RULE

Deparment of Health and Hospitals
Bureau of Health Services Financing

Health Care Facility Sanctions
(LAC 48:I.Chapter 46 and LAC 50:I.Chapter 55)

The Department of Health and Hospitals, Bureau of Health Services Financing has repealed LAC 50:I.Chapter 55 governing health care facility sanctions in its entirety and has adopted LAC 48:I.Chapter 46 as authorized by R.S. 36:254, 40:2009.11, 40:2009.23, 40:2199 and 40:2199.1. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 48
PUBLIC HEALTH—GENERAL
Part I. General Administration
Subpart 3. Licensing and Certification
Chapter 46 Health Care Facility Sanctions
Subchapter A. General Provisions
§4601. Introduction

A. The purpose of this Chapter is to:

1. provide for the development, establishment and enforcement of statewide standards for the imposition of sanctions pursuant to state statutes against health care facilities in the state of Louisiana which have violations of federal or state law or statutes, licensure standards and requirements, certification requirements, or Medicaid requirements;

2. specify criteria as to when and how each sanction is to be applied;

3. specify the severity of the sanctions to be used in the imposition of such sanctions;

4. develop the procedure and requirements for applying each sanction;

5. provide for an administrative reconsideration process as well as an appeal procedure, including judicial review; and

6. provide for the administration of the Nursing Home Residents' Trust Fund and the Health Care Facility Fund.

B. This Chapter shall not apply to any individual health care provider who is licensed or certified by one of the boards under the Department of Health and Hospitals. These boards include, but are not limited to:

1. Board of Pharmacy;
2. Board of Physical Therapy;
3. Board of Licensed Medical Examiners;
4. Board of Dentistry;
5. Board of Podiatry; and
6. Board of Optometrists.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.11, 40:2009.23, 40:2199 and 40:2199.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3077 (November 2013).

§4603. Definitions

Administrative Reconsideration—for purposes of this Chapter, also known as informal reconsiderations.

Class A Violation—a violation of a rule or regulation that creates a condition or occurrence relating to the maintenance and/or operation of a facility which results in death or serious harm to a client. Examples of *class A violations* include, but are not limited to:

1. acts or omissions by an employee or employees of a facility that either knowingly or negligently resulted in the death of a client; or

2. acts or omissions by an employee or employees of a facility that either knowingly or negligently resulted in serious harm to a client.

Class B Violation—a violation of a rule or regulation in which a condition or occurrence relating to the maintenance and/or operation of a facility is created which results in the substantial probability of death or serious physical or mental harm to a client. Examples of *class B violations* include, but are not limited to:

1. medications or treatments improperly administered or withheld;

2. lack of functioning equipment necessary to care for a patient or client;

3. failure to maintain emergency equipment in working order;

4. failure to employ a sufficient number of adequately trained staff to care for clients; or

5. failure to implement adequate infection control measures.

Class C Violation—a violation of a rule or regulation in which a condition or occurrence relating to the maintenance and/or operation of a facility creates a potential for harm by directly threatening the health, safety, rights, or welfare of a client. Examples of *class C violations* include, but are not limited to:

1. failure to perform treatments as ordered by the physician, including the administration of medications;

2. improper storage of poisonous substances;

3. failure to notify the physician and family of changes in the condition of a patient or client;

4. failure to maintain equipment in working order;

5. inadequate supply of needed equipment;

6. lack of adequately trained staff necessary to meet a patient's or client's needs; or

7. failure to protect patients or clients from personal exploitation including, but not limited to, sexual conduct involving facility staff and a patient or client.

Class D Violation—a violation of a rule or regulation related to administrative and reporting requirements that do not directly threaten the health, safety, rights, or welfare of a client. Examples of *class D violations* include, but are not limited to:

1. failure to submit written reports of accidents;

2. failure to timely submit a plan of correction;

3. falsification of a record; or

4. failure to maintain a patient's or client's financial records as required by rules and regulations.

Class E Violation—a violation that occurs when a facility fails to submit a statistical or financial report in a timely manner as required by rule or regulation.

Client–an individual receiving services from a health care facility.

CMS—the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Department or *DHH*—the Louisiana Department of Health and Hospitals.

Desk Review—Health Standards Section's (HSS) procedure for conducting administrative reconsiderations of sanctions in which a panel of HSS employees, who were not involved in the decisions to cite the deficiencies that were the basis of the sanction or impose the sanction, reviews the documentation submitted by the facility and the information on which the sanction was based and determines whether the sanction was appropriate. Oral presentations are not scheduled unless requested.

Devolutive Appeal—an appeal that does not suspend the execution of the administrative sanction pending the outcome of the appeal.

Division of Administrative Law (DAL)—the Louisiana Department of State Civil Service, *Division of Administrative Law*, or its successor.

