



**Center for Clinical Standards and Quality/Quality, Safety & Oversight Group**

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**Ref: 19-04-NH/HHA/CLIA**

**DATE:** January 22, 2019

**TO:** State Survey Agency Directors

**FROM:** Director  
Quality, Safety & Oversight Group

**SUBJECT:** Notice of Final Rule Adjusting Civil Monetary Penalties (CMPs) for Inflation

**Memorandum Summary**

- **Adjustment of Civil Monetary Penalties (CMP) for Inflation:** The Department of Health and Human Services (HHS) has published in the Federal Register on October 11, 2018, a final rule which adjusts for inflation CMP amounts authorized under the Social Security Act ([See Adjustment of Civil Monetary Penalties for Inflation](#)).
- **New CMP Amounts:** The final rule lists the new CMP amounts and ranges and are effective as of October 11, 2018.
- **Selected Providers Highlighted:** The CMPs under the authority of HHS affects multiple areas, but we are highlighting only on those CMPs assessed for Skilled Nursing Facilities (SNFs), Nursing Facilities (NFs), SNFs/NFs, Home Health Agencies (HHAs), and Clinical laboratories effective October 11, 2018.

**Background**

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act) (Sec. 701 of the Bipartisan Budget Act of 2015, Pub. L. 114-74) amends the Federal Civil Penalties Inflation Adjustment Act of 1990 (the Inflation Adjustment Act) (Pub. L 101-410) which was enacted to improve the effectiveness of federal CMPs and to maintain their deterrent effect. Prior to 2015, CMPs authorized under the Social Security Act were exempt from inflation adjustments under the law.

The 2015 Act required agencies to make an initial “catch-up” adjustment, and annual inflation adjustments thereafter through final rulemaking, published in the Federal Register. The October 11, 2018, final rule provides for an adjustment of CMPs that may be imposed for noncompliance by SNF/NFs, HHAs, and Clinical laboratories. This is reflected in a table showing how all CMPs are increased due to the inflation adjustment from 2016 to 2018 as required by the 2015 Act in section 45 CFR Part 102.3. For 2018, CMPs have been increased by a multiplier of 1.02041. The annual adjustments are based on the percentage change of the Consumer Price Index for all Urban Consumers (CPI-U) for the month of October of a current year exceeds the CPI for the month of October of the previous year.

**Application and Updated Tools**

The 2018 Annual Adjustment is effective October 11, 2018. The adjusted amounts apply to CMPs assessed on or after October 11, 2018. For SNFs, NFs and SNF/NFs, the CMP Analytic Tool instructions and calculations will be updated to reflect these changes. Please note that the final rule only affects specific CMP amounts and not any other related provisions, such as the factors reviewed for assessing CMPs for example.

The final rule can be found at <https://www.gpo.gov/fdsys/pkg/FR-2018-10-11/html/2018-22005.htm> and <https://www.federalregister.gov/documents/2018/10/11/2018-22005/annual-civil-monetary-penalties-inflation-adjustment>.

CMP amounts will also be posted on the Survey and Certification website: <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Civil-Monetary-Penalties-Annual-Adjustments.html>.

**Effective Date:** Immediately. The 2018 Annual Adjustment was effective October 11, 2018. Please refer to the Application instructions, above. This guidance should be immediately communicated to all RO and State Survey Agency survey, certification and enforcement staff, their managers and the State/RO training coordinators.

/s/  
Karen Tritz  
Acting Director

Attachment: LTC-HHA-CLIA Specific CMP Adjustments-2018

cc: Survey and Certification Regional Office Management  
State Medicaid Agencies

**APPENDIX A**  
**CALCULATION OF CMP ADJUSTMENTS**

Citation		Description <sup>2</sup>	Date of Last Penalty Figure or Adjustment <sup>3</sup>	2016 Maximum Adjusted Penalty (\$)	2017 Maximum Adjusted Penalty (\$) <sup>4</sup>	2018 Maximum Adjusted Penalty (\$)
U.S.C.	CFR <sup>1</sup>					
1395i-3(b)(3)(B)(ii)(1)	42 CFR 1003.210(a)(11)	Penalty for certification of a false statement in assessment of functional capacity of a Skilled Nursing Facility resident assessment.	2016	2,063	2,097	2,140
1395i-3(b)(3)(B)(ii)(2)	42 CFR 1003.210(a)(11)	Penalty for causing another to certify or make a false statement in assessment of functional capacity of a Skilled Nursing Facility resident assessment.	2016	10,314	10,483	10,697
1395i-3(g)(2)(A)	42 CFR 1003.1310	Penalty for any individual who notifies or causes to be notified a Skilled Nursing Facility of the time or date on which a survey is to be conducted.	2016	4,126	4,194	4,280

