



**Centers for Medicare & Medicaid Services**  
**Center for Clinical Standards & Quality**  
**Survey & Certification Group**  
**Division of Nursing Homes**

**CMP Analytic Tool**

**User's Guide**

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Version 1.3

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# 1 Overview



## **2 CMP Analytic Tool**

### **2.1 Introduction Section**

#### **2.1.1 General Instructions**

CMS Regional Offices have a variety of enforcement remedies to choose from in addressing non-compliance by a facility. These remedies include civil money penalty, directed plan of correction, directed in-service training, state monitoring, temporary manager, and termination. Not all situations require the same remedy. The RO should use the enforcement remedy most appropriate in considering the level/severity of harm to the resident, the context behind the facility non-compliance, and the type of enforcement that has the best chance of the facility achieving future compliance.

All CMS Regional Offices (ROs) are required to use the following CMP Analytic Tool and Instructions: (1) to choose the appropriate type of CMP to be imposed; and (2) to calculate the CMP amount, when the RO determines that a CMP is an appropriate remedy to impose. The RO must complete all sections of the tool that apply to the type of CMP selected. Please refer to the CMP Analytic Tool User's Guide for information about using this tool. Though remedies are usually imposed on Level 3 and Level 4 deficiencies, depending upon the circumstances, Regional Offices may impose CMPs for level 2 deficiencies based on the factors listed in 42 CFR 488.404 and 488.438(f).

Note: Use a separate calculation for each Life Safety Code (LSC) CMP, Health Survey CMP, or any new or changed CMP within a noncompliance cycle. For factors that may result in an increase in the CMP (e.g., culpability, facility history of noncompliance, etc.), only calculate those factors one time for each survey. Apply the added dollar amounts to each CMP you impose per survey, unless otherwise instructed. Always use the tool and User's Guide at this link (save in your bookmarks/favorites) for the most current version. Required fields are marked with an asterisk.\*

## 2.2 “Select the Calculation Type” Section

### 2.2.1 Input

Field	Input	Detailed Instructions
<b>Calculation Type</b> (Required)	<ul style="list-style-type: none"><li>• Preliminary</li><li>• Final</li></ul>	Select “Final” if in compliance or terminated.

## 2.3 “Enter the Case Information” Section

### 2.3.1 Input

Field	Input	Detailed Instructions
<b>CCN</b> (Required)	Text	N/A
<b>Confirm CCN</b> (Required)	Text	N/A
<b>Provider Name</b> (Required)	Text	N/A
<b>Analyst Name</b> (Required)	Text	Enter full name (first and last name).
<b>Cycle Start Date</b> (Required)	Text	Enter the date in mm/dd/yyyy format.

## 2.4 “Select the CMP Type (Per Day or Per Instance)” Section

### 2.4.1 General Instructions

*Section 1819(h)(2)(B)(ii) of the Social Security Act.*

The factors to consider in this tool for each type of CMP are intended to determine amounts for each CMP to be imposed. Also, if a Life Safety Code (LSC) deficiency is the basis for the CMP, the whole Tool algorithm applies to the LSC deficiencies, not the health deficiencies.

Note: This tool is to be used to calculate an amount for each new or changed CMP imposed against a facility within a noncompliance cycle.

Note: This tool does not address noncompliance at level 2, S/S of “D” or “E.” Depending on the circumstances, Regional Offices may impose CMPs for level 2 deficiencies based on the factors listed in 42 CFR 488.404 and 488.438(f).

### 2.4.2 Input

#### 2.4.2.1 Past Noncompliance

Field	Input	Detailed Instructions
<b>CMP Type</b> (Required)	Per Instance CMP (PI) for Past Noncompliance	<p>Past noncompliance occurs when a facility was out of substantial compliance before the current survey began, but took specific action to fully address the issue and come back into compliance with a specific regulatory tag. See Appendix P for additional information.</p> <p>Select this CMP Type for all past noncompliance in which a CMP would be recommended.</p>

