TENNCARE POLICY MANUAL

Policy No:	PRO 16-002 (Rev. 1)		
Subject:	Delinquent Balances on Nursing Facility Assessment Fees		
Approval:		**Date:**	7/31/17

BACKGROUND:
Tennessee law[1] provides for an annual assessment fee to be charged to nursing homes that are licensed by the Department of Health and that provide care in Tennessee. While the fee is calculated on an annual basis, nursing homes remit payment in quarterly installments. Proceeds from the fee are placed in a trust fund and draw matching dollars from the Centers for Medicare and Medicaid Services (CMS) to help pay for certain nursing home services covered by the Tennessee Division of Health Care Finance and Administration (HCFA).

Occasionally, nursing homes subject to the assessment fee accrue delinquent balances by failing to remit payment in a timely manner. Legislation passed by the General Assembly in 2016[2] defines the ways in which HCFA may address these delinquent balances. Among the provisions of the legislation are payment plans for facilities committed to bringing their balances to a status of "current," as well as recoupments, penalties, and loss of supplemental payments (both Quality and Acuity) for facilities whose balances remain delinquent.

POLICY/PURPOSE:
The purpose of this policy is to ensure that facilities fulfill their obligations related to the nursing home assessment fee in a timely manner. HCFA encourages all nursing homes to remit quarterly installment payments by the statutorily defined due dates. Although the "Procedures" section of this policy outlines circumstances in which payment plans may be granted, such arrangements should be viewed as a last resort.

DEFINITION/CLARIFICATION OF TERMS:

1. <u>Date of Delinquency</u>. This date immediately follows the last day on which a nursing home's assessment fee payment must have been received by HCFA to be considered timely. To

[1] T.C.A. § 71-5-1003
[2] Public Chapter No. 883

eliminate any ambiguity about a nursing home's date of delinquency, each assessment fee invoice issued by HCFA will include a memo specifying the date on which payment of the fee will be considered delinquent.

2. Days. For purposes of this policy, "days" refers to calendar days. Due dates or other deadlines that would fall on a weekend or holiday are transferred to the first business day thereafter.

3. Payment Plan Proposal / Payment Plan. A payment plan proposal is a formal, written request to HCFA's Chief Financial Officer that not only details the circumstances of a nursing home's fee payment delinquency, but also proposes a schedule of payments equal to the facility's total outstanding balance. A payment plan proposal becomes an active payment plan once HCFA has approved the proposal and received the facility's first scheduled payment. An active payment plan is a precondition for a delinquent facility to resume receiving Quality and Acuity payments and to stop accruing penalties and interest on the outstanding balance.

4. Quality Payments / Acuity Payments. These are two types of supplemental payments made to nursing homes by HCFA. A facility that is delinquent with regard to fee payments will lose eligibility for such payments until the past due balance is paid or an active payment plan is in place. Supplemental payments lost during a period of delinquency will not be restored to a facility once the past due balance is paid.

PROCEDURES:

1. Categorization of delinquent nursing homes. In defining how it will respond to instances of delinquent fee payment, HCFA recognizes three categories of nursing homes:

    - **Group A** – facilities that carried a delinquent balance into State Fiscal Year (SFY) 2017;
    - **Group B** – facilities that develop a delinquent balance during SFY 2017 or afterward; and
    - **Group C** – facilities that develop a delinquent balance during SFY 2017 or afterward, enter into a payment plan with the State, and fail to abide by the terms of the payment plan.

    The manner in which HCFA addresses delinquent balances held by nursing homes in each of these groups will be discussed in Procedures 3-5 below.

2. Evaluation process. HCFA has discretion in responding to instances of delinquent fee payment in their early stages. The agency may, for instance, allow a nursing home to enter into a payment plan. Alternately, recoupment from scheduled Quality and Acuity payments and imposition of penalties and interest may occur. The course of action pursued depends on an evaluation conducted by HCFA, one that takes into account not only the needs of TennCare enrollees, but also the answers to such questions as—

- Has the facility made an effort to pay its assessment fees?
- Does the facility have a history of delinquent payments?
- Does the facility have the financial ability to pay?
- Does the facility have adequate margins (i.e., a proper balance between revenue and cost)?
- Is there a pending bankruptcy or change in ownership?
- Is there a specific circumstance that precipitated the delinquency, and is it likely to recur?
- Has the facility implemented proper corrective actions to prevent future delinquency?
- Does the facility have a history of non-compliance in areas other than fee payment?
- Has the facility acted in good faith, and been open and transparent in dialogue with HCFA?
- Are there other mitigating—or aggravating—factors to be considered?

