

Center for Medicaid and State Operations/Survey and Certification Group

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**Admin Info: 07-14**

**DATE:** June 22, 2007  
**TO:** State Survey Agency Directors  
**FROM:** Director  
Survey and Certification Group  
**SUBJECT:** Civil Money Penalty (CMP) Analytic Tool

**Memorandum Summary**

1. This letter provides a CMP analytic tool for Regional Offices (ROs) to use in evaluating the reasonableness of State-recommended CMP amounts to those amounts suggested by the tool.
2. While use of the tool is not mandatory for States, CMP amounts recommended by States will be periodically compared to the tool amounts to ensure that the recommended amounts are within a generally acceptable range in order to promote as much national consistency as possible.

While it is recognized that CMP amounts can vary greatly depending on facility-specific factors as well as the uniqueness of each noncompliance situation, States and the Centers for Medicare & Medicaid Services (CMS) agree that, to the extent possible, it is important and desirable that there be increased national consistency in penalty amounts. Please note that the analytic tool does not affect the 35% reduction on the final amount that occurs with a nursing home waives its right to an administrative hearing on the imposition of a CMP.

**CMP Analytic Tool:** The CMP analytic tool was developed by a joint State-Federal workgroup and was pilot tested by all CMS ROs for 90 days, from June 1 to August 31, 2006. The tool was not used to change or challenge any State-recommended CMP amounts but rather, its purpose was to help us determine the extent to which penalties imposed by States are consistent nationally and where follow-up with States might be advisable when great disparity occurs.

We analyzed the pilot data that was submitted by calculating the disparity between the analytic tool CMP amount and the CMP amount recommended by the State. That dollar amount was then converted to a percentage. From the national totals, we were able to calculate the standard deviation in both dollar and percentage amounts. Data confirmed that most State-recommended CMP amounts were within a reasonable range of the amount suggested by the tool.

**Review Thresholds:** State-recommended CMP amounts will generally be considered to be acceptable without special review if they are within 35 percent of the amount resulting from using the analytic tool. When recommended amounts fall outside the 35 percent threshold, ROs will discuss the CMP amount with the State, with the understanding that legitimate reasons may well support an outlier penalty amount.

**RO Wishes to Reduce a State-Recommended CMP:** When the State recommends a CMP amount that is within the reasonable boundaries of the CMP analytic tool but the RO wishes to impose a CMP 35 percent or more lower than that amount, the RO will secure agreement from the Division of Nursing Homes in Central Office.

**Use of the Tool by the RO:** We do not wish to create additional burden for ROs relative to this tool; rather, it is our expectation that the tool will be used with sufficient frequency to allow the ROs to conclude that the States' amounts are typically within the 35 percent threshold, as well as to inform them of outlier cases which may require consultation with the State.

**Use of the Tool by States:** While use of the tool is not mandatory for States, its use by ROs may generate follow-up with a State when a State's recommended amount falls outside the 35 percent threshold.

We extend many thanks to the workgroup members who worked to create the key content of this tool, and the many regional office staff who provided important input and review.

For questions concerning this memorandum, please call Pat Miller at 410-786-6780 or email her at [Patricia.Miller@cms.hhs.gov](mailto:Patricia.Miller@cms.hhs.gov).

/s/  
Thomas E. Hamilton

Attachments:  
Instructions  
CMP Analytic Tool

cc: Survey and Certification Regional Office Management  
State Medicaid Directors

## **Worksheet Instructions For Initial CMP Imposition in a Survey Cycle**

### **Highest Scope/Severity:**

#### **Letter:**

- Insert the highest scope and severity level deficiency cited at the current survey (for example, H).

#### **Number at Highest S/S:**

- Insert the number of deficiencies cited for the highest scope and severity level (for example, 3 deficiencies at S/S level H).

### **Type of CMP:**

- Check the type of CMP the State Agency recommended.
- Use this CMP type for your analysis.