### 2.4.2.2 Continuing Noncompliance Identified Before the Start Date of the Current Survey (Not Past Noncompliance)

Field	Input	Detailed Instructions
<b>CMP Type</b> (Required)	Per Instance CMP (PI) Before the Start of the Survey	Select this CMP Type if noncompliance that wasn't past noncompliance existed before the start date of the survey and none of the factors requiring a per day CMP are present. Multiple PIs may be imposed for different types or dates of noncompliance. Do NOT select this CMP Type if you select a PD CMP before the Start Date of the Survey.
<b>CMP Type</b> (Required)	Per Day CMP (PD) Before the Start of the Survey	Select this CMP Type if any of the noncompliance factors identified below existed prior to the start date of the survey.
<b>CMP Factors for Per Day CMP (PD) Before the Start of the Survey</b>	<ul style="list-style-type: none"> <li>• IJ (S/S of "J", "K", or "L") was cited with actual harm to a resident</li> <li>• Abuse was cited at a level 3 ( S/S of "G", H", "I"), or IJ (S/S of "J", "K", or "L") with actual harm to a resident</li> <li>• The same tag at a S/S of "G" or above was cited within the last year on any survey and the tag is cited at a S/S of "J", "K", or "L" on the current survey</li> <li>• Deficiencies at a S/S of "H" or "I"</li> </ul>	N/A



### 2.4.2.3 Noncompliance Existing at the Time of the Survey

Field	Input	Detailed Instructions
<b>CMP Type</b> (Required)	Per Instance CMP (PI) During the Survey	Select this CMP Type if any of the noncompliance factors identified below existed at the time of the survey, but do not use if a Per Day CMP is in effect at the time of the survey. Note: Multiple PIs may be imposed for different types or dates of noncompliance.
<b>CMP Factors for Per Instance CMP (PI) During the Survey</b>	<ul style="list-style-type: none"> <li>• Findings of noncompliance that is a singular event of actual harm at a S/S of "G" or "J"</li> <li>• Findings of current/ongoing noncompliance at a S/S of "G" or above or SQC findings at a S/S of "F" but where a facility has a good compliance history</li> </ul>	N/A
<b>CMP Type</b> (Required)	Per Day CMP (PD) During the Survey	For noncompliance existing at the time of the survey, always select this CMP Type (Per Day CMP (PD) During the Survey) if none of the Per Instance CMP (PI) During the Survey factors is present.

## 2.5 “Select the CMP Start and End Dates (Only for Per Day CMPs)” Section

### 2.5.1 General Instructions

PD CMP Start Date - A PD CMP should begin on the first day noncompliance at the cited S/S level is documented, even if that date precedes the first day of the current survey unless the facility can demonstrate that it corrected the noncompliance prior to the current survey (past noncompliance). If the team cannot document the first day of noncompliance, then the CMP should start on the date the noncompliance was observed and documented at the time of the current survey.

PD CMP End Date - Except in cases when IJ is removed on the same date that it was identified, do not include the day on which IJ is removed, the day the S/S is lowered, thereby lowering the CMP amount to another level or substantial compliance is achieved when calculating the final PD CMP.

### 2.5.2 Input

Field	Input	Detailed Instructions
CMP Start Date	Text	Enter the date in mm/dd/yyyy format.
CMP End Date	Text	Enter the date in mm/dd/yyyy format.

## 2.6 “Select the CMP Base Amount” Section

### 2.6.1 General Instructions

Select the highest S/S level for the base Calculated CMP Amount.

### 2.6.2 Input

Field	Input	Detailed Instructions
<b>CMP Base Amount</b> (Required)	<ul style="list-style-type: none"> <li>• Per Day - Regional Office Discretion - \$105</li> <li>• Per Day - Potential for More than Minimal - S/S Level F - \$405</li> <li>• Per Day - Actual Harm - S/S Level G - \$505</li> <li>• Per Day - Actual Harm - S/S Level H - \$1255</li> <li>• Per Day - Actual Harm - S/S Level I - \$2055</li> <li>• Per Day - Immediate Jeopardy - S/S Level J - \$6394</li> <li>• Per Day - Immediate Jeopardy - S/S Level K - \$8444</li> <li>• Per Day - Immediate Jeopardy - S/S Level L - \$10494</li> <li>• Per Instance - Potential for More than Minimal - S/S Level F - \$5000</li> <li>• Per Instance - Actual Harm - S/S Level G - \$10000</li> <li>• Per Instance - Actual Harm - S/S Level H - \$12500</li> <li>• Per Instance - Actual Harm - S/S Level I - \$15000</li> <li>• Per Instance - Immediate Jeopardy - S/S Level J - No Harm - \$10000</li> <li>• Per Instance - Immediate Jeopardy – S/S Level J - Harm - \$17000</li> <li>• Per Instance - Immediate Jeopardy - S/S Level K - No Harm - \$12500</li> <li>• Per Instance - Immediate Jeopardy - S/S Level K - Harm - \$18000</li> <li>• Per Instance - Immediate Jeopardy - S/S Level L - No Harm - \$15000</li> <li>• Per Instance - Immediate Jeopardy - S/S Level L - Harm - \$20000</li> </ul>	Select the highest S/S level for the base Calculated CMP Amount.
Abated IJ	Yes	N/A

