

**LTCCC Briefing Paper: CMS Final Rule on 2015 Prospective Payment System for Nursing Homes & Uses of Civil Money Penalties (CMPs)**

August 6, 2014

Following is the section of the Federal Register with the analysis of and responses to public comments on the FY 2015 SNF PPS Proposed Rule pertaining to the use of nursing home Civil Money Penalties (CMPs). For each comment to the proposed rule and Centers for Medicare and Medicaid Services (CMS) response we have written a short summary, highlighted in gray. The purpose of the short summaries is to enable stakeholders to quickly and easily identify the provisions about which they are interested. All of the language, except for the highlighted summaries, comes directly from the Federal Register.

Since these are just short summaries it is recommended to read the original text below the summaries, and/or the final rule language, for complete information on a given issue. As the Table of Contents indicates, we have also included provisions of the final rule.

The rule can be accessed at <https://www.federalregister.gov/articles/2014/08/05/2014-18335/medicare-program-prospective-payment-system-and-consolidated-billing-for-skilled-nursing-facilities>.

Estimated amounts of CMP funds (From 79 FR 45654):

In FY 2011, the approximate total amount of civil money penalties returned to the states was \$28 million. In FY 2012, the approximate total amount of civil money penalties returned to the states was \$32 million. In FY 2013, the approximate total amount of civil money penalties returned to the states was \$35 million. The estimated amount that we expect to be returned to the states in FY2015... is approximately \$33 million.

---

**Table of Contents**

**Civil Money Penalties (section 6111 of the Affordable Care Act).....2**  
**Provisions of the Final Rule; Regulations Text.....9**

---

A Rule by the [Centers for Medicare & Medicaid Services](#) on [08/05/2014](#)

## Civil Money Penalties (section 6111 of the Affordable Care Act)

In the FY 2015 SNF PPS proposed rule ([79 FR 25788](#) through 25789), we discussed clarifications related to statutory requirements as specified in section 6111 of the Affordable Care Act regarding the approval and use of civil money penalties imposed by CMS. Further, we proposed changes to the CMS enforcement regulations at § 488.433 to clarify and strengthen these provisions to provide more specific instructions to states regarding the use of civil money penalties and the approval process, and to permit an opportunity for greater transparency and accountability of civil money penalty monies utilized by states. Finally, we invited public comment on our proposed changes as well as on CMS's proposed methods to ensure compliance with these requirements. The comments received on this topic, along with our responses, appear below.

**SUMMARY:** Commentators asked CMS to specify the requirements and CMS's expectations for soliciting civil money penalty funds and tracking approved projects, etc.... CMS said this would be done in guidance to the SOM (State Operations Manual).

*Comment:* A few commenters requested that we specify the requirements and CMS's expectations for soliciting civil money penalty funds and tracking approved civil money penalty projects. One commenter suggested that we establish a formula to determine how much is appropriate for a state to keep in reserve each year. Several commenters suggested that CMS should specify how information should be made public by the state, including the availability of grants, approved projects funded to date and the outcomes of previously funded projects. One commenter states that the proposed rule lacks clarity regarding what constitutes an “acceptable” state plan and how CMS would make such a determination.

*Response:* Specific operational details regarding our expectations for the state are not appropriate for inclusion in regulation. We plan to issue subsequent guidance regarding these operational details and publish this guidance in the State Operations manual.

**SUMMARY:** Commentator asked will states be required to share plans for use of CMPs with CMS? Yes - CMS will require states to submit their plans to their respective CMS Regional Offices for formal approval.

*Comment:* One commenter asked if states will be required to share their acceptable plan for the effective use of civil money penalty funds with CMS. One commenter recommends formal CMS approval of all plans and public disclosure once the plan is approved. One commenter asked if CMS will require the acceptable plan be posted on some Web site.

*Response:* We will require states to submit their plans to their respective CMS Regional Offices for formal approval. We have revised § 488.433(e) to specify that the plan must be

approved by CMS. Public reporting of particular information related to survey and certification information is addressed specifically in Sections 1819(g)(5) and 1819(i) of the Act (as amended by section 6103 of the Affordable Care Act) and directs CMS to publish relevant enforcement information.

**SUMMARY:** Several commentators asked about how CMS/states will make public information on grant awards and projects approved. Answer: CMS will publish an annual report, posted on its website, on approved CMP projects. They “will explore appropriate methods to present information in a manner that will be accessible and meaningful to the public” and consider issuing guidance to states regarding making the information about their state plans for civil money penalties as well as approved civil money penalty projects publicly available, as required in this final rule, by posting on a state website.

