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**REINVESTMENT OF CIVIL MONEY PENALTIES TO BENEFIT
NURSING HOME RESIDENTS**

**State Project/Program: NORTH CAROLINA CULTURE CHANGE COALITION
ENHANCEMENT GRANTS**

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

Federal Authorization: Social Security Act, Sections 1819(h)(2)(B)(ii)(IV)(ff),
1919(h)(3)(C)(ii)(IV)(ff) and 1919 [42 U.S.C. 1396R]

QSO-20-14-NH

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State Authorization: None

**NC Department of Health and Human Services
Division of Health Service Regulation**

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SFY **2023** audit confirmation reports for payments made to Counties, Local Management Entities (LMEs), Managed Care Organizations (MCOs), Boards of Education, Councils of Government, District Health Departments and DHSR Grant Subrecipients will be available by mid-October at the following web address:
<https://www.ncdhhs.gov/about/administrative-offices/office-controller/audit-confirmation-reports> At this site, click on the link entitled "Audit Confirmation Reports (State Fiscal Year 2022-2023). Additionally, audit confirmation reports for Nongovernmental entities receiving financial assistance from DHHS are found at the same website except select "Non-Governmental Audit Confirmation Reports (State Fiscal Years 2021-2023)"

The auditor should not consider the Supplement to be "safe harbor" for identifying audit procedures to apply in a particular engagement, but the auditor should be prepared to justify departures from the suggested procedures. The auditor can consider the supplement a "safe harbor" for identification of compliance requirements to be tested if the auditor performs reasonable procedures to ensure that the requirements in the Supplement are current.

The grantor agency may elect to review audit working papers to determine that audit tests are adequate.

Auditors may request documentation of monitoring visits by the State Agencies.

This compliance supplement must be used in conjunction with the OMB 2023 Compliance Supplement which will be issued in the summer. This includes “Part 3 - Compliance Requirements,” for the types that apply, “Part 6 - Internal Control,” and “Part 4 - Agency Program” requirements if the Agency issued guidance for a specific program. The OMB Compliance Supplement is Section A of the State Compliance Supplement.

GENERAL INTRODUCTION

Federal law provides for the collection and use of Civil Money Penalty (CMP) funds imposed by the Centers for Medicare and Medicaid Services (CMS) when nursing homes do not meet the Medicare Requirements for Participation. The Patient Protection and Affordable Care Act established that 90 percent of the federal portion of CMP funds could be used to support activities that benefit nursing home residents, including projects that assure quality care within nursing homes.

The grants are made possible by the utilization of penalty monies collected by the North Carolina DHHS, DHSR, from federal enforcement actions under the 1987 Omnibus Budget Reconciliation ACT (OBRA). The grant program is implemented through a partnership of the NC Culture Change Coalition, DHSR and the Centers for Medicare and Medicaid Services (CMS).

In March 2020, CMS issued memorandum QSO-20-14-NH providing guidance to facilities on restricting visitation of all visitors and non-essential health care personnel, except for certain compassionate care situations, such as an end-of-life situation. In May 2020, CMS released Nursing Home Reopening Recommendations, which provided additional guidance on visitation for nursing homes as their states and local communities progress through the phases of reopening. In June 2020, CMS released a Frequently Asked Questions document on visitation, which expanded on previously issued guidance on topics such as outdoor visits, compassionate care situations, and communal activities.

In February 2022, CMS released an updated Frequently Asked Questions document on visitation, which allowed a facility to request Civil Money Penalty (CMP) Reinvestment funds to purchase portable fans and portable room air cleaners with high-efficiency particulate air (HEPA, H-13 or - 14) filters to increase or improve air quality.

I. PROGRAM OBJECTIVES

The purpose of this funding opportunity is to solicit applications to participate in a Federal grant program using Civil Money Penalty (CMP) funds. The expectation is to improve the quality of life for residents in the state’s certified long-term care nursing home facilities. Improvements are accomplished through promoting positive environmental and cultural changes within these homes. Facilities base these changes on the culture change modes that best fit their vision for transforming the medical model of nursing homes to more homelike settings. By showcasing a variety of cultural change enhancement philosophies, the facilities are allowed the flexibility to make alterations in the building. This in turn enhances the overall culture according to the needs and wants of their residents and staff.

II. PROGRAM PROCEDURES

The grant review committee, comprised of members of the NC Culture Change Coalition, will review each application submitted. Applications will be reviewed every month.

