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Action Plan

To Encourage the Use
of Funds from
Civil Money Penalties
and Fines to Improve
Nursing Home Resident
Care and Quality of Life

for
Consumer Advocates
Nursing Home Staff
Long Term Care Ombudsmen
and Citizens

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INTRODUCTION

What Are CMPs/Fines And What Can They Do For Residents?

In 1986, Congress passed the Nursing Home Reform Act (OBRA, 1986) which allowed the government to issue sanctions against nursing homes that failed to comply with federal Medicare and Medicaid quality of care requirements. Civil money penalties (CMPs) (or fines) were one sanction that was implemented by the government in 1995 to encourage nursing homes to comply with federal requirements and to prevent poor quality of care. State licensing and certification programs have contracts with the federal government Centers for Medicare and Medicaid Services to inspect nursing homes on a regular basis and to issue CMPs for violations of federal regulations. In addition to federal CMPs, states may also issue and collect state CMPs or fines for violations of state quality of care rules.

For nursing home residents, CMPs/fines offer a two fold opportunity to make their lives better: (1) CMPs/fines may be an important deterrent to poor care; and (2) collected CMPs/fines offer an additional pool of money to improve their quality of life and care. Yet, many states do not levy them, collect them or, if they do, use them in innovative ways to improve care.

States can use federal CMPs to:

- Maintain the operations of a facility, pending correction of deficiencies or closure;
- Assist in receiverships and relocation of residents;
- Reimburse residents for personal funds lost; and
- Fund other projects that benefit facility residents.

State fines can be used in ways dictated by each state's laws.

Goals of This Project

Ideally there would be no need for the imposition of CMPs/fines because all facilities would provide high quality of care. Unfortunately, however, because many deficiencies in quality of care exist, CMPs/fines are a necessary and important remedy. CMPs/fines that are collected can have a wide-ranging, positive impact on the lives of nursing home residents. Funds collected from CMPs/fines are a potentially powerful source of funding that can be targeted to making things better for residents. The goals of this project are to inform the public, consumer groups, government officials, ombudsmen and the nursing home industry about the practices and experiences of states' use of CMPs/fines; to encourage states to make greater use of CMPs/fines for projects; and to identify the uses of funds from CMPs/fines for special projects that can be replicated to provide lasting and widespread improvements to resident quality of life.

How to Use This CMP Action Plan

Following are summaries of the findings from our study, including information on states' experiences with CMPs/fines and interviews with stakeholders -- ombudsmen, advocates, providers and government officials. In addition, we have specific recommendations for states and CMS on how to better utilize CMPs/fines. This information will give you the background knowledge necessary to make optimum use of the last section, "Strategies for Stakeholders."

Remember: these materials are meant to provide a foundation of knowledge about CMPs/fines and how they can be used to improve the lives of nursing home residents in your state. It is critical to consider what activities will influence political and regulatory leaders in your community and how to ensure that the monies are utilized in a way that will best help residents.

SUMMARY OF FINDINGS

Variations in CMPs/fines

- There is wide variation among states in issuing and collecting CMPs/fines. Most states issue federal CMPs and CMPs/fines for violations of state deficiencies.
- In 2004, about \$17 million in federal CMP funds were collected.
- In 2004, about \$3.6 million in state CMPs/fines funds were collected.

Funds Available from CMPs/Fines

- Funds collected from CMPs/fines represent a substantial resource available to states for nursing home quality improvement projects. 46 states reported having \$60 million available in accounts from CMPs/fines in 2005.

Use of Funds from CMPs/Fines

- 32 states reported spending \$28 million in funds from CMPs/fines during the 1999-2005 period.
- 65 percent of funds expended were used for survey and certification activities such as temporary management, relocation, consultation, and other such activities and 35 percent were used for special projects.
- About half of the states reported spending \$10 million of funds for projects to improve nursing home care. Of the total expenditures, 20 percent was spent on provider projects, 5 percent on advocacy projects, and 10 percent on other projects.
- Eight states had not used their funds.
- Funds from state CMPs/fines were used to fund schools in two states, while six states put state CMPs/fines into the state general fund.
- Most states using funds for projects were contiguous states in the Midwest, South, and Middle Atlantic regions.

Lack of Information about CMPs/Fines

- Most states had difficulty obtaining current information about the number and the amount of federal CMPs issued and collected by CMS.
- This project had to collect some information on fund balances by using FOIA requests because some states were unwilling to provide the information without such a request.
- Ombudsman and citizen advocacy group (CAG) respondents were largely aware of CMPs/fines but most did not know how much was collected or how the funds were used in their states. Most ombudsman and citizen advocate respondents favor making this information public.
- 26% of state ombudsman respondents, 14% of local ombudsman respondents, and 31% of CAG respondents make CMP information available to the public.

