



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

**CMP Analytic Tool**

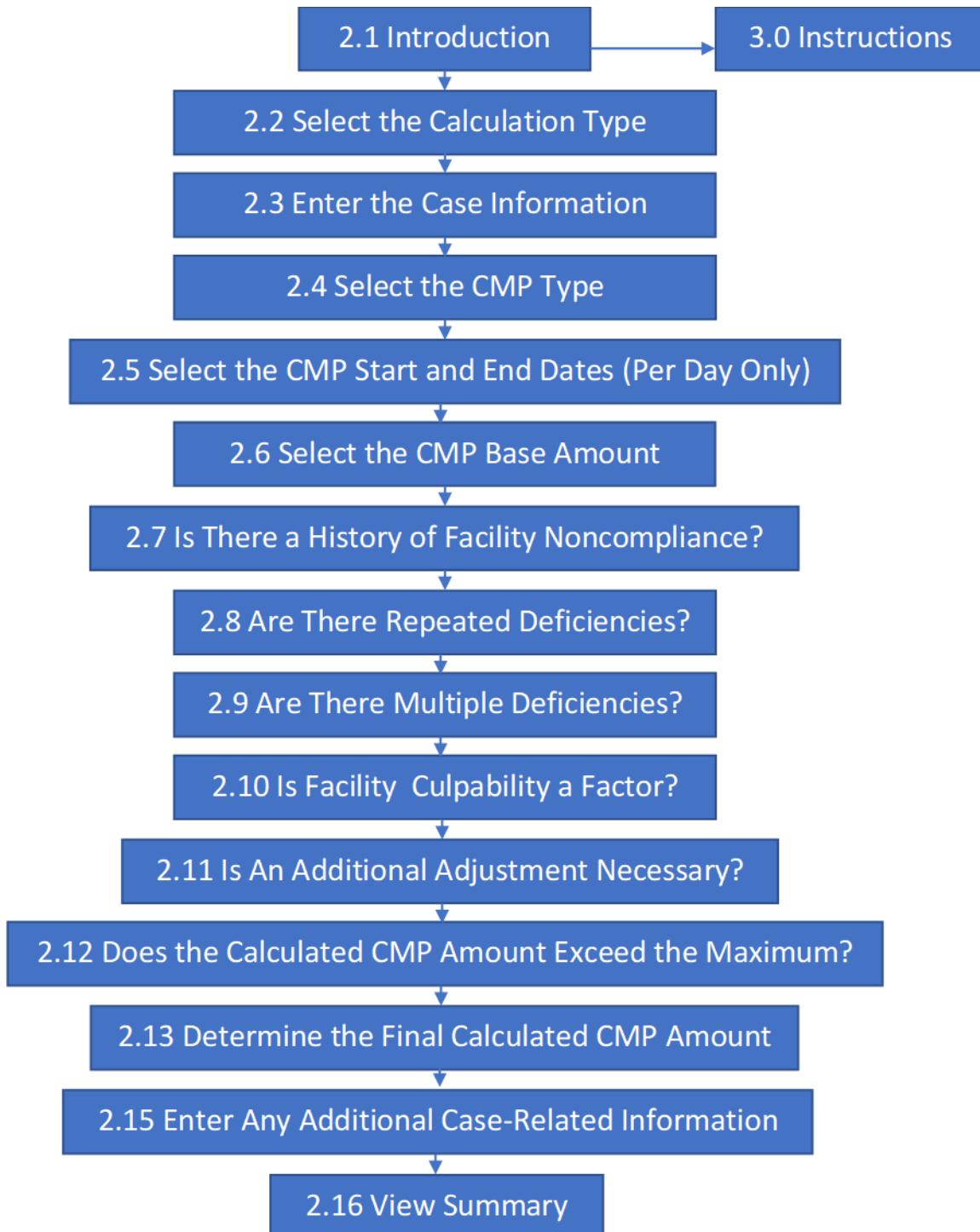
**User's Guide**

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## 1 Overview



## 2 CMP Analytic Tool

### 2.1 *Introduction Section*

#### 2.1.1 General Instructions

CMS locations have a variety of enforcement remedies to choose from in addressing noncompliance by a facility. These remedies include civil money penalties, denial of payment for all individuals, discretionary denial of payment for new admissions, mandatory denial of payment (new admissions 3-months), directed in-service training, directed plan of correction, discretionary termination, mandatory termination, state monitoring, temporary management, transfer of residents, and transfer of residents/closure of facility. Not all situations require the same remedies. The CMS location should use the enforcement remedy most appropriate in considering the level/severity of harm to the resident, the context behind the facility noncompliance, and the type of enforcement that has the best chance of the facility achieving future compliance.

