

## **.51 Civil Money Penalties — Imposition.**

A. A civil money penalty may be imposed when:

- (1) A deficiency exists; or
- (2) An ongoing pattern of deficiencies exist in a nursing facility.

B. In determining whether a civil money penalty is to be imposed, the Department shall consider the following factors:

- (1) The number, nature, and seriousness of the deficiencies;
- (2) The extent to which the deficiency or deficiencies are part of an ongoing pattern during the preceding 24 months;
- (3) The degree of risk to the health, life, or safety of the residents of the nursing facility caused by the deficiency or deficiencies;
- (4) The efforts made by, and the ability of, the nursing facility to correct the deficiency or deficiencies;
- (5) A nursing facility's prior history of compliance in general and specifically with reference to the cited deficiencies; and
- (6) Such other factors as justice may require.

C. When the Department determines that a deficiency or an ongoing pattern of deficiencies exists, the Department shall notify the nursing facility of the deficiency or deficiencies and may:

- (1) Impose a per day civil money penalty until sustained compliance has been achieved;
- (2) Permit the facility the opportunity to correct the deficiencies by a specific date; or
- (3) Impose a per instance civil money penalty for each instance of violation.

D. When the Department permits a facility the opportunity to correct the deficiencies by a specific date, and the facility fails to comply with this requirement, the Department may impose a per day civil money penalty for each day of violation until correction of the deficiency or deficiencies has been verified and sustained compliance has been maintained.

E. When a civil money penalty is imposed, the Department shall issue an order which includes the:

- (1) Deficiency or deficiencies on which the order was based;
- (2) Amount of civil money penalty to be imposed; and
- (3) Manner in which the amount of civil money penalty was calculated.

F. An order issued pursuant to §E of this regulation is void unless issued within 60 days of the inspection or reinspection at which the deficiency or deficiencies are identified.

## **.52 Civil Money Penalties — Amount of Penalty.**

A. A civil money penalty imposed under this chapter for potential for more than minimal harm deficiencies may not exceed:

(1) \$10,000 per instance; or

(2) \$1,000 per day for an ongoing pattern of deficiencies until correction of the deficiencies has been verified and sustained compliance has been maintained.

B. A civil money penalty imposed under this chapter for actual harm deficiencies may not exceed:

(1) \$10,000 per instance; or

(2) \$5,000 per day for an ongoing pattern of deficiencies until correction of the deficiencies has been verified and sustained compliance has been maintained.

C. A civil money penalty imposed under this chapter for a serious and immediate threat may not exceed:

(1) \$10,000 per instance; or

(2) \$10,000 per day for an ongoing pattern of deficiencies until correction of the deficiencies has been verified and sustained compliance has been maintained.

D. In setting the amount of a civil money penalty, the Department shall consider the following factors:

(1) The number, nature, and seriousness of the deficiencies;

(2) The degree of risk to the health, life, or safety of the residents of the nursing facility caused by the deficiency or deficiencies;

(3) The efforts made by, and the ability of, the nursing facility to correct the deficiency or deficiencies;

(4) Current federal guidelines for civil money penalties;

(5) Whether the amount of the proposed civil money penalty will jeopardize the financial ability of the nursing facility to continue operating as a nursing facility;

(6) A nursing facility's prior history of compliance; and

(7) Such other factors as justice may require.

## **.53 Civil Money Penalties — Effective Date and Duration of Penalty.**

A. Per Instance Civil Money Penalty. The effective date may be as early as the date that the deficiency or deficiencies upon which the civil money penalty is based first occurred.

B. Per Day Civil Money Penalty.

(1) The daily civil money penalty starts to accrue as of the date of the visit that identifies the deficiency or deficiencies upon which the civil money penalty is based.

(2) The accrual of the daily civil money penalty ceases when correction of the deficiency or deficiencies upon which the civil money penalty was based has been verified and the facility has maintained sustained compliance.

## **.54 Civil Money Penalties — Payment of Penalty/Establishment of Escrow Account.**

A. A civil money penalty payment is due 15 calendar days after:

(1) The time period for requesting a hearing has expired and a request for hearing was not received; or

(2) Receipt of a written request from the facility to waive its right to a hearing and reduce the amount of the civil money penalty by 40 percent provided the written request is received by the Department within 30 calendar days of the Department's order imposing the civil money penalty.

B. Within 15 days of the request for an appeal by a nursing facility, the nursing facility shall deposit the amount of the civil money penalty in an interest-bearing escrow account. If a per day civil money penalty is in effect at the time the escrow account is established, the amount owed on that date shall be deposited into the escrow account. The nursing facility shall bear any cost associated with establishing the escrow account, and the account shall be titled in the name of the nursing facility and the Department of Health and Mental Hygiene as joint owners.

C. When the Secretary issues the final decision of the Department:

(1) If the decision upholds the imposition of the full civil money penalty, the escrow funds, in addition to the amount of any per day civil money penalty that has accrued after the initial deposit into the escrow account, shall be released to the Department within 15 days from the date of the decision;

(2) If the decision upholds the imposition of a civil money penalty, but reduces the amount of the civil money penalty, the amount due the Department shall be released to the Department with accrued interest within 15 days of the date of the decision and the balance will be released to the nursing facility within 15 days of the date of the decision; or

(3) If the decision reverses the imposition of the civil penalty, the escrow funds shall be released to the nursing facility with accrued interest within 15 days of the decision.

D. If a facility does not release or pay the civil money penalty to the Department after the Secretary has issued a final decision upholding the civil money penalty and after notice to the facility, the State may deduct the amount of the civil money penalty from any sum that is then or later owed by the State to the facility, pursuant to State Finance and Procurement Article, §7-222, Annotated Code of Maryland.

## **.55 Civil Money Penalties — Hearings.**

- A. A licensee aggrieved by the imposition of a civil money penalty may appeal the action by filing a request for a hearing in accordance with State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland.
- B. The Secretary has the burden of proof with respect to the imposition of civil money penalties.
- C. The Office of Administrative Hearings shall render a decision within 10 working days of the hearing.