WEST VIRGINIA CODE: §16B-4-10

§16B-4-10. Reports of inspections; plans of correction; assessment of penalties and use of funds derived therefrom; hearings.

(a) Reports of all inspections made pursuant to §16B-4-8 and §16B-4-9 of this code shall be in writing and filed with the director and shall list all deficiencies in the nursing home's compliance with the provisions of this article and the rules adopted hereunder.

(1) No later than 10 working days following the last day of the inspection, the director shall transmit to the nursing home a copy of such report and shall specify a time within which the nursing home shall submit a plan for correction of such deficiencies.

(2) Additionally, notification of the availability of the independent informal dispute resolution process and an explanation of the independent informal dispute resolution process shall be included in the transmittal.

(3) A nursing home adversely affected by an order or citation of a deficient practice issued pursuant to this section may request the independent informal dispute resolution process contained in §16B-4-12a of this code.

(4) The plan submitted by the nursing home shall be approved, rejected, or modified by the director.

(5) The inspectors or the nursing home shall allow audio taping of the exit conference with the expense to be paid by the requesting party.

(b) With regard to a nursing home with deficiencies and upon its failure to submit a plan of correction which is approved by the director, or to correct any deficiency within the time specified in an approved plan of correction, the director, in consultation with the Inspector General, may assess civil penalties as hereinafter provided or may initiate any other legal or disciplinary action as provided by this article: *Provided*, That any action by the director shall be stayed until federal proceedings arising from the same deficiencies are concluded.

(c) Nothing in this section may be construed to prohibit the director from enforcing a rule, administratively or in court, without first affording formal opportunity to make correction under this section, where, in the opinion of the director, the violation of the rule jeopardizes the health or safety of residents, or where the violation of the rule is the second or subsequent such violation occurring during a period of 12 full months.

(d) Civil penalties assessed against nursing home shall not be less than $50 nor more than $8,000: *Provided*, That the director, in consultation with the Inspector General, may not assess a penalty under state licensure for the same deficiency or violation cited under federal law and may not assess a penalty against a nursing home if the nursing home

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corrects the deficiency within 20 days of receipt of written notice of the deficiency unless it is a repeat deficiency or the nursing home is a poor performer.

(e) In determining whether to assess a penalty, and the amount of penalty to be assessed, the director, in consultation with the Inspector General shall consider:

(1) How serious the noncompliance is in relation to direct resident care and safety;

(2) The number of residents the noncompliance is likely to affect;

(3) Whether the noncompliance was noncompliance during a previous inspection;

(4) The opportunity the nursing home has had to correct the noncompliance; and

(5) Any additional factors that may be relevant.

(f) The range of civil penalties shall be as follows:

(1) For a deficiency which presents immediate jeopardy to the health, safety, or welfare of one or more residents, the director, in consultation with the Inspector General, may impose a civil penalty of not less than $3,000 nor more than $8,000;

(2) For a deficiency which actually harms one or more residents, the director, in consultation with the Inspector General, may impose a civil penalty of not less than $1,000 nor more than $3,000;

(3) For a deficiency which has the potential to harm one or more residents, the director, in consultation with the Inspector General, may impose a civil penalty of not less than $50 nor more than $1,000;

(4) For a repeated deficiency, the director, in consultation with the Inspector General, may impose a civil penalty of up to 150 percent of the penalties provided in §16B-4-10(f)(1) through §16B-4-10(f)(3) of this code; and

(5) If no plan of correction is submitted as established in this rule, a penalty may be assessed in the amount of $100 a day unless a reasonable explanation has been provided and accepted by the director, in consultation with the Inspector General.

(g) The director, in consultation with the Inspector General, shall assess a civil penalty of not more than $1,000 against an individual who willfully and knowingly certifies a material and false statement in a resident assessment. Such penalty shall be imposed with respect to each such resident assessment. The director, in consultation with the Inspector General, shall impose a civil penalty of not more than $5,000 against an individual who willfully and knowingly causes another individual to certify a material and false statement in a resident assessment. Such penalty shall be imposed with respect to each such resident assessment.

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(h) The director, in consultation with the Inspector General, shall assess a civil penalty of not more than $2,000 against any individual who notifies, or causes to be notified, a nursing home of the time or date on which an inspection is scheduled to be conducted under this article or under 42 U.S.C.A. §§ 1395 *et seq.* and 1396 *et seq.*

(i) If the director, in consultation with the Inspector General, assesses a penalty under this section, the director shall cause delivery of notice of such penalty by personal service or by certified mail. Said notice shall state the amount of the penalty, the action or circumstance for which the penalty is assessed, the requirement that the action or circumstance violates, and the basis upon which the director, in consultation with the Inspector General, assessed the penalty and selected the amount of the penalty.

(j) The Inspector General shall, in a civil judicial proceeding, recover any unpaid assessment which has not been contested under §16B-4-12 of this code within 30 days of receipt of notice of such assessment, or which has been affirmed under the provisions of that section and not appealed within 30 days of receipt of the Board of Review's final order, or which has been affirmed on judicial review, as provided in §16B-4-13 of this code. 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 Inspector General for:

(1) The protection of the health or property of facility residents;

(2) Long-term care educational activities;

(3) The costs arising from the relocation of residents to other nursing homes when no other funds are available; and

(4) In an emergency situation in which there are no other funds available, the operation of a facility pending correction of deficiencies or closure.

(k) The opportunity for a hearing on an action taken under this section shall be as provided in §16B-4-12 of this code.

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