

ARTICLE 7. VIOLATIONS AND CIVIL PENALTIES

s 72701. Definitions.

(a) The following definitions shall apply to this Article:

(1) Substantial probability means that the likelihood of an event is real, actual and not imaginary, insignificant or remote.

(2) Serious physical harm means that type of dangerous bodily injury, illness or condition in which:

(A) A part of the body would be permanently removed, rendered functionally useless or substantially reduced in capacity, either temporarily or permanently and/or

(B) A part of an internal function of the body would be inhibited in its normal performance to such a degree as to temporarily or permanently cause a reduction in physical or mental capacity or shorten life.

(3) Direct relationship means one in which a significant risk or effect is created and does not include a remote or minimal risk or effect.

(4) A class "C" violation is any violation of a statute or regulation relating to the operation or maintenance of a skilled nursing facility which the Department determines has only a minimal relationship to the health, safety or security of the skilled nursing facility patients.

Note: Authority cited: Sections 208(a) and 1275, Health and Safety Code. Reference: Sections 1276, 1424 and 1427, Health and Safety Code.

s 72703. Class "A" Violations -Examples.

Note: Authority cited: Sections 100275(a) and 1275, Health and Safety Code. Reference: Sections 1276, 1424 and 1426, Health and Safety Code.

HISTORY

Repealer of section and amendment of Note filed 5-30-96; operative 6-29-96
(Register 96, No. 22).

s 72705. Class "B" Violations -Examples.

Note: Authority cited: Sections 100275(a) and 1275, Health and Safety Code. Reference: Sections 1276, 1424 and 1426, Health and Safety Code.

HISTORY

Repealer of section and amendment of Note filed 5-30-96; operative 6-29-96
(Register 96, No. 22).

s 72707. Filing of Names and Addresses.

(a) The licensee of each skilled nursing facility shall file with the Department the address of the licensee to whom all citations and notices concerning any class "A" or class "B" violations shall be mailed by the Department.

(b) Each such licensee shall also designate one or more persons who is authorized to accept on the licensee's behalf any citations to be served by any representative of the Department.

(c) Each such licensee shall file with the Department the names or titles of those persons who are such designees of the licensee.

(d) Each such licensee shall also file with the Department a written notice of any change in address or of any change of designee. The Department shall mail all citations or notices to the latest address on file with the Department.

Note: Authority cited: Sections 208(a) and 1275, Health and Safety Code. Reference: Section 1276, Health and Safety Code.

s 72709. Issuance of Citations.

(a) Each citation shall be in writing and shall include at least the following in addition to that required in Section 1423(a), Health and Safety Code:

(1) The earliest feasible time for the elimination of the condition constituting the violation. Such time shall be the shortest possible time within which the licensee reasonably can be expected to correct the alleged violation. In prescribing such time, the Department shall consider the following factors:

(A) The seriousness of the alleged violation.

(B) The number of patients affected.

(C) The availability of required equipment or personnel.

(D) The estimated time required for delivery, and any installation of required equipment.

(E) Any other relevant circumstances.

(2) The name, address and telephone number of the district administrator of the district in which the facility is located.

Note: Authority cited: Sections 208(a) and 1275, Health and Safety Code. Reference: Sections 1276 and 1423(a), Health and Safety Code.

s 72711. Penalties.

(a) In fixing the amount of the civil penalty to be imposed for a class "A" violation, the district administrator or his designee, shall consider:

(1) The gravity of the violation which shall include:

(A) The degree of substantial probability that death or serious physical harm to the patient would result and if applicable, did result, from the violation.

(B) The severity of serious physical harm to a patient or guest which was likely to result and if applicable, that did result, from the violation.

(C) The extent to which the provisions of the applicable statutes or regulations were violated.

(2) The "Good Faith" exercised by the licensee. Indications of good faith include awareness of the applicable statutes and regulations and reasonable diligence in complying with such requirements, prior accomplishments manifesting the licensee's desire to comply with such requirements, and any other mitigating factors in favor of the licensee.

(3) Any previous violations committed by the licensee.

Note: Authority cited: Sections 208(a) and 1275, Health and Safety Code. Reference: Sections 1276, 1424, 1425, 1426 and 1427, Health and Safety Code.

s 72713. Citation Review Conference.

(a) At a citation review conference:

(1) The licensee shall have the right to be represented by legal counsel, or a person of the licensee's choosing, to present oral or written information on the licensee's behalf, and to explain any mitigating circumstances.

(2) The representatives of the Department who issued the citation should attend the conference and present information, oral or written, in substantiation of the alleged violation.

