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**SANCTIONS AND APPEALS****Sanctions**

When an ICF/DD does not comply with the requirements set forth in the ICF/DD **Standards for Payment**, DHH may impose sanctions. Sanctions may involve the following:

- Special staffing requirements,
- Withholding of vendor payments,
- Civil fines,
- Denial of payments for new admissions, or
- Termination of the ICF/DD's certification as a Medicaid provider.

**Special Staffing Requirements**

When the secretary of DHH determines that additional staffing or staff with specific qualifications would be beneficial in correcting deficient practices, DHH may require a facility to hire additional staff on a full-time or consultant basis until the deficient practices have been corrected. This provision may be invoked in concert with, **or** instead of, the sanctions cited below.

**Withholding of Vendor Payments**

DHH may withhold vendor payments in whole or in part in the following situations, which are not all inclusive:

- **Delinquent Staffing Report** – when the ICF/DD provider fails to timely submit a required, completed staffing report. After DHH notifies the provider of the delinquent report, vendor payments may be withheld until the completed report is received.
- **Unapproved Staffing Shortage** – when a report indicates an unapproved staffing shortage, vendor payments may be withheld until staffing is brought into compliance.
- **Incorrect/Inappropriate Charges** – when DHH determines that the ICF/DD incorrectly or inappropriately charged recipients, families, or responsible parties,

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or there has been misapplication of recipient funds, vendor payments may be withheld until the facility does the following:

- Makes restitution, and
  - Submits documentation of such restitution to DHH Bureau of Health Services Financing.
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- **Delinquent Cost Report** – when an ICF/DD fails to submit a cost report within 90 days from the fiscal year end closing date, a penalty of 5 percent of the total monthly payment for the first month and a progressive penalty of 5 percent of the total monthly payment for each succeeding month may be levied and withheld from the vendor's payment for each month that the cost report is due, not extended, and not received. The penalty is nonrefundable.

**Note: BHSF may grant a 30-day extension of the 90-day time limit, when requested by the ICF/DD provider, if just cause has been established. Extensions beyond 30 days may be approved for situations beyond the ICF/DD's control.**

- **Cost Report Errors** – errors greater than 10 percent in the aggregate for the ICF/DD provider for the cost report year may result in a maximum penalty of 10 percent of the current per diem rate for each month the cost report errors are not corrected. The penalty is non-refundable.
- **Corrective Action for Audit Findings** – vendor payments may be withheld when a facility fails to submit corrective action in response to financial and compliance audit findings within **15 days** after receiving the notification letter until such time compliance is achieved.
- **Failure to Respond or Adequately Respond to Requests for Financial/Statistical Information** – failure of a facility to respond or adequately respond to requests from DHH for financial and statistical information within 15 days after receiving the notification letter may result in payments being withheld until the requested information is received.
- **Insufficient Medical Recertification** – when a facility fails to secure recertification of a recipient's need for care and services, the vendor's payment for that individual may be withheld or recouped until compliance is achieved.
- **Inadequate Review/Revision of Plan of Care (IHP)** – when a facility repeatedly fails to ensure that an adequate IHP for a recipient is reviewed and revised at least at the required intervals, payment may be withheld or recouped until compliance is achieved.

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- **Failure to Submit Response to Survey Reports** – when a facility fails to submit an acceptable response within 30 days after receiving a survey report from DHH, CMS, OIG or the Legislative Auditor, vendor payments may be withheld until an adequate response is received, unless the appropriate agency extends the time limit.
- **Corrective Action on Complaints** – when a facility fails to submit an adequate corrective action plan in response to a complaint within seven days after receiving the complaint report, vendor payments may be withheld until an adequate corrective action plan is received, unless the time limit is extended by DHH.
- **Delinquent Utilization Data Requests** – facilities will be required to submit utilization data in a timely manner when requested by DHH. Providers will be given written notice when the utilization data has not been received by the due date. The notice will advise the provider of the date by which the utilization data must be received to avoid withholding of vendor payments. The due date will never be less than 10 days from the date the notice is mailed to the provider. If the utilization data is not received by the due date indicated in the notice, payments will be withheld until the utilization data is received.
- **Termination or Withdrawal from the Medicaid Program** – when a provider is terminated or withdraws from the Medicaid Program, vendor payments will be withheld until all programmatic and financial issues are resolved.

**Civil Fines**

DHH is authorized to impose monetary sanctions on those health care facilities found to be out of compliance with any state or federal law or rule concerning the operation and services of the health care provider.

