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Lawsuit Alleges CMS Directive Violated Enforcement Provisions

The National Consumer Voice for Quality Long-Term Care (Consumer Voice) and California Advocates for Nursing Home Reform joined a lawsuit filed by AARP Foundation and Constantine Cannon LLP alleging that the Department of Health and Human Services and Centers for Medicare and Medicaid Services (CMS) put residents at risk by limiting enforcement penalties available under federal law. The suit challenges an operations memo from CMS in July 2017 directing states to impose per-instance fines for past violations, rather than fines for each day of past noncompliance.

As implemented according to this revised policy, a “per-instance” fine amount imposed for past noncompliance would be the same whether the facility did not meet standards for 3 days, 30 days, or 300 days. During each of those days, residents are at risk of or experiencing harm.

“In an industry troubled with repeat deficiencies and inconsistent compliance, stronger enforcement is needed,” said Lori Smetanka, Executive Director of the Consumer Voice. “Enforcement remedies, including civil money penalties, should not only deter facilities from noncompliance, but should incentivize them to evaluate whether they meet standards and fix problems in a timely manner.” This change in policy by CMS effectively removes the incentive for self-monitoring and quality assurance that should be a core component of all facility operations and puts residents at risk of significant harm.

It is the responsibility of the Secretary to ensure that the standards nursing homes meet, and the enforcement of those standards, are adequate to protect the health, safety, welfare, and rights of residents, and that public money is efficiently spent. This directive puts the interests of nursing home providers over residents. Further, the policy directly conflicts with the federal law governing enforcement mandated by Congress in the 1987 Nursing Home Reform Act and the subsequent regulations that implemented that Act.

This lawsuit seeks to have this revised policy vacated and return to the per-day penalties provided in the Nursing Home Reform Act. The [full complaint can be read here](#).

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