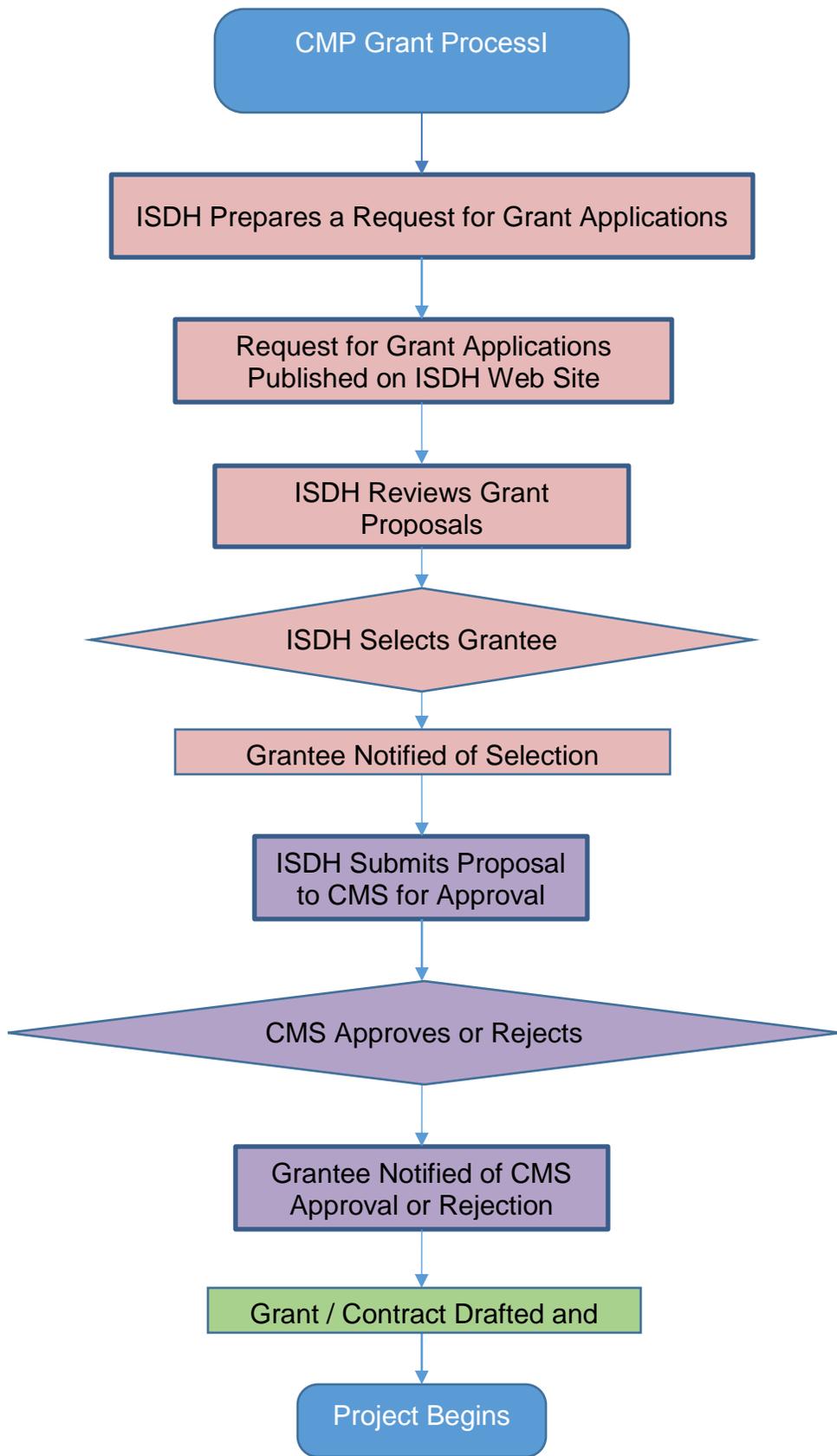
To provide transparency of the ISDH CMP Program, a web page was created for the program. The *Civil Money Penalty (CMP) Project Center* includes information on the CMP program and information on each project. The link to the web page is found on the Healthcare Quality Resource Center page at <http://www.in.gov/isdh/24555.htm>.

CMP Project Proposals

For CMP funded projects, there are two processes that may be used. First, the ISDH may fund projects through a grant process. Second, the ISDH may fund projects through the state contract process.

The following is a general description of the process for funding of CMP projects:

1. If the project is to be a grant, the ISDH will post a *Request for Grant Applications* on the agency web site. If the project is to be a contract, the ISDH will release a *Request for Proposals* through the Department of Administration web site.
2. After the deadline for applications / proposals, the ISDH reviews and selects projects for funding.
3. CMS approval of projects is required. Once a project is selected, the ISDH submits a project proposal to the CMS Region V Office for approval. By its policy and procedure, CMS has 45 days to review or request additional information.
4. Once CMS approves, the ISDH completes the state grant / contract process with the selected vendor.



CMP Contract Process