Any ICF/DD found to be in violation of any state or federal statute, regulation, or any DHH rule adopted pursuant to the Act governing the administration and operation of the facility may be sanctioned as provided in the schedule of files listed under Class A through Class E Violations.

**Repeat Violation**

A repeat violation occurs when two violations of a similar nature occur within an 18 month period. DHH has the authority to determine when a violation is a repeat violation. Violations may be considered repeat violations by DHH when the following conditions exist:

- When DHH has established the existence of a violation as of a particular date and the violation is one that may be reasonably expected to continue until corrective

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action is taken, DHH may elect to treat said continuing violation as a repeat violation subject to appropriate fines 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

- When DHH has established the existence of a violation and another violation that is the same or substantially similar to the cited violation occurs within 18 months, the second and all similar subsequent violations occurring within the 18-month time period will be considered repeat violations and sanctioned accordingly.

**Opening or Operating a Facility without a License**

The opening or operation of a facility without a license or registration will be a misdemeanor, punishable upon conviction by a fine of not less than \$1,000 or more than \$5,000. Each day's violations will constitute a separate offense. On learning of such an operation, DHH will refer the facility to the appropriate authorities for prosecution.

Any ICF/DD found to have a violation that poses a threat to the health, safety, rights, or welfare of a resident or recipient may be liable for civil fines in addition to any criminal action that may be brought under other applicable laws.

**Description of Violations and Applicable Civil Fines****Class A Violations**

A Class A violation is a violation of a rule that creates a condition or occurrence relating to the maintenance or operation of a facility that results in death or serious harm to a resident. Examples of Class A violations include, but are not limited to the following:

- Acts of omissions by an employee(s) of a facility that either knowingly or negligently resulted in the death of a resident, and
- Acts of omissions by an employee(s) of a facility that either knowingly or negligently resulted in serious harm to a resident.

Civil fines for Class A violations may not exceed \$2,500 for the first violation or \$5,000 per day for repeat violations.

**Class B Violations**

A Class B violation is a violation of a rule in which a condition or occurrence relating to the maintenance or operation of a facility is created that results in the substantial probability that

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death or serious harm to the resident will result if the condition or occurrence remains uncorrected. Examples of Class B violations include, but are not limited to the following:

- Medications or treatments improperly administered or withheld,
- Lack of functioning equipment necessary to care for recipients,
- Failure to maintain emergency equipment in working order,
- Failure to employ a sufficient number of adequately trained staff to care for recipients, and
- Failure to implement adequate infection control measures.

Civil fines for Class B violations may not exceed \$1,500 for the first violation or \$3,000 per day for repeat violations.

**Class C Violations**

A Class C violation is a violation of a rule in which a condition or occurrence relating to the maintenance or operation of the facility is created that threatens the health, safety, or welfare of a resident. Examples of Class C violations include, but are not limited to the following:

- Failure to perform treatments as ordered by the physician,
- Improper storage of poisonous substances,
- Failure to notify physician and family of changes in condition of the recipient,
- Failure to maintain equipment in working order,
- Inadequate supply of needed equipment,
- Lack of adequately trained staff necessary to meet recipients' needs, and
- Failure to adhere to professional standards in giving care to the recipient.

Civil fines for Class C violations may not exceed \$1,000 for the first violation or \$2,000 per day for repeat violations.

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**Class D Violations**

A Class D violation is a violation of rules related to administrative and reporting that do not threaten the health, safety, rights, or welfare of a recipient. Examples of Class D violations include, but are not limited to, the following:

- Failure to submit written reports of accidents,
- Failure to timely submit a Plan of Correction,
- Falsification of a record, and
- Failure to maintain recipients' financial records as required by rules or regulations.

Civil fines for Class D violations may not exceed \$100 for the first violation or \$250 per day for repeat violations.

**Class E Violations**

A Class E violation occurs when a facility fails to submit a statistical or financial report in a timely manner when such a report is required by a rule.

Civil fines for Class E violations may not exceed \$50 for the first violation or \$100 per day for repeat violations.

**Maximum Amount for a Civil Fine**

The aggregate fines assessed for violations determined in any one month may not exceed \$10,000 for a Class A and Class B violation.

The aggregate fines assessed Class C, Class D, and Class E violations determined in any one month may not exceed \$5,000.

**Appeals**

DHH reserves the right to reject a request for Title XIX participation, impose sanctions or terminate participation status when an ICF/DD does the following:

- Fails to abide by the rules promulgated by DHH,

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- Fails to obtain compliance or is otherwise not in compliance with Title VI of the Civil Rights Act,
- Engages in practice not in the best interest of Medicaid (Title XIX) recipients,
- Has previously been sanctioned for violation of state and/or federal rules, or
- Has previously been decertified from participation as a Title XIX provider.