*Comment:* One commenter asked if CMS has any plans to publicly report the amount of civil money penalty funds collected and returned to the states. Another commenter stated that CMS should publish a link to information on state's civil money penalty account balances on Nursing Home Compare. One commenter asked if the solicitation, acceptance and monitoring information of approved projects utilizing civil money penalty funds would be required to be posted on some Web site for transparency purposes. Several commenters suggested that CMS require information regarding state's use of civil money penalties to be posted online and updated annually. One commenter recommended that we include in the regulatory language at § 488.433(e)(2) that the information be publicly available at all times and updated, at least annually. One commenter requested that a link to information on state's use of civil money penalties be included on the Nursing Home Compare Web site. One commenter asked CMS to specify what the reporting timeframe would be. This commenter also asked if State Medicaid Web sites would be an acceptable place to post civil money penalty information on, what the duration of the posting would be, and finally, if states would be required to post previously approved civil money penalty projects prior to the effective date of this ruling.

*Response:* We will make key information publicly available regarding approved projects, CMP grant awards, and CMP funds disbursed to states. We will explore appropriate methods to present information in a manner that will be accessible and meaningful to the public. Currently, all projects that a state is recommending for approval are submitted to the CMS Regional Office for final approval. The CMS Regional Office is tracking all approved projects and submits this information to the CMS Central Office at least annually. Additionally, we will prepare an annual transparency report on approved civil money penalty projects. We will be posting this annual report on the CMS Web site. We expect the states to provide information in their plans for utilizing CMP funds to CMS on an annual basis to permit CMS to make a national report available on an annual basis; preferably aligning with the current civil money penalty uses transparency report which is compiled on a calendar year basis. The additional information required as a result of this rule would apply to all projects approved after the rule's effective date.

In response to these comments, we will consider issuing guidance to states regarding making the information about their state plans for civil money penalties as well as approved civil money penalty projects publicly available, as required in this final rule, by posting on a state Web site and making sure that this information is updated on an annual basis. As to the length of time of the posting, we would anticipate that states would post a new report about the use of penalty funds on an annual basis that would include currently funded projects as well as information, or links to the information, for projects funded after this regulation even if the projects have ended.

**SUMMARY:** Commentator asked about states' tracking of results of projects and making information on the projects, including these results, available to the public. CMS said "We expect that states track the results of approved projects. Projects funded with civil money penalty monies should have clear goals and methodologies to achieve those goals. States will be required to make information available about the outcome or results of completed projects."

*Comment:* One commenter asked us to clarify what the terms "results of projects" and "other key information" would involve when we proposed that states "make information about the use of civil money penalty funds publicly available, including about the dollar amount awarded for approved projects, the grantee or contract recipients, the results of projects, and other key information."

*Response:* We expect that states track the results of approved projects. Projects funded with civil money penalty monies should have clear goals and methodologies to achieve those goals. States will be required to make information available about the outcome or results of completed projects. These results should include the grant recipient, amount and duration of the grant, purpose and goals of the project, results of the project (for example, whether or not the project was successful), lessons learned, and similar key information, such as whether improvements have been institutionalized as a result of the project. Most importantly, we hope that the publicly-shared information would help others to gain insight into the methodologies to achieve important quality of care or quality of life goals, even if the project was not successful in achieving such goals within the time period of the civil money penalty grant.

**SUMMARY:** One state asked what happens if there is a year in which it has no proposed projects that meet CMS criteria. CMS responded that it would work with a state to identify appropriate projects for use of the CMPs.

*Comment:* One state asked that if there is a year when a state does not receive civil money penalty proposals that meet the CMS criteria, what would be the required next steps for a state to take.

*Response:* If there is a year that a state has actively solicited for proposals and still receives no proposals that meet the CMS criteria for approval, then we would work with the state

to explore opportunities to fund worthwhile projects that would benefit nursing home residents. We would do this by looking at the state's solicitation process, using successful projects that have been funded by other states as a model, and offering any guidance necessary to ensure that civil money penalty funds are being utilized for their intended purpose.

**SUMMARY:** Several commentators asked about the use of CMPs for QAPI activities. CMS agreed that CMPS should not be used for activities/functions that facilities are already paid to provide. CMS acknowledged challenge of distinguishing appropriate technical assistance projects in this regard. CMS stated “We expect most of the [QAPI] technical assistance will be done by the Quality Improvement Organizations (QIOs), but do not rule out the use of CMP funds for very targeted purposes that the QIOs are not able to accomplish....”