**APPENDIX A**  
**CALCULATION OF CMP ADJUSTMENTS**

1396r(h)(3)(C)(ii)(I)	42 CFR 483.151(c)(2)	Grounds to waive disapproval of nurse aide training program - reference to disapproval based on imposition of CMP "not less than \$5,000" [Not CMP authority but CMP imposition at this level determines eligibility to seek waiver of disapproval of nurse aide training program].	2016	10,314	10,483	10,697
1320a-7j(h)(3)(A)		Penalty for an administrator of a facility that fails to comply with notice requirements for the closure of a facility.	2016	108,745	110,524	112,780
	42 CFR 488.446(a)(1),(2),&(3)	Minimum penalty for the first offense of an administrator who fails to provide notice of facility closure.	2016	544	553	564

**APPENDIX A**  
**CALCULATION OF CMP ADJUSTMENTS**

		Minimum penalty for the second offense of an administrator who fails to provide notice of facility closure.	2016	1,631	1,658	1,692
		Minimum penalty for the third and subsequent offenses of an administrator who fails to provide notice of facility closure.	2016	3,262	3,315	3,383
1320b-25(c)(1)(A)		Penalty for failure of covered individuals to report to the Secretary and 1 or more law enforcement officials any reasonable suspicion of a crime against a resident, or individual receiving care, from a long-term care facility.	2016	217,490	221,048	225,560

**APPENDIX A**  
**CALCULATION OF CMP ADJUSTMENTS**

1320b-25(c)(2)(A)		Penalty for failure of covered individuals to report to the Secretary and 1 or more law enforcement officials any reasonable suspicion of a crime against a resident, or individual receiving care, from a long-term care facility if such failure exacerbates the harm to the victim of the crime or results in the harm to another individual.	2016	326,235	331,572	338,339
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**APPENDIX A**  
**CALCULATION OF CMP ADJUSTMENTS**

1320b-25(d)(2)		Penalty for a long term care facility that retaliates against any employee because of lawful acts done by the employee, or files a complaint or report with the State professional disciplinary agency against an employee or nurse for lawful acts done by the employee or nurse.	2016	217,490	221,048	225,560
1395i-3(h)(2)(B)(ii)(I)	42 CFR 488.408(d)(1)(iii)	Penalty per day for a Skilled Nursing Facility that has a Category 2 violation of certification requirements.				
		Minimum	2016	103	105	107
		Maximum	2016	6,188	6,289	6,417
	42 CFR 488.408(d)(1)(iv)	Penalty per instance of Category 2 noncompliance by a Skilled Nursing Facility.				
		Minimum	2016	2,063	2,097	2,140
		Maximum	2016	20,628	20,965	21,393

**APPENDIX A**  
**CALCULATION OF CMP ADJUSTMENTS**

	42 CFR 488.408(e)(1)(iii)	Penalty per day for a Skilled Nursing Facility that has a Category 3 violation of certification requirements.				
		Minimum	2016	6,291	6,394	6,525
		Maximum	2016	20,628	20,965	21,393
	42 CFR 488.408(e)(1)(iv)	Penalty per instance of Category 3 noncompliance by a Skilled Nursing Facility.				
		Minimum	2016	2,063	2,097	2,140
		Maximum	2016	20,628	20,965	21,393
	42 CFR 488.408(e)(2)(ii)	Penalty per instance for a nursing facility's failure to meet Category 3 certification, which results in immediate jeopardy.				
		Minimum Per Day	2016	6,291	6,394	6,525
		Maximum Per Day	2016	20,628	20,965	21,393
		Minimum Per Instance	2016	2,063	2,097	2,140
		Maximum Per Instance	2016	20,628	20,965	21,393



**APPENDIX A**  
**CALCULATION OF CMP ADJUSTMENTS**

	42 CFR 488.438(a)(1)(i)	Penalty per day of a Skilled Nursing Facility that fails to meet certification requirements. These amounts represent the upper range per day.				
		Minimum	2016	6,291	6,394	6,524
		Maximum	2016	20,628	20,965	21,393
	42 CFR 488.438(a)(1)(ii)	Penalty per day of a Skilled Nursing Facility that fails to meet certification requirements. These amounts represent the lower range per day.				
		Minimum	2016	103	105	107
		Maximum	2016	6,188	6,289	6,418
	42 CFR 488.438(a)(2)	Penalty per instance of a Skilled Nursing Facility that fails to meet certification requirements.				
		Minimum	2016	2,063	2,097	2,140
		Maximum	2016	20,628	20,965	21,393
1395cc(g)	42 CFR Part 1003	Penalty for improper billing by Hospitals, Critical Access Hospitals, or Skilled Nursing Facilities.	2016	5,000	5,082	5,186

**APPENDIX A**  
**CALCULATION OF CMP ADJUSTMENTS**

263a(h)(2)(B) & 1395w-2(b)(2)(A)(ii)	42 CFR 493.1834(d)(2)(i)	Penalty for a clinical laboratory's failure to meet participation and certification requirements and poses immediate jeopardy.				
		Minimum	2016	6,035	6,134	6,259
		Maximum	2016	19,787	20,111	20,521
	42 CFR 493.1834(d)(2)(ii)	Penalty for a clinical laboratory's failure to meet participation and certification requirements and the failure does not pose immediate jeopardy.				
		Minimum	2016	99	101	103
		Maximum	2016	5,936	6,033	6,156
1395l(h)(5)(D)	42 CFR 402.105(d)(2)(i)	Penalty for knowingly, willfully, and repeatedly billing	2016	15,024	15,270	30,000
		for a clinical diagnostic laboratory test other than on an assignment-related basis.				