The submitting facility will be invited to participate in the review process, either by phone or in person. Each proposal will be assigned a mentor who is a member of the grant review committee. That mentor will be available to assist the facility in making any changes, corrections, or edits to the proposal as needed to meet the CMS requirements. This process

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can take as long as needed – there is no deadline for submission of proposals. Once the proposal has completed a final review by the full committee, the applicant will be instructed to merge their grant proposal into the CMS CMP application. Then the Nursing Home Licensure & Certification Section will forward the application to CMS for review. Once an application is approved by CMS, the Nursing Home Licensure & Certification Section will begin the contract process.

Each contract is entered in the Enterprise Business System (EBS) and Open Window System prior to seeking approval to contract. All appropriate approvals are obtained prior to the effective date of a contract.

A contract between the subrecipients and the Division of Health Service Regulation (DHSR), Department of Health and Human Services (DHHS), will be in effect for the duration of the entire grant period.

State agencies can approve communicative technology and accessories, in-person visitation aids and air quality devices and filters applications that meet the defined CMS parameters without review by CMS. This process will reduce the amount of time needed to review and approve the use of funds for those two specific requests.

III. COMPLIANCE REQUIREMENTS

Below on the matrix are the types of compliance requirements are applicable to the federal program, noted as “Y,” as determined by the federal granting agency if the federal program is listed in Part 2 of the OMB 2023 Compliance Supplement. A State agency may have added a Type. If the program is not listed in Part 2, the State Agency has determined the applicable Types. If a Type, applicable by OMB, does not apply at the local level or if the State has modified the federal requirements at the local level, this should be explained in the supplement under the Type. A Type that is not applicable at the local level is noted by “N.”

If a particular Type is noted as “Y,” the auditor must determine if the Type has a direct and material effect on the federal program for the auditee. For each Type of compliance requirement, the auditor must use the OMB 2023 Compliance Supplement, Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and Part 4 (which includes any program-specific requirements) to perform the audit.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/ Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	Y	N	N	Y	Y	N	Y	Y	Y

A. Activities Allowed or Unallowed

Reinvestment of Civil Money Penalties to Benefit Nursing Home Residents allows the following activities:

- Non-pharmacological approaches to improve the quality of life and care of individuals with dementia
- Reduction in the use of antipsychotic medications for individuals with dementia
- Dining and bathing enhancements
- Outdoor projects
- Acquiring and maintaining resident animals
- Plants and horticultural activities
- Music therapy, activities, and resident centered computer systems
- Communicative technologies and accessories
- In-person visitation aids
- Indoor portable fans
- Indoor portable air cleaners with high-efficiency particulate air (HEPA, H-13 or -14) filters

Funds may not be used to:

- Fund staff salaries
- Complete capital improvements to a nursing home, or to build a nursing home
- Pay entities to perform functions for which they are already paid by State or Federal sources
- Ventilation systems
- Portable fire extinguishers of approved types
- Disinfectant and Cleaning Supplies (Disinfectant wipes, hand sanitizer, etc.)
- No-Smoking signage
- Partial support for large-scale construction projects
- Expenditures needed for regulatory compliance
- Nursing home services or supplies that are already the responsibility of the nursing home, such as laundry, linen, food, heat, staffing costs, etc.
- Recruit or provide Long Term Care Ombudsman certification training for staff or volunteers, or investigate and work to resolve complaints
- Travel
- Internet or software subscription fees
- Administrative fees
- Indirect Cost. For example: federally determined indirect (facilities and administrative-F&A) costs such as staff fringe benefits or facility maintenance.
- Personal Protective Equipment (PPE), COVID-19 testing machines or supplies, etc.
- Applicants cannot use the standard CMP application process to supplement a request to obtain additional funding in excess of the \$3,000 maximum limit for communicative technology and accessories, in-person visitation aids and air quality devices and filters.

B. Allowable Costs/Cost Principles

All subrecipients that expend State funds (including federal funds passed through the N.C. Department of Health and Human Services) are required to comply with the cost principles described in the N. C. Administrative Code at 09 NCAC 03M .0201.

Maximum use of \$3,000 per facility with exceptions allowable on a case-by-case basis (e.g., for facilities with a large number of residents).

Subrecipients shall use funds exclusively as detailed in the application submitted by the subrecipient and approved by the Division.

E. Eligibility

NC Culture Change Coalition enhancement grants fund North Carolina dually certified providers (SNF/NF), nursing facilities (NF) and other organizations. All activities must promote positive environmental and cultural changes within these homes.

Directly address the need to facility in-person visits for residents.

Directly address the need for virtual visits as a replacement for in-person visits.