All CMS locations 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 CMS location determines that a CMP is an appropriate remedy to impose. The CMS location 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, CMS locations may impose CMPs for level 2 deficiencies based on the factors listed in 42 CFR 488.404 and 488.438(f).

*Notes: 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
CCN (Required)	Text	N/A
Provider Name (Required)	Text	N/A
Analyst Name (Required)	Text	Enter full name (first and last name).
Cycle Start Date (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; 42 CFR 488.404 and 488.438.*

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: After deciding that a CMP will be imposed, CMS locations must use the tool and its guidance to decide whether to impose a Per Instance (PI) CMP versus a Per Day (PD) CMP, regardless of the State Survey Agency's recommendation. See additional instructions to [determine Per Day or Per Instance selection](#).*

*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.*

### 2.4.2 Input

Field	Input	Detailed Instructions
<b>CMP Type (Required)</b>	<ul style="list-style-type: none"><li>• Per Instance CMP (PI)</li><li>• Per Day CMP (PD)</li></ul>	For each instance where a CMP will be imposed for a facility, select only one CMP Type to be used: Per Instance or Per Day.
<b>CMP Per Instance Determination</b>	<ul style="list-style-type: none"><li>• Impose a Per Instance CMP for past noncompliance. (If the CMS location believes that a per day CMP is warranted, prior to CMP imposition contact the Survey and Operations Group Director and Division Director for concurrence.)</li><li>• Impose one or more Per Instance CMPs: (If the CMS location believes that a per day CMP is warranted, prior to CMP imposition contact the Survey and Operations Group Director and Division Director for concurrence.)<ol style="list-style-type: none"><li>a. For findings of noncompliance that are cited at S/S of “G” or “J” and the deficient practice was a “singular event” of noncompliance and not abuse; or</li><li>b. Where a facility has a good compliance history and the noncompliance is not of the type described in the first Per Day checkbox below, a. through d.</li></ol></li></ul>	Select one.

*CMP Analytic Tool*

<b>Field</b>	<b>Input</b>	<b>Detailed Instructions</b>
<b>CMP Per Day Determination</b>	<ul style="list-style-type: none"><li>• Impose a Per Day CMP beginning on the earliest date the facility staff engaged in deficient practices in relation to the tag that is driving the CMP until substantial compliance is achieved if:<ol style="list-style-type: none"><li>a. IJ is cited with harm to a resident that is not a "singular event"; or</li><li>b. Abuse was cited at actual harm or IJ and one or more residents suffered level 3 or 4 harm; or</li><li>c. IJ is cited on the current survey and the same tag was cited at a S/S of "G" or above on any prior survey within the last calendar of the current survey; or</li><li>d. Deficiencies at a S/S of "H" or "I".</li></ol></li><li>• Impose a Per Day CMP beginning on the entry day of the survey until substantial compliance is achieved for all other situations.</li></ul>	Select one.

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

### **2.5.1 General Instructions**

PD CMP Start Date - PD CMPs will either begin on the entry date of the survey or before the survey began, specifically on the earliest date the facility staff engaged in deficient practices in relation to the tag that is driving the CMP. Refer to the "Select the CMP Type" to determine when PD CMPs start. If the tool directs you to start a CMP before the survey began, but you cannot determine that date by reviewing the 2567, start the CMP on the entry date of the survey.

PD CMP End Date - PD CMPs should end the day before the date substantial compliance is achieved. For IJs that last one day only, impose the IJ-level CMP for that day. For IJs that last more than one day, do not impose the IJ level CMP on the day that IJ was removed.

### **2.5.2 Input**

Field	Input	Detailed Instructions
<b>CMP Start Date</b>	Text	Enter the date in mm/dd/yyyy format.
<b>CMP End Date</b>	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 - Late Adopter - \$635</li><li>• Per Instance - Infection Control - \$5000</li><li>• Per Instance - Infection Control - \$10000</li><li>• Per Instance - Infection Control - \$15000</li><li>• Per Instance - Infection Control - \$20000</li><li>• Per Day - Potential for More than Minimal - S/S Level D - \$275</li><li>• Per Day - Potential for More than Minimal - S/S Level E - \$400</li><li>• Per Day - Potential for More than Minimal - S/S Level F - \$520</li><li>• Per Day - Actual Harm - S/S Level G - \$650</li><li>• Per Day - Actual Harm - S/S Level H - \$1610</li><li>• Per Day - Actual Harm - S/S Level I - \$2630</li><li>• Per Day - Immediate Jeopardy - S/S Level J - \$8140</li><li>• Per Day - Immediate Jeopardy - S/S Level K - \$10765</li><li>• Per Day - Immediate Jeopardy - S/S Level L - \$13365</li><li>• Per Instance - Potential for More than Minimal - S/S Level D - \$6380</li><li>• Per Instance - Potential for More than Minimal - S/S Level E - \$8490</li><li>• Per Instance - Potential for More than Minimal - S/S Level F - \$10615</li><li>• Per Instance - Actual Harm - S/S Level G - \$12735</li><li>• Per Instance - Actual Harm - S/S Level H - \$15920</li><li>• Per Instance - Actual Harm - S/S Level I - \$19105</li><li>• Per Instance - Immediate Jeopardy - S/S Level J - No Harm - \$12740</li></ul>	Select the highest S/S level for the base Calculated CMP Amount.

