

**He-P 803.12 Administrative Remedies.**

(a) The department shall impose administrative remedies for violations of RSA 151, He-P 803 or other applicable licensing rules, including:

- (1) Requiring a licensee to submit a POC;
- (2) Imposing a directed POC upon a licensee;
- (3) Imposing fines upon an unlicensed individual, applicant or licensee;
- (4) Suspension of a license; or
- (5) Revocation of a license.

(b) When fines are imposed, the department shall provide a written notice, as applicable, which:

- (1) Identifies each deficiency;
- (2) Identifies the specific remedy(s) that has been proposed; and
- (3) Provides the licensee with the following information:

a. The right to a hearing in accordance with RSA 541-A and He-C 200 prior to the fine becoming final; and

b. The automatic reduction of a fine by 25% if the licensee waives the right to a hearing, the fine is paid within 10 days of the date on the written notice from the department and the deficiency has been corrected, or a POC has been accepted and approved by the department.

(c) A POC shall be developed and enforced in the following manner:

(1) Upon receipt of a notice of deficiencies, the licensee shall submit a POC detailing:

a. How the licensee intends to correct each deficiency;

b. What measures will be put in place, or what system changes will be made to ensure that the deficiency does not recur; and

c. The date by which each deficiency shall be corrected;

(2) The licensee shall submit a POC to the department within 21 calendar days of the date on the

letter that transmitted the inspection report unless the licensee requests, either verbally or in writing, and the department agrees, to extend that deadline, based on the following criteria:

- a. The licensee demonstrates that he or she has made a good faith effort to develop and submit the POC within the 21 calendar day period but has been unable to do so; and
- b. The department determines that the health, safety or well-being of a resident will not be jeopardized as a result of granting the extension;

(3) The department shall review and accept each POC that:

- a. Achieves compliance with RSA 151 and He-P 803;
- b. Addresses all deficiencies and deficient practices as cited in the inspection report;
- c. Prevents a new violation of RSA 151 or He-P 803 as a result of the implementation of the POC; and
- d. Specifies the date upon which the deficiencies will be corrected;

(4) If the POC is acceptable, the department shall issue a license certificate or provide written notification of acceptance of the POC, whichever is applicable;

(5) If the POC is not acceptable:

- a. The department shall notify the licensee in writing of the reason for rejecting the POC;
- b. The licensee shall develop and submit a revised POC within 14 days of the date of the written notification from the department that states the original POC was rejected unless, within the 14 day period, the licensee requests an extension, either via telephone or in writing, and the department grants the extension, based on the following criteria:

1. The licensee demonstrates that he or she has made a good faith effort to develop and submit the POC within the 14 day period but has been unable to do so; and
2. The department determines that the health, safety or well being of a resident will not be jeopardized as a result of granting the waiver;

c. The revised POC shall comply with (1) above and be reviewed in accordance with (3)

above; and

d. If the revised POC is not acceptable to the department, or is not submitted within 14 days of the date of the written notification from the department that states the original POC was rejected, the licensee shall be subject to a directed POC in accordance with (d) below and a fine in accordance with (f)(11) below;

(6) The department shall verify the implementation of any POC that has been submitted and accepted by:

- a. Reviewing materials submitted by the licensee;
- b. Conducting a follow-up inspection; or
- c. Reviewing compliance during the next annual inspection;

(7) Verification of the implementation of any POC shall only occur after the date of completion specified by the licensee in the plan; and

(8) If the POC or revised POC has not been implemented by the completion date at the time of the next inspection the licensee shall be:

- a. Notified by the department in accordance with He-P 803.12(b); and
- b. Issued a directed POC in accordance with (d) below and shall be subject to a fine in accordance with (f)(12) below.

(d) The department shall develop and impose a directed POC that specifies corrective actions for the licensee to implement when:

- (1) As a result of an inspection, deficiencies were identified that require immediate corrective action to protect the health and safety of the residents and employees;
- (2) A revised POC is not submitted within 14 days of the written notification from the department; or
- (3) A revised POC submitted by the licensee or administrator has not been accepted.