Subrecipients requesting in-person visitation aids must ensure appropriate life safety code requirements found at 42 CFR 483.90 are met, unless waived under the PHE declaration.

North Carolina must maintain an adequate amount of CMP funds to be used in emergency situations, such as emergency evacuations. Therefore, may not be able to fund communicative technology and accessories, in-person visitation aids and air quality devices and filters requests for all, or some subrecipients.

H. Period of Performance

The funding period for the enhancement grants will be one, two, or three years, depending on the length of time requested to complete a proposed project, beginning with the date of the individual contracts and ending with the expenditure of grant funds.

The funding period for communicative technology requests will be one year, beginning with the date of April 24, 2020.

The funding period for in-person visitation aids requests will be one year, beginning with the date of September 17, 2020.

The funding period for air quality devices and filters requests will be one year, beginning with the date of February 02, 2022.

I. Procurement and Suspension and Debarment

All grantees that expend State funds (including federal funds passed through the N. C. Department of Health and Human Services) are required to comply with the procurement standards described in the North Carolina General Statutes and the North Carolina Administrative Code, which are identified in the State of North Carolina Procurement Manual accessible on the Internet at <https://ncadmin.nc.gov/government/procurement/procurement-rules>.

The Division may require the return of all or part of the funds if the subrecipient fails to comply with all terms, conditions, and provisions of the executed contract.

Except in the cases of communicative technology and accessories, in-person visitation aids and air quality devices and filters requests, suspension and debarment applies.

L. Reporting

Except in the cases of communicative technology and accessories, in-person visitation aids and air quality devices and filters requests, subrecipients shall complete and submit to DHHS a written quarterly narrative report detailing their progress for the duration of the executed contract period and include any CMS conditions or requests that were listed in the CMS approval letter.

Except in the cases of communicative technology and accessories, in-person visitation aids and air quality devices and filters requests, subrecipients must also complete and submit to DHHS a quarterly expense report until all funds have been expended. The expense report must be completed on a DHHS-approved form and must reflect costs incurred during the prior fiscal quarter reflected in that quarter's reimbursement bills.

Within 3 months after the end of their fiscal year, subrecipients are required to comply with G.S. 143C-6-23 and the North Carolina Administrative Code 09 NCAC 03M. Failure to submit this

information to the State funding agency's Contract Administrator could result in a grantee's name being placed on the state auditor's public list of non-compliant grantees.

M. Subrecipient Monitoring

To maintain the integrity of the grant program, DHSR personnel serving on behalf of the Coalition, will make a planned, on-site visit annually during the grant period to each grant receiving nursing home to monitor grant compliance. Additional visits may be conducted as needed to assess compliance. If visitation restrictions are in place, the annual on-site visit shall be conducted virtually. Except in the cases of communicative technology and accessories, in-person visitation aids and air quality devices and filters requests.

Regardless of how visits are conducted, there are certain core principles and best practices that reduce the risk of COVID-19 transmission, as detailed in CMS's Center for Clinical Standards and Quality/Survey & Certification Group Memorandum dated September 17, 2020 (REF: QSO-20-39-NH) ("Principles").

The principles must be adhered to at all times.

Nursing Home will ensure visitors who are unable to adhere to the Principles of COVID-19 infection prevention will not be permitted to visit or be asked to leave.

N. Special Tests and Provisions

1. Budget Amendments

Compliance Requirement – Subrecipients may not amend their budgets during the contract period. The line-item Budget within the contract sets out the items for which the Contractor may be reimbursed and the amounts for which it may be reimbursed.

Audit Objective – To determine that the budget approved by CMS and the budget used by the subrecipient are identical. To determine that the line-item expenditures reported on the Request for Reimbursement to the State have not exceeded approved line item budgeted amounts.

Suggested Audit Procedures – Compare, by line item, the subrecipient program expenses with the final budget as approved by CMS. The auditor should review the Consolidated Contract, Contract Addendum, Budgetary Guidance, expenditure reports and activity reports for verification that the reported expenditures are allowable and supported by documentation.

2. Indirect Costs

Compliance Requirement – If budgeted, the subrecipient may include indirect cost in their budgets. Indirect cost may not be duplicated elsewhere in the budget.

A subrecipient may not include indirect cost in the cases of communicative technology and accessories, in-person visitation aids and air quality devices and filters requests.

Suggested Audit Procedures – The indirect cost plan supporting the indirect cost reported should be reviewed to determine that cost included in the plan is allowable and equitably allocated. Any discrepancies should be disclosed in the audit as "questioned costs."

The subrecipient shall provide an Indirect Cost Letter whenever their indirect cost is 10% or higher.