Field	Input	Detailed Instructions
	<ul style="list-style-type: none"><li>• Per Instance - Immediate Jeopardy – S/S Level J - Harm - \$21645</li><li>• Per Instance - Immediate Jeopardy - S/S Level K - No Harm - \$15920</li><li>• Per Instance - Immediate Jeopardy - S/S Level K - Harm - \$22925</li><li>• Per Instance - Immediate Jeopardy - S/S Level L - No Harm - \$19105</li><li>• Per Instance - Immediate Jeopardy - S/S Level L - Harm - \$25470</li></ul>	
IJ Removed	Yes	N/A

### 2.6.3 Output

Field	Output
Calculated CMP Amount	Amount

## 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 had any deficiencies cited at a S/S of "G" or above on any survey (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
Facility Noncompliance Amount Added	<ul style="list-style-type: none"><li>• Per Day - For one to two deficiencies at severity level 3 or 4 in past three years - Add \$270</li><li>• Per Instance - For one to two deficiencies at severity level 3 or 4 in past three years - Add \$1280</li><li>• Per Day - For three to five deficiencies at severity level 3 or 4 in past three years - Add \$785</li><li>• Per Instance - For three to five deficiencies at severity level 3 or 4 in past three years - Add \$3200</li><li>• Per Day - For six or more deficiencies at severity level 3 or 4 in past three years - Add \$1290</li><li>• Per Instance - For six or more deficiencies at severity level 3 or 4 in past three years - Add \$6380</li></ul>	Select the amount to add to the Calculated CMP Amount.

### 2.7.3 Output

Field	Output
Calculated CMP Amount	Amount

## 2.8 “Are There Repeated Deficiencies?” Section

### 2.8.1 General Instructions

42 CFR 488.438(d)(2)(3).

Increase the CMP penalty amount for any repeated deficiencies for which a CMP penalty was previously imposed. "Repeated Deficiencies" are deficiencies within the same regulatory grouping of requirements under which deficiencies were cited at the last survey of the same survey type (Health, LSC, EP), 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 \$145</li><li>• Per Day - S/S Level G, H, I - Add \$270</li><li>• Per Day - S/S Level J, K, L - Add \$405</li><li>• Per Instance - S/S Level F - Add \$1280</li><li>• Per Instance - S/S Level G, H, I - Add \$3200</li><li>• Per Instance - S/S Level J, K, L - Add \$6380</li></ul>	Select the amount to add to the Calculated CMP Amount based on the highest S/S level of the repeat deficiencies.

### 2.8.3 Output

Field	Output
<b>Calculated CMP Amount</b>	Amount

## **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 7 or more 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
<b>Multiple Deficiencies Amount Added</b>	<ul style="list-style-type: none"><li>• Per Day - For 7-14 deficiencies - Add \$140</li><li>• Per Day - For 15-19 deficiencies - Add \$390</li><li>• Per Day - For 20+ deficiencies - Add \$645</li><li>• Per Instance - For 7-14 deficiencies - Add \$3200</li><li>• Per Instance - For 15-19 deficiencies - Add \$7645</li><li>• Per Instance - For 20+ deficiencies - Add \$12740</li></ul>	Select the amount to add to the Calculated CMP Amount based on the guidance above.

