

Civil Monetary Penalties: An Opportunity for Funding Innovation in Nursing Home Care

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Many states are using the fines collected as a result of nursing home violations to fund projects to improve the quality of life and quality of care of nursing home residents. In those states, nursing home advisory committees provide consultation to state regulatory agencies on the expenditure of Civil Money Penalty (CMP) funds and make recommendations for funding of innovative projects. In addition to efforts to improve the quality of clinical care (such as the reduction of pressure ulcers and the use of restraints), states are also encouraging person directed care, promoting consumer and resident advocacy, developing family and community involvement, and supporting culture change initiatives.

Alternative models of care have sprung up in response to the growing realization that there is a better way to provide care for our nations elders in nursing homes. Sometimes referred to as “person centered care,” “resident directed care” or “culture change;” the focus is on empowering residents to direct their own care and caregivers to act creatively in responding to the needs of residents.

CMP funds are a potentially powerful source for supporting innovation that improves conditions for everyone who resides or works in a nursing home.

Background: In 1986, Congress passed the Nursing Home Reform Act (OBRA) 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) are one type of sanction. The federal Centers for Medicare and Medicaid Services (CMS) contracts with the California Department of Health Services’ Licensing and Certification (CMS) to inspect nursing homes on a regular basis and to issue CMPs for failure to comply with federal statute. California has a similar system of fines for facilities that fail to comply with state statute and regulations.

CMP funds collected are deposited into either the Health Facilities Citation Penalties Account (for violations of state statute and regulations) or the Federal Citation Penalty Account (for violations of federal statute and regulations). In the past, these funds have primarily been used to fund temporary receiverships and to hire temporary managers for facilities that are in trouble. In addition, California uses some of the funds (\$1.5 million) to provide additional budgetary support to the California Long Term Care Ombudsman Program.

CMS issued guidance to states encouraging the use of federal CMP funds for innovative projects that improve the quality of care and quality of life for nursing home residents.

Specifically, CMS stated, “Because CMP funds collected by a state are state funds, the state may use the money for any project that directly benefits facility residents.”

A report recently released by the Commonwealth Fund recommends the use of federal CMP funds for innovation, and strongly advocates for public disclosure of the use of these funds. The report also provides examples of special projects funded in other states:

- Initiatives that support recruitment and retention of nursing assistants
- Promotion of resident and family councils and other types of consumer advocacy
- Support for the Long Term Care Ombudsman Program
- Alzheimer’s and dementia care training
- Culture change initiatives
- Research to identify the extent of mental illness among residents and to make recommendations regarding staff training
- Training workshops for facilities on restraints and pressure ulcers

Summary of Legislation:

This bill:

1. Requires DHS Licensing and Certification to post a full accounting of the use of the both federal and state CMP funds on its website.
2. Adds findings and declarations regarding the federal government’s guidance to the states regarding use of federal CMP funds.
3. Allows spending up to \$130,000 of the federal fund for the innovative projects.

Support for the Bill:

Aging Services of California (formerly the California Association of Homes and Services for the Aging)
California Advocates for Nursing Home Reform
California Association of Health Facilities
California Hospital Association
Live Oak Institute
Mercy Retirement Center
Older Women’s League
SEIU