

# WEST VIRGINIA CODE: §16-29D-8

## **§16-29D-8. Civil penalties; removal as provider.**

The Secretary of the Department of Human Services may assess a civil penalty for violation of this article. In addition to the assessments the secretary may remove the health care provider from any list of providers for whose services a department or division may pay. Upon the secretary determining there is probable cause to believe that a health care provider is knowingly violating any portion of this article, or any plan, order, directive, rule or regulation issued pursuant to this article, the secretary shall provide such health care provider with written notice which shall state the nature of the alleged violation and the time and place at which such health care provider shall appear to show cause why a civil penalty or removal from any list of providers should not be imposed, at which time and place such health care provider shall be afforded an opportunity to cross-examine the secretary's witnesses and afforded the opportunity to present testimony and enter evidence in support of its position. The hearing shall be conducted in accordance with the administrative hearings provisions of section four, article five, chapter twenty-nine-a of this code. The hearing may be conducted by the secretary or a hearing officer appointed by the secretary. The secretary or hearing officer shall have the power to subpoena witnesses, papers, records, documents, and other data in connection with the alleged violations and to administer oaths or affirmations in any such hearing. If, after reviewing the record of such hearing, the secretary determines that such health care provider is in violation of this article or any plan, order, directive, rule, or regulation issued pursuant to this article, the secretary may assess a civil penalty of not less than \$1,000 nor more than \$25,000, and may remove the health care provider. Any health care provider assessed or removed shall be notified of the assessment or removal in writing and the notice shall specify the reasons for the assessment and its amount or the reasons for removal. In any appeal by the health care provider in the circuit court, the scope of the court's review, which shall include a review of the amount of the assessment and any removal as a provider, shall be as provided in section four, article five, chapter twenty-nine-a of this code for the judicial review of contested administrative cases. The provider may be removed from any list of providers, based upon the final orders of the secretary, pending final disposition of any appeal. Such removal order or penalty assessment may be stayed by the circuit court after hearing, but may not be stayed in any ex parte proceeding. If the health care provider assessed or removed has not appealed such assessments or removal and fails to pay the amount of the assessment to the secretary within thirty days, the Attorney General may institute a civil action in the circuit court of Kanawha County to recover the amount of the assessment. Civil action under this section shall be handled in an expedited manner by the circuit court and shall be assigned for hearing at the earliest possible date. The remedies set forth in this section are intended only for violations of this article and shall not affect any other contractual relationship between any department or division and a health care provider.