Health Care Facility or *Facility*—any health care provider or entity licensed or certified by DHH. In other laws, statues and regulations, this entity may be referred to as a provider, agency, clinic, residential unit, or home. A *health care facility* shall include, but not be limited to a/an:

1. abortion clinic;
2. adult brain injury facility;
3. adult day health care agency;
4. adult residential care provider (ARCP);
5. ambulatory surgical center;
6. case management agency;
7. behavioral health service provider;
8. crisis receiving center;
9. emergency medical services provider;
10. end stage renal disease (ESRD) treatment facility;
11. forensic supervised transitional residential and aftercare facility;
12. supplier of portable x-ray services;
13. home and community-based services (HCBS) provider;
14. home health agency;
15. hospice agency;
16. hospital;
17. intermediate care facility for persons with developmental disabilities (ICF-DD);
18. mental health clinic;
19. mental health center;
20. mental health rehabilitation agency;
21. non-emergency medical transportation agency;
22. nursing facility;
23. rural health clinic;
24. pain management clinic;
25. pediatric day health care (PDHC) facility;
26. psychiatric rehabilitation treatment facility (PRTF);
27. substance abuse/addiction treatment facility; and
28. therapeutic group home (TGH).

HSS—the Department of Health and Hospitals, Office of Management and Finance, Health Standards Section.

Licensee—the person, partnership, company, corporation, association, organization, professional entity, or other entity to whom a license is granted by the licensing agency, and upon whom rests the ultimate responsibility and authority for the conduct of, and services provided by the facility.

Louisiana Administrative Procedure Act (APA)—R.S. 49:950 et seq.

New Admission—any individual admitted to a facility or a new client receiving services from the facility after the facility receives notice of the sanction and on or after the effective date of the sanction as listed in the sanction notice. A client who was admitted prior to the effective date of the sanction and taking temporary leave before, on or after the effective date of the sanction is not considered a new admission upon return to the facility.

Repeat Violation—either of the following:

1. the existence of the violation is established as of a particular date and it is one that may be reasonably expected to continue until corrective action is taken. The department may elect to treat the cited continuing violation as a repeat violation subject to appropriate sanction for each day following the date on which the initial violation is established until such time as there is evidence that the violation has been corrected; or
2. the existence of a violation is established and another violation that is the same or substantially similar to the cited violation occurs within 18 months. The second and all similar violations occurring within an 18-month time period will be considered as repeat violations and sanctioned accordingly.

Sanction—any adverse action imposed on a facility by the department pursuant to its statutory or regulatory authority for a violation of a statute, law, rule or regulation. For purposes of this Rule, sanction does not include the following:

1. any adverse action that may be applied to a facility by the statewide management organization of the Louisiana Behavioral Health Partnership or its successor, or by a contracted coordinated care network with the Bayou Health program or its successor;
2. any adverse action that may be applied to a facility by an agency of the federal government or another state agency;
3. a deficiency; or
4. an immediate jeopardy determination.

Secretary—the *secretary* of DHH or his/her designee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.11, 40:2009.23, 40:2199 and 40:2199.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3077 (November 2013).

Subchapter B. Sanctions and Standards for the Imposition of Sanctions

§4611. General Provisions

A. Any health care facility found to be in violation of any state or federal statute, regulation, or any department rule, adopted in accordance with the APA, governing the administration and operation of the facility may be sanctioned as provided in this Chapter.

B. Unless otherwise prohibited by federal law or regulation, the department may impose one or more of the following sanctions:

1. civil fine(s);
2. denial of Medicaid payment with respect to any individual admitted to, or provided services by, a facility;
3. denial of new admissions into the facility or by the provider;
4. removal from the freedom of choice list;
5. transfer of clients receiving services;
6. suspension of license;
7. monitoring;
8. special staffing requirements;

9. temporary management;

10. revocation of license;

11. denial of license renewal; or

12. any and all sanctions allowed under federal or state law or regulations, including but not limited to:

a. sanctions authorized under the medical assistance programs integrity law (MAPIL), pursuant to R.S. 46:437.1 et seq.;

b. the surveillance and utilization review systems (SURS) rule, pursuant to LAC 50:I, Chapter 41; or

c. any successor statutes or rules.

C. Considerations. When determining whether to impose a sanction, the department may consider some or all of the following factors:

1. whether the violations pose an immediate threat to the health or safety of the client(s);

2. the duration of the violation(s);

3. whether the violation, or one that is substantially similar, has previously occurred during the last three consecutive surveys;

4. the facility's history of survey compliance;

5. the sanction most likely to cause the facility to come into compliance in the shortest amount of time;

6. the severity of the violation if it does not pose an immediate threat to health and safety;

7. the "good faith" exercised by the facility in attempting to stay in compliance;

8. the financial benefit to the facility of committing or continuing the violation;

9. whether the violation is a repeat violation;

10. whether the facility interfered or hindered the department's investigation or survey process;

11. whether the facility has the governance or institutional control to maintain compliance; and

12. such other factors as the department deems appropriate.

D. The department shall determine whether a violation is a repeat violation and sanction the provider accordingly.

E. The department reserves the right to issue more than one sanction for each violation committed by a facility.

F. Any facility sanctioned under this Rule and found to have a violation that poses a threat to the health, safety, rights, or welfare of a client may have additional actions, such as criminal charges, brought against it under another applicable law, statute or regulation.

G. Unless otherwise provided for in state law or statute, if the secretary determines that the violations committed by the facility pose an imminent or immediate threat to the health, welfare or safety of any client receiving services, the imposition of the sanction may be immediate and may be enforced during the pendency of the administrative appeal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.11, 40:2009.23, 40:2199 and 40:2199.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3078 (November 2013).

