

15.3.a.3. The director shall write policy and procedures addressing the manner in which an informal dispute resolution shall be conducted.

15.3.a.4. The policy and procedures for an informal dispute shall be available to the public upon written request.

15.3.b. If the director fails to complete an informal dispute resolution in a timely manner it does not delay the effective date of any enforcement action against the nursing home.

15.3.c. If during the informal dispute resolution process a nursing home is successful in demonstrating that deficiencies should not have been cited, the director shall remove the deficiencies from the statement of deficiencies and rescind any enforcement action imposed solely as a result of those cited deficiencies.

15.3.d. All communications during an informal dispute resolution are confidential and cannot be used by or against the licensee or the director in the event a formal hearing takes place.

' 64-13-16. Enforcement and Due Process.

16.1. Enforcement: Director=s Powers, Duties and Rights.

16.1.a. The director may invoke penalties against a nursing home violating the provisions of this rule in accordance with the provisions of this rule.

16.2. Enforcement Generally.

16.2.a. The director may assess civil penalties, and may suspend, revoke, or deny renewal of the license of a nursing home for cause after notice as required by this rule and the provisions of W. Va. Code ' 16-5C-1, et seq., or take any other action contemplated by this rule. Cause may include one (1) or more of the following:

16.2.a.1. Failure to provide standard quality of care for residents;

16.2.a.2. Willfully and knowingly falsifying the material content of resident assessments;

16.2.a.3. Failure to submit a plan of correction required by W. Va. Code ' 16-5C-1 et seq.;

16.2.a.4. Failure to submit a plan of correction that is approved by the director;

16.2.a.5. Failure to correct deficiencies within the time frame specified in an approved plan of correction;

16.2.a.6. Repeat noncompliance within the same regulatory grouping as defined in this rule;

16.2.a.7. Failure to cooperate with or interference with the director or an authorized representative of the director in the inspection of the nursing home;

16.2.a.8. Failure to comply with this rule;

16.2.a.9. Violation of any provision of this rule that produces immediate jeopardy to the health or

safety of residents;

16.2.a.10. Violation of the provisions of this rule relative to the discharge of residents or employees because of complaints against the nursing home;

16.2.a.11. Use of subterfuge or other dishonest action in applying for an original or renewal license;

16.2.a.12. Use of subterfuge or other dishonest action in obtaining the time, date and location of any inspection;

16.2.a.13. Abuse of residents;

16.2.a.14. Neglect of residents;

16.2.a.15. Misappropriation of residents= property; or

16.2.a.16. Attempted bribery of any employee or contracted person of the department.

16.3. Formal Hearings and Due Process for Actions of Enforcement.

16.3.a. All formal hearings shall be conducted pursuant to AWest Virginia Department of Health and Human Resources Legislative Rules, Rules of Procedure for Contested Cases@, 64CSR1.

16.3.b. An applicant for a license or a licensee or any other person aggrieved by an order or other action by the director pursuant to this rule or to W. Va. Code ' 16-5C-1 et seq., shall have the opportunity for a formal hearing by the director, upon written request to the director in a manner prescribed in AWest Virginia Department of Health and Human Resources Administrative Rules, Rules of Procedure for Contested Case Hearings and Declaratory Ruling@, 64CSR1.

16.3.c. A formal hearing pursuant to this rule shall be conducted in accordance with the pertinent provisions of W. Va. Code ' ' 29A-4-1 et seq., and 29A-5-1 et seq.

16.3.d. A nursing home may request a formal hearing and seek judicial review pursuant to W. Va. Code ' ' 16-5C-12 and 13 to contest the deficiencies issued by the director, irrespective of whether the deficiency results in the imposition of civil money penalty.

16.3.d.1. The director shall begin an enforcement action to ensure compliance with W. Va. Code ' 16-5C-1 et seq., or any rule or order issued thereunder, whenever the director determines that any person:

16.3.d.1.A. Has engaged in, or is engaging in, an act or practice in violation of W. Va. Code ' 16-5C-1 et seq., or any rule or order; or

16.3.d.1.B. When it appears to the director that any person has aided, abetted, or caused, or is aiding, abetting or causing such an act or practice; or

16.3.d.1.C. That no action is being taken under federal regulation or that the action does not adequately protect the residents= health or safety.