Special Nursing Home Projects¹

- A wide variety of types of nursing home special projects were funded.
- The average project funded by states for providers was \$48,000, for advocates was \$110,000, and other projects was \$76,000. Some states gave small amounts of funds to many providers and projects. The funding in some cases appeared to be too small to have any measurable impacts.
- Most special projects funded by states appeared to be short-term or one-time funding.
- Most special projects funded by states did not have outcomes reported and did not have formal evaluations.

¹ For more information, please request a copy of the paper, "State Uses of Funds from Civil Money Penalties and Fines from Nursing Homes." See end for information on how to request.

Procedures for Using Funds from CMPs/Fines

- Most reporting state officials stated they do NOT have procedures established to inform stakeholders about the availability of funds from CMP/fines for special projects.
- Most state officials stated that they do NOT involve stakeholders in the decision-making about the use of the CMPs/fines.
- Almost 2/3 of state ombudsman respondents indicated a lack of participation in decision-making on the use of CMPs/fines.

Examples of State Special Projects

1. *Delaware* – Training workshops for facilities on restraints and pressure ulcers.
2. *Florida* – A university research project to identify the extent of mental illness among residents and to make recommendations for specialized staff training.
3. *Iowa* – CNA recruitment and retention initiatives.
4. *Kansas* – Resident relocation and ombudsman training and resource materials.
5. *Illinois and Kentucky* – Support for local ombudsman programs to increase staff so residents have access to ombudsman services with a goal of 1 paid ombudsman per 2000 LTC beds.
6. *Indiana* – An Alzheimer's and dementia care training program.
7. *Louisiana and Illinois* – Culture change initiatives.
8. *Maryland* – Quality improvement and technical assistance units, family council development, Wellspring projects, pets-on-wheels for facilities, and a hospice network.
9. *Michigan* – A special team for NH remediation and closures, a NH transition program, and evaluation of a NH dining assistant program.
10. *Minnesota* – Production and distribution of a brochure on restraint use and a training video.
11. *New Jersey* – Quality improvement, Eden Alternative grants, and a resident satisfaction survey.
12. *North Carolina* – Five programs for quality improvement initiatives, a university medication error study, and Eden Alternative and Pioneer Network programs.
13. *Ohio* – Technical assistance programs to help improve quality of care.

RECOMMENDATIONS FOR STATES

Remove Variations in CMPs/fines Issued and Collected

- Establish consistency in the way that CMPs/fines are issued and collected for violations of federal and state quality regulations.
- For states that are not using CMPs/fines, use this sanction when appropriate. Work with CMS to establish a training program for state surveyors on the use of CMPs/fines.

Use of Funds from CMPs/Fines

- Absolutely require that funds be used for purposes directly related to nursing home residents.
- Expend funds for CMPs/fines primarily for special projects & programs that stimulate resident quality of care and quality of life that can ultimately be replicated.
- Limit the use of funds for relocation, temporary management, other licensing and certification activities, and state emergencies to what is necessary.
- Ensure that the state survey and certification agency responsible for levying the CMPs/fines retains control over how those funds are used and is accountable for how they are used.
- Remove state requirements that restrict the use of funds (such as putting the funds in the

state general fund) or prevent the funds from being used for projects to improve quality.

Ensure Access to Information about CMPs/Fines

- Improve collection of data about CMPs.
- Publish annual summary reports on the amount of funds available from CMPs/fines, the specific uses of the funds by year, the organization receiving funds, and details on the project evaluations. This information should include:
 - ▶ Whether there is a special account set up
 - ▶ A quarterly account balance
 - ▶ The process for applying to use the funds
 - ▶ How the funds are used
 - ▶ The state's evaluation of the program/project
- Ensure that these reports are distributed to long term care ombudsmen and advocates.
- State ombudsmen should include information about use of CMPs/fines in routine training offered to local ombudsmen, and offer them suggestions about how to inform the public about these enforcement actions.

Process of Using State CMPs/Fines

- Involve a wide range of knowledgeable stakeholders in setting the criteria for and guidelines for the use of funds including residents and family members, ombudsmen, family council members, members of citizen advocacy groups, providers, and individuals with grant-making experience.

- Establish a public process including public notice of fund availability with a clear annual timeline for applications for funding of innovative projects and an objective review process.
- Establish a broad based advisory committee composed of stakeholder groups such as consumer advocates, ombudsman, providers, etc to establish priorities for the use of funds and to advise on the selection of specific projects.
- Allocate sufficient funds for projects/activities /programs so that they can make a substantial, lasting impact and potentially a widespread impact.
- Allocate funds for programs/projects that are practical and can be sustained and/or replicated by others after the funding has ended.
- Authorize funds for innovative projects that go beyond regulatory requirements and ordinary budget items to improve residents' quality of care and quality of life, encourage person directed care, promote consumer advocacy and involvement and stimulate and support the spread of "culture change."
- Target consumer focused projects such as work with family councils, resident councils, consumer advocacy organizations, and ombudsman projects. Establish an evaluation process for all projects, using outside evaluation experts if possible.
- Encourage programs/projects to be jointly developed with academic organizations, consumers (or their representatives) and established experts.