§4613. Civil Fines

A. Class A Violations

1. Civil fines for class A violations shall not exceed $2,500 for the first violation and shall not exceed $5,000 per day for repeat violations.

2. The aggregate fines assessed for class A repeat violations shall not exceed $20,000 in any one calendar month.

B. Class B Violations

1. Civil fines for class B violations shall not exceed $1,500 for the first violation and shall not exceed $3,000 per day for repeat violations.

2. The aggregate fines assessed for class B repeat violations shall not exceed $15,000 in any one calendar month.

C. Class C Violations

1. Civil fines for class C violations shall not exceed $1,000 for the first violation and shall not exceed $2,000 per day for repeat violations.

2. A facility may elect to pay 50 percent of the civil fine imposed for a class C violation in exchange for waiving its right to an administrative reconsideration and appeal if it submits, and HSS receives, the following within 30 days of the facility's receipt of the civil fine notice:

a. payment of 50 percent of the civil fine imposed; and

b. the facility's written waiver of the right to an administrative reconsideration and appeal on the form provided by DHH.

D. Class D Violations

1. Civil fines for class D violations shall not exceed $100 per day for the first violation and shall not exceed $250 per day for repeat violations.

E. Class E Violations

1. Civil fines for class E violations shall not exceed $50 for the first violation and shall not exceed $100 for repeat violations.

F. Determination of the Amount of Civil Fines

1. In establishing the amount of civil fines to be imposed against the provider, the department may consider:

a. all relevant aggravating circumstances, including, but not limited to:

i. whether the violation resulted from intentional or reckless conduct by the provider;

ii. the pervasiveness of the violation;

iii. the duration of the violation; and/or

iv. the extent of actual or potential harm to clients; and

b. all relevant mitigating circumstances, including, but not limited to:

i. whether the provider had taken steps to prevent the violation; and/or

ii. whether the provider had implemented an effective corporate compliance program prior to the violation.

2. The aggregate fines assessed for any class C, D and E violations shall not exceed $5,000 in any one calendar month.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.11, 40:2009.23, 40:2199 and 40:2199.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3079 (November 2013).

§4615. Denial of Medicaid Payment

A. The department may impose the sanction of "denial of Medicaid payment" with respect to any individual admitted

to or provided services by a facility for any violation of statute, rule or regulation including, but not limited to:

1. a violation of a rule or regulation that creates a condition or occurrence relating to the maintenance and/or operation of a facility which results in death or serious harm to a resident, patient or client;

2. a violation of a rule or regulation in which a condition or occurrence relating to the maintenance and/or operation of a facility is created and results in the substantial probability of death or serious physical or mental harm to a resident, patient or client will result from the violation;

3. a repeat violation of a rule or regulation in which a condition or occurrence relating to the maintenance and/or operation of a facility creates a potential for harm by directly threatening the health, safety, rights, or welfare of a client; or

4. more than two substantiated complaint surveys in two years.

B. This sanction shall remain in effect until:

1. the department determines that the facility is in compliance with the requirements; and

2. the department has provided notice to the facility of its compliance and the lifting of the sanction.

C. The department has the discretion to apply this sanction to new admissions only.

D. The facility shall notify all clients and all potential new clients of the imposition of this sanction.

E. The facility is prohibited from seeking reimbursement from a Medicaid recipient for services provided during the imposition of this sanction.

F. This sanction may be used in conjunction with other sanctions including, but not limited to, removal from the freedom of choice list and transfer of clients to another facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.11, 40:2009.23, 40:2199 and 40:2199.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3079 (November 2013).

§4617. Denial of New Admissions

A. The department may impose the sanction of "denial of new admissions." Denial of new admissions prohibits a new client from being admitted to a facility or any new client from receiving services from a facility during the term of the sanction.

B. The department may impose the sanction of denial of new admission for any violation of statute, rule or regulation including, but not limited to:

1. a violation of a rule or regulation that creates a condition or occurrence relating to the maintenance and/or operation of a facility which results in death or serious harm to a resident, patient or client;

2. a violation of a rule or regulation in which a condition or occurrence relating to the maintenance and/or operation of a facility is created and results in the substantial probability of death or serious physical or mental harm to a resident, patient or client will result from the violation;

3. a repeat violation of a rule or regulation in which a condition or occurrence relating to the maintenance and/or operation of a facility creates a potential for harm by directly threatening the health, safety, rights, or welfare of a client; or

4. more than two substantiated complaint surveys in two years.

C. The facility must provide notice of the imposition of the sanction and its effective date to all potential new admissions and to health care providers who have transferred, or it reasonably believes may transfer, a client into the sanctioned facility.

D. The sanction shall remain in effect until:

1. the department determines that the facility is in compliance with the requirements; and

2. the facility has received notice of its compliance and the lifting of the sanction.

E. This sanction may be used in conjunction with other sanctions, including removal from the freedom of choice list.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.11, 40:2009.23, 40:2199 and 40:2199.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3080 (November 2013).

