

State/Territory: Nebraska

Citation

Sanctions for Psychiatric Hospitals

1902(y)(1),
1902(y)(2)(A),
and Section
1902(y)(3)
of the Act
(P.L. 101-508,
Section 4755(a)(2))

(a) The State assures that the requirements of section 1902(y)(1), section 1902(y)(2)(A), and section 1902(y)(3) of the Act are met concerning sanctions for psychiatric hospitals that do not meet the requirements of participation when the hospital's deficiencies immediately jeopardize the health and safety of its patients or do not immediately jeopardize the health and safety of its patients.

1902(y)(1),(A)
of the Act

(b) The State terminates the hospital's participation under the State plan when the State determines that the hospital does not meet the requirements for a psychiatric hospital and further finds that the hospital's deficiencies immediately jeopardize the health and safety of its patients.

1902(y)(1)(B)
of the Act

(c) When the State determines that the hospital does not meet the requirements for a psychiatric hospital and further finds that the hospital's deficiencies do not immediately jeopardize the health and safety of its patients, the State may:

1. terminate the hospital's participation under the State plan;
or
2. provide that no payment will be made under the State plan with respect to any individual admitted to such hospital after the effective date of the finding; or
3. terminate the hospital's participation under the State plan and provide that no payment will be made under the State plan with respect to any individual admitted to such hospital after the effective date of the finding.

1902(y)(2)(A)
of the Act

(d) When the psychiatric hospital described in (c) above has not complied with the requirements for a psychiatric hospital within 3 months after the date the hospital is found to be out of compliance with such requirements, the State shall provide that no payment will be made under the State plan with respect to any individual admitted to such hospital after the end of such 3-month period.

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1932(e)
42 CFR 428.726

Sanctions for MCOs and PCMs

- (a) The State will monitor for violations that involve the actions and failure to act specified in 42 CFR Part 438 Subpart I and to implement the Provisions in 42 CFR 438 Subpart I, in manner Specified below:

Intermediate Sanctions. The State may impose Intermediate Sanctions when the MCO acts or fails to act as follows:

- A. Fails substantially to provide medically necessary services that the MCO is required to provide, under law or under its contract with the State, to a client covered under the contract.
- B. Imposes on clients premiums or charges that are in excess of the premiums or charges permitted under the Medicaid program.
- C. Acts to discriminate among clients on the basis of their health status or need for health care services.
- D. Misrepresents or falsifies information that it furnishes to CMS or to the State.
- E. Misrepresents or falsifies information that it furnishes to a client, potential client, or health care provider.
- F. Fails to comply with the requirements for physician incentive plans, as set forth (for Medicare) in 42 CFR 422.208 and 422.210.
- G. Has distributed directly, or indirectly through any agent or independent contractor, marketing materials that have not been approved by the State or that contain false or materially misleading information.
- H. Has violated any of the other applicable requirements of sections 1903(m) or 1932 of the Social Security Act and any implementing regulations.
- I. Has violated any of the other applicable requirements of sections 1932 or 1905(t)(3) of the Social Security Act and any implementing regulations.

Intermediate Sanctions: Types. The State may impose the following types of intermediate sanctions:

- A. Civil monetary, penalties in the following specified amounts:

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State Nebraska

1. A maximum of \$25,000 for each determination of failure to provide services; misrepresentation or false statements to clients, potential clients or health care providers; failure to comply with physician incentive plan requirements; or marketing violations.
2. A maximum of \$100,000 for each determination of discrimination; or misrepresentation or false statements to CMS or the State.
3. A maximum of \$15,000 for each recipient the State determines was not enrolled because of a discriminatory practice (subject to the \$100,000 overall limit above).
4. A maximum of \$25,000 or double the amount of the excess charges, (whichever is greater) for charging premiums or charges in excess of the amounts permitted under the Medicaid program.

The State must deduct from the penalty the amount of overcharge and return it to the affected clients(s).

- Appointment of temporary management for the MCO as provided in 42 CFR 438.706.
- Granting clients the right to terminate enrollment without cause and notifying the affected clients of their right to disenroll.
- Suspension of all new enrollment, including default enrollment, after the effective date of the sanction.
- Suspension of payment for recipients enrolled after the effective date of the sanction and until CMS or the State is satisfied that the reason for imposition of the sanction no longer exists and is not likely to recur.
- Additional sanctions allowed under state statute or regulation that address areas of noncompliance.

- (b) The State uses the definition below of the threshold that would be met before an MCO is considered to have repeatedly committed violations of section 1903(m) and thus subject to imposition of temporary management:

Special Rules for Temporary Management. Temporary management only be imposed by the State if it finds that:

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- A. There is continued egregious behavior by the MCO, including, but not limited to behavior that is described in 42 CFR §438.700, or that is contrary to any requirements of sections 1903(m) and 1932 of the Act; or
 - B. There is substantial risk to clients' health; or
 - C. The sanction is necessary to ensure the health of the MCO's clients while improvements are made to remedy violations under 42 CFR §438.700 or until there is an orderly termination or reorganization of the MCO.
- (c) The State's contracts with MCOs provide that payments provided for under the contract will be denied for new enrollees when, and for so long as, payment for those enrollees is denied by CMS under 42 CFR 438.730(e).

_____ Not applicable; the State does not contract with MCOs, or the State does not choose to impose intermediate sanctions on PCCMs.

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