Prior to such rejection or termination, DHH may conduct an Informal Reconsideration at the ICF/DD's request. The ICF/DD has the right to an administrative appeal pursuant to the Administrative Procedure Act.

**Informal Reconsideration**

When an ICF/DD receives a written notification of adverse action and a copy of the findings upon which the decision was based, the ICF/DD may provide written notification to BHSF Health Standards Section within 10 calendar days of receiving the notification, and request an informal reconsideration.

The ICF/DD may submit written documentation or request an opportunity to present oral testimony to refute the findings of DHH on which the adverse action is based.

DHH will review all oral testimony and documents presented by the ICF/DD and, after the conclusion of the informal reconsideration, will advise the ICF/DD in writing of the results of the reconsideration which will include one of the following:

- The original decision has been upheld,
- The original decision has been modified, or
- The original decision has been reversed.

The ICF/DD may also request an administrative appeal by submitting their request, in writing, within 30 days of the receipt of the adverse action to the DHH Bureau of Appeals. The Bureau of Appeals will attempt to conduct the hearing within 120 days of the original notice of adverse action.

**Notice and Appeal Procedure**

When DHH imposes a sanction on a health care provider, it will give the provider written notice of the imposition. The notice will be given by certified mail and will include the following:

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- The nature of the violation(s) and whether the violation(s) is classified as a repeat violation,
- The legal authority that established the violation(s),
- The civil fine assessed for each violation,
- Inform the administrator of the facility that the facility has 10 days from receipt of the notice within which to request an informal reconsideration of proposed sanction,
- Inform the administrator of the facility that the facility has 30 days from receipt of the notice within which to request an administrative appeal of the proposed sanction and that the request for an informal reconsideration does not extend the time limit for requesting an administrative appeal, and
- Inform the administrator of the facility that the consequences of failing to request an informal reconsideration and/or an administrative appeal will be that DHH's decision is final and there will be no further administrative or judicial review.

The provider may request an informal reconsideration of DHH's decision to impose a civil fine. This request must be made to DHH in writing within 10 days of receipt of the notice of the imposition of the fine. The following is the informal reconsideration process:

- Designated DHH employees who did not participate in the initial decision to recommend imposition of a sanction will conduct this reconsideration.
- Oral presentation can be requested by the provider representative, and if requested, will be made to the designated employees.
- Reconsideration will be made on the basis of documents and oral presentations made by the provider to the designated employees at the time of the reconsideration.
- Correction of the deficient practice for which the sanction was imposed will not be the basis of the reconsideration.
- The designated employees will only have the authority to confirm, reduce or rescind the civil fine.



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- DHH will notify the provider of the results of the reconsideration within 10 working days after the oral presentation.
- This process is not in lieu of the administrative appeal and does not extend the time limits for filing an administrative appeal.

The facility may request an administrative appeal. If an administrative appeal is requested within the specified time limit, the appeal will be held as provided in the *Administrative Procedure Act* (LA R.S. 49:950 et seq.) An appeal bond shall be posted with the Bureau of Appeals as provided in LA R.S. 40:2199(D) or the provider may choose to file a devolutive appeal. With a devolutive appeal, the civil fine must be paid in full within **10 days** of filing the appeal.

The provider may request judicial review of the administrative appeal decision as provided in the *Administrative Procedure Act*.

**Collection of Fines**

The fines are final when one of the following occurs:

- The facility admits to the violations and agrees to pay the fine,
- An appeal is not requested within 30 days of the notice (refer to appeals), or
- The administrative hearing affirms DHH's findings of violations and time for seeking judicial review has expired.

When civil fines become final, they shall be paid in full within 10 days of their commencement unless DHH allows a payment schedule in light of documented financial hardship. Arrangements for a payment schedule must commence within 10 days of the fines becoming final. Interest will begin to accrue at the current judicial rate on the day the fines become final.

If payment of assessed fines is not received within the prescribed time period after becoming final and the provider is a Medicaid provider, DHH will deduct the full amount plus the accrued interest from money otherwise due to the provider as Medicaid reimbursement in its next (quarterly or monthly) payment.

Providers may not claim fines or interest as reimbursable costs, or increase charges to residents, recipients, or patients as a result of such fines or interest.

Civil fines collected will be deposited in the Health Care Facility Fund maintained by the state treasury.