### **Base Amount of CMP:**

- Go to the Per Day and Per Instance CMP grids on the last page.
- Select a CMP amount that corresponds to the highest cited scope and severity level.
  - For example, if the State Agency recommended a per instance CMP and the highest cited scope and severity is a level H, the base amount for the CMP is \$2000.
  - For example, if the State Agency recommended a per day CMP and the highest cited scope and severity is a level H, the base amount for the CMP is \$600.
- Indicate the CMP dollar amount you selected in the box at the right.

### **ITEM 1: History of Facility Noncompliance (Skip if continuing per day CMP) 42 CFR §488.438(f)(1)**

- Indicate whether you are adding an amount for a facility's history of noncompliance in the last survey cycle. If you check "no," then go to Item 2.
- If you checked "yes," select one amount that corresponds to the highest scope/severity level deficiency cited in the last survey cycle. Add that amount to the box at the right.
- For example, if the highest deficiency cited on the last survey cycle was K-level, add \$500 to the base CMP amount.
- Do not add an amount for deficiencies cited in the DEF range in the last survey cycle.
- Indicate the dollar CMP amount you are adding in the box at the right.

**ITEM 2: Seriousness and Scope of the Current Deficiencies CMP 42 CFR §488.404(b)**

- In the first box, indicate whether there is substandard quality of care (SQC) by checking the appropriate box.
- If there is SQC and you selected a per day CMP, the amount you add for SQC is based on the highest scope & severity level at which the SQC exists.
- If there is SQC and you selected a per instance CMP, add an amount for SQC only if the instance for which the “per instance” CMP being imposed is SQC.
- If the SQC constitutes no harm (level F), add to the base CMP amount \$50 for a per day CMP or \$500 for a per instance CMP.
- If the SQC constitutes harm (levels H or I), add to the base CMP amount \$100 for a per day CMP or \$1000 for a per instance CMP.
- If the SQC constitutes immediate jeopardy (levels J, K, or L), add to the base CMP amount \$500 for a per day CMP or \$2500 to a per instance CMP.
- If there is no SQC, there is no change in the CMP amount.
- Indicate the dollar CMP amount you are adding for SQC in the box at the right.

**ITEM 3: Number of Deficiencies (Skip if “per instance” CMP) 42 CFR §488.404(c)**

- If the total number of deficiencies cited at the current survey is 10 or more, use the table below to calculate a multiplier. If less than 10, continue to step 4.

Total Number of Deficiencies	Multiplier
10-14	1.0
15-24	1.25
25+	1.5

- Enter the multiplier from above table to calculate the add-on.

Highest Severity	Amount	Multiplier (from 3a)	Final Add-on
DEF	\$50		
GHI	\$100		
JKL	\$500		

- Example 1: A facility is cited with the following deficiencies: 6 at scope/severity level D, 4 at E, 2 at G, 2 at H, and 1 at J. (Total 15 deficiencies) The highest scope/severity level deficiency cited on the current survey is a J. Add \$500 to the base CMP amount and place this amount in the box at the right.

**ITEM 4. Facility Culpability 42 CFR §488.438(f)(4)**

- This is self-explanatory. There are no guidelines on this.

**ITEM 5. Repeated Deficiencies (Skip if “per instance”) 42 CFR §488.438(d)(3)**

- If there is a repeated deficiency cited and a per day CMP was imposed in the last survey cycle for a deficiency in the same regulatory grouping, indicate the amount of the last per day CMP imposed.
- If the current CMP calculation is not at least \$100 more than the previously imposed per day CMP, add \$100 to the previously imposed CMP and indicate that amount in the \$ box.

**ITEM 6. Facility’s Financial Condition 42 CFR §488.438(f)(2)**

- Review the documentation related to financial condition. Check whether you believe the documentation supports a lowering of the CMP amount and, if yes, enter the amount to be deducted.

