

CHAPTER 22

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22.A. Definitions

For the purposes of this Chapter, the following words have the following meanings:

22.A.1. "Deficiency" means a failure to comply with State licensing regulations.

22.A.2. "Directed Plan of Correction" means a plan of correction issued by the Department which directs a nursing facility how and when to correct any deficiency or deficiencies.

22.A.3. "Division" means the Division of Licensing and Certification.

22.A.4.A "failure to correct any deficiency" occurs when a nursing facility does not remedy a deficiency within the time established in a plan of correction or directed plan of correction or if an extension has been granted by the Division, within the period of that extension.

22.A.5. "False information" means written or verbal statements or representations of fact that are not true and that were made intentionally, knowingly or without having taken reasonable steps to ascertain whether or not they were true.

22.A.6. "Impede or interfere with the enforcement of laws or regulations" means either a failure to provide to Division representatives information that is necessary to determine compliance with licensure laws or regulations, failure to allow Division representatives access to a nursing facility or any part of a nursing facility, failure to preserve evidence related to a particular violation, or retaliation against residents/employees for lodging of complaints with the Department of Human Services.

22.A.7. "Person" means any natural person, partnership, association or corporation or other entity, including any county, local or governmental unit.

22.A.8. "Plan of Correction" means a document executed by a nursing facility in response to a statement of deficiencies issued by the Division.

22.A.9. "Resident's rights" means those rights enumerated in either the Resident's Rights Act, 22 M.R.S.A. Section 7921 et seq., Chapter 10 of these regulations or 42 United States Code Section 1396 r (c).

22.A.10. "A repeated deficiency" occurs whenever a nursing facility fails to comply with the same State licensing regulation or fails to comply with the same requirement of 42 United States Code Section 1396 r (b), (c) or (d) on more than one occasion within a two year period.

22.A.11. "State licensing regulations" refers to the Division's regulations governing the licensing and functioning of nursing facilities.

22.A.12. "Statement of Deficiencies" means a document issued by the Division which describes a nursing facility's deficiencies in complying with State licensing regulations.

22.A.13. "Substantial probability" refers to something that is more likely to occur than not.

22.A.14. "Substantial Risk", with respect to a particular condition or event, refers to a danger that would be considered unacceptable to a reasonable person who is aware of the consequences of that condition or event.

22.A.15. "Submit" means to deposit in the U.S. Mail or to hand-deliver to the Division of Licensing and Certification.

22.A.16. "Timely corrective action" refers to the date stated in a plan of correction by which a specific deficiency will be corrected, or the date by which that specific deficiency must be corrected pursuant to a directed plan of correction, whichever is earliest.

22.A.17. "Working days" means weekdays excluding any weekday that a Statement of Deficiencies is received and excluding legal holidays.

22.B. General Procedures for Enforcement

22.B.1. Licensing Inspections

Each nursing facility will be inspected prior to being issued its initial license and annually thereafter prior to renewal of a license. The Division may also inspect at any other time to determine compliance with State licensing regulations. For nursing facilities providing both nursing home and assisted living services, the Division will ensure that a single coordinated licensing and life safety code inspection is performed.

22.B.2. Statement of Deficiencies

After any inspection, a Statement of Deficiencies will be sent to the facility if the inspection discloses any failure to comply with State licensing regulations. A Statement of Deficiencies will be accompanied by either a Plan of Correction form or a Directed Plan of Correction.

22.B.3. Plans of Correction

If mailed a Plan of Correction form, the provider must complete it by indicating how and when any deficiency will be or has been corrected, and submit it to the Division within ten working days of receipt of any Statement of Deficiencies. The Division will have ten (10) days after receipt to determine whether it accepts the Plan of Correction.

22.B.4. Failure to Correct Deficiencies

The failure to correct any deficiency or deficiencies or to file a Plan of Correction with the Division may lead to the imposition of sanctions or penalties as described in this Chapter.

22.C. Intermediate Sanctions

The Division is authorized to impose one or more of the following intermediate sanctions when any of the circumstances listed in Section 22.D., below, are present and the Division determines that a sanction is necessary and appropriate to ensure compliance with State licensing regulations or to protect the residents of a nursing facility or the general public.

22.C.1. The Division may direct a nursing facility to stop all new admissions regardless of payment source or to admit only those residents the Division approves, until such time as it determines that corrective action has been taken.

22.C.2. The Division may issue a Directed Plan of Correction.

22.C.3. The Division may impose a financial penalty upon a nursing facility.

22.D. Grounds for Intermediate Sanctions

The following circumstances shall be grounds for the imposition of intermediate sanctions:

22.D.1. Operation of a nursing facility without a license.

22.D.2. Impeding or interfering with the enforcement of laws or regulations governing the licensing of nursing facilities, or giving false information in connection with the enforcement of such laws and regulations.