(3) The conference shall be an informal proceeding, and shall not be conducted in the manner of a judicial hearing or as a hearing under the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and need not be conducted according to technical rules relating to evidence and witnesses.

(4) Neither the licensee nor the Department shall have the right to subpoena any witness to attend the conference, to record testimony at the conferences, nor to formally cross-examine any person testifying at the conference. However, the licensee and the Department may present any witness on its behalf at the conference.

Note: Authority cited: Sections 208(a) and 1275, Health and Safety Code. Reference: Sections 1276 and 1428, Health and Safety Code.

BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS
TITLE 22. SOCIAL SECURITY
DIVISION 5. LICENSING AND CERTIFICATION OF HEALTH FACILITIES, HOME
HEALTH
AGENCIES, CLINICS, AND REFERRAL AGENCIES
CHAPTER 3.5. RECEIVERSHIP MANAGEMENT OF LONG-TERM CARE
FACILITIES

s 72801. Minimum Qualifications for a Receiver.

(a) In order to be on the Department list of potential receivers an individual or entity shall be a:

(1) Nursing Home Administrator licensed by the California Board of Examiners of Nursing Home Administrators, or

(2) responsible person, which shall mean a retired nursing home administrator, other person with experience in management of a health facility, public health administrator, or corporate officer or,

(3) responsible entity, which shall mean a public agency, a corporation, or a partnership that provides health facility management consultation and has been or is currently a California health facility licensee.

(b) If the potential receiver is an individual with professional licensure, he or she shall be in good standing with the applicable professional licensing board at the time of appointment.

(c) If the potential receiver is an entity, the entity shall be currently licensed to operate a health facility, or must be able to meet current standards for health facility licensing at the time of appointment.

(d) The potential receiver shall have experience in the delivery of health care services which means:

(1) If an individual, at least 12 consecutive months experience as an administrator or assistant administrator of a health facility licensed by the State of California.

(2) If an entity, shall have operated a California licensed health facility for a minimum of 12 consecutive months.

Note: Authority cited: Sections 208(a), 1275 and 1335, Health and Safety Code.

Reference: Section 1327(b), Health and Safety Code.

HISTORY

1. New section filed 10-15-91; operative 11-14-91 (Register 92, No. 3).

s 72803. Receivership Investigation.

(a) Any person having knowledge of circumstances which may warrant the petitioning of the court for appointment of a receiver according to the provisions of Health and Safety Code Sections 1325-1335 may notify the Director of the Department of Health Services and request that the Department initiate a receivership investigation.

(b) A request for a receivership investigation shall be made in writing and shall include the following:

(1) The name and address of the facility for which the investigation is being requested.

(2) The basis for the request as specified in Health and Safety Code Section 1327(a).

(3) All facts upon which the request is based.

(4) The name, address and phone number of the person or persons making the request for investigation.

(c) Within 45 days of receipt of a request for receivership investigation, the Department shall notify the person or persons making the request whether the Department intends to petition the court for the appointment of a receiver for the long-term care health facility which was the subject of the requested investigation.

Note: Authority cited: Sections 208(a), 1275 and 1335, Health and Safety Code.

Reference: Sections 1327(a) and 1327.1, Health and Safety Code.

HISTORY

1. New section filed 10-15-91; operative 11-14-91 (Register 92, No. 3).

s 72805. Duties of a Receiver.

(a) A receiver shall comply with the provisions of Health and Safety Code Section 1336 in the transfer of any patient from the facility while acting in the capacity of receiver.

(b) A receiver shall not interfere with the health facility licensee's attempt to secure a change in ownership or to secure a new licensee to operate the facility.

(c) If the receiver needs the assistance of staff other than those needed for the operation of the facility, he or she shall notify the Department in writing and request the court to authorize any expenditures.

(d) The receiver shall comply with all licensing requirements applicable to the type of long-term health care facility for which he or she is a receiver.

(e) No later than 45 days after appointment as the receiver for a facility, the receiver shall

make a written report to the court and to the Department which includes the following information:

(1) A description of the physical condition of the long-term health facility plant including:

(A) Any deficiencies in the facility plant which affect facility operation.

(B) A recommendation whether the physical condition of the facility will allow for its continued operation as a long-term health care facility.

(2) The receiver's assessment of the probability that the long-term health care facility will meet State standards for operation by the end of 4 months under receivership or by an alternate date specified by the Department.

(3) The number of patients remaining in the facility and the number of patients transferred during the receivership.

Note: Authority cited: Sections 208(a), 1275 and 1335, Health and Safety Code.

Reference: Sections 1329, 1331(c) and 1336, Health and Safety Code.

HISTORY

1. New section filed 10-15-91; operative 11-14-91 (Register 92, No. 3).