## 2.7 “Is There a History of Facility Noncompliance?” Section

### 2.7.1 General Instructions

42 CFR §488.438(f)(1).

If a facility has a history and/or a pattern of noncompliance at a S/S of "G" or above for surveys (standard, complaint, or revisit) conducted in the past 3 calendar years, add an amount indicated below based on the S/S pattern/trend of a facility's noncompliance history.

### 2.7.2 Input

Field	Input	Detailed Instructions
<b>Facility Noncompliance Amount Added</b>	<ul style="list-style-type: none"><li>• Per Day - Add \$205</li><li>• Per Day - Add \$405</li><li>• Per Day - Add \$605</li><li>• Per Day - Add \$805</li><li>• Per Day - Add \$1005</li><li>• Per Instance - Add \$1000</li><li>• Per Instance - Add \$2500</li><li>• Per Instance - Add \$5000</li></ul>	Select the amount to add to the Calculated CMP Amount.

## 2.8 “Are There Repeated Deficiencies?” Section

### 2.8.1 General Instructions

42 CFR §488.438(d)(2)(3).

"Repeated Deficiencies" are deficiencies within the same regulatory grouping of requirements under which deficiencies were cited at the last survey, subsequently corrected, and cited again at the next survey.

### 2.8.2 Input

Field	Input	Detailed Instructions
<b>Repeated Deficiencies Amount Added</b>	<ul style="list-style-type: none"><li>• Per Day - S/S Level F - Add \$105</li><li>• Per Day - S/S Level G, H, I - Add \$205</li><li>• Per Day - S/S Level J, K, L - Add \$305</li><li>• Per Instance - S/S Level F - Add \$1000</li><li>• Per Instance - S/S Level G, H, I - Add \$2500</li><li>• Per Instance - S/S Level J, K, L - Add \$5000</li></ul>	Select the amount to add to the Calculated CMP Amount based on the highest S/S level of the repeat deficiencies.

## 2.9 “Are There Multiple Deficiencies?” Section

### 2.9.1 General Instructions

42 CFR §488.404(c)(1).

Survey findings that include multiple deficiencies can indicate a systemic problem relating to the noncompliance, as opposed to a survey that identifies a singular or a few incident(s) of noncompliance. For surveys with greater than **five** deficiencies, add an amount between the ranges indicated below. The scope and severity of the deficiencies should also be considered. As the number of increases, and/or the level of S/S increases, the amount added should increase.

### 2.9.2 Input

Field	Input	Detailed Instructions
Multiple Deficiencies Amount Added	<ul style="list-style-type: none"><li>Per Day - Add \$100 - \$1500 per day</li><li>Per Instance - Add \$2500 - \$10000 per instance</li></ul>	Enter a dollar amount (no cents) in multiples of \$50 to add to the Calculated CMP Amount.

## 2.10 “Is Facility Culpability a Factor?” Section

### 2.10.1 General Instructions

42 CFR §488.438(f)(4).

Add an amount indicated below if culpability is a factor above the base level of non-compliance. Culpability as defined in the regulation refers to situations where includes but is not limited to neglect, indifference, or disregard for resident care, comfort or safety.