**ITEM 7. TOTAL CMP IMPOSED**

- This is the base CMP amount plus amounts added for history of noncompliance, seriousness and scope of deficiencies, number of deficiencies, facility culpability, repeated deficiencies. From this amount, if applicable, deduct an amount for facility financial condition.
- Final per day CMP for non-IJ must be between \$50 and \$3000.
- Final per day CMP for IJ must be between \$3050 and \$10,000.
- Final per instance CMP imposed for all deficiencies on a survey must total between \$1000 and \$10,000.

**ITEM 8. Other Remedies**

- Please indicate other remedies imposed by checking the appropriate box.

## CMP Worksheet

CMP Case Worker Name:		Current Date:																																		
Provider Name:		CCN Number:																																		
Highest Scope/Severity: Letter:                      Number at Highest S/S:		Type of Civil Money Penalty:  Per Day [ ]                      Per Instance [ ]																																		
Base Amount of CMP:				\$																																
<b>1. History of Facility Noncompliance (SKIP IF CONTINUING Per Day CMP) 42 CFR §488.438(f)(1)</b>																																				
(a) Is there a history of noncompliance at scope/severity level "G" or above? No [ ] (go to # 2)                      Yes [ ] (go to b)		If "Yes," add one amount for the highest scope/severity level deficiency cited during the most recent survey cycle.		\$																																
(b) Are you adding an amount for facility's history of noncompliance? No [ ] (go to # 2)                      Yes [ ] →		<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 33%;">Severity</th> <th style="width: 33%;">Per Instance</th> <th style="width: 33%;">Per Day</th> </tr> </thead> <tbody> <tr> <td>GHI</td> <td>\$1000</td> <td>\$100</td> </tr> <tr> <td>JKL</td> <td>\$2500</td> <td>\$500</td> </tr> </tbody> </table>		Severity	Per Instance	Per Day	GHI	\$1000	\$100	JKL	\$2500	\$500																								
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Is there Substandard Quality of Care on the current survey? No [ ] (If "No," go to # 3) Yes [ ] →	If Yes for "Per Day" – amount to be added is based on the highest scope & severity level at which SQC exists.	If Yes for "Per Instance" – amount to be added for SQC only if the instance for which the "per instance" CMP being imposed is SQC.	\$																																	
<b>Substandard Quality of Care?</b> Yes, Non-harm [ ] Yes, Harm [ ] Yes, Immediate Jeopardy [ ]	<b>Per Day</b> Add \$50 Add \$100 Add \$500	<b>Per Instance</b> Add \$500 Add \$1000 Add \$2500																																		
<b>3. Total Number of Deficiencies Cited on Current Survey (SKIP IF "PER INSTANCE" CMP) 42 CFR §488.404(c)</b>																																				
(a) Identify the total number of deficiencies in the table below to calculate a multiplier. Enter the multiplier in 3(b) to calculate the Add-on. →  If less than 10 deficiencies, go to # 4.		(b) Add-on for large number of deficiencies																																		
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 50%;">Total Number of Deficiencies</th> <th style="width: 50%;">Multiplier</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">10-14</td> <td style="text-align: center;">1.0</td> </tr> <tr> <td style="text-align: center;">15-24</td> <td style="text-align: center;">1.25</td> </tr> <tr> <td style="text-align: center;">25+</td> <td style="text-align: center;">1.5</td> </tr> </tbody> </table>		Total Number of Deficiencies	Multiplier	10-14	1.0	15-24	1.25	25+	1.5	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 15%;">Highest Severity</th> <th style="width: 