

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF PUBLIC WELFARE
ADULT RESIDENTIAL LICENSING
POLICIES AND PROCEDURES**

**Administrative Fines
Effective December 1, 2008**

Purpose:

Guiding principles in applying the fine system are to:

- ▶ Compel compliance with state licensing regulations (the purpose is not revenue generation, nor is the purpose to punish)
- ▶ Apply fines in a fair and equitable manner
- ▶ Take into account the Commonwealth's administrative time to apply and enforce the fines, in conjunction with other enforcement remedies provided by statute.

The administrative fine system is supplemental to other enforcement remedies provided under 62 P.S. §1001 et seq, 55 Pa.Code Ch. 2600 and 55 Pa.Code Ch. 20.

Classifications of violations will be completed by the Department on a "totality of circumstance" basis, not on a "per se" basis (in other words, the circumstances for each single violation will be assessed in determining the appropriate classification and amount of the fine, rather than pre-classifying each regulation and each possible circumstance of the violation).

Legal Authority:

62 P.S. §1085 -1087

55 Pa.Code § 261-270 (relating to enforcement)

55 Pa.Code § 20.37 (relating to emergency removal of residents)

Policy:

A. The Department will assess a fine for a repeated, uncorrected violation for any license for which a Provisional license is issued.

1. A repeated violation is noncompliance with the same Ch. 2600 regulation number (to the most specific section, subsection, paragraph or subparagraph) on the Department of Public Welfare's (Department) Violation Report from at least the prior 12 months of Violation Reports AND including the last renewal inspection (whenever conducted) and all

Violation Reports issued by the Department since the last renewal inspection.

2. An uncorrected violation, for the purposes of fine assessment, but not for the purpose of issuance of a Provisional License in accordance with 62 P.S. § 1008 – see § 2600.270 (relating to correction of violations), is a regulatory violation with Ch. 2600 that is not fully corrected (for which full, long-term compliance has not been observed by the Department).

B. The Department will assess a fine for any repeated, uncorrected violation of 55 Pa.Code § 2600.64(c) (relating to administrator training and orientation) and § 2600.65(e) (relating to direct care staff person training and orientation).

C. The following criteria will be used by the Department to determine the classification of the violation:

1. Seriousness of the violation, defined as the degree of potential risk to the health, safety and well being of the residents if the regulation is not met. Consideration is also given to the duration of the violation.

2. Steps taken to correct the violation, defined as the degree of compliance with the previously agreed upon Plan of Correction (as issued in the prior Violation Report) and the evidence of good faith efforts made to comply with the regulation. Consideration is given to any obstacles outside the provider's control that prohibited or delayed compliance with the previously agreed upon Plan of Correction.

3. Patterns of a related nature, defined as one or more violations in the same "Center Head" section of Ch. 2600. Consideration is given to the relatedness and grouping of all cited violations.

D. Fines apply per resident per day as specified at 62 P.S. § 1086 and 55 Pa.Code § 2600.262 (related to penalties.) It is noted that § 2600.262(e) states that the Department will assess a minimum penalty of \$5 per resident per day, up to a maximum penalty of \$15 per resident per day, for each Class II Violation. Class II violations will be routinely assessed at \$5 per resident per day.

E. Fines are assessed based on the number of residents served as of the most recent inspection of the facility.

F. Fines are in effect until the provider has fully corrected the violation. It is the responsibility of the provider to provide evidence of not just initial regulatory compliance, but also long-term regulatory compliance with each violation. Once a fine is assessed by the Department, it is presumed that a violation continues to exist resulting in the continued imposition of the fine, until the provider has provided evidence of full, long-term compliance that is verified by the

Department. The provider must therefore notify the Department promptly and provide evidence of compliance for all fully corrected violations.

G. All fines will begin to accrue on the date the licensing decision is made by the Department, as issued by the Deputy Secretary. As such, the date on the licensing transmittal of the licensing decision as signed by the Deputy Secretary will determine the date the fines begin to accrue.

H. Appeals of all or some fines are permitted in accordance with § 2600.263 (related to appeals of penalty.) The procedure for appeals is included when the invoice for fine collection is sent to the provider from the Department's Bureau of Financial Operations (BFO) at the time the actual billing occurs.

I. The exact amount of the fine to be assessed is calculated at the end of the grace period for correction in accordance with § 2600.262. The expiration of the grace period will be the basis for an initial invoice to be submitted reflecting the amount of the fine assessed and to be paid. The receipt of the initial billing from the Department indicating the exact fine calculation will constitute a negative action resulting in an official sanction taken by the Department. Therefore, until the official sanction and billing occurs, the facility cannot submit an appeal of the administrative fine.

J. Once a fine is assessed, any requests from the facility to submit installment payments must be submitted from the provider in writing and must be approved by the Director, Adult Residential Licensing (ARL) and the Director, BFO.