### **2.9.3 Output**

Field	Output
<b>Calculated CMP Amount</b>	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 noncompliance, and is evidenced in the 2567. [Culpability](#) as defined in the regulation refers to situations which include, but are 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>• Severity Level 2 - Add \$405</li><li>• S/S Level G - Add \$785</li><li>• S/S Level H - Add \$1800</li><li>• S/S Level I - Add \$2555</li><li>• S/S Level J - Add \$3205</li><li>• S/S Level K - Add \$4470</li><li>• S/S Level L - Add \$5745</li></ul>	Select the amount to add to the Calculated CMP Amount based on the highest S/S level cited.
<b>Facility Culpability Rationale</b>	N/A	N/A

### **2.10.3 Output**

Field	Output
<b>Calculated CMP Amount</b>	Amount

## 2.11 “Is an Additional Adjustment to the Calculated CMP Amount Necessary?” Section

### 2.11.1 General Instructions

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

### 2.11.2 Input

Field	Input	Detailed Instructions
Select a Percentage to Adjust the Calculated CMP Amount	<ul style="list-style-type: none"> <li>• Add 5%</li> <li>• Add 10%</li> <li>• Add 15%</li> <li>• Add 20%</li> <li>• Add 25%</li> <li>• Add 30%</li> <li>• Add 35%</li> <li>• Add 5%</li> <li>• Add 10%</li> <li>• Add 15%</li> <li>• Add 20%</li> <li>• Add 25%</li> <li>• Add 30%</li> <li>• Add 35%</li> <li>• Reset Adjustment</li> </ul>	N/A
For Other Adjustments, Enter the Adjusted Calculated CMP Amount	Number	Enter a dollar amount (no cents).
Adjusted Calculated CMP Amount Rationale	<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 State Survey Agency)</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>	N/A

Field	Input	Detailed Instructions
Adjusted Calculated CMP Amount Rationale	Text	N/A

### **2.11.3        Output**

Field	Output
Adjusted Calculated CMP Amount	Amount

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

### **2.12.1 Input**

Field	Input	Detailed Instructions
Reduced Calculated CMP Amount	<ul style="list-style-type: none"><li>• Per Day - Calculated CMP Amount for IJ Case &gt; \$26685 - Reduce Calculated CMP Amount to \$26685</li><li>• Per Day - Calculated CMP Amount for Non-IJ Case &gt; \$8003 - Reduce Calculated CMP Amount to \$8003</li><li>• Per Day - Calculated CMP Amount for Non-IJ Case &gt; \$8003 and a repeat deficiency - No change</li><li>• Per Instance - Calculated CMP Amount Exceeds \$26685 - Reduce Calculated CMP Amount to \$26685</li></ul>	Select the highest permissible CMP amount.

### **2.12.2 Output**

Field	Output
Reduced Calculated CMP Amount	Amount

## **2.13 “Determine the Final Calculated CMP Amount” Section**

### **2.13.1 General Instructions**

The Final Calculated CMP Amount is determined using one of the following:

- Calculated CMP Amount or;
- Adjusted Calculated CMP Amount, if an adjustment has been made or;
- Reduced Calculated CMP Amount, if a reduction for exceeding the regulatory amount has been made.

Final Calculated CMP Amount, Per Day: the above amount multiplied by the Total CMP Days, less any Discount.

Final Calculated CMP Amount, Per Instance: The above amount, less any Discount.

### **2.13.2 Input**

Field	Input	Detailed Instructions
<b>Discounts Applied to Final Calculated CMP Amount</b>	<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

### **2.13.3 Output**

Field	Output
<b>Final Calculated CMP Amount</b>	Amount

**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 "View Summary" Section

### 2.15.1 Input

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

### 2.15.2 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 Day Determination	As Selected
CMP Per Instance Determination	As Selected
CMP Start Date	mm/dd/yyyy
CMP End Date	mm/dd/yyyy
IJ Removed	yes if checked
CMP Base Amount	As Selected
Facility Noncompliance Amount Added	As Selected
Repeated Deficiencies Amount Added	As Selected
Multiple Deficiencies Amount Added	As Selected
Base Culpability Amount Added	As Selected
Facility Culpability Rationale	As Completed
Calculated CMP Amount	Dollar Amount
Adjusted Calculated CMP Amount	Dollar Amount
Adjusted Calculated CMP Amount Rationale	As Selected
Adjusted Calculated CMP Amount Rationale Other	As Selected
Reduced Calculated CMP Amount - Maximum Exceeded	As Selected

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Field	Output
<b>Discounts Applied to Final Calculated CMP Amount</b>	<i>As Selected</i>
<b>Total CMP Days</b>	<i>Number of Days</i>
<b>Final Calculated CMP Amount</b>	<i>Dollar Amount</i>
<b>Additional Information</b>	<i>As Completed</i>

## **3 Instructions**

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

All CMS locations 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 CMS location determines that a CMP is an appropriate remedy to impose. The CMS location must complete all sections of the tool that apply to the type of CMP selected.