15%;">Per Day Amount</th> <th style="width: 10%;"></th> <th style="width: 15%;">Multiplier (from 3a)</th> <th style="width: 10%;"></th> <th style="width: 15%;">Final Add-on</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">DEF</td> <td style="text-align: center;">\$50</td> <td style="text-align: center;">x</td> <td></td> <td style="text-align: center;">=</td> <td></td> </tr> <tr> <td style="text-align: center;">GHI</td> <td style="text-align: center;">\$100</td> <td style="text-align: center;">x</td> <td></td> <td style="text-align: center;">=</td> <td></td> </tr> <tr> <td style="text-align: center;">JKL</td> <td style="text-align: center;">\$500</td> <td style="text-align: center;">x</td> <td></td> <td style="text-align: center;">=</td> <td></td> </tr> </tbody> </table>			Highest Severity	Per Day Amount		Multiplier (from 3a)		Final Add-on	DEF	\$50	x		=		GHI	\$100	x		=		JKL	\$500	x		=	
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<b>4. Facility Culpability 42 CFR §488.438(f)(4)</b>					
Are you <b>adding</b> an amount for facility culpability? No <input type="checkbox"/> (If "No," go to # 5) Yes <input type="checkbox"/> → Deficiencies include neglect, indifference or disregard for resident care, comfort or safety.		Rationale:		\$	
<b>SUBTOTAL</b>					
\$					
<b>5. Repeated Deficiencies (SKIP IF "PER INSTANCE") 42 CFR §488.438(d)(3)</b>					
Is the highest s/s deficiency a repeated deficiency? No <input type="checkbox"/> (If "No," go to # 6) Yes <input type="checkbox"/> → "Repeated Deficiencies" are deficiencies in the same regulatory grouping of requirements found at the last survey, subsequently corrected, and found again at the next survey. (§488.438(d)(3))		If "Yes", was a Per Day CMP imposed? No <input type="checkbox"/> (If "No," go to # 6) Yes <input type="checkbox"/> ↓ Amount of Last Per Day CMP imposed \$ _____		Is CMP subtotal, indicated above, at least \$100 more than the previously imposed Per Day CMP? Yes <input type="checkbox"/> (If "Yes," go to # 6) No <input type="checkbox"/> ↓ If "No" add at least \$100 to the previously imposed CMP.	\$
<b>6. Facility's Financial Condition 42 CFR §488.438(f)(2)</b>					
Is there a request and documentation related to financial condition? No <input type="checkbox"/> (If "No," go to Total CMP Imposed) Yes <input type="checkbox"/>		Based on the documentation, should the CMP be reduced? No <input type="checkbox"/> (If "No," go to Total CMP Imposed) Yes <input type="checkbox"/> Deduct Amount: →		(\$ )	
<b>Summarize reasoning for decision if CMP adjustment was requested.</b>					
<b>7. TOTAL CMP IMPOSED (may not exceed the regulatory limit of \$10,000 per day or \$10,000 per instance)</b>					
\$					
<b>8. Other Remedies</b>					
Check other remedies in addition to the Civil Money Penalty:					
<input type="checkbox"/> Directed Training		<input type="checkbox"/> Temporary Manager			
<input type="checkbox"/> Directed Plan of Correction		<input type="checkbox"/> State Alternative Remedy			
<input type="checkbox"/> Denial of Payment for New Admissions					

# CMP GRID

## Per Instance CMP

<b>Immediate Jeopardy</b>	<b>J</b> \$3500	<b>K</b> \$4500	<b>L</b> \$5500
<b>Actual Harm</b>	<b>G</b> \$1500	<b>H</b> \$2000	<b>I</b> \$2500
<b>Potential for Minimum Harm</b>	<b>D</b> \$1000	<b>E</b> \$1100	<b>F</b> \$1200
<b>No Harm</b>	<b>A</b> N/A	<b>B</b> N/A	<b>C</b> N/A

## Per Day CMP

<b>Immediate Jeopardy</b>	<b>J</b> \$3050	<b>K</b> \$4050	<b>L</b> \$5050
<b>Actual Harm</b>	<b>G</b> \$250	<b>H</b> \$600	<b>I</b> \$1000
<b>Potential for Minimum Harm</b>	<b>D</b> \$100	<b>E</b> \$150	<b>F</b> \$200
<b>No Harm</b>	<b>A</b> N/A	<b>B</b> N/A	<b>C</b> N/A