§4619. Removal from the Freedom of Choice List

A. The department may impose the sanction of "removal from the freedom of choice list" to a facility placed on a freedom of choice list. DHH may impose this sanction for any violation including, but not limited to:

1. a violation of a rule or regulation that creates a condition or occurrence relating to the maintenance and/or operation of a facility which results in death or serious harm to a resident, patient or client;

2. a violation of a rule or regulation in which a condition or occurrence relating to the maintenance and/or operation of a facility is created and results in the substantial probability of death or serious physical or mental harm to a resident, patient or client;

3. a repeat violation of a rule or regulation in which a condition or occurrence relating to the maintenance and/or operation of a facility creates a potential for harm by directly threatening the health, safety, rights, or welfare of a client; or

4. more than two substantiated complaint surveys in two years.

B. The sanction of removal from the freedom of choice list shall remain in effect until:

1. the department determines that the facility is in compliance with the requirements; and

2. the facility has received notice of its compliance and the lifting of the sanction.

C. This sanction may be used in conjunction with another sanction, including denial of new admissions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.11, 40:2009.23, 40:2199 and 40:2199.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3080 (November 2013).

§4621. Transfer of Clients Receiving Services

A. The department may impose the sanction of "transfer of clients receiving services" provided by a facility. This sanction may be imposed for any violation of statute, rule or regulation including but not limited to:

1. a violation of a rule or regulation that creates a condition or occurrence relating to the maintenance and/or operation of a facility which results in death or serious harm to a resident, patient or client;

2. a violation of a rule or regulation in which a condition or occurrence relating to the maintenance and/or operation of a facility is created and results in the substantial

probability of death, serious physical harm or mental harm to a resident, patient or client;

3. a repeat violation of a rule or regulation in which a condition or occurrence relating to the maintenance and/or operation of a facility creates a potential for harm by directly threatening the health, safety, rights, or welfare of a client;

4. when there is an imminent threat to the health, safety and welfare of the facility's clients; or

5. more than two substantiated complaint surveys in two years.

B. This sanction may be imposed in conjunction with any other sanctions including, but not limited to, the following:

1. license suspension;

2. monitoring;

3. license revocation; and/or

4. denial of Medicaid payment with respect to any individual admitted to or provided services by a facility.

C. The sanction of transfer of clients shall remain in effect until:

1. the department determines that the facility is in compliance with the requirements; and

2. the facility has received notice of its compliance and the lifting of the sanction from the department.

D. The facility shall:

1. assist in the safe and orderly transfer of its clients to other facilities;

2. prohibit any action(s) that would prevent or impede the transfer of its clients;

3. maintain the needs of its clients until the transfer is complete; and

4. update the client's treatment plan and other records as necessary in preparation for the transfer or discharge of its client.

E. The facility, with assistance from the department, shall notify the clients of the transfer sanction and the transfer procedures. The department will identify similar facilities in close proximity to accommodate the clients being transferred.

F. At a minimum, the facility shall provide, at the facility's expense:

1. a copy of the current active treatment plan;

2. current orders; and

3. any other pertinent medical records to the facility accepting its transferred clients in an effort to achieve the seamless continuum of care.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.11, 40:2009.23, 40:2199 and 40:2199.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3080 (November 2013).

§4623. License Suspension

A. Unless otherwise provided by federal or state law, the department may impose a suspension of a license if the department determines that the violations committed by the facility pose an imminent or immediate threat to the health, welfare or safety of its clients.

B. The sanction of license suspension shall remain in effect until the department determines that the facility is in compliance with the requirements, and has provided notice of compliance and the lifting of the suspension to the facility.

C. The imposition or lifting of the suspension does not affect the imposition of other sanctions.

D. If the license suspension is reversed during the appeal process, the facility's license will be re-instated or granted upon the payment of any licensing fees, outstanding sanctions or other fees due to the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.11, 40:2009.23, 40:2199 and 40:2199.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3081 (November 2013).

§4625. Monitoring

A. The department may impose the sanction of monitoring. The facility is responsible for the cost of the monitoring.

B. Monitoring may be imposed:

1. when the facility is noncompliant with any law, statute, rule or regulation and is in the process of correcting deficiencies to achieve such compliance;

2. when the facility was previously found to be noncompliant with any law, statute, rule or regulation, has corrected deficiencies to achieve such compliance, and verification of continued compliance is indicated; or

3. when the department has reason to question the compliance of the facility with any law, statute, rule or regulation;

4. while a facility is instituting improvements; or

5. while a facility is in the process of closing.

C. Monitoring may include:

1. periodic unannounced visits by a surveyor;

2. on-site full time monitoring by surveyors to observe all phases of the facility's operations; or

3. on-site visits as deemed necessary by the department.

D. The department may maintain and utilize a specialized team of professionals, such as an attorney, auditor or health care professional, for the purpose of identifying, surveying, gathering and preserving evidence, and carrying out appropriate enforcement actions against facilities being monitored.

E. The sanction of monitoring shall remain in effect until:

1. the department determines that the facility is in compliance with the requirements and will remain in compliance with such requirements; and

2. the facility has received notice of compliance and the lifting of the sanction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.11, 40:2009.23, 40:2199 and 40:2199.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3081 (November 2013).