### 2.10.2 Input

Field	Input	Detailed Instructions
<b>Base Culpability Amount Added</b>	<ul style="list-style-type: none"> <li>• S/S Level F at SQC - Add \$205</li> <li>• S/S Level F at SQC - Add \$405</li> <li>• S/S Level G, H, or I - Add \$605</li> <li>• S/S Level G, H, or I - Add \$805</li> <li>• S/S Level G, H, or I - Add \$1005</li> <li>• S/S Level G, H, or I - Add \$1205</li> <li>• S/S Level G, H, or I - Add \$1405</li> <li>• S/S Level G, H, or I - Add \$1605</li> <li>• S/S Level G, H, or I - Add \$1805</li> <li>• S/S Level G, H, or I - Add \$2005</li> <li>• S/S Level J, K, or L - Add \$2505</li> <li>• S/S Level J, K, or L - Add \$2705</li> <li>• S/S Level J, K, or L - Add \$2905</li> <li>• S/S Level J, K, or L - Add \$3105</li> <li>• S/S Level J, K, or L - Add \$3305</li> <li>• S/S Level J, K, or L - Add \$3505</li> <li>• S/S Level J, K, or L - Add \$3705</li> <li>• S/S Level J, K, or L - Add \$3905</li> <li>• S/S Level J, K, or L - Add \$4105</li> <li>• S/S Level J, K, or L - Add \$4305</li> <li>• S/S Level J, K, or L - Add \$4505</li> </ul>	Select the amount to add to the Calculated CMP Amount based on the highest S/S level cited.

## 2.11 “Does the Calculated CMP Amount Exceed the Maximum Regulatory Amount?” Section

### 2.11.1 Input

Field	Input	Detailed Instructions
<b>Reduced Calculated CMP Amount</b>	<ul style="list-style-type: none"><li>• Per Day - Calculated CMP Amount for IJ Case &gt; \$20965 - Reduce Calculated CMP Amount to \$20965</li><li>• Per Day - Calculated CMP Amount for Non-IJ Case &gt; \$6289 - Reduce Calculated CMP Amount to \$6289</li><li>• Per Day - Calculated CMP Amount for Non-IJ Case &gt; \$6289 and a repeat deficiency - No change</li><li>• Per Instance - Calculated CMP Amount Exceeds \$20965 - Reduce Calculated CMP Amount to \$20965</li></ul>	Select the highest permissible CMP amount.



## 2.12 “Determine the Final Calculated CMP Amount” Section

### 2.12.1 General Instructions

The Final Calculated CMP is determined according to CMP Type:

- The lowest Calculated CMP Amount is determined: lowest of Calculated CMP Amount and Reduced Calculated CMP Amount (adjusted for exceeding the maximum regulatory amount).
- Final Calculated CMP Amount, Per Day: The lowest Calculated CMP Amount multiplied by the Total CMP days, less any Discount.
- Final Calculated CMP Amount, Per Instance: The lowest Calculated CMP Amount, less any Discount.

### 2.12.2 Input

Field	Input	Detailed Instructions
Discounts Applied to Final Calculated CMP Amount	<ul style="list-style-type: none"> <li>• No Discount</li> <li>• Discount for Waiving Appeal (35%)</li> <li>• Discount for Self-reporting and Waiving Appeal (50%)</li> </ul>	N/A

### 2.12.3 Output

Field	Description
Final Calculated CMP Amount	N/A

## 2.13 “Is An Additional Adjustment to the Final Calculated CMP Amount Necessary?” Section

### 2.13.1 General Instructions

The Final Calculated CMP Amount may be adjusted by no more than 35%. If an Adjusted Final Calculated CMP Amount is entered, provide a rationale below. If the RO believes that the Final Calculated CMP Amount should be adjusted by more than 35%, they must consult with and obtain prior approval from the CO before making any further adjustment using this tool.

Note: Any CMP that is projected to exceed \$250,000 must be sent to CO for review prior to sending the imposition letter.

### 2.13.2 Input

Field	Input	Detailed Instructions
<b>Adjusted Final Calculated CMP Amount</b>	Number	Enter a dollar amount (no cents). Adjust the Final Calculated CMP Amount (which is the total amount for Per Instance or Per Day) and enter above. Note: The amount entered should reflect the total amount (not a Per Day amount).
<b>Adjusted Final Calculated CMP Amount Rationale</b>	<ul style="list-style-type: none"> <li>The amount of time between the noncompliance and the survey (do not select this if the delay was caused by the facility's failure to timely report to the SA)</li> <li>The amount of time for the revisit survey if it exceeded the amount of time required by the SOM</li> <li>Other</li> </ul>	Select a rationale.