16.3.d.2. The director shall impose one or more of the following remedies:

16.3.d.2.A. License termination;

16.3.d.2.B. Reduction of bed capacity;

16.3.d.2.C. Ban on new admissions;

16.3.d.2.D. Temporary management;

16.3.d.2.E. Civil money penalties; or

16.3.d.2.F. Closure of the nursing home in emergency situations or transfer of residents, or both.

16.3.e. A nursing home may not avoid cited deficiencies or enforcement actions because it has undergone a change of ownership.

16.4. Ban on New Admissions and Reduction in Licensed Bed Capacity.

16.4.a. The director shall by order place a ban on new admissions, reduce the licensed bed capacity of a nursing home, or both, when on the basis of inspection he or she makes the following findings:

16.4.a.1. The licensee is not providing adequate care under the nursing home=s existing bed capacity; and

16.4.a.2. A reduction in licensed bed capacity or a ban on new admissions, or both, would place the nursing home in a position to render adequate care.

16.4.b. A reduction in licensed bed capacity or a ban on new admissions, or both, remains in effect until the nursing home is determined by the director to be in substantial compliance with this rule.

16.4.c. If the residents of the nursing home are in immediate jeopardy regarding their health, safety, welfare or rights, the director may seek an order to transfer residents out of the nursing home as provided for in subsection 4.13 of this rule.

16.4.d. Any notice to a licensee of reduction in licensed bed capacity or a ban on new admissions shall include the terms of the order, the reasons for the order and a date set for compliance.

16.5. Revocation or Suspension of License.

16.5.a. If the director suspends a nursing home=s license, he or she shall also specify the conditions giving rise to the suspension that are to be corrected by the licensee during the period of suspension to entitle the licensee to apply for reinstatement of his or her license.

16.5.a.1. If the director revokes a license, he or she may stay the effective date of the revocation by not more than ninety (90) days upon a showing that the stay is necessary to assure appropriate placement of residents.

16.5.b. The director=s order is final unless vacated or modified by court order.

16.6. Immediate Jeopardy or Repeat Deficiency.

16.6.a. The director may enforce this rule, administratively or in court, without first affording an opportunity to correct a deficiency when the director finds either of the following:

16.6.a.1. Violation of this rule jeopardizes the health or safety of a resident; or

16.6.a.2. The violation is a repeat deficiency which has caused harm to a resident.

16.6.b. The suspension, expiration, forfeiture or cancellation by operation of law or order of the director of a license issued by the director shall not deprive the director of the authority as provided by law and this rule to take any of the following actions:

16.6.b.1. Institute or continue a disciplinary proceeding;

16.6.b.2. Institute or continue a proceeding for the denial of license application;

16.6.b.3. Enter an order denying a license application; or

16.6.b.4. Take any other disciplinary action as provided by state law or rules.

16.6.c. Withdrawal of a license application shall not deprive the director of the right to penalize the applicant on any other ground using any authority otherwise provided by law or this rule.

16.7. Procedure for Civil Penalties.

16.7.a. Assessment and application of civil penalties.

16.7.a.1. The director shall assess and apply penalties for violations of this rule in accordance with the provisions W. Va. Code ' 16-5C-1 et seq., and this rule.

16.7.a.2. Upon completion of a report of inspection, the director shall determine what civil money penalties he or she shall assess.

16.8. Notice of Civil Money Penalty.

16.8.a. The director shall send to the nursing home a certified written notice of intent to impose a civil money penalty including the basis for imposing the civil money penalty.

16.8.a.1. The notice shall include:

16.8.a.1.A. The nature of the noncompliance;

16.8.a.1.B. The statutory basis for the civil money penalty;

16.8.a.1.C. The amount of the civil money penalty;

16.8.a.1.D. Any factors that were considered when determining the amount of the civil money penalty;

16.8.a.1.E. When the civil money penalty is due; and

16.8.a.1.F. Instructions for responding to the notice, including a statement of the nursing home's right to a hearing, and the implications of waiving a hearing.