§4627. Special Staffing Requirements

A. The department may require special staffing for the facility.

B. Special staffing may include, but is not limited to:

1. a consultant on client assessments or care planning;

2. an additional licensed nurse to provide treatments;

3. a consultant dietician;

4. a consultant pharmacist; or

5. medical records practitioner.

C. The department may impose the sanction of special staffing for any violation of statute, rule or regulation including, but not limited to:

1. a violation of a rule or regulation that creates a condition or occurrence relating to the maintenance and/or operation of a facility which results in death or serious harm to a resident, patient or client;

2. a violation of a rule or regulation in which a condition or occurrence relating to the maintenance and/or operation of a facility is created and results in the substantial probability of death or serious physical or mental harm to a resident, patient or client will result from the violation;

3. a repeat violation of a rule or regulation in which a condition or occurrence relating to the maintenance and/ or operation of a facility creates a potential for harm by directly threatening the health, safety, rights, or welfare of a client;

4. at the discretion of the department, when there is a breakdown in the care and services at a facility and the efforts of the facility have not been successful in correcting the deficiencies; or

5. when there is an imminent threat to the health, safety and welfare of the facility's clients.

D. Any special staffing shall meet the requirements outlined in the letter from the department and be:

1. in addition to the staff already hired;
2. time limited;
3. compensated by the facility; and
4. approved by the department.

E. The sanction shall remain in effect until the department determines the facility:

1. is in compliance with requirements; and
2. has received notice of its compliance and the lifting of the sanction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.11, 40:2009.23, 40:2199 and 40:2199.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3081 (November 2013).

§4629. Temporary Management

A. The department may require the immediate appointment of a temporary manager, at the facility's expense, to:

1. oversee the operation of the facility; and
2. assure the health and safety of the facility's clients.

B. Temporary management may be imposed for any violation of statute, rule or regulation including, but not limited to:

1. a violation of a rule or regulation that creates a condition or occurrence relating to the maintenance and/or operation of a facility which results in death or serious harm to a resident, patient or client;

2. a violation of a rule or regulation in which a condition or occurrence relating to the maintenance and/or operation of a facility is created and results in the substantial probability of death, serious physical harm or mental harm to a resident, patient or client;

3. a repeat violation of a rule or regulation in which a condition or occurrence relating to the maintenance and/or operation of a facility creates a potential for harm by directly threatening the health, safety, rights, or welfare of a client;

4. when there is a breakdown in the care and services at a facility and the efforts of the facility have not been successful in correcting the deficiencies;

5. when a licensee or its management has abandoned its clients;

6. when a licensee or its management has abandoned the facility which jeopardizes the health, safety and/or welfare of the facility's clients; or

7. when a facility is closing within 30 calendar days and the department has reasonable cause to believe that inadequate arrangements have been made to relocate the clients and may result in adverse effects to the clients.

C. This sanction shall be enforced and in effect during the pendency of the facility's administrative reconsideration and/or appeal.

D. Cost of Temporary Management

1. The facility shall be responsible for all costs of temporary management.

2. The department shall undertake any means to recover the payment of temporary management including, but not limited to, withholding or recouping from the facility's Medicaid reimbursement.

3. Failure to reimburse the department for the cost of temporary management shall result in the facility's owners, managers, officers, directors and administrator being prohibited from operating, managing, directing or owning a licensed health care facility for a period of two years from the latter of the date the sanction is lifted or the date the sanction is upheld through the appeal process.

E. Powers and Duties of the Temporary Manager

1. The facility must provide the temporary manager with sufficient power and duties to address, correct and/or ameliorate the deficiencies that led to the imposition of the temporary management sanction.

2. The temporary manager's powers and duties are subject to the approval of the department.

F. Qualifications and Compensation of a Temporary Manager. The facility shall appoint a temporary manager who is:

1. qualified by education and experience to perform the duties required of the temporary management;
2. subject to the approval of the department; and
3. adequately compensated by the facility for the performance of his/her duties as temporary manager.

G. The department may end the temporary management of a facility when it determines that the facility is in compliance with the laws, rules or regulations for a sufficient time period as determined by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.11, 40:2009.23, 40:2199 and 40:2199.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3082 (November 2013).

§4631. Denial of Renewal License and Revocation of License

A. The department may deny an application to renew a license or may revoke a license pursuant to the process and procedures contained in the department's statutory and promulgated licensing standards applicable to each facility.

B. Voluntary Non-Renewal

1. If a facility fails to timely renew its license, the license expires on its face and is considered voluntarily surrendered.

2. There are no appeal rights for a voluntary surrender as this is a voluntary action on the part of the facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.11, 40:2009.23, 40:2199 and 40:2199.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3082 (November 2013).

Subchapter C. Notice and Appeals

§4641. Notice of Sanctions and Appeals

A. Unless otherwise provided in the licensing standards or other promulgated state rule or regulation, the following notice and appeal procedures are applicable to all sanctions imposed by the department pursuant to a Louisiana state statute or regulation.