## 2.14 “Enter Any Additional Case-Related Information (Optional)” Section

### 2.14.1 Input

Field	Input	Detailed Instructions
Additional Information	Text	N/A

## 2.15 “Is the Facility Financial Condition a Factor?” Section

### 2.15.1 General Instructions

42 CFR §488.438(f)(2).

A facility is responsible for notifying CMS of hardship and providing financial documentation.

### 2.15.2 Input

Field	Input	Detailed Instructions
<b>Lower Calculated CMP Amount Selection</b>	CMS reviewed the financial information and determined that facility documentation proves (select one): <ul style="list-style-type: none"><li>• A reduction is necessary.</li><li>• A reduction is not necessary.</li></ul>	Select an option.
<b>Lower Calculated CMP Amount</b>	Number	Enter a dollar amount (no cents) in multiples of \$50. Note: The amount entered should reflect the total amount (not a Per Day amount).

## 2.16 “View Totals” Section

### 2.16.1 Output

Field	Description
<b>Calculated CMP Amount</b>	The <b>Calculated CMP Amount</b> is the sum of <b>CMP Base Amount</b> and <b>Facility Noncompliance Amount, Repeated Deficiencies Amount (Per Day only), Total Number of Tags Cited Amount (Per Day only),</b> and <b>Base Culpability Amount</b> , if any.
<b>Reduced Calculated CMP Amount</b>	The <b>Reduced Calculated CMP Amount</b> is the amount after the adjustment for exceeding the maximum regulatory amount, if any.
<b>Total CMP Days</b>	The <b>Total CMP Days</b> for Per Day is the total number of days from the <b>CMP Start Date</b> to the <b>CMP End Date</b> .
<b>Discounts Applied to Final Calculated CMP Amount</b>	The <b>Discounts Applied to Final Calculated CMP Amount</b> include one of the following options: No discount, 35% discount if waiving appeal, or 50% discount for self-reporting and waiving appeal.
<b>Final Calculated CMP Amount</b>	The <b>Final Calculated CMP Amount</b> for Per Day is the lowest <b>Calculated CMP Amount</b> multiplied by the <b>Total CMP Days</b> , less any <b>Discount</b> . Note: This is a total amount, not a Per Day amount. The <b>Final Calculated CMP Amount</b> for Per Instance is the lowest <b>Calculated CMP Amount</b> , less any <b>Discount</b> .
<b>Adjusted Final Calculated CMP Amount</b>	The <b>Adjusted Final Calculated CMP Amount</b> is the amount after the adjustment to the <b>Final Calculated CMP Amount</b> . Note: This is a total amount, not a Per Day amount.
<b>Lower Calculated CMP Amount</b>	The <b>Lower Calculated CMP Amount</b> is the amount after the adjustment for facility financial condition, if any. Note: This is a total amount, not a Per Day amount.
<b>Total Final CMP Amount</b>	The <b>Total Final CMP Amount</b> is the <b>Adjusted Final Calculated CMP Amount or Lower Calculated CMP Amount</b> if an adjustment was made, otherwise the <b>Final Calculated CMP Amount</b> .

## 2.17 “View Summary” Section

### 2.17.1 Input

Field	Detailed Instructions
Display Summary	Note: If changes are made to any of the fields above, display Summary again.
Begin a New Case	N/A