Consistent with CMS policy on immediate imposition of remedies, CMS locations 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 CMS location 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 CMS location must evaluate whether or not a CMP remedy is warranted. In such cases, the CMS location must review the survey findings and impose the appropriate remedy(ies) regardless of a State’s recommendation or lack thereof.

CMS locations 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

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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.

## *Instructions*

tool should be used with this protocol, which more fully explains factors that lead to final CMP amounts.

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

After deciding that a CMP will be imposed, CMS locations must use the tool and its guidance to decide whether to impose a Per Instance (PI) CMP versus a Per Day (PD) CMP, regardless of the State Survey Agency's recommendation.

1. Impose a Per Instance CMP for past noncompliance, unless approval for a Per Day CMP has been received by the Survey and Operations Group and Division Director leadership based on the specifics of the case.

*Note: Never impose Per Day and Per Instance CMPs for the same survey. If the tool leads you to impose both (for example you have past noncompliance at F314 and IJ with harm at F223 on the same survey) impose only the Per Day CMP for F223 and not the Per Instance CMP for the F314 tag.*

2. Impose one or more Per Instance CMPs, unless approval for a Per Day CMP has been received by the Survey and Operations Group and Division Director leadership based on the specifics of the case:
  - a. For findings of noncompliance that are cited at S/S of "G" or "J" and the deficient practice was a "singular event" of noncompliance and not abuse; or
  - b. Where a facility has a good compliance history and the noncompliance is not of the type described in 3.a. through d. (below)

*Notes: Only impose multiple Per Instance CMPs for different tags, not for the same tag. Singular Event is a one-time event in which one resident was harmed in an isolated incident (one incident) that is not the result of a pattern or widespread issues. Singular event is an event that is not the result of a system breakdown but one in which an unforeseen incident still occurred. For example, there were systems in place to prevent an incident, but one staff did not follow the system. A "good compliance history" means that the facility has not had a S/S "G" level deficiency or above in the past three (3) calendar years.*

3. Impose a Per Day CMP beginning on the earliest date the facility staff engaged in deficient practices in relation to the tag that is driving the CMP until substantial compliance is achieved if:
  - a. IJ is cited with harm to a resident that is not a "singular event"; or
  - b. Abuse was cited at actual harm or IJ and one or more residents suffered level 3 or 4 harm; or

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- c. IJ is cited on the current survey and the same tag was cited at a S/S of "G" or above on any prior survey within the last calendar of the current survey; or
- d. Deficiencies at a S/S of "H" or "I".

*Notes: Abuse is usually cited at the primary abuse tag, F600 (F223 in the original F-tag system). However, if abuse occurred and is cited at other tags, such as F606 or F607, (F225/F226 in the original F-tag system), then impose a Per Day CMP on the earliest date the facility staff engaged in deficient practices in relation to that tag. Please refer to the [official crosswalk of original F-tags to new F-tags](#). The current survey can be any type of survey (complaint, recertification, revisit or life safety code).*

- 4. Impose a Per Day CMP beginning on the entry day of the survey until substantial compliance is achieved for all other situations.

*Notes: Examples of situations where the Per Day CMP could begin on the first day of the survey include: All S/S "G" level tags that are not abuse; IJ tags where no resident was harmed (if the same tag was not cited at S/S "G" level or above within the last calendar year).*

## **3.3 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.

See the State Operations Manual, Chapter 7, Section 7510.1 for additional information.

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

## *Instructions*

If the CMS location believes that the circumstances involved in the specific case require an adjustment to the CMP amount which was calculated using this tool, the CMS location may increase or reduce the CMP by NO MORE THAN 35 percent. **If the CMS location 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 CMS location believes that a calculated CMP should be adjusted by more than 35 percent, it must consult with and obtain prior approval from the Survey and Operations Group leadership before making the adjustment.***

A 35 percent adjustment that the CMS location 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 42 CFR 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 CMS Baltimore.

**Effective Date: Immediately for all enforcement cases when the CMS location determines that a CMP is an appropriate enforcement remedy.** This guidance should be communicated to all CMS location and State Survey Agency survey, certification and enforcement staff, their

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managers and the State/CMS location training coordinators within 30 days of this memorandum.

### ***3.5 For Training and General Examples ONLY<sup>3</sup>***

The following information provides some examples of situations in which the Departmental Appeals Board (DAB)<sup>4</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 CFR 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 CFR 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

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<sup>3</sup> Note this information is provided only by way of providing some examples in which the DAB found culpability in the past.

<sup>4</sup> [DAB website](#)

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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 CFR 483.13**

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

**Quality of Life: 42 CFR 483.15**

1. Egregious dignity issues. DAB 2513