RECOMMENDATIONS FOR CMS

- Mandate recommendations for states.
- Publish annual summary reports on the amount of funds available from CMPs/fines, the specific uses of the funds by year, the organization receiving funds, and details on the project evaluations. This information should include:
 - ▶ Whether there is a special account set up
 - ▶ A quarterly account balance
 - ▶ The process for applying to use the funds
 - ▶ How the funds are used
 - ▶ The state's evaluation of the program/project
- Monitor states' compliance with mandates.

STRATEGIES FOR STAKEHOLDERS

To achieve the greatest overall benefits for residents, as many stakeholders as possible must work together to promote this study's recommendations. Identify all the stakeholders in your state. See if you can conduct activities together. Use the summary of findings and recommendations listed above as well as additional specific state information for your advocacy.²

OMBUDSMEN/ADVOCATES

1. Educate the policy makers in your state

Strong collection and beneficial use of CMPs/fines depends on backing and "buy in" of state policy makers. You can use the information from this project as a basis for making the case to policy makers in your state. If possible, bring together other groups and individual consumers to join meetings with policy makers, or provide them with talking points to use on their own. Advocate for legislation that will require fines collected to be used for programs that improve resident quality of life.

- a. Meet with legislators
- b. Meet with government agencies
- c. Meet with your governor

2. Educate the public in your state

It is crucial for the public to know that fines against nursing homes can be a source of funding for programs or projects that could improve nursing home care and quality of life. Use the findings from this project to develop your own materials. Learn about how CMPs/fines are levied, collected and used in your state. Put this information in:

- a. Any newsletter you publish
- b. Your web site (feel free to link to CMP Project page on www.nursinghome411.org)

- c. An article in newsletters of other groups or communities
- d. Letters to the editor in local papers
- e. Articles in local papers

3. Promote grassroots action

Develop steps the public can take to advocate for implementation of the recommendations of this project. Urge individuals to:

- a. Write letters (if possible, using sample letters you have written) to policy makers in your state – legislators, the governor, aging agencies, health department, etc.
- b. Write letters to the editor of local papers
- c. Meet with their political representatives (as mentioned above under "educate the policymakers in your state.")

4. Participate in the decision-making process on how to use the funds to improve nursing home care and quality of life

If your state is already using the funds and/or begins to use the funds after your advocacy:

- a. Propose projects or programs for funding that meet the study's recommendations for states
- b. Request to be part of the review process for both selection and evaluation of programs/activities
- c. Request information on CMPs/ fines levied and collected in your state – use this information to continue informing the public

5. Additional recommendation for Long Term Care Ombudsmen and others who might have government affiliation

- a. Use your position in state government and/or your government contacts to influence the state to implement civil money penalties (if they are not doing so already) and to use the funds as recommended by this study to improve resident care.

² See the end for information on how to get specific state information by requesting a copy of "Study of Federal and State Civil Money Penalties and Fines for Nursing Homes in the U.S."

- b. Request to be part of review process in both project selection and evaluation.

PROVIDERS & PROVIDER ORGANIZATIONS

1. Promote quality of care so that CMPs/fines do not need to be levied.
2. Work with other stakeholders to ensure that CMPs/fines collected are appropriately used to improve the resident experience.
3. Disseminate these materials and other information on CMPs/fines. Distribute information:
 - a. At conferences

- b. On-line and
- c. Through communications with your members (such as newsletters)

4. Meet with government agencies.
 - a. Give them input on what types of projects would most improve the lives of your residents
 - b. Promote the use of CMPs/fines to improve quality of life and consumer involvement
5. Advocate for legislation that will require fines collected to be used for programs that improve resident quality of life.
6. Propose projects for funding that meet the recommendations for states (see above).

FOR MORE INFORMATION

The Long Term Care Community Coalition (LTCCC) and the National Citizens' Coalition for Nursing Home Reform (NCCNHR) both maintain dedicated pages on their websites with information on CMPs/fines and more in-depth information on this study.

Following are the websites where this information is available. Copies of any information, including this Action Plan, may be freely distributed so long as LTCCC is credited and the materials are not charged for.

- www.nursinghome411.org
- www.nursinghomeaction.org
- www.ltccc.org

Our full project, "Funding for Nursing Home Innovation: A Review of State Practices with Federal Civil Monetary Penalties and State Fines" includes a number of different products, available on our websites.

- NCCNHR Resource Brief describing survey of ombudsmen and citizen advocacy groups
- Case Studies – details of 6 state projects using CMPs

Also available are two papers detailing specific findings on individual state experiences with CMPs. For copies of these papers, which include detailed tables, please contact by email:

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