22.D.3. Failure to submit a Plan of Correction within ten (10) working days after receipt of a Statement of Deficiencies.

22.D.4. Failure to take timely corrective action in accordance with a Plan of Correction or a Directed Plan of Correction.

22.D.5. Failure to comply with State licensing laws or regulations when this failure poses an immediate threat of death or substantial probability of serious mental or physical harm to a resident or residents.

22.D.6. The occurrence of a repeated deficiency that poses a substantial risk to any resident's health or safety or infringes upon any resident's rights.

22.D.7. Failure to comply with 42 United States Code, Title 42, Section 1396 r (b) Requirements Relating to Provision of Services; (c) Requirements Relating to Residents' Rights; and (d) Requirements Relating to Administration and Other Matters.

22.E. Procedure for Imposing Financial Penalties on Nursing Facilities

22.E.1. Assessment of Financial Penalties

Upon review or inspection of a nursing facility, the Division of Licensing and Certification will compile a list of deficiencies found (if any) and send out a Statement of Deficiencies. The Division will also review the deficiencies to ascertain whether there are any grounds for assessment of financial penalties in accordance with Sections 22.C., 22.D., and 22.F. of this Chapter. If the Division determines it is appropriate to assess financial penalties against a nursing facility, based on a Statement of Deficiencies, the Division shall issue to that facility an Assessment of Financial Penalties. That Assessment shall describe the grounds for the imposition of the penalty, the regulation or law that has been violated, and the scheduled amount of the fine corresponding to that violation.

Penalties shall accrue with interest for each day that grounds for imposition of the penalty exist, after the date upon which an Assessment of Financial Penalties is issued. The burden of demonstrating correction of the grounds that support any penalty rests with the facility.

In any instance where the Division imposes a penalty or penalties for conduct described in Section 22.D.7., penalties will not be imposed pursuant to Sections 22.D.5. or 22.D.6. for that same conduct.

22.E.2. Payment of Penalty

If the nursing facility does not contest the imposition or amount of a penalty assessed by the Division, the facility must pay the Department the amount of that penalty within thirty (30) days of receipt of the Assessment of Penalties. The Department may offset against any reimbursement due the facility the amount of any penalties that are outstanding after this time period.

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22.E.3. Informal Conference

If a nursing facility disagrees with the imposition or amount of any penalty assessed by the Division, the facility must notify the Division in writing, stating the nature of the disagreement, within ten (10) working days of a receipt of an Assessment of Penalties. Upon receipt of this request, the Director of the Division of Licensing and Certification or his/her designee shall schedule an informal conference for the purpose of trying to resolve the dispute. The Division Director or his/her designee shall inform the facility of the result of the informal conference in writing. A facility which desires to appeal the result of an affirmed or modified assessment of penalties following an informal conference must request an administrative hearing, pursuant to Section 22.G.6. The Department will stay the collection of any fiscal penalties until final action is taken on an appeal. Penalties shall accrue with interest for each day until final resolution and implementation.

22.E.4. Compliance with Regulations

A request for an informal conference or for an administrative review of the results of an informal conference shall not affect any nursing facility's obligation to comply with State licensing laws and regulations.

22.F. Amount of Penalties

The Division will determine the amount of any penalty to be imposed against a nursing facility according to the following classification system, or as most recently determined by statute or regulation:

| Class | Grounds for Penalty | Amount | Repeat |
|----------|---|-------------------------------|---------|
| Class I | Any failure to comply with State licensing laws, regulations, or 42 USC, Section 1396 r (b), (c), or (d) that poses an immediate threat of death to a resident or residents; or impeding, interfering, or giving false information in connection with the enforcement of laws or regulations governing nursing facility licensure. | \$9.00 per bed per occurrence | \$10.00 |
| Class II | Any failure to comply with State licensing laws, regulations or 42 USC Section 1396 r (b), (c), or or | \$8.00 per bed per occurrence | \$9.00 |

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(d) or any regulations imposed pursuant to these laws that poses a substantial probability of serious mental or physical harm to a resident or residents; failure to submit a plan of correction within ten (10) working days after receipt of a statement of deficiencies; or failure to take timely corrective action in accordance with a plan of correction or directed plan of correction.

| | | |
|-----------|---|-------------------------------|
| Class III | The occurrence of a repeated deficiency that poses a substantial risk to a resident's or residents' health or safety | \$6.00 per bed per occurrence |
| | Any failure to comply with 42 USC Section 1396 r (b), (c) or (d) which is not included either as a Class I or Class II violation. | \$10.00 per bed |

* "\$9.00 per bed per occurrence" means, for example, that a facility with 50 (fifty) beds would be assessed a penalty of \$450 (\$9.00 per resident x 50 beds) for a single instance of a Class I violation.