*Comment:* We received several comments regarding the language at § 488.433(b)(4), specifically on the potential that civil money penalty funds could be used for technical assistance for facilities implementing quality assurance and performance improvement (QAPI) programs. Commenters stated that quality assurance and performance improvement is a facility's responsibility and it will also soon be a requirement of participation. They stressed that civil money penalty funds should not be given to facilities to perform activities that they are already required and paid to perform under federal law. They noted that while language at § 6111 of the Affordable Care Act authorizes the use of civil money penalties for “technical assistance for facilities implementing quality assurance programs;” general language about quality assurance should not be interpreted to include QAPI.

*Response:* We agree that civil money penalty funds should not be used to pay for activities, functions, or products that nursing homes are required to provide. At the same time, we believe there is a tremendous need for knowledge and sharing of important ways to provide care and achieve results that may transcend the basic requirements in our regulations. Because there is a challenge to providing technical assistance while avoiding any supplanting of nursing home responsibilities, we require that proposed projects be approved by CMS and publicly reported. We expect, over time, that we will learn more about the projects that achieve the appropriate balance between providing effective technical assistance that advances the quality of care and quality of life for residents without supplanting what nursing homes are already required to do. At the present time we have already identified in CMS published guidance a variety of uses that are prohibited, and believe that the identified prohibitions are sufficient for now. With regard to QAPI in particular, section 1128I(c) of the Act directs CMS to provide technical assistance to facilities on the development of best practices in order to meet CMS' established QAPI standards. We expect most of the technical assistance will be done by the Quality Improvement Organizations (QIOs), but do not rule out the use of CMP funds for very targeted purposes that the QIOs are not able to accomplish, especially for nursing homes that have a high reliance on Medicaid funding or are among the lowest-performing facilities. Further, at the present time there is no federal requirement for nursing homes to

have a QAPI system, so there is little potential for supplanting facility compliance with a current expectation. Under section 1128I(c), following promulgation of regulations, all facilities will be required to develop and implement a QAPI program in the future, and we plan to administer the CMP funds in a manner that avoids supplanting of facility responsibilities when those rules become effective.

**SUMMARY:** Commentator asked about use of CMPs to pay salaries for temporary managers. CMS stated it is facility's responsibility to pay for temporary managers but possible to use CMPs in narrowly defined, extraordinary circumstances.

*Comment:* While the proposed language at § 488.433(b)(5) addresses and expands the appropriate use of civil money penalties for the infrastructure of the temporary management remedy, one commenter does not feel this provision will help as facilities cannot afford the temporary manager salary. This commenter urges CMS to allow facilities to use civil money penalties to pay the salaries of temporary managers when the alternative is decertification of the facility.

*Response:* At § 488.433(b)(5), we proposed to clarify in a new paragraph that in extraordinary situations involving closure of a facility, civil money penalty funds may be used to pay the salary of a temporary manager. Such a circumstance is very narrowly construed to situations where CMS concludes that it is otherwise infeasible to ensure timely payment for such a manager by the facility and CMS determines that extraordinary action is necessary in order to protect the residents until relocation efforts are successful. However, as specified in § 488.415(c), in all other circumstances a temporary manager's salary must be paid by the facility. We do not propose to change this basic responsibility of a nursing home to pay the salary of the temporary manager.

**SUMMARY:** One commentator stated that they do not support use of CMPs for joint provider/surveyor training, that it should be a low-level priority for the use of funds and that such trainings, when conducted, should include consumers, LTC Ombudsmen and advocates. CMS disagreed about the appropriateness of joint surveyor/provider training and stated that it did not want to require that these stakeholders be included. CMS did agree that this is a lower-priority use of CMPs and "ought to be limited to special situations." CMS also stated that this issue would be addressed further in guidance.

*Comment:* One commenter stated that they did not support the use of civil money penalty funds for the joint training of facility staff and surveyors and suggested that this use be a low level priority, be limited, and include other interested parties, such as consumers, ombudsman and advocates. This commenter also urged CMS to restore the language at the end of proposed § 488.433(b)(4) which is included in current regulations, ". . . when such facilities have been cited by CMS for deficiencies in the applicable requirements."