**APPENDIX A**  
**CALCULATION OF CMP ADJUSTMENTS**

1395bbb(c)(1)	42 CFR 488.725(c)	Penalty for any individual who notifies or causes to be notified a home health agency of the time or date on which a survey of such agency is to be conducted.	2016	4,126	4,194	4,280
1395bbb(f)(2)(A)(i)	42 CFR 488.845(b)(2)(iii)	Penalty for each day a home health agency is not in compliance with statutory requirements.	2016	19,787	20,111	20,521
	42 CFR 488.845(b)(3)	Penalty per day for home health agency's noncompliance (Upper Range).				
		Minimum	2016	16,819	17,094	17,443
		Maximum	2016	19,787	20,111	20,521
	42 CFR 488.845(b)(3)(i)	Penalty for a home health agency's deficiency or deficiencies that cause immediate jeopardy and result in actual harm.	2016	19,787	20,111	20,521

**APPENDIX A**  
**CALCULATION OF CMP ADJUSTMENTS**

42 CFR 488.845(b)(3)(ii)	Penalty for a home health agency's deficiency or deficiencies that cause immediate jeopardy and result in potential for harm.	2016	17,808	18,099	18,468
42 CFR 488.845(b)(3)(iii)	Penalty for an isolated incident of noncompliance in violation of established HHA policy.	2016	16,819	17,094	17,443
42 CFR 488.845(b)(4)	Penalty for a repeat and/or condition level deficiency that does not constitute immediate jeopardy, but is directly related to poor quality patient care outcomes (Middle Range).				
	Minimum	2016	2,968	3,017	3,079
	Maximum	2016	16,819	17,094	17,443

**APPENDIX A**  
**CALCULATION OF CMP ADJUSTMENTS**

	42 CFR 488.845(b)(5)	Penalty for a repeat and/or condition level deficiency that does not constitute immediate jeopardy and that is related predominately to structure or process-oriented conditions (Lower Range).				
		Minimum	2016	989	1,005	1,026
		Maximum	2016	7,915	8,044	8,208
	42 CFR 488.845(b)(6)	Penalty imposed for instance of noncompliance that may be assessed for one or more singular events of condition-level noncompliance that are identified and where the noncompliance was corrected during the onsite survey.				
		Minimum	2016	1,979	2,011	2,052
		Maximum	2016	19,787	20,111	20,521

**APPENDIX A**  
**CALCULATION OF CMP ADJUSTMENTS**

		Penalty for each day of noncompliance (Maximum).	2016	19,787	20,111	20,521
	42 CFR 488.845(d)(1)(ii)	Penalty for each day of noncompliance (Maximum).	2016	19,787	20,111	20,521
1395b-7(b)(2)(B)	42 CFR 402.105(g)	Penalty for any person who knowingly and willfully fails to furnish a beneficiary with an itemized statement of items or services within 30 days of the beneficiary's request.	2016	147	149	152
1395nn(g)(5)	42 CFR 411.361	Penalty for any person that fails to report information required by HHS under Section 1877(f) concerning ownership, investment, and compensation arrangements.	2016	18,936	19,246	19,639

## APPENDIX A

### CALCULATION OF CMP ADJUSTMENTS

1395dd(d)(1)	42 CFR 1003.510	Penalty for a hospital or responsible physician dumping patients needing emergency medical care, if the hospital has 100 beds or more.	2016	103,139	104,826	106,965
		Penalty for a hospital or responsible physician dumping patients needing emergency care, if the hospital has less than 100 beds	2016	51,570	52,414	53,484

<sup>1</sup>Some HHS components have not promulgated regulations regarding their civil monetary penalties-specific statutory authorities.

<sup>2</sup>The description is not intended to be a comprehensive explanation of the underlying violation; the statute and corresponding regulation, if applicable, should be consulted.

<sup>3</sup>Statutory, or Inflation Act Adjustment.

<sup>4</sup>The cost of living multiplier for 2018, based on the CPI-U for the month of October 2017, not seasonally adjusted, is 1.02041, as indicated in Office of Management and Budget (OMB) Memorandum M-18-03, "Implementation of Penalty Inflation Adjustments for 2018, Pursuant to the Federal Civil Penalties Adjustment Act Improvements Act of 2015" (December 15, 2017).