### 2.17.2 Output

Field	Output
Calculation Type	final or preliminary
CCN	Provider Number
Provider Name	Provider Name
Analyst Name	Analyst Name
Cycle Start Date	mm/dd/yyyy
Current Date	mm/dd/yyyy
CMP Type	Per Day or Per Instance
CMP Per Instance Factors	As Selected (include the exact wording of the selection)
CMP Start Date	mm/dd/yyyy
CMP End Date	mm/dd/yyyy
Abated IJ	yes if checked
CMP Base Amount	As Selected (include the exact wording of the selection)
Facility Noncompliance Amount Added	As Selected (include the exact wording of the selection)
Repeated Deficiencies Amount Added	As Selected (include the exact wording of the selection)
Multiple Deficiencies Amount Added	As Selected (include the exact wording of the selection)
Base Culpability Amount Added	As Selected (include the exact wording of the selection)
Calculated CMP Amount	Dollar Amount
Reduced Calculated CMP Amount - Maximum Exceeded	As Selected (include the exact wording of the selection)
Discounts Applied to Final Calculated CMP Amount	As Selected (include the exact wording of the selection)
Total CMP Days	Number of Days
Final Calculated CMP Amount	Dollar Amount
Adjusted Final Calculated CMP Amount	Dollar Amount
Rationale for Adjusted Final Calculated CMP	As Completed
Lower Calculated CMP Amount Detail	As Selected (include the exact wording of the selection)
Lower Calculated CMP Amount - Financial Condition	Dollar Amount
Total Final CMP Amount	Dollar Amount
Additional Information	As Completed

## 3 Instructions

### ***3.1 Instructions for Use and Completion of the Civil Money Penalty (CMP) Analytic Tool***

All CMS Regional Offices (ROs) are required to use the following instructions and CMP Analytic Tool: (1) to choose the appropriate type or types of CMPs to be imposed; and (2) to calculate the CMP amount, when the RO determines that a CMP is an appropriate remedy to impose. The RO must complete all sections of the tool that apply to the type of CMP selected.

Consistent with CMS policy on immediate imposition of remedies, ROs must evaluate each case and consider whether or not to impose a CMP in addition to or instead of other remedies for deficiencies with a Scope and Severity (S/S) of “G,” or above, and for deficiencies with a S/S of “F” when Substandard Quality of Care (SQC) is cited. For deficiencies cited at other S/S levels, the RO should consider imposing alternative remedies other than a CMP as appropriate.

For cases in which the State Survey Agency fails to recommend a CMP, the RO must evaluate whether or not a CMP remedy is warranted. In such cases, the RO must review the survey findings and impose the appropriate remedy(ies) regardless of a State’s recommendation or lack thereof.

ROs must use this tool in the calculation of each new or changed<sup>1</sup> CMP imposed on a facility within a noncompliance cycle<sup>2</sup>. Each time a survey is conducted within an already running noncompliance cycle and a CMP is imposed, the facility is given appeal rights and may exercise its waiver of right to a hearing (refer to section 7526 of the State Operations Manual (SOM), Chapter 7).

This tool is not dispositive, and does not replace professional judgment or the application of other pertinent information in arriving at a final CMP amount. However, it does provide logic, structure, and defined factors for mandatory consideration in the determination of CMPs. The tool should be used with this protocol, which more fully explains factors that lead to final CMP amounts.

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<sup>1</sup> A CMP is changed when the circumstances initiating the original CMP imposed have changed and an increase or decrease to the original CMP may be warranted. For example, a facility has corrected some but not all of the original deficiencies and is still within its noncompliance cycle and the remaining deficiencies warrant an increase or decrease in the original CMP imposed. See section 7516.3 of the SOM.

<sup>2</sup> A noncompliance cycle begins with a recertification, complaint or temporary waiver revisit survey that finds noncompliance and ends when substantial compliance is achieved or the facility is terminated (or voluntarily terminates) from the Medicare and Medicaid programs. The noncompliance cycle cannot exceed 6 months. Once a remedy is imposed, it continues until the facility is in substantial compliance (and in some cases, until it can demonstrate that it can remain in substantial compliance), or is terminated from the programs.

### ***3.2 Choosing the Type of CMP to be Imposed***

After making a determination that a CMP will be imposed, ROs must use the Tool and the guidance provided in the tool to decide whether to impose a Per Instance (PI) CMP versus a Per Day (PD) CMP, or both, regardless of the State Survey Agency's recommendation. Note: Multiple PIs may be imposed for different types or dates of noncompliance.

Factors to consider when determining "a good compliance history" include but are not limited to:

- The facility is not a Special Focus Facility;
- The facility has not had findings at a S/S of "G" or above within the past three (3) calendar years, unless they were cited as past noncompliance;
- The facility has a history/pattern of achieving compliance prior to or at the time of the first revisit; and/or
- The facility has a history/pattern of sustaining compliance with previously cited deficiencies (i.e., no repeat deficiencies).