B. Notice to Facility of Sanctions. The department shall provide written notice to a health care facility of the imposition of a sanction. The notice shall contain the following information:

1. the nature of the violation(s) and whether the violation is a repeat violation;

2. the legal authority for the violation(s);

3. the sanction assessed for each violation and the effective date of the sanction;

4. notification that the facility has 10 calendar days from receipt of the notice within which to request an administrative reconsideration of the proposed sanction;

5. notification of the administrative reconsideration and/or administrative appeal procedures and the deadlines for each; and

6. notification that the department's decision becomes final and no administrative or judicial review may be obtained if the facility fails to timely request an administrative reconsideration and/or administrative appeal.

C. Waivers. When a civil fine for a class C violation is imposed, the facility may choose to waive its right to an administrative reconsideration and appeal hearing in exchange for paying 50 percent of the fine by submitting the waiver and payment to HSS within 30 days of receipt of the notice imposing the civil fine.

D. Administrative Reconsideration. The facility may request an administrative reconsideration of the department's decision to impose a sanction.

1. The facility's request for an administrative reconsideration must:

a. be in writing;

b. be received by HSS within 10 calendar days of the provider's receipt of the notice of the imposition of the sanction; and

c. include any documentation that demonstrates that the sanction was in error.

2. A reconsideration shall be conducted by designated employees of the department who did not participate in the initial decision to recommend imposition of the sanction.

3. Correction of the deficiency or violation cited for imposition of the sanction shall not be the basis for an administrative reconsideration.

4. A reconsideration shall be conducted as a desk review unless the facility elects to make an oral presentation. The facility may request an oral presentation by notifying HSS within the deadline provided in the notice scheduling the administrative reconsideration.

5. A sanction may be confirmed, reduced or rescinded as a result of the administrative reconsideration. A deficiency may not be altered or rescinded as a result of the administrative reconsideration, except a deficiency may be altered or rescinded in an administrative reconsideration of a revocation, denial of renewal or suspension.

6. A reconsideration decision shall be based upon all documents and the oral presentation furnished by the provider to the department at the time of the administrative reconsideration.

7. A reconsideration decision is final unless the facility timely requests an administrative appeal.

E. Administrative Appeal

1. The provider may request an administrative appeal of the department's decision to impose a sanction.

2. The issue that may be adjudicated in the appeal is the appropriateness of the sanction, including the classification of the violation(s).

3. A deficiency and its underlying facts may not be altered or rescinded as a result of the administrative appeal, except a state deficiency and its underlying facts may be altered or rescinded in an administrative appeal of a revocation, denial of renewal or suspension. For example, in an appeal of a fine due to a Class A violation, the DAL, after hearing the evidence, may decide to reduce the violation to a Class B and reduce the fine accordingly. However, the DAL may not reduce or alter the underlying deficiency on the survey report.

4. The facility's appeal request shall:

a. be in writing;

b. be received by the DAL within 30 days of the provider's receipt of the notice of the imposition of the sanction when no administrative reconsideration is requested, or when an administrative reconsideration is requested, within 30 days of the receipt of the notice of the results of the administrative reconsideration;

c. state what the facility contests and the specific reasons for the disagreement; and

d. shall include any documentation that demonstrates that the sanction was imposed in error.

5. In an appeal contesting a civil fine, the facility shall either post an appeal bond with the DAL as provided in R.S. 40:2009.11 for nursing facilities or R.S. 40:2199(D) for all other facilities, or the facility may choose to pay the fine and file a devolutive appeal.

6. Correction of the deficiency or violation cited for the imposition of the sanction will not be considered as a basis for the appeal.

7. The administrative hearing shall be limited to those issues specifically contested.

8. Except as hereinafter provided, when an administrative appeal is requested in a timely and proper manner, the DAL shall provide an administrative hearing in accordance with the provisions of the APA.

E. Judicial Review. The facility may request judicial review of the administrative appeal decision in the Nineteenth Judicial District Court in accordance with the APA.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.11, 40:2009.23, 40:2199 and 40:2199.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3083 (November 2013).

§4643. Administrative Appeal Process

A. Any party may appear and be heard at an appeal proceeding through an attorney at law or designated representative. A designated representative must file a

written notice of appearance on behalf of the facility identifying him/herself by name, address and telephone number, and identifying the party represented in addition to written authorization to appear on behalf of the facility.

B. The administrative appeal hearing shall be conducted by an administrative law judge (ALJ) or his or her successor from the DAL.

C. Preliminary Conferences

1. The ALJ may schedule a preliminary conference.

2. The purposes of a preliminary conference, if scheduled, include, but are not limited to the following:

a. clarification, formulation and simplification of issues(s);

b. resolution of matters in controversy;

c. exchange of documents and information;

d. stipulations of fact so as to avoid unnecessary introduction of evidence at the formal review;

e. the identification of witnesses; and

f. such other matters that may aid in the disposition of the issues.

3. When the ALJ schedules a preliminary conference, all parties shall be notified in writing. The notice shall direct any parties and their attorneys to appear at a specified date, time and place.

4. Where the preliminary conference resolves all or some matters in controversy, a summary of the findings agreed to at the conference shall be provided to all parties.

5. Where the preliminary conference does not resolve all matters in controversy, an administrative hearing shall be scheduled on those matters still in controversy.

D. Hearings

1. When an administrative hearing is scheduled, the facility and/or its attorney and the agency representative, shall be notified in writing of the date, time and place of the hearing.

