

Description of the Civil Penalty Assessment Guideline

Please be advised that the Secretary of Health has provided guidance to the Pennsylvania Department of Health (DOH), Bureau of Facility Licensure, Division of Nursing Care Facilities (Division), regarding how to assess civil penalties (CPs) against long term care facilities pursuant to the Health Care Facilities Act (HCFA).

This guidance requires the Division, when issuing CPs, to take into consideration several factors: (1) the statutory provisions authorizing CPs under the HCFA; (2) recommendations contained in the Pennsylvania Auditor General's July 2016 Performance Audit of DOH's regulatory oversight of long-term care facilities; and (3) DOH's interest in effective regulation to promote the highest possible quality of care and services for residents in the Commonwealth's long term care facilities.

Significantly, any facility with a Division survey exit date on or after January 1, 2017, may be subjected – when warranted – to CPs calculated on a per violation per day basis pursuant to 35 P.S. § 448.817. Additionally, when determining whether CPs are warranted, the Department will give specific consideration, among other things, to whether a facility's violations resulted in harm or death to a resident. The Department may also put out a public notice of any Orders, once they become final, where a facility was issued a provisional license or civil penalty pursuant to the HCFA.

The Secretary's guidance preserves the Department's discretion to take into consideration other mitigating or aggravating circumstances. If mitigating or aggravating circumstances warrant deviating from the Secretary's guidance, the Division will be able to propose an alternative CP with a special committee formed by the Secretary. The purpose of this committee is to consider mitigating or aggravating circumstances and what impact they had on the facility and that led to the violations.

The Department recognizes that these changes may result in higher CPs to facilities. The purpose of this is to impress upon long-term care facilities the need to provide quality care to the residents of their facilities.

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