### ***3.3 Choosing the PD CMP Start Date***

A PD CMP should begin either on the first day noncompliance at the cited S/S level is documented, or on the first day of the survey that noncompliance was identified. Per day CMPs should not begin before the start date of the survey unless:

- IJ (S/S of "J", "K", or "L") was cited with actual harm to a resident; or
- Abuse was cited at a level 3 ( S/S of "G", "H", "I"), or IJ (S/S of "J", "K", or "L") with actual harm to a resident
- The same tag at a S/S of "G" or above was cited within the last year on any survey and the tag is cited at a S/S of "J", "K", or "L" on the current survey; or
- Deficiencies at a S/S of "H" or "I" were cited.

If the facility can demonstrate that it corrected the noncompliance prior to the current survey, that is past noncompliance, and a per instance CMP should be used. If the team cannot document the first day of noncompliance, then the CMP should start on the date the noncompliance was observed and documented at the time of the current survey.

For example, a survey begins on May 1 and on that date the survey team finds evidence of immediate jeopardy, that resulted in a resident suffering a fractured hip. If the survey team is able to document that the immediate jeopardy began on April 1, the PD CMP start date is April 1. However, if the survey team is unable to document the first day of noncompliance at the immediate jeopardy level, the CMP would start on May 1.



### ***3.4 Guidance on Determining the Dates of a PD CMP***

**PD CMP Start Date<sup>3</sup>** - In all cases where this tool requires a PD CMP be imposed before the start date of the survey, the RO analyst shall calculate the start date for the proposed CMP with the first supportable date of noncompliance, as determined by the evidence documented by surveyors in the Statement of Deficiencies (CMS form 2567).

Therefore, in performing the survey and when making a recommendation for a PD CMP to CMS, the State Survey Agency must determine the earliest date for which supportable evidence shows that the noncompliant practice began.

If this start date is not clearly identified and supportable, then the RO should contact the State Survey Agency to see if such a date can be determined and should document this discussion and conclusion. If the start date cannot be determined, the PD CMP would begin on the first day during the survey on which the survey team identified the noncompliant practice.

**PD CMP End Date** - **Except in cases when IJ is removed on the same date that it was identified, do not include the day on which IJ is removed, the day the S/S is lowered, thereby lowering the CMP amount to another level or substantial compliance is achieved when calculating the final PD CMP.** See 42 C.F.R. §488.440(h), penalties accrue until the date of correction. The RO analyst will input the resulting number of days into the CMP Analytic Tool.

### ***3.5 CMPs for Past Noncompliance***

**Past noncompliance identified during the current survey** means a deficiency citation at a specific survey data tag (F-tag or K-tag) (with a S/S at "G" or above, or SQC findings at a S/S at "F") that meets **all** of the following three criteria:

1. The facility was not in compliance with the specific regulatory requirement(s) (as referenced by the specific F-tag or K-tag) at the time the situation occurred;
2. The noncompliance occurred after the exit date of the last standard (recertification) survey and before the survey (standard, complaint, or revisit) currently being conducted; and
3. There is sufficient evidence to determine that the facility corrected the noncompliance and is in substantial compliance at the time of the current survey for the specific regulatory requirement(s), as referenced by the specific F-tag or K-tag.

Additional information regarding past noncompliance can be found in the State Operations Manual, Appendix P, Section E, "Determining Citations of Past Noncompliance at the Time of the Current Survey."

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<sup>3</sup> A CMP may not include days prior to the date of the last standard survey.

### **3.6 Required Central Office Prior Approval for Any Adjustment to Final Calculated CMP Amount of More than Thirty-five Percent (35%)**

If the RO believes that the circumstances involved in the specific case require an adjustment to the CMP amount which was calculated using this Tool, the RO may increase or reduce the CMP by NO MORE THAN 35 percent. **If the RO makes such an adjustment, in each instance, it must provide a rationale for that adjustment when completing the tool.** An adjustment to the CMP is not the same thing as imposing a different CMP based on different or new deficiencies. Whenever such an adjustment is made, the analyst will annotate the tool when calculating the original CMP to explain why an adjustment was made. For a newly imposed or revised CMP within the same noncompliance cycle, a separate tool is to be completed.

