

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; and

12. 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.

(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).

5:27A-18.5 Failure to pay a penalty; remedies

(a) Within 30 days after the mailing date of a Notice of Proposed Assessment of a Penalty, a residential health care 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.

(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.

5:27A-18.6 Curtailment of admissions

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

1. Where violations of licensing regulations are found that have been determined to pose an immediate and serious threat of harm to patients or residents of a residential health care facility;
2. Where the Department has issued a Notice of Proposed Revocation or Suspension of a residential health care facility license, for the purpose of limiting the census of a facility if patients or residents must be relocated upon closure;
3. Where the admission or readmission of new patients or residents to a residential health care facility would impair the facility's ability to correct serious or widespread violations of licensing regulations related to direct patient care and cause a diminution in the quality of care; or
4. For exceeding the licensed or authorized bed or service capacity of a residential health care facility, except in those instances where exceeding the licensed or authorized capacity was necessitated by emergency conditions and where immediate and satisfactory notice was provided to the Department.

(b) The order for curtailment may be withdrawn upon a survey finding that the residential health care facility has achieved substantial compliance with the applicable licensing regulations or Federal certification requirements and that there is no immediate and serious threat to patient safety, or in the case of providers exceeding licensed capacity, has achieved a census equivalent to licensed and approved levels. Such order to lift a curtailment may reasonably limit the number and priority of patients to be admitted by the facility in order to protect patient safety.

5:27A-18.7 Appointment of a receiver

(a) Pursuant to N.J.S.A. 26:2H-42 et seq., the Department may seek an order or judgment in a court of competent jurisdiction, directing the appointment of a receiver for the purpose of remedying a condition or conditions in a residential health care facility that represent a substantial or habitual violation of the standards of health, safety, or resident care adopted by the Department or pursuant to Federal law or regulation.

(b) The Department shall review and approve the receiver's qualifications prior to submission for court approval. The receiver shall have experience and training in residential health care. The Department shall maintain a list of interested and approved receivers.

(c) No receiver may be a current owner, licensee, or administrator of the subject residential health care facility or a spouse or immediate family member thereof.

5:27A-18.8 Suspension of a license

(a) Pursuant to N.J.S.A. 26:2H-14, the Commissioner may order the summary suspension of a license of a residential health care facility or a component or distinct part of a facility upon a finding that violations pertaining to the care of patients or to the hazardous or unsafe conditions of the physical structure pose an immediate threat to the health, safety, and welfare of the public or the residents of the facility.

(b) Upon a finding described in (a) above, the Commissioner or the Commissioner's authorized representative shall serve notice in person or by certified mail to the residential health care facility or its registered agent of the nature of the findings and violations and the proposed order of suspension. Except in the case of a life-threatening emergency, the notice shall provide the facility with a 72-hour period from receipt to correct the violations and provide proof to the Department of such correction.

(c) If the Department determines the violations have not been corrected, and the residential health care facility has not filed notice requesting a hearing to contest the notice of suspension within 48 hours of receipt of the Commissioner's notice pursuant to (e) below, then the license shall be deemed suspended. Upon the effective date of the suspension, the

facility shall cease and desist the provision of health care services and effect an orderly transfer of patients.

(d) The Department shall approve and coordinate the process to be followed during an evacuation of the residential health care facility or cessation of services pursuant to an order for suspension or revocation.

(e) If the residential health care facility requests a hearing within 48 hours of receipt of the Notice of Proposed Suspension of License in accordance with N.J.S.A. 26:2H-14, the Department shall arrange for an immediate hearing to be conducted by the Commissioner and a final agency decision shall be issued within 48 hours by the Commissioner. If the Commissioner shall affirm the proposed suspension of the license, the order shall become final. The licensee may apply for injunctive relief against the Commissioner's order in the New Jersey Superior Court, in accordance with the provisions set forth in N.J.S.A. 26:2H-14.

(f) Notwithstanding the issuance of an order for proposed suspension of a license, the Department may concurrently or subsequently impose other enforcement actions pursuant to these rules.

(g) The Department may rescind the order for suspension upon a finding that the residential health care facility has corrected the conditions which were the basis for the action.

5:27A-18.9 Revocation of a license

(a) A Notice of the Proposed Revocation of a residential health care facility license may be issued in the following circumstances:

1. The facility has failed to comply with licensing requirements, posing an immediate and serious risk of harm or actual harm to the health, safety, and welfare of patients or residents, and the facility has not corrected such violations in accordance with an approved plan of correction or subsequent to imposition of other enforcement remedies issued pursuant to these rules;

2. The facility has exhibited a pattern and practice of violating licensing requirements, posing a serious risk of harm to the health, safety and welfare of residents or patients. A pattern and practice may be demonstrated by the repeated violation of identical or substantially-related licensing regulations during three consecutive surveys, or the issuance of civil monetary penalties pursuant to N.J.A.C. 5:27A-18.4 or other enforcement actions for unrelated violations on three or more consecutive surveys;

3. Failure of a licensee to correct identified violations which had led to the issuance of an order for suspension of a license, pursuant to N.J.A.C. 5:27A-3.6 or 3.8; or

4. Continuance of a facility on provisional licensure status for a period of 12 months or more.