(e) If at the time of the next inspection the directed POC referenced in (d) above has not been

implemented by the completion date stated in the directed POC the department shall, as appropriate:

- (1) Issue a warning that enforcement action will be taken if the POC is not implemented;
  - (2) Impose a fine;
  - (3) Deny the application for a renewal of a license; or
  - (4) Revoke or suspend the license in accordance with He-P 803.13.
- (f) The department shall impose fines as follows:
- (1) For a failure to cease providing unlicensed services after being notified by the department of the need for a license, in violation of RSA 151:2 the fine shall be \$2000.00 for an applicant or unlicensed provider;
  - (2) For a failure to cease operations after a denial of a license or after receipt of an order to cease and desist immediately, in violation of RSA 151:2 and RSA 541-A:30, the fine for an applicant, unlicensed provider or a licensee shall be \$2000.00;
  - (3) For advertising services or otherwise representing themselves as having a license to provide services that they are not licensed to provide, in violation of RSA 151:2, III, the fine for an applicant, licensee or unlicensed provider shall be \$500.00;
  - (4) For a failure to comply with the directives of a warning issued by the department in violation of RSA 151:7-a and He-P 803.11(h), the fine shall be \$500.00;
  - (5) For a failure to submit a renewal application for a license prior to the expiration date, in violation of He-P 803.06(b), the fine shall be \$100.00;
  - (6) For a failure to notify the department prior to a change of ownership, in violation of He-P 803.08(a)(1), the fine shall be \$500.00;
  - (7) For a failure to notify the department prior to a change in the physical location, in violation of He-P 803.08(a)(2), the fine shall be \$500.00;
  - (8) For a refusal to allow access by the department to the nursing home's premises, programs, services or records, in violation of He-P 803.09(a), the fine for an applicant, individual or

licensee shall be \$2000.00;

(9) For refusal to cooperate with the inspection or investigation conducted by the department the fine shall be \$ 2000.00;

(10) For a failure to submit a POC or revised POC, within 21 or 14 days, respectively, of the date on the letter that transmits the inspection report, in violation of He-P 803.12(c)(2) or (5)(b), the fine for a licensee shall be \$100.00 unless an extension has been granted by the department;

(11) For a failure to implement any POC that has been accepted or issued by the department, in violation of He-P 803.12(c)(8), the fine for a licensee shall be \$1000.00;

(12) For a failure to establish, implement or comply with licensee policies, after being notified in writing by the department of the need to establish, implement or comply with licensee policies, as required by He-P 803.14(c), the fine for a licensee shall be \$500.00;

(13) For a failure to provide services or programs required by the licensing classification and specified by He-P 803.14(b), the fine for a licensee shall be \$500.00;

(14) For exceeding the maximum number of residents, in violation of He-P 803.14(k), the fine for a licensee shall be \$500.00;

(15) For moving a current resident to an unlicensed space prior to approval from the department, the fine for a licensee shall be \$500.00;

(16) For falsification of information contained on an application or of any records required to be maintained for licensing, in violation of He-P 803.14(f), the fine shall be \$500.00 per offense;

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(17) For a failure to meet the needs of the resident, in violation of He-P 803.14(i)(1), the fine for a licensee shall be \$500.00;

(18) For employing an administrator or other personnel who do not meet the qualifications for the position, in violation of He-P 803.17(b)(1) and 803.18(d)(3), the fine for a licensee shall be \$500.00;

(19) For failure to report an unusual incident as required by He-P 803.14(t), the fine for a licensee shall be \$500.00 per occurrence;

(20) When an inspection determines that a violation of RSA 151 or He-P 803 has the potential to jeopardize the health, safety or well-being of a resident, in addition to any other enforcement actions taken by the department, the fines assessed shall be as follows:

a. If the same deficiency is cited within 2 years of the original deficiency, the fine for a licensee shall be double the initial fine, but not to exceed \$2000.00; and

b. If the same deficiency is cited a third time within 2 years of being fined in a. above, the fine for a licensee shall be triple the fine, but not to exceed \$2000.00;

(21) Each day that the individual or licensee continues to be in violation of the provisions of RSA 151 or He-P 803 shall constitute a separate violation and shall be fined in accordance with He-P 803.12(f); and

(22) If the applicant or licensee is making good faith efforts to comply with (4) or (18) above, the department shall not issue a daily fine.

(g) Payment of any imposed fine to the department shall meet the following requirements:

(1) Payment shall be made in the form of check or money order made payable to the "Treasurer, State of New Hampshire" or cash in the exact amount due; and

(2) Cash, money order, or certified check shall be required when an applicant or licensee has issued payment to the department by check, and such check was returned for insufficient funds.

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