2. Evidence. The taking of evidence shall be controlled in a manner best suited to ascertain the facts and safeguard the rights of the parties. Prior to taking evidence, the issues shall be explained, and the order in which the evidence will be received shall be explained.

a. Testimony shall be taken only on oath, affirmation or penalty of perjury.

b. Each party shall have the right to:

i. call and examine witnesses;

ii. introduce exhibits;

iii. question opposing witnesses and parties on any matter relevant to the issue even though the matter was not covered in the direct examination; and

iv. impeach any witness regardless of which party first called him to testify; and

v. rebut the evidence against him.

c. The ALJ may question any party or witness and may admit any relevant and material evidence.

d. Each party shall arrange for the presence of their witnesses at the hearing.

e. A subpoena to compel the attendance of a witness may be issued by the ALJ upon written request by a party and showing the need therefore, or by the ALJ on his own motion.

f. An application for a subpoena duces tecum for the production by a witness of books, papers, correspondence, memoranda, or other records shall be:

i. in writing to the ALJ;

ii. give the name and address of the person or entity upon whom the subpoena is to be served;

iii. precisely describe the material that is desired to be produced;

iv. state the materiality thereof to the issue involved in the proceeding; and

v. include a statement indicating that to the best of the applicant's knowledge, the witness has such items in his possession or under his control.

3. The facility has the burden to prove that the imposition of a sanction was erroneous.

4. An audio recording of the hearing shall be made. A transcript will be prepared and reproduced at the request of a party to the hearing, provided he bears the cost of a copy of the transcript.

5. At the conclusion of the hearing, the ALJ may take the matter under submission.

6. Specific written findings as to each issue contested by the facility shall be made.

7. The ALJ has the authority to affirm, reverse, or modify the sanction(s) imposed by the department.

8. The ALJ does not have the authority to:

a. rescind or amend any violation of federal law, statute or regulation found by DHH on behalf of CMS; or

b. amend or rescind any violation of state law, statute, rule or manual in an appeal of a civil fine or of any other sanction, except license revocation, suspension and non-renewal.

9. Such findings shall be submitted in writing to the facility at its last known address and to the department and other affected parties.

E. Continuances

1. A hearing may be continued to another time or place, or a further hearing may be ordered by the ALJ on his own motion or upon showing of good cause, at the request of any party.

2. Where the ALJ determines that additional evidence is necessary for the proper determination of the case, he/she may, at his/her discretion:

a. continue the hearing to a later date and order the party to produce additional evidence; or

b. close the hearing and hold the record open in order to permit the introduction of additional documentary evidence.

3. Any evidence so submitted shall be made available to both parties and each party shall have the opportunity for rebuttal.

4. Written notice of the time and place of a continued or further hearing shall be provided to each party, except that when a continuance of further hearing is ordered during a hearing, oral notice of the time and place of the hearing may be given to each party present at the hearing.

F. If a facility representative fails to appear at a hearing, the appeal may be dismissed and the departmental findings made final. A copy of the decision shall be mailed to each party.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.11, 40:2009.23, 40:2199 and 40:2199.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3083 (November 2013).

Subchapter D. Enforcement of Sanctions

§4651. Enforcement of Sanctions/Collection of Fines

A. The decision to impose a sanction(s), except those classified as immediate, is final when:

1. an administrative appeal is not requested within the specified time limit;

2. the facility agrees to pay the fine or to comply with the sanction;

3. the administrative appeal affirms the department's fine or sanction and the time for seeking judicial review has expired; or

4. the judicial review or appeal affirms the fine or sanction and the deadline for seeking further review expires.

B. Civil Fines. When a fine becomes final, the facility shall do one of the following:

1. make payment in full within 10 days of the date the fine becomes final; or

2. request a payment schedule, in light of a documented hardship, within 10 calendar days of the fine becoming final.

C. Interest shall begin to accrue, at the current judicial rate, on the day following the date on which any fine becomes due and payable.

D. Failure to Make Payment of Assessed Fines. When the assessed fine is not received within the prescribed time period and the facility has not arranged for a payment schedule, the department may:

1. deduct the full amount with accrued interest from funds otherwise due to a Medicaid provider as Medicaid reimbursement; or

2. institute civil action as necessary to collect the fines due if the provider is not a Medicaid provider.

E. The facility is prohibited from:

1. claiming imposed fines and/or interest as reimbursable costs to Medicaid or Medicare; and

2. increasing charges to clients as a result of civil fines and/or interest imposed by DHH.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.11, 40:2009.23, 40:2199 and 40:2199.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3085 (November 2013).

Subchapter E. Funds

§4661. Nursing Home Residents' Trust Fund

A. The department shall deposit civil fines and the interest collected from nursing homes into the Nursing Home Residents' Trust Fund, hereafter referred to as trust fund.

B. The secretary shall administer the trust fund.

C. The monies in the trust fund shall be subject to annual appropriation and shall be used solely as mandated by the Omnibus Budget Reconciliation Act of 1987 (P.L. 100-203) for any of the following purposes:

1. to protect the health or property of residents of nursing homes which the department finds deficient;

2. to pay for the costs of relocation of residents to other facilities;

3. to maintain operation of a facility pending correction of deficiencies or closure;

4. to reimburse residents for personal funds lost;

5. to allow the department to use the funds for education to improve the health and welfare of residents;

6. to reimburse a nursing home(s) for evacuation expenses, subject to approval by the federal government; and

7. any other purpose approved by CMS.