**NOTE:** If the RO believes that a calculated CMP should be adjusted by **more** than 35 percent, it must consult with and obtain prior approval from CMS Central Office before making the adjustment. Requests for prior approval should be sent to the CMS Central Office. Any CMP of \$250K must be sent to CMS Central Office for review prior to sending the imposition letter.

A 35 percent adjustment that the RO may make is not the same as, and does not affect, the 35 or 50 percent reductions made to the total CMP amount based on §§488.436 and 488.438. The facility will receive a 35 percent reduction if it timely waives its right to an Administrative Hearing. The facility should be notified that it will receive a 50 percent reduction if **all** of the following conditions are met:

- The facility must have self-reported the noncompliance to CMS or the State before it was identified by CMS or the State and before it was reported to CMS or the State by means of a complaint lodged by a person other than an official representative of the nursing home;
- Correction of the noncompliance must have occurred on the earlier of either 15 calendar days from the date of the self-reported circumstance or incident that later resulted in a finding of noncompliance or 10 calendar days from the date (of CMS' notice to the facility) that a CMP was imposed;
- The facility waives its right to a hearing;
- The noncompliance that was self-reported and corrected did not constitute a pattern of harm, widespread harm, immediate jeopardy, or result in the death of a resident;
- The CMP was not imposed for a repeated deficiency that was the basis of a CMP that previously received a reduction; and
- The facility has met mandatory reporting requirements for the incident or circumstance upon which the CMP is based as required by Federal and State law.

If you have any questions regarding the memorandum, Tool or guidance, please contact the CMP Central Office.

**Effective Date: Immediately for all enforcement cases when the CMS RO determines that a CMP is an appropriate enforcement remedy.** This guidance should be communicated to all RO and State Survey Agency survey, certification and enforcement staff, their managers and the State/RO training coordinators within 30 days of this memorandum.

### ***3.7 For Training and General Examples ONLY<sup>4</sup>***

The following information provides some examples of situations in which the Departmental Appeals Board (DAB)<sup>5</sup> and/or the DAB Administrative Law Judges (ALJs) determined that there was **facility culpability**. The DAB and ALJ decisions cited below were issued before the 2016 update to the federal regulations, so the regulatory references listed below are those that existed at the time those decisions were issued.

#### **Physical Environment: 42 C.F.R. §483.70**

1. Life Safety Code (LSC) and/or maintenance issues considered detrimental to the health, safety and welfare of the residents. DAB CR3000

#### **Quality of Care: 42 C.F.R. §483.25**

1. Repeated failure to timely follow or clarify doctor's treatment orders (including for pressure sores). DAB 2390 and 2299
2. Repeated failure to notify doctor of significant changes. DAB 2479 and 2304
3. Repeated failure to notify physician of change which exposed resident to high likelihood of suffering grave harm. DAB 2304 and 2300
4. Repeated failure to properly assess pressure sores. DAB 2426
5. Multiple residents with severe weight loss (> 5% in a month) not detected or addressed despite care plan. DAB 2511
6. Repeated failure to timely provide testing, care, treatment & services for residents receiving anticoagulant therapy. DAB 2411
7. Repeated failure to closely monitor resident with compromised respiratory status, or failure to have necessary oxygen equipment. DAB, 2511, 2344, 2327, and 2299
8. Failure to administer CPR to "full code" resident. DAB 2396 and 2336
9. Repeated failure to implement interventions and supervise to prevent falls for resident with history of falls. DAB 2470, 2380, and 2357
10. Repeated failure to adequately supervise resident with known choking problems to provide prompt intervention. DAB 2520 and 2192
11. Repeated failure to provide blood sugar monitoring and care as ordered as ordered by physician. DAB 2375
12. Repeated failure to supervise residents with known history of elopement. DAB 2450, 2446, 2434, and 2288
13. Repeated transfer of residents by one aide despite care plan requiring two aides for transfer. DAB CR1863

#### **Resident Behavior and Facility Practices: 42 C.F.R. §483.13**

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<sup>4</sup> Note this information is provided only by way of providing some examples in which the DAB found culpability in the past.

<sup>5</sup> [DAB website](#)

*Instructions*

1. Staff failure to promptly report physical, verbal or sexual abuse. DAB 2256

**Quality of Life: 42 C.F.R. §483.15**

1. Egregious dignity issues. DAB 2513