

## TO BE RESCINDED

5122-33-26

**Imposition of civil penalties.**

- (A) If the director determines that an adult care facility is in violation of Chapter 5119. of the Revised Code or this chapter, the director may impose a civil penalty, pursuant to this rule, on the owner of the facility. The director shall determine the classification and amount of the penalty by considering the following factors:
- (1) The gravity of the violation, the severity of the actual or potential harm, and the extent to which the provisions of Chapter 5119. of the Revised Code or this chapter were violated;
  - (2) Actions taken by the owner or manager to correct the violation; and
  - (3) The number, if any, of previous violations of the same rule provision by the adult care facility.
- (B) The director shall give written notice of the order imposing a civil penalty to the adult care facility by certified mail, return receipt requested, or shall provide for delivery of the notice in person. The notice shall specify the classification of the violation as determined under paragraph (C) of this rule, the amount of the penalty and the rate of interest, the action that is required to be taken to correct the violation, the time within which it is to be corrected as specified in paragraph (D) of this rule, and the procedures for the facility to follow to request a conference on the order imposing a civil penalty.
- (C) For purposes of imposing civil penalties, violations shall be classified as follows:
- (1) Class I violations are conditions or occurrences that present an immediate and serious threat to the physical or emotional health, safety, or security of residents of an adult care facility. Whoever is determined to have committed a class I violation is subject to a civil penalty of not less than seven hundred dollars nor more than one thousand dollars for each violation. Examples of class I violations include, but are not limited to, the following:
    - (a) The facility does not have adequate food, fuel, or electricity;
    - (b) At least one staff member is not physically present in the facility, in accordance with the applicable provisions of paragraphs (C) and (E) of rule 5122-33-13 of the Administrative Code;
    - (c) There are unqualified, untrained, or underage individuals managing the

facility or providing services, or the number of staff members is insufficient to meet the needs of the residents, in violation of paragraphs (B) and (J) of rule 5122-33-13 of the Administrative Code;

- (d) The temperature of hot water in the facility is over one hundred twenty degrees Fahrenheit or scalds a resident;
  - (e) There is abuse or neglect of a resident, including use of physical restraints on residents, in violation of paragraph (A)(4) of rule 5122-33-23 of the Administrative Code;
  - (f) The bedroom of a nonambulatory resident is located on a floor that does not exit to ground level, in violation of paragraph (C)(6) of rule 5122-33-09 of the Administrative Code;
  - (g) There are insufficient, inadequate, inoperable, or malfunctioning smoke detectors or fire extinguishers in violation of paragraphs (C)(2) and (C)(3) of rule 5122-33-09 of the Administrative Code, or the fire protection systems are not in compliance with the rules adopted under Chapters 3781. and 3791. of the Revised Code or maintained in accordance with rules adopted by the state fire marshal under section 3737.83 of the Revised Code, as applicable;
  - (h) The facility admits or retains a resident who needs skilled nursing care in excess of what is permitted under paragraph (D) of rule 5122-33-17 of the Administrative Code or who needs personal care services beyond what the facility provides;
  - (i) The facility provides skilled nursing care;
  - (j) The facility is in danger of building collapse;
  - (k) There are temperature extremes in the facility resulting in health hazards to residents, in violation of paragraph (G)(2) of rule 5122-33-22 of the Administrative Code; or
  - (l) The facility admits or retains a resident diagnosed with mental illness and the manager or staff are not in compliance with rule 5122-33-14 of the Administrative Code.
- (2) Class II violations are conditions or occurrences, other than class I violations, that directly threaten the physical or emotional health, safety, or security of

residents of an adult care facility. Whoever is determined to have committed a class II violation is subject to a civil penalty of not less than five hundred dollars nor more than seven hundred dollars for each violation. Examples of class II violations include, but are not limited to, the following:

- (a) An individual is working in the facility under the influence of illegal drugs or is using alcohol to the extent that the individual's performance of job duties is adversely affected or the health and safety of any resident is jeopardized, in violation of paragraph (P)(2) of rule 5122-33-13 of the Administrative Code;
- (b) The facility is violating a resident's right under rule 5122-33-23 of the Administrative Code and the violation directly results in physical or emotional harm;
- (c) The facility is providing personal care services otherwise than in accordance with acceptable standards of care;
- (d) The facility fails to make available three nourishing meals a day in violation of paragraph (B) of rule 5122-33-20 of the Administrative Code;
- (e) The facility fails to adhere to special diets for residents who require them in violation of paragraph (B) of rule 5122-33-20 of the Administrative Code;
- (f) The facility fails to have a resident's physical or mental health assessed, as required by rule 5122-33-18 of the Administrative Code;
- (g) There are unsanitary or unsafe living conditions within the facility;
- (h) There is contaminated food or water in the facility, in violation of paragraph (E) of rule 5122-33-20 of the Administrative Code and paragraph (G)(6) of rule 5122-33-22 of the Administrative Code;
- (i) The facility fails to obtain prompt health care services for residents, in violation of rule 5122-33-19 of the Administrative Code;
- (j) The facility misappropriates or mishandles resident funds, in violation of paragraph (C) of rule 5122-33-21 of the Administrative Code;