*Response:* We believe that there are benefits for joint training between State survey agencies and nursing home providers to improve understanding of federal requirements

and to communicate specific policies and procedures. In fact, we have sponsored such joint trainings on a national basis dating back to the implementation of the nursing home reform provisions of Omnibus Budget Reconciliation Act of 1987 (OBRA '87) to train both states and providers in the new health and safety requirements and enforcement rules. To provide optimum flexibility of such training, we do not propose to limit or to require other stakeholders in joint trainings nor do we propose to limit the facilities that may utilize civil money penalty funds for joint training to only those facilities that have been cited by CMS for deficiencies under the applicable requirements. However, we do agree that this is a lower-priority use of CMP funds and ought to be limited to special situations. We will further address this issue in CMS guidance.

**SUMMARY:** Commentators made several suggestions re. states that fail to comply with acceptable uses of the funds. CMS stated that these are issues appropriate for future guidance, not regulatory language.

*Comment:* One commenter suggested that CMS should not limit itself to only withholding future civil money penalty disbursements in cases where states routinely failed to comply with the acceptable use of civil money penalty funds. They suggested referral to the Office of the Inspector General, or the recoupment of such funds. Another commenter recommended that we require states that failed to comply to submit an acceptable plan of correction within 30 days. They further suggested that, until an acceptable plan of correction had been submitted and approved by CMS, that CMS continue to award these civil money penalty funds to entities whose applications for use of such funds met CMS criteria. It was also suggested that a statement that CMS is withholding funds due to a state's non-compliance be posted clearly and visibly on the state survey agency's Web site. Additionally, it was urged that CMS monitor a withheld state's civil money penalty activity on a quarterly basis for at least one year after funds are once again distributed.

*Response:* Specific operational details regarding the withholding of future civil money penalty disbursements to a state are not appropriate for inclusion in regulation. We plan to issue subsequent guidance regarding these operational details and publish this guidance in the State Operations Manual. While we appreciate the suggestions offered for further enforcement action when states are not complying with the acceptable uses of civil money penalty funds as specified in § 488.433, we are optimistic that the possibility of funds being withheld will be incentive enough for states to comply with this regulation. While we do not rule out the idea of posting public information about a state that has had funds withheld, we expect that any withholding would be short-lived. We will take under advisement the additional suggestions offered by commenters for future consideration.

**SUMMARY:** Several commentators suggested that CMS develop a standardized application for the use of CMPs, with components addressing several key issues. CMS agreed .

*Comment:* Several commenters suggested that CMS develop a standardized application for use of civil money penalty funds. This application should clearly articulate how the

proposed use is not duplicative of statutorily mandated services, including those related to quality of care or quality of life, and how residents, families, long term care ombudsman and consumer representatives were included in the development of the proposed use and how they will be engaged in the project activities.

*Response:* We agree, and will develop a standardized application that states may make available to any entities seeking to submit proposals for projects to be funded with civil money penalties. We expect that such a template should be completed by early CY 2015.

**SUMMARY:** Commentator stated that CMS should give the states more autonomy in use of the funds. CMS stated that it will consider ways to give states more autonomy over time, but indicated that the present arrangement provides for significant state determination and decision-making re. CMP uses.

*Comment:* One commenter suggested that CMS allow states more autonomy to award civil money penalty funds to applicants consistent with CMS-prescribed guidelines. They further noted that because states vary in their specific needs, they are more knowledgeable about how to best meet their needs in order to best serve the beneficiaries and residents/patients of nursing centers within the state.

*Response:* We will consider ways in which states may gain more autonomy over time, as we learn more about projects that are successful, are able to fully implement the additional processes in this regulation, and work with stakeholders. We recognize the critical role that states play and wish to bolster state ability to use civil money penalty funds effectively. Under the arrangements already in place, proposals for projects utilizing civil money penalty funds are submitted directly to the state survey agency. The state conducts the initial review of all proposals and forwards those that meet CMS criteria and that they are recommending for final approval to the CMS regional office. We believe the regulations we are finalizing here will make the entire state civil money penalty program more coherent, more transparent, and more effective.

**SUMMARY:** One commentator recommended that states be allowed to align CMP grant process with its fiscal year. CMS said it has no objection to this.

*Comment:* One commenter recommends that states be allowed to align their civil money penalty grant process with their fiscal year in order to coordinate existing state grant process timeframes.

*Response:* We have no objections to states aligning their civil money penalty grant process with their fiscal year.