22F.1. Penalties for Operation of a Nursing Facility Without a License

The minimum penalty for operating a nursing facility without a license is \$500 per day.

22.F.2. Maximum Penalty

The maximum penalty the Division may impose in any instance in which it issues an Assessment of Financial Penalties subsequent to issuance of a Statement of Deficiencies to a nursing facility shall be \$10,000.

22.F.3. Reduction or Delay of Penalties

Nursing facilities which are unable to immediately pay a penalty may apply to the Division of Licensing and Certification to have payment of that penalty delayed, paid in installments, or, in certain circumstances, reduced.

In order to have the payment of a fine delayed or paid in installments, a nursing facility must provide sufficient information, on forms provided by the Division of Licensing and Certification, to demonstrate that immediate full payment of the total amount due would result in the interruption of the provision of necessary services to residents.

In order to have a fine reduced, a nursing facility must, on forms provided by the Division of Licensing and Certification, demonstrate that payment of the full amount of the penalty would result in a permanent interruption in the provision of necessary services to residents even if paid in installments or delayed.

22.G. Other Sanctions for Failure to Comply with Applicable Laws/Regulations

22.G.1. Refusal to Renew

When an applicant fails to demonstrate consistent compliance with applicable laws and regulations, the Department may refuse to issue or renew a license to operate a nursing facility.

22.G.2. Conditional License

If, at the expiration of a full or provisional license, or during the term of a full license, the facility fails to comply with applicable laws and regulations, and, in the judgment of the Division, the best interest of the public would be served, the Division may issue a conditional license, or change a full license to a conditional license. Failure by the conditional licensee to meet the conditions specified by the Department shall permit the Division to void the conditional license or refuse to issue a full license. The conditional license shall be void when the Division has delivered in hand or by certified mail a written notice to the licensee, or, if the licensee cannot be reached for service in-hand or by certified mail, has left written notice thereof at the agency or facility. For the purposes of this subsection, the term "licensee" means the person, firm, corporation or association to whom a conditional license has been issued.

22.G.3. Emergency Suspension or Revocation

Whenever, upon investigation, conditions are found which, in the opinion of the Department, immediately endanger the health or safety of the persons living in or attending a facility, the Department may take action for an emergency suspension or temporary revocation of the license pursuant to either 5 M.R.S.A., Section 10004 or 4 M.R.S.A., Section 1153. If the Department acts pursuant to 5 M.R.S.A., Section 10004, it shall give written notice of such emergency suspension by delivering notice in hand to the licensee. If the licensee cannot be reached for personal service, the notice may be left at the licensed premises. Whenever a license is suspended by the Department under this emergency provision, the Department shall file a complaint with the Administrative Court within thirty (30) days if the Department determines that a longer period of suspension or revocation is required.

22.G.4. Revocation

Any license issued under these regulations may be suspended or revoked for violation of applicable laws and regulations, committing, permitting, aiding or abetting any illegal practices in the operation of the facility or conduct or practices detrimental to the welfare of persons living in or attending a facility. When the Division believes a license should be suspended or revoked, it shall file a complaint with the Administrative Court as provided in the Maine Administrative Procedures Act, Title V, Chapter 375.

22.G.5.Receivership

Pursuant to 22 M.R.S.A. Section 7931 et. seq., the Department may petition the Superior Court to appoint a receiver to operate a nursing facility in the following circumstances:

1. When the facility intends to close but has not arranged at least thirty (30) days prior to closure for the orderly transfer of its residents;
2. When an emergency exists in the facility which threatens the health, security or welfare of residents;
or
3. When the facility is in substantial or habitual violation of the standards of health, safety or resident care established under State or Federal regulations to the detriment of the welfare of the residents.

22.G.6.Appeals

Any nursing facility aggrieved by the Department's decision to take any of the following actions, or to impose any of the following sanctions, may request an administrative hearing to refute the basis of the Department's decision, as provided by the Maine Administrative Procedures Act, 5 M.R.S.A. Section 1001 et. seq. or the Department's Administrative Hearing Manual. Administrative hearings will be held in conformity with the Department's Administrative Hearing Manual. A request for a hearing must be made in writing to the Director of the Division of Licensing and Certification, and must specify the reason for the appeal. Any request must be mailed within ten (10) days from receipt of the Department's decision to:

- a. issue a conditional license;
- b. amend or modify a license;
- c. void a conditional license;
- d. refuse to issue or renew a full license;
- e. refuse to issue a provisional license;
- f. stop or limit admissions;
- g. issue a directed plan of correction;
- h. affirm or modify an assessment of penalties after an informal review;
- i. deny application to reduce the amount or delay the payment of any penalty.

22.G.7.Public Information

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The Department will maintain an up-to-date listing of all sanctioned facilities. Upon final action on the imposition of a sanction, the Department will add the sanctioned facility to its listing. This information will be available to the public.