- (k) The facility fails to follow appropriate infection control procedures, in violation of paragraph (H) of rule 5122-33-22 of the Administrative Code;
  - (l) The facility fails to maintain its electrical or heating system in good, safe operating condition, in violation of paragraphs (I)(6) and (I)(7) of rule 5122-33-22 of the Administrative Code, to an extent which directly threatens the health and safety of the residents;
  - (m) The facility fails to obtain a mental health plan for care in violation of paragraph (C) of rule 5122-33-12 of the Administrative Code; or
  - (n) The facility fails to comply with a mental health plan for care in violation of paragraph (G) of rule 5122-33-18 of the Administrative Code.
- (3) Class III violations are conditions or occurrences, other than class I or class II violations, that indirectly or potentially threaten the physical or emotional health, safety, or security of residents of a facility. Whoever is determined to have committed a class III violation is subject to a civil penalty of not less than one hundred dollars nor more than five hundred dollars for each violation. Examples of class III violations include, but are not limited to the following:
- (a) The facility interferes with an authorized inspection of the facility conducted pursuant to section 5119.71 or 5119.73 of the Revised Code and rule 5122-33-06 of the Administrative Code;
  - (b) The facility maintains an incorrect health assessment record for a resident, in violation of rule 3701-20-18 of the Administrative Code;
  - (c) The facility has missing or inadequate furnishings, supplies, or food in violation of paragraph (D)(10), (D)(11) or (D)(12) of rule 5122-33-22 of the Administrative Code or paragraph (C) of rule 5122-33-20 of the Administrative Code;
  - (d) The facility admits or retains more residents than the number authorized in the facility's license, in violation of paragraph (B) of rule 5122-33-02 of the Administrative Code;
  - (e) The facility fails to conduct fire drills and smoke detector checks as required, in violation of paragraph (C)(1)(a) or paragraph (C)(2)(c) of

rule 5122-33-09 of the Administrative Code, or the fire protection systems are not in compliance with the rules adopted under Chapters 3781. and 3791. of the Revised Code or maintained in accordance with rules adopted by the state fire marshal under section 3737.83 of the Revised Code, as applicable;

- (f) The facility fails to maintain its electrical or heating system in safe operating condition, in violation of paragraphs (I)(6) and (I)(7) of rule 5122-33-22 of the Administrative Code, to an extent which indirectly threaten the health and safety of the residents;
  - (g) The facility fails to enter into a resident agreement with each resident, in violation of paragraph (A) of rule 5122-33-16 of the Administrative Code;
  - (h) The facility fails to provide proper notification of transfer and discharge, in violation of paragraph (C) of rule 5122-33-24 of the Administrative Code;
  - (i) The facility fails to post emergency information, in violation of paragraph (I)(15) of rule 5122-33-22 of the Administrative Code; and
  - (j) The facility fails to have a current mental health plan(s) for care as prescribed by rule 5122-33-18 of the Administrative Code, if applicable.
- (D) The director shall order that the condition or practice constituting a class I violation be abated or eliminated within twenty-four hours or any longer period the director considers reasonable. The notice for a class II or a class III violation shall specify a time within which the violation is required to be corrected.
- (E) If the facility requests a conference in a letter mailed or delivered not later than two working days after it has received the notice, the director shall hold a conference with representatives of the facility concerning the civil penalty. The conference shall be held not later than seven days after the director receives the request. The director shall provide written notification to the facility of the time, place, and date of the conference at least three days before the scheduled conference.
- (F) At the conference the director shall discuss with the representatives of the facility the violation cited in the notice provided for in paragraph (B) of this rule and shall advise the representatives in regard to correcting the violations. If the director issues an order upholding the civil penalty, the facility may request an adjudication

hearing pursuant to Chapter 119. of the Revised Code but the order of the director shall be in effect during proceedings instituted pursuant to that chapter until a final adjudication is made. Not later than five days after the conference, the director shall issue another order either upholding or terminating the penalty.

- (G) If the facility does not request a conference or if, after a conference, it fails to take action to correct a violation in the time prescribed, the director shall issue an order upholding the penalty, plus interest at the rate specified in section 1343.03 of the Revised Code for each day beyond the date set for payment of the penalty. The director may waive the interest payment for the period prior to the conference if he or she concludes that the conference was necessitated by a legitimate dispute.
- (H) The director may cancel or reduce the penalty for a class I violation if the facility corrects the violation within the time specified in the notice except that the director shall impose the penalty even though the facility has corrected the violation if a resident suffers physical harm because of the violation or the facility has been cited previously for the same violation. The director may cancel the penalty for a class II or class III violation if the facility corrects the violation within the time specified in the notice and the facility has not been cited previously for the same violation. Each day of a violation of any class, after the date the director sets for abatement or elimination, constitutes a separate and additional violation.
- (I) If an adult care facility fails to pay a penalty imposed under section 5119.77 of the Revised Code and this rule, the director may commence a civil action to collect the penalty. The license of an adult care facility that has failed to pay a penalty imposed under section 5119.77 of the Revised Code and this rule shall not be renewed until the penalty has been paid.
- (J) If a penalty is imposed under this rule, a fine shall not be imposed under section 5119.99 of the Revised Code for the same violation.

Effective:

Five Year Review (FYR) Dates: 01/20/2017

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Certification

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Date

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