## Provisions of the Final Rule; Regulations Text

*Editor's Note: The following comes directly from the Federal Register at 79 FR 45652 and is unedited except for highlighting of the provisions that we thought were of interest and which were not fully addressed in the comments and responses, above.*

As discussed in section IV.B. of this final rule, we are updating the payment rates under the SNF PPS for FY 2015 as required by section 1888(e)(4)(E)(ii) of the Act. In addition, we will use the most current OMB delineations (discussed in section IV.D.1) to identify a facility's urban or rural status for the purpose of determining which set of rate tables will apply to the facility. Also, effective October 1, 2015, we will use ICD-10-CM code B20 (in place of ICD-9-CM code 042) to identify those residents for whom it is appropriate to apply the AIDS add-on. Further, as discussed in section IV.D.1 of this final rule, we are finalizing changes to the wage index based on the most current OMB delineations, including a 1-year transition with a blended wage index for all SNFs for FY 2015; revising the policy governing use of the COT OMRA (section IV.D.3); and finalizing changes to the enforcement regulations related to civil money penalties utilized by states (section IV.D.4.).

With reference to the civil money penalty provisions discussed in section IV.D.4. of this final rule, as proposed we are modifying current CMS regulations to provide further clarification to states and the public regarding prior approval and appropriate use of these federally-imposed civil money penalty funds.

At § 488.433, civil money penalties: Uses and approval of civil money penalties imposed by CMS, we will amend the regulation to specify that civil money penalties may not be used for state management operations except for the reasonable costs that are consistent with managing the projects utilizing civil money penalty funds; specify that all activities utilizing civil money penalty funds must be approved in advance by CMS; outline specific requirements that must be included in proposals submitted for CMS approval; specify that CMP funds may not be used for projects that have not been approved by CMS; specify that states are responsible for soliciting, accepting, monitoring and tracking the results of all approved activities utilizing civil money penalties and making this information publicly available on at least an annual basis; specify that state plans must ensure that a core amount of civil money penalty funds will be held in reserve for emergencies, such as relocation of residents in the event of involuntary termination from Medicare and Medicaid; and, specify steps CMS will take if civil money penalty funds are being used for disapproved purposes or not being used at all, in other words, that CMS has authority to take appropriate steps to ensure that these funds are used for their intended purpose, such as withholding future disbursements of CMP amounts.

The revised CMS regulations will explicitly clarify the intended use of these civil money penalty funds (including the processes for prior approval of all activities using civil money penalty funds by CMS) and how CMS will address a state's use of civil money penalty funds for activities that have been disapproved by CMS or used by states for activities other than those explicitly specified in statute or regulations.

At § 488.433(a), we clarify that approved projects may work to improve residents' quality of life and not just quality of care. We also clarify that while states may not use funds for survey and certification operations or state expenses, they may use a reasonable amount of civil money penalty funds for the actual administration of grant awards, including the tracking, monitoring, and evaluating of approved projects. Some states have maintained that effective use and management of the civil money penalty funds requires more state oversight and planning than they are able to provide currently, and that an allowance for such management would remove a barrier to the effective use of these funds. We did not propose a monetary or numeric limit on what might be considered reasonable, although one to three percent of available funds might be considered reasonable for an established fund.

At § 488.433(b)(5), we clarify in a new paragraph that in extraordinary situations involving closure of a facility, civil money penalty funds may be used to pay the salary of a temporary manager when CMS concludes that it is infeasible to ensure timely payment for such a manager by the facility. We have encountered situations, for example, in which a facility is in bankruptcy and the court has frozen all funds at the very time that residents are being relocated and closure is proceeding. In another situation involving involuntary termination from Medicare and impending closure of the facility, the facility was not making payments for staff or for its utilities, and residents were at risk due to the imminent departure of staff and the absence of a manager. While § 489.55 permits Medicare and Medicaid payments to a facility to continue for up to 30 days after the effective date of a facility's termination or possibly longer (or shorter) if a facility has submitted a notification of closure under § 483.75(r) in order to promote the orderly and safe relocation of residents, if the continued Medicare and Medicaid payments are being used to pay for facility operations during the relocation period but are being diverted elsewhere by the facility, then residents may be placed at increased risk. The change at § 488.433(b)(5) clarifies not only that CMS places a priority on resident protection and protection of the Trust Fund and allows such emergency use of civil money funds, but that CMS also intends to stop or suspend the payments to the facility under § 489.55 when such a situation occurs.

At new § 488.433(c), we specify the requirements for all civil money penalty fund proposals being submitted to CMS for approval.

At new § 488.433(d), we provide that civil money penalty funds may not be used for activities that have been disapproved by CMS.