These questions have been developed by HCFA as a guide and, therefore, may be applied in any manner the agency deems useful. Depending on a particular facility's history and circumstances, HCFA may place greater emphasis on some questions and/or exclude some questions from the evaluation altogether.

As assessment fee balances remain unpaid, HCFA will report certain instances of delinquency to the Board for Licensing Health Care Facilities to determine whether admissions to the nursing home should be suspended and/or whether the nursing home's license should be revoked.

3. Responding to delinquent balances by nursing homes in Group A. For nursing homes that carried a delinquent assessment fee balance into SFY 2017, HCFA will formulate action plans on a case-by-case basis.

4. Responding to delinquent balances by nursing homes in Group B. For nursing homes that develop a delinquent assessment fee balance during SFY 2017 or afterward, HCFA's response will occur in two stages.

   The first stage occurs **30 days after the assessment fee due date**. At this point, a facility that has not yet paid any outstanding assessment fee—either from the current quarter or from any previous quarter—will be considered delinquent, and penalties and interest will accrue on the outstanding balance beginning on the initial due date. As a result, supplemental payments to the facility will be affected. Beginning on the date of delinquency, the first installment of the Quality payments to the facility will be forfeited and redistributed to the Quality payment pool, and the quarterly installment of the Acuity payments to the facility will be withheld and deducted from the facility's outstanding balance. These actions will occur even if the facility has paid the delinquent balance in full—or has obtained HCFA's approval of a payment plan proposal—on the 31st day following the due date. In addition, the facility will remain ineligible for Quality payments and will continue to have Acuity payments withheld until either the outstanding balance is paid in full or the first installment of an active payment plan has been received. A facility in compliance with its active payment plan will not be subject to withholding of supplemental payments, provided that the facility has no other delinquency. A facility that has a payment plan related to a previous delinquency will still be subject to enforcement of this policy should a delinquency on any subsequent assessment occur.

The second stage occurs **90 days after the assessment fee due date**. For facilities that have neither paid the assessment fee in full nor entered into a payment plan by this point, HCFA will initiate proceedings before the Board for Licensing Health Care Facilities as required by Tennessee law.[3] The proceedings will address whether admissions to the facility should be suspended.[4]

5. Responding to delinquent balances by nursing homes in Group C. As with facilities in Group B, HCFA's response to nursing homes in Group C will occur in stages. These stages are based not on the original assessment fee due date, but on the due date of the payment plan installment.

   The first day after a missed installment due date, the facility will be notified by letter that it has seven days after the due date either to pay the installment or to restructure the payment plan with HCFA. It should be noted that HCFA is under no obligation to accept a restructured payment plan and may renegotiate the repayment terms.

   Facilities that have not paid the installment or obtained a restructured payment plan by **the eighth day after a missed installment due date** are subject to several measures. These include the following:

   - Reinstatement of all previous penalties and interest that had been avoided by timely installment payments;
   - New penalties and interest, which are calculated from the missed installment due date until the facility's balance is current;
   - Immediate ineligibility for supplemental payments (in the same manner as applied to Group B) and complete recoupment of future Acuity payments until the facility's balance is current or the payment plan is reestablished or restructured; and
   - Additional recoupments as necessary (at a pace determined by HCFA).

   On **the thirtieth (30th) day after a missed installment due date**, if the facility has neither paid the installment in full nor restructured its payment plan with TennCare, HCFA will initiate

[3] T.C.A. § 71-5-1006(c)(2)(A)

[4] If the Board does suspend admissions, the facility has 60 days either to pay the assessment fee in full or enter into a payment plan. If the facility fails to do either, TennCare will initiate proceedings with the Board to revoke the facility's license, as required by T.C.A. § 71-5-1006(c)(4).

proceedings before the Board for Licensing Health Care Facilities as required by Tennessee law (in the same manner as with Group B).

OFFICES OF PRIMARY RESPONSIBILITY:

HCFA Assessment Review Committee
HCFA Fiscal Office

REFERENCES:

http://www.lexisnexis.com/hottopics/tncode/
T.C.A. §§ 71-5-1003 and 71-5-1006

http://share.tn.gov/sos/acts/109/pub/pc0883.pdf
Public Chapter No. 883, Public Acts of the Tennessee 109th General Assembly

---

Original: 09/01/16: JTR
Revision 1: 07/31/17: JTR