

§ 488.444

42 CFR Ch. IV (10-1-00 Edition)

(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.

[59 FR 56243, Nov. 10, 1994; 60 FR 50119, Sept. 28, 1995, as amended at 64 FR 13361, Mar. 18, 1999]

§ 488.444 Civil money penalties: Settlement of penalties.

(a) HCFA has authority to settle cases at any time prior to a final administrative decision for Medicare-only SNFs, State-operated facilities, or other facilities for which HCFA's enforcement action prevails, in accordance with § 488.330.

(b) The State has the authority to settle cases at any time prior to the evidentiary hearing decision for all cases in which the State's enforcement action prevails.

§ 488.450 Continuation of payments to a facility with deficiencies.

(a) *Criteria.* (1) HCFA may continue payments to a facility not in substantial compliance for the periods specified in paragraph (c) of this section if the following criteria are met:

(i) The State survey agency finds that it is more appropriate to impose alternative remedies than to terminate the facility;

(ii) The State has submitted a plan and timetable for corrective action approved by HCFA; and

(iii) The facility, in the case of a Medicare SNF, or the State, in the case of a Medicaid NF, agrees to repay the Federal government payments received under this provision if corrective action is not taken in accordance with the approved plan and timetable for corrective action.

(2) HCFA or the State may terminate the SNF or NF agreement before the end of the correction period if the criteria in paragraph (a)(1) of this section are not met.

(b) *Cessation of payments.* If termination is not sought, either by itself or along with another remedy or remedies, or any of the criteria set forth in paragraph (a)(1) of this section are not

met or agreed to by either the facility or the State, the facility or State will receive no Medicare or Federal Medicaid payments, as applicable, from the last day of the survey.

(c) *Period of continued payments.* If the conditions in paragraph (a)(1) of this section are met, HCFA may continue payments to a Medicare facility or to the State for a Medicaid facility with noncompliance that does not constitute immediate jeopardy for up to 6 months from the last day of the survey.

(d) *Failure to achieve substantial compliance.* If the facility does not achieve substantial compliance by the end of the period specified in paragraph (c) of this section,

(1) HCFA will—

(i) Terminate the provider agreement of the Medicare SNF in accordance with § 488.456; or

(ii) Discontinue Federal funding to the SNF for Medicare; and

(iii) Discontinue FFP to the State for the Medicaid NF.

(2) The State may terminate the provider agreement for the NF.

[59 FR 56243, Nov. 10, 1994; 60 FR 50119, Sept. 28, 1995]

§ 488.452 State and Federal disagreements involving findings not in agreement in non-State operated NFs and dually participating facilities when there is no immediate jeopardy.

The following rules apply when HCFA and the State disagree over findings of noncompliance or application of remedies in a non-State operated NF or dually participating facility:

(a) *Disagreement over whether facility has met requirements.* (1) The State's finding of noncompliance takes precedence when—

(i) HCFA finds that a NF or a dually participating facility is in substantial compliance with the participation requirements; and

(ii) The State finds that a NF or dually participating facility has not achieved substantial compliance.

(2) HCFA's findings of noncompliance take precedence when—

(i) HCFA finds that a NF or a dually participating facility has not achieved substantial compliance; and