



In the Literature

Highlights from Commonwealth Fund-Supported Studies in Professional Journals

Variation in the Use of Federal and State Civil Money Penalties for Nursing Homes

November 24, 2008

Authors: Charlene Harrington, Ph.D.; Theodore Tsoukalas, Ph.D.; Cynthia Rudder, Ph.D.; Richard J. Mollot, J.D.; and Helen Carrillo, M.S.

Journal: *The Gerontologist*, October 2008 48(5):679–91

Contact: Charlene Harrington, University of California, San Francisco, Charlene.harrington@ucsf.edu, or Mary Mahon, Senior Public Information Officer, The Commonwealth Fund, mm@cmwf.org

An abstract is available at: <http://gerontologist.gerontologyjournals.org/cgi/content/abstract/48/5/679>

Synopsis

In this study, researchers examined federal and state use of civil money penalties (CMPs) against nursing homes and found that CMPs are an underused tool for spurring improvement in the quality of resident care. Moreover, state enforcement varies widely from state to state.

The Issue

To boost nursing home quality, the federal government provided states with the ability to issue fines, or civil money penalties, against poorly performing nursing homes that participate in Medicare and Medicaid. In addition to federal CMPs, states may also issue their own fines, although the same violation cannot be cited under both state and federal regulations. CMPs are an important tool for promoting higher quality in nursing home care and for sanctioning noncompliant facilities, but recent research indicates they are greatly underused in many states. Variations in state enforcement practices can create inequities in the quality of care.

“CMS must pay greater attention to studying the use and collection of CMPs, developing standard policies and practices for the number and amount of federal CMPs issued by states, and collecting complete data on federal and state CMPs and other enforcement actions.”

Key Findings

- In 2004, although 15 states were not using federal CMPs, all but four states issued either federal or state CMPs. The wide variation in the use of CMPs suggests a lack of standard enforcement procedures or limited federal oversight of the enforcement process.
- A total of 3,159 federal and state CMPs were collected in 2004. CMPs were given for only 2 percent of deficiencies cited, for a total of \$21.6 million.

- While CMPs were given for only 2 percent of the total number of deficiencies cited, 15.5 percent of the deficiencies were rated by states as having the potential for causing or actually causing harm or jeopardy to nursing home residents.
- The accuracy and completeness of CMP data collected by the federal government requires improvement. Because state CMPs are widely used along with federal CMPs, the federal databases should collect state CMP data to present a complete picture of the use of CMPs for enforcement.

Addressing the Problem

Findings show that federal and state CMPs are a seldom-used sanction, with wide variations in state policies and practices. The researchers suggest a reexamination of the federal CMP system. The Centers for Medicare and Medicaid Services, they say, should provide more guidance so that states can understand when and how to use CMPs. At the same time, better enforcement remedies than CMPs may exist for serious violations, making an evaluation of the effectiveness of different enforcement approaches worthwhile.

About the Study

The researchers surveyed state licensing and certification officials to collect information about whether states issued federal and state CMPs, the number of CMPs issued and collected, and the amount of CMPs collected. They supplemented the survey with CMP data from the federal enforcement action database for 2000–2004.

The Bottom Line

Wide variation in the use of CMPs by states in their regulation of nursing homes points to a need to improve and streamline the federal CMP system and optimize its effectiveness for improving nursing home quality.

Citation

C. Harrington, T. Tsoukalas, C. Rudder et al., “Variation in the Use of Federal and State Civil Money Penalties for Nursing Homes,” *The Gerontologist*, October 2008 48(5): 679–91.

This summary was prepared by Christopher Gearon and Deborah Lorber.