

the average daily charge collected from such patient or patients;

7. For violations of licensure regulations related to patient care or physical plant standards that represent a risk to the health, safety, or welfare of patients or residents of a facility or the general public, \$500.00 per violation where such deficiencies are isolated or occasional and do not represent a pattern or widespread practice throughout the facility;

8. Where there are multiple deficiencies related to patient care or physical plant standards throughout a facility, and/or such violations represent a direct risk that a patient's physical or mental health will be compromised, or where an actual violation of a resident's or patient's rights is found, a penalty of \$1,000 per violation may be assessed for each day noncompliance is found;

9. For repeated violations of any licensing regulation within a 12-month period or on successive annual inspections, or failure to implement an approved plan of correction, where such violation was not the subject of a previous penalty assessment, \$500.00 per violation, which may be assessed for each day noncompliance is found. If the initial violation resulted in the assessment of a penalty, within a 12-month period or on successive annual inspections, the second violation shall result in a doubling of the original fine, and the third and successive violations shall result in a tripling of the original fine;

10. For violations resulting in either actual harm to a patient or resident, or in an immediate and serious risk of harm, \$2,500 per violation, which may be assessed for each day noncompliance is found;

11. For failure to report information to the Department as required by statute or licensing regulation, after reasonable notice and an opportunity to cure the violation, \$250.00 per day;

12. For failure to implement a Certificate of Need condition of approval, \$1,000 per day, which shall be assessed either from the date specified in the Certificate of Need for implementation of the specific condition of approval, if identified, or from the date on which the Certificate of Need was considered to be implemented;

13. For violations of rules governing the prohibition of mandatory overtime contained in N.J.A.C. 8:43E-8, \$1,000 per violation, which may be assessed for each day noncompliance is found;

14. For failure of an entity licensed in accordance with N.J.S.A. 26:2H-1 et seq. to submit a serious preventable adverse event report to the Department in a timely fashion, as defined in N.J.A.C. 8:43E-10.6, the following, which shall be levied from the date following the date the report was due to be submitted to the Department until the date on which the report is received by the Department:

i. \$1,000 per day for general hospitals, with the maximum penalty assessed per event not to exceed \$100,000; and

ii. \$250.00 per day for all other facilities, with the maximum penalty assessed per event not to exceed \$25,000; and

15. For failure of an entity licensed in accordance with N.J.S.A. 26:2H-1 et seq. to disclose to a patient or resident, pursuant to N.J.A.C. 8:43E-10.7, a serious preventable adverse event that affected that patient or resident, the following:

i. \$1,000 for failure to disclose an event that the health care facility also failed to report, in a timely manner, to the Department; and

ii. \$5,000 for failure to disclose an event that the health care facility reported, in a timely manner, to the Department.

(b) Except for violations deemed to be immediate and serious threats, the Department may decrease the penalty assessed in accordance with (a) above, based on the compliance history of the facility; the number, frequency and/or severity of violations by the facility; the measures taken by the facility to mitigate the effects of the current violation, or to prevent future violations; the deterrent effect of the penalty; and/or other specific circumstances of the facility or the violation.

(c) The Department may increase the penalties in (a) above up to the statutory maximum per violation per day in consideration of the economic benefit realized by the facility for noncompliance.

Amended by R.2004 d.71, effective February 17, 2004.

See: 35 N.J.R. 4195(a), 36 N.J.R. 1017(a).

Amended (a)3 and (a)4; added (a)13.

Amended by R.2008 d.52, effective March 3, 2008.

See: 39 N.J.R. 314(a), 40 N.J.R. 1094(a).

In the introductory paragraph of (a) and in (a)13, substituted "rules" for "regulations"; in (a)12, deleted "or" from the end; in (a)13, substituted a semicolon for the period at the end; and added (a)14 and (a)15.

Case Notes

Where it was undisputed that a client of an adult medical day care, who was 84 years old and suffering from numerous medical problems, was picked up by its van in order to be transported to its facility, the van arrived at the facility at about 10:15 a.m., and the client was left unattended in the van from 10:15 a.m. to 1:00 p.m., the day care was ordered to pay a penalty of \$2,500, pursuant to N.J.A.C. 8:43E-3.4(10), for violating N.J.A.C. 8:43F-17.2. The client suffered actual harm as a result of the violation for it was stipulated that the client was verbally unresponsive, had labored breathing, elevated respiration and elevated vital signs, and the facility, in fact, called 911 to address her condition. N.J. Dep't of Health & Senior Services v. Senior Care of Marlton, OAL Dkt. No. HLT 8253-07, 2008 N.J. AGEN LEXIS 75, Initial Decision (January 18, 2008).

8:43E-3.5 Failure to pay a penalty; remedies

(a) Within 30 days after the mailing date of a Notice of Proposed Assessment of a Penalty, a facility which intends to challenge the enforcement action shall notify the Department

of its intent to request a hearing pursuant to the Administrative Procedure Act.

(b) The penalty becomes due and owing upon the 30th day from mailing of the Notice of Proposed Assessment of Penalties, if a notice requesting a hearing has not been received

by the Department. If a hearing has been requested, the penalty is due 45 days after the issuance of a Final Agency Decision by the Commissioner, if the Department's assessment has not been withdrawn, rescinded, or reversed, and an appeal has not been timely filed with the New Jersey Superior Court, Appellate Division pursuant to New Jersey Court Rule 2:2-3.