D. Request for monies from the trust fund shall be made in writing to the department. All expenditures are subject to the approval of CMS.

E. Monies from the trust fund shall be utilized only to the extent that private or public funds, including funds available under Title XVIII and Title XIX of the Social Security Act, are not available or are not sufficient to meet the expenses of the facility.

F. The department is hereby authorized to enter into cooperative endeavor agreements with public and private entities for the approved expenditure of monies in the trust fund that achieve the purpose of the fund.

G. The existence of the trust fund shall not make the department responsible for the maintenance of residents of a nursing home facility or maintenance of the facility itself.

H. The department has the discretion to require repayment of a disbursement from the trust fund.

1. If required, the terms of repayment of monies disbursed shall be determined by the secretary and may, where appropriate, be set forth in a contract signed by the secretary and the applicant or other party responsible for repayment.

2. Failure to repay the funds according to the established terms of repayment shall preclude future disbursements to the applicant from the trust fund until all monies are repaid.

3. Monies due and owing to reimburse the trust fund shall accrue interest at the current judicial interest rate.

4. If a nursing home fails to repay the funds according to the established terms of repayment, the department may recoup the amount of disbursement not repaid by a nursing home from the nursing home's Medicaid payments or from any other payments owed to the nursing home from the department.

5. All monies collected pursuant to a repayment agreement or by recoupment shall be treated in the same manner as a collected civil fine.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.11, 40:2009.23, 40:2199 and 40:2199.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3085 (November 2013).

§4663. Health Care Facility Fund

A. The civil fines and interest collected from health care facilities, other than nursing homes, shall be deposited into the Health Care Facility Fund, hereafter referred to as trust fund.

B. The department has the exclusive use of the funds contained in the trust fund.

C. The monies in the trust fund shall be subject to annual appropriation by the legislature and shall be used exclusively for the following purposes:

1. the protection of health, welfare, rights or property of those receiving services from health care facilities;

2 the enforcement of sanctions against health care facilities;

3. the education, employment and training of employees, staff or other personnel of health care facilities; and/or

4. programs designed to improve the quality of care in health care facilities.

D. The Health Care Facility Fund may not be used to fund re-occurring programs.

E. The department is hereby authorized to enter into cooperative endeavor agreements with public and private entities for the approved expenditure of monies in the trust fund that achieve the purpose of the fund.

F. The department has the discretion to require repayment of a disbursement from the trust fund.

1. If required, the terms of repayment of monies disbursed shall be determined by the secretary and may, where appropriate, be set forth in a contract signed by the secretary and the applicant or other party responsible for repayment.

2. Failure to repay the funds according to the established terms of repayment shall prevent future disbursements to the applicant from the trust fund until all monies are repaid.

3. Monies due and owing according to the established terms of repayment shall accrue interest at the current judicial interest rate.

4. If a facility fails to repay the funds according to the established terms of repayment, the department may recoup the amount of disbursement not repaid by a facility from the facility's Medicaid payments or from any other payments owed to the facility from the department.

5. All monies collected pursuant to a repayment agreement or by recoupment shall be treated in the same manner as a collected civil fine.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.11, 40:2009.23, 40:2199 and 40:2199.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3085 (November 2013).

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part I. Administration
Subpart 7. Sanctions
Chapter 55. Health Care Facility Sanctions

§5501. General Provisions

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2199.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 11:37 (January 1985), amended LR 11:770 (August 1985), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 18:189 (February 1992), LR 26:1448 (July 2000), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3086 (November 2013).

§5503. Description of Violation and Applicable Civil Fines

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2199.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 11:37 (January 1985), amended LR 11:770 (August 1985), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 18:189 (February 1992), LR 26:1448 (July 2000), LR 31:1590 (July 2005), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3086 (November 2013).

§5505. Notice and Appeal Procedure

Repealed,

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2199.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 11:37 (January 1985), amended LR 11:770 (August 1985), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 18:189 (February 1992), LR 26:1449 (July 2000), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3086 (November 2013).

§5507. Collection of Fines

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2199.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 11:37 (January 1985), amended LR 11:770 (August 1985), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 18:189 (February 1992), amended LR 26:1450 (July 2000), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3086 (November 2013).

Kathy H. Kliebert
Secretary

1311#086

RULE

Department of Health and Hospitals
Bureau of Health Services Financing
and
Office of Aging and Adult Services

Home- and Community-Based Services Waivers
Support Coordination Standards for Participation
(LAC 50:XXI.Chapter 5)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services have amended LAC 50:XXI.Chapter 5 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XXI. Home- and Community-Based Services Waivers
Subpart 1. General Provisions
Chapter 5. Support Coordination Standards for Participation for Office of Aging and Adult Services Waiver ProgramsSubchapter A. General Provisions

§501. Introduction

A. The Department of Health and Hospitals (DHH) establishes these minimum standards for participation which provides the core requirements for support coordination services provided under home- and community-based waiver programs administered by the Office of Aging and Adult Services (OAAS). OAAS must determine the adequacy of