16.9. Amount of Civil Money Penalty.

16.9.a. Civil money penalties assessed against licensed nursing homes may not be less than fifty dollars (\$50) nor more than eight thousand dollars (\$8,000):

16.9.a.1. The director may not assess a civil money penalty against a nursing home that corrects the violation of the rule within twenty (20) days of receipt of written notice of the violation, unless it is a repeat deficiency or the nursing home is a poor performer when a civil money penalty can be assessed immediately.

16.9.b. Hearing and Due Process for a Civil Money Penalty.

16.9.b.1. A nursing home shall, within sixty (60) days from receipt of the notice of an initial, reconsidered, or revised determination of the director, submit any request for a hearing on the determination of the noncompliance that is the basis for imposition of the civil money penalty. For good cause shown, a hearing examiner may extend the time for filing the request for hearing.

16.9.b.2. If a nursing home requests a hearing within the time specified in this rule, the director shall collect the civil money penalty within fifteen (15) days of a final adjudication that upholds the director's determination of non-compliance.

16.9.b.3. If a nursing home waives its right to a hearing in accordance with this rule, the director shall collect the civil money penalty within seventy-five (75) days of the notice of determination of the director.

16.9.b.4. If the nursing home waives its right to a hearing, the civil money penalty shall be reduced by thirty-five percent (35%) by the director.

16.9.c. If a civil money penalty is assessed by the federal Health Care Financing Administration or the State Medicaid Agency for the same deficiency, the director shall reduce any State civil money penalty by the amount of the federal civil money penalty in calculating the amount owed.

16.9.d. Cumulative Remedies.

16.9.d.1. The civil money penalties and remedies provided by W. Va. Code '16-5C-15 are cumulative and are in addition to all other penalties and remedies provided by law.

16.9.d.1.A. For a violation that presents immediate jeopardy to the health, safety or welfare of one (1) or more residents, the director may impose a civil money penalty of not less than three thousand (\$3,000) dollars nor more than eight thousand dollars (\$8,000).

16.9.d.2. For a violation that actually harms one (1) or more residents, the director may impose a civil money penalty of not less than one thousand dollars (\$1,000) nor more than three thousand dollars (\$3,000).

16.9.d.3. For a violation that has the potential to harm one (1) or more residents, the director may

impose a civil money penalty of not less than fifty dollars (\$50) nor more than one thousand dollars (\$1,000).

16.9.d.4. For a repeat deficiency, the director may impose a civil money penalty of up to one hundred fifty percent (150%) of the penalties provided in paragraphs (1.A.), (2.A.) and (d.3.) of this Subdivision.

16.9.d.5. If no plan of correction is submitted as established in this section, the director may assess a civil money penalty in the amount of one hundred dollars (\$100) a day unless the nursing home has provided a reasonable explanation for the violation that has been accepted by the director.

16.9.d.6. If a deficiency for which an acceptable plan of correction has been provided to the director is not corrected upon revisit to the nursing home, the deficiency shall be regarded as a repeat deficiency.

16.9.d.7. Residents, residents= families or legal representatives, and ombudsmen may also independently pursue violations of this rule in court. Any waiver by a resident or his or her legal representative of the right to commence an action under W. Va. Code ' 16-5C-15, whether oral or in writing, is void as contrary to public policy.

16.10. Civil Money Penalty Procedures After Termination of a License.

16.10.a. In the case of termination of a nursing home license, the director shall send the civil money penalty information after the:

16.10.a.1. Final administrative decision is made;

16.10.a.2. Nursing home has waived its right to a hearing; or

16.10.a.3. Time for requesting a hearing has expired and the director has not received a hearing request from the nursing home.

16.10.b. A civil money penalty payment is due fifteen (15) days after:

16.10.b.1. A final administrative decision;

16.10.b.2. The time period for requesting a hearing has expired;

16.10.b.3. Receipt of the written request to waive a hearing; or

16.10.b.4. The effective date of termination of a license.

16.11. Civil Money Penalty for Notification of Inspection.

16.11.a. The director shall assess a civil money penalty not to exceed two thousand dollars (\$2,000) against any person who notifies, or causes to be notified, a nursing home of the time or date on which an inspection is scheduled to be conducted.

16.12. Interest on Civil Penalties.

16.12.a. The assessments for penalties and for costs of actions taken under W. Va. Code ' 16-5C-1 et seq., shall accrue interest at the rate of five percent (5%) per annum beginning thirty (30) days after receipt of

notice of the assessment or after receipt of the director=s final order following a hearing, which ever is later.

16.12.b. All assessments against a nursing home that are unpaid shall be added to the nursing home=s licensure fee and may be filed as a lien against the property of the licensees or operators of the nursing home.

16.13. Action for Recovery of Civil Penalties.

16.13.a. The director shall, in a civil judicial proceeding, recover any unpaid civil money penalty that has not been contested under W. Va. Code ' 16-5C-12 within thirty (30) days of receipt of the director=s final order, or that has been affirmed on judicial review, as provided in W. Va. Code ' 16-5C-13.

16.13.a.1. All money collected by assessments of civil penalties or interest shall be paid into a special resident benefit account and shall be applied by the director for:

16.13.a.1.A. The protection of the health or property of the nursing home=s residents;

16.13.a.1.B. Long-term care educational activities;

16.13.a.1.C. The costs arising from the relocation of residents to other facilities when no other funds are available;

16.13.a.1.D. In an emergency situation when no other funds available, the operation of the nursing home pending correction of deficiencies or closure; and

16.13.a.1.E. The reimbursement of residents for personal funds lost.

16.14. Immediate Jeopardy. If there is immediate jeopardy to the residents= health, safety, welfare or rights the director shall petition the circuit court.

16.14.a. The circuit court may issue an Order to:

16.14.a.1. Close the nursing home;

16.14.a.2. Transfer the residents in the nursing home to other nursing homes; or

16.14.a.3. Appoint temporary management to oversee the operation of the nursing home and to assure the health, safety, welfare and rights of the nursing home=s residents.

16.15. Temporary Management.

16.15.a. Upon petition of the director, a circuit court may divest the licensee or operator of a nursing home of possession and control of a nursing home and appoint temporary management.

16.15.a.1. The temporary management is responsible to the court and has any powers and duties granted by the court to direct all acts necessary or appropriate to conserve the property and promote the health, safety, welfare and rights of the residents of the nursing home.

16.15.a.2. These powers include, but are not limited to, the replacement of management and staff, the hiring of consultants, the making of any necessary expenditures to close the nursing home or to

repair or improve the nursing home to return it to compliance with applicable requirements and the power to receive, conserve, and expend funds, including payments on behalf of the licensee or operator of the nursing home.

16.15.a.3. The temporary management shall give priority to expenditures for current direct resident care or the transfer of residents.

16.15.b. The person charged with temporary management shall be an officer of the court, is not liable for conditions at the nursing home that existed or originated prior to his or her appointment and is not personally liable, except for his or her own gross negligence and intentional acts for situations that result in injuries to persons or damage to property at the nursing home during the temporary management.

16.15.c. No person shall impede the operation of the temporary management.

16.15.c.1. There shall be an automatic stay for a ninety (90) day period subsequent to the establishment of a temporary management of any action that would interfere with the functioning of the nursing home, including, but not limited to, cancellation of insurance policies, termination of utility services, attachments to working capital costs, foreclosures, evictions and repossessions of equipment used in the nursing home.

16.15.d. The temporary management established for the purpose of making improvements to bring a nursing home into compliance with applicable requirements shall not be terminated until the court has determined that the nursing home has the management capability to ensure continued compliance with all applicable requirements.

16.15.d.1. If the court has not made the determination within six (6) months of the establishment of the temporary management, the temporary management terminates by operation of law at that time, and the nursing home shall be closed.

16.15.d.2. After the termination of the temporary management, the person who was responsible for the temporary management shall make an accounting to the court.

16.15.d.2.A. This accounting will be based on receipts and shall consist of the deduction of the cost of temporary management, expenditures and civil penalties and interest no longer subject to appeal in that order; and

16.15.d.2.B. The nursing home shall pay any excess to the licensee or operator of the nursing home.

16.15.e. The temporary manager shall bill the nursing home on a bi-weekly basis and the nursing home shall pay any amounts due within fifteen (15) days.

16.15.e.1. The amount paid to the temporary manager for a thirty day period may not exceed the seventy-fifth percentile of the allowable administrators= salary reported on the most recent cost report for the nursing home=s peer group as determined by the director.

16.16. Corrective Action.

16.16.a. The director shall enforce these provisions to protect residents of nursing homes.

16.16.b. A nursing home, found on the basis of an inspection to have deficiencies, shall develop a plan of correction and submit it to the director within ten (10) working days of receipt of a report of inspections. The director may allow three (3) additional days in the event of a documented extenuating circumstance.

16.16.c. A plan of correction shall specify the time when the nursing home shall correct each violation cited in the report.

16.16.d. The time specified shall be the shortest possible time within which the nursing home can reasonably be expected to correct the violation.

16.16.e. The time stated is subject to approval or modification by the director.

16.16.f. In determining whether to approve the time submitted by the nursing home, the director shall consider the following factors:

16.16.f.1. The seriousness of the violation;

16.16.f.2. The number of residents affected;

16.16.f.3. The availability of required equipment or personnel;

16.16.f.4. The estimated time required for delivery and installation of required equipment;

and

16.16.f.5. Any other relevant circumstances.

16.16.g. A plan of correction shall contain:

16.16.g.1. The corrective actions that the nursing home will accomplish for those residents found to have been affected by the deficiency;

16.16.g.2. How the nursing home will identify other residents having the potential to be affected by the same deficiency and what corrective action will be taken;

16.16.g.3. What measures the nursing home will put into place or what systemic changes will be made to ensure that the deficiency does not recur; and

16.16.g.4. How the nursing home will monitor the corrective actions put in place to ensure the deficiency will not recur, i.e., what quality assurance program will be put into place.

16.16.h. A plan of correction submitted by a nursing home shall be approved, modified or rejected by the director.

16.16.i. The director shall notify each nursing home within ten (10) working days as to whether a plan of correction has been approved, modified or rejected.

16.16.j. If the director rejects or modifies the plan, the reasons for the action shall be stated in the notice.

16.16.k. When the director rejects a plan of correction, a revised plan shall be submitted by the

nursing home to the director within seven (7) working days of receipt of the rejection.

16.16.l. A nursing home with a repeat deficiency or with deficiencies resulting in immediate jeopardy or causing harm to a resident may not submit a revised plan of correction.

16.16.m. If the nursing home fails to submit a plan of correction that is accepted by the director or to correct any deficiency within the time specified in an accepted plan of correction, the director may assess civil money penalties as provided in this rule or may initiate any other legal or disciplinary action available to him or her in accordance with State law and this rule.

'64-13-17. Deemed Status.

17.1. Approval Process.

17.1.a. Upon approval of deemed status by the Health Care Financing Administration, the director shall accept accreditation by the Joint Commission on the Accreditation of Healthcare Organizations or any other Health Care Financing Administration approved accrediting organization with standards and inspection process comparable to W. Va. Code '16-5C-1, et seq., and the regulations and rules duly promulgated thereunder as evidence that the nursing home demonstrates compliance with or meets all licensing requirements. The director shall not perform a licensing inspection if the following criteria are met:

17.1.a.1. A nursing home sends the director a copy of the organization's official accreditation report within thirty (30) days of the nursing home's notification of accreditation; and

17.1.a.2. Quality of care measures are identified and assured as required by W. Va. Code '16-5C-9a(c).

17.2. Responsibilities of the Director.

17.2.a. The director may use this report in lieu of one (1) regular nursing home licensure inspection.

17.2.b. The director shall make any inspections and investigations as he or she considers necessary, investigate complaints, perform follow up activities on adverse accreditation findings, conduct periodic validation inspections, and perform any Health Care Financing Administration mandated tasks.

17.2.c. Pursuant of W. Va. Code '16-5C-9a(d), the director may revoke the nursing home's exemption from State licensing inspections upon substantiation of a complaint.