At new § 488.433(e), we provide that states must maintain an acceptable plan (approved by CMS) for the effective use of civil money penalty funds, including a description of methods by which the state will solicit, accept, monitor, and track approved projects funded by civil money penalty amounts and make key information publicly available. Examples of information that must be publicly available would include information on the projects that have been approved by CMS, the grantee and project recipients, the dollar amounts of projects approved, and the results of the projects. We also clarify that these plans provide for a core amount of funds that will generally be held in reserve for

emergencies such as unplanned relocation of residents pursuant to an involuntary termination from Medicare and Medicaid, unless the state's plan demonstrates the availability of other funds to cover emergency situations, and a reasonable aggregate amount of civil money penalty funds, beyond the emergency reserve amount, that the state expects to disburse each year for grants or contracts of projects that benefit residents and are consistent with the statute and CMS regulations. We appreciate that states may wish to develop a multi-year plan and provide an approximate range of total amount that the state plans to disburse. The intent is to ensure there is an acceptable plan, and that a state is prepared to respond to emergencies while at the same time is not maintaining a large unused amount of civil money penalty funds.

In § 488.433(f), we provide that CMS may withhold future disbursement of collected civil money penalty funds to a state if CMS finds that the state has not spent such funds in accordance with the statute and regulations, fails to make use of funds to benefit the quality of care or life of residents, or fails to maintain an acceptable plan approved by CMS.

- - - - -

Section 488.433 is revised to read as follows:

§ 488.433 Civil money penalties: Uses and approval of civil money penalties imposed by CMS.

(a) Ten percent of the collected civil money penalty funds that are required to be held in escrow pursuant to § 488.431 and that remain after a final administrative decision will be deposited with the Department of the Treasury in accordance with § 488.442(f). The remaining ninety percent of the collected civil money penalty funds that are required to be held in escrow pursuant to § 488.431 and that remain after a final administrative decision must be used entirely for activities that protect or improve the quality of care or quality of life for residents consistent with paragraph (b) of this section and may not be used for survey and certification operations or State expenses, except that reasonable expenses necessary to administer, monitor, or evaluate the effectiveness of projects utilizing civil money penalty funds may be permitted.

(b) All activities and plans for utilizing civil money penalty funds, including any expense used to administer grants utilizing civil money penalty funds, must be approved in advance by CMS and may include, but are not limited to:

(1) Support and protection of residents of a facility that closes (voluntarily or involuntarily).

(2) Time-limited expenses incurred in the process of relocating residents to home and community-based settings or another facility when a facility is closed (voluntarily or involuntarily) or downsized pursuant to an agreement with the State Medicaid agency.

(3) Projects that support resident and family councils and other consumer involvement in assuring quality care in facilities.

(4) Facility improvement initiatives, such as joint training of facility staff and surveyors or technical assistance for facilities implementing quality assurance and performance improvement programs.

(5) Development and maintenance of temporary management or receivership capability such as but not limited to, recruitment, training, retention or other system infrastructure expenses. However, as specified in § 488.415(c), a temporary manager's salary must be paid by the facility. In rare situations, if the facility is closing, CMS plans to stop or suspend continued payments to the facility under § 489.55 of this chapter during the temporary manager's duty period, and CMS determines that extraordinary action is necessary to protect the residents until relocation efforts are successful, civil money penalty funds may be used to pay the manager's salary.

(c) At a minimum, proposed activities submitted to CMS for prior approval must include a description of the intended outcomes, deliverables, and sustainability; and a description of the methods by which the activity results will be assessed, including specific measures.

(d) Civil money penalty funds may not be used for activities that have been disapproved by CMS.

(e) The State must maintain an acceptable plan, approved by CMS, for the effective use of civil money funds, including a description of methods by which the State will:

(1) Solicit, accept, monitor, and track projects utilizing civil money penalty funds including any funds used for state administration.

(2) Make information about the use of civil money penalty funds publicly available, including about the dollar amount awarded for approved projects, the grantee or contract recipients, the results of projects, and other key information.

(3) Ensure that:

(i) A core amount of civil money penalty funds will be held in reserve for emergencies, such as relocation of residents pursuant to an involuntary termination from Medicare and Medicaid.

(ii) A reasonable amount of funds, beyond those held in reserve under paragraph (e)(3)(i) of this section, will be awarded or contracted each year for the purposes specified in this section.

(f) If CMS finds that a State has not spent civil money penalty funds in accordance with this section, or fails to make use of funds to benefit the quality of care or life of residents, or fails to maintain an acceptable plan for the use of funds that is approved by CMS, then CMS may withhold future disbursements of civil money penalty funds to the State until the State has submitted an acceptable plan to comply with this section.