1. A specific listing of the deficiencies for which informal review is requested; and

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2. Documentation supporting any contention that a survey finding was in error.

(c) The review will be conducted within 10 business days of the request by supervisory staff of Health Facilities Inspection Services who did not directly participate in the survey. The review can be conducted in person at the offices of the Department or, by mutual agreement, solely by review of the documentation as submitted.

(d) A decision will be issued by the Department within seven business days of the conference or the review, and if the determination is to agree with the facility's contentions, the deficiencies will be removed from the record. If the decision is to disagree with the request to remove deficiencies, a plan of correction is required within five business days of receipt of the decision. The facility retains all other rights to appeal deficiencies and enforcement actions taken pursuant to these rules.

8:43E–2.4 Plan of correction

(a) The Department may require that the facility submit a written plan of correction specifying how each deficiency that has been cited will be corrected along with the time frames for completion of each corrective action. A single plan of correction may address all events associated with a given deficiency.

(b) The plan of correction shall be submitted within 10 business days of the facility's receipt of the notice of violations, unless the Department specifically authorizes an extension for cause. Where deficiencies are the subject of informal dispute resolution pursuant to N.J.A.C. 8:43E–2.3, the extension shall pertain only to the plans of correction for the deficiencies under review.

(c) The Department may require that the facility's representatives appear at an office conference to review findings of serious or repeated licensure deficiencies and to review the causes for such violations and the facility's plan of correction.

(d) The plan of correction shall be reviewed by the Department and will be approved where the plan demonstrates that compliance will be achieved in a manner and time that assures the health and safety of patients or residents. If the plan is not approved, the Department may request that an amended plan of correction be submitted within five business days. In relation to violations of resident or patient rights, the Department may direct specific corrective measures that must be implemented by facilities.

SUBCHAPTER 3. ENFORCEMENT REMEDIES

8:43E–3.1 Enforcement remedies available

(a) Pursuant to N.J.S.A. 26:2H–13, 14, 15, 16 and 38, the Commissioner or his or her designee may impose the following enforcement remedies against a health care facility for violations of licensure regulations or other statutory requirements:

1. Civil monetary penalty;

2. Curtailment of admissions;

3. Appointment of a receiver or temporary manager;

4. Provisional license;

5. Suspension of a license;

6. Revocation of a license;

7. Order to Cease and Desist operation of an unlicensed health care facility; and

8. Other remedies for violations of statutes as provided by State or Federal law, or as authorized by Federal survey, certification, and enforcement regulations and agreements.

Case Notes

Improper transfer of nursing care facilities; period from dates on which facilities entered into agreements until applications for Certificate of Need filed constituted periods of violations; penalties assessed. In Matter of Oakridge Manor Nursing Home. 93 N.J.A.R.2d (HLT) 1.

8:43E–3.2 Notice of violations and enforcement actions

The Commissioner shall serve notice to a facility of the proposed assessment of civil monetary penalties, suspension or revocation of a license, or placement on a provisional license, setting forth the specific violations, charges or reasons for the action. Such notice shall be served on a licensee or its registered agent in person or by certified mail.

8:43E–3.3 Effective date of enforcement actions

The assessment of civil monetary penalties, or revocation of a license, or the placement of a license on provisional status shall become effective 30 days after the date of mailing or the date personally served on a licensee, unless the licensee shall file with the Department a written answer to the charges and give written notice to the Department of its desire for a hearing in which case the assessment, suspension, revocation, or placement on provisional license status shall be held in abeyance until the administrative hearing has been concluded and a final decision is rendered by the Commissioner. Hearings shall be conducted in accordance with N.J.A.C. 8:43E–4.1.

8:43E–3.4 Civil monetary penalties

(a) Pursuant to N.J.S.A. 26:2H–13 and 14, the Commissioner may assess a penalty for violation of licensure regulations in accordance with the following standards:

1. For operation of a health care facility without a license, or continued operation of a facility after suspension or revocation of a license, $250.00 per day from the date of initiation of services;

2. For violation of an order for curtailment of admissions, $250.00 per patient, per day from the date of such admission to the date of discharge or lifting of the curtailment order;

3. For failure to obtain prior approval from the Licensing Program, Division of Health Facilities Evaluation and Licensing, for occupancy of an area or initiation of a service following construction or application for licensure, $250.00 a day;

4. For construction or renovation of a facility without the Department's approval of construction plans, $1,000 per room or area renovated and immediate suspension of use of the room or area;

5. For the transfer of ownership of a health care facility without prior approval of the Department, $250.00 per day from the date of the transfer of interest to the date of discovery by the Department. Such fine may be assessed against each of the parties at interest;

6. For maintaining or admitting more patients or residents to a facility than the maximum capacity permitted under the license, except in an emergency as documented by the facility in a contemporaneous notice to the Department, $25.00 per patient per day plus an amount equal to 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, $250.00 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 $500.00 per violation may be assessed for each day non-compliance is found;

9. For repeated violation 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, $250.00 per violation, which may be assessed for each day non-compliance 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, $1,000 per violation, which may be assessed for each day non-compliance 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; or

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.

(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 non-compliance.

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

(a) Upon the receipt of a Notice of the Proposed Assessment of a Penalty, a facility has 30 days in which to notify the Department of its intent to request a hearing pursuant to the Administrative Procedures Act.

(b) The penalty becomes due and owing upon the 30th day from receipt 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 Appellate Division pursuant to Rule 2:2–3 of the New Jersey Court Rules.

(c) Failure to pay a penalty within 30 days of the date it is due and owing pursuant to (b) above may result in one or more of the following actions:

1. Institution of a summary civil proceeding by the State pursuant to the Penalty Enforcement Law (N.J.S.A. 2A:58–1 et seq.); or

2. Placing the facility on a provisional license status.

8:43E–3.6 Curtailment of admissions

(a) The Department may issue an order curtailing all new admissions and readmissions to a health care facility in the following circumstances: