

R432. Health and Human Services, Family Health and Preparedness, Licensing.

R432-3. General Health Care Facility Rules Inspection and Enforcement.

R432-3-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-3-2. Purpose.

This rule delineates the role and responsibility of the Department and the licensing agency in the enforcement of rules and regulations pertaining to health, safety, and welfare in all licensed and unlicensed health facilities and agencies regulated by Title 26, Chapter 21. These provisions provide guidelines and criteria to ensure that sanctions are applied consistently and appropriately.

R432-3-3. Deemed Status.

The Department may grant licensing deemed status to facilities and agencies accredited by Federally approved accreditation agencies in lieu of the licensing inspection by the Department upon completion of the following by the facility or agency:

- (1) As part of the license renewal process, the licensee shall identify on the Request for Agency Action/Application its desire to:
 - (a) initiate deemed status,
 - (b) continue deemed status, or
 - (c) relinquish deemed status during the licensing year of application.
- (2) This request shall constitute written authorization for the Department to attend the accrediting agency exit conference.
 - (3) Upon receipt from the accrediting agency, the facility shall submit copies of the following:
 - (a) accreditation certificate;
 - (b) survey reports and recommendations;
 - (c) progress reports of all corrective actions underway or completed in response to accrediting body's action or Department recommendations.
 - (4) Regardless of deemed status, the Department may assert regulatory responsibility and authority pursuant to applicable state and federal statutes to include:
 - (a) inspections,
 - (b) complaint investigations,
 - (c) verification of the violations of state law, rule, or standard identified in a Department survey or, violations of state law, rule, or standard identified in the accrediting body's survey including:
 - (i) facilities or agencies granted a provisional or conditional accreditation by the accreditation agencies until a full accreditation status is achieved,
 - (ii) any facility or agency that does not have a current, valid accreditation certificate, or
 - (iii) construction, expansion, or remodeling projects required to comply with standards for construction promulgated in the rules by the Health Facility Committee.
 - (5) The Department may annually conduct validation inspections of facilities or agencies accredited for the purpose of determining compliance with state licensing requirements. If a validation survey discloses a failure to comply with the standards for licensing, the provisions relating to regular inspections shall apply.

R432-3-4. Access for Inspections.

- (1) The Department or its designee may, upon presentation of proper identification, inspect each licensed health care facility or agency as necessary to determine compliance with applicable laws, rules and federal regulations.
- (2) Each licensed health care facility or agency must:
 - (a) allow authorized representatives of the Department immediate access to the facility or agency, including access to all staff and patients; and
 - (b) make available and permit photocopying of facility records and documents by, or on behalf of, the Department as necessary to ascertain compliance with applicable laws, rules and federal regulations. Copies become the responsibility and property of the Department.

R432-3-5. Statement of Findings.

- (1) Whenever the Department has reason to believe that a health facility or agency is in violation of Title 26, Chapter 21 or any of the rules promulgated by the Health Facility Committee, the Department shall serve a written Statement of Findings to the licensee or his designee within the following timeframe.
 - (a) Statements for Class I are served immediately.
 - (b) Statements for Class II violations are served within ten working days.
- (2) Violations shall be classified as Class I or Class II violations.
 - (a) "Class I Violation" means any violation of a statute or rule relating to the operation or maintenance of a health facility or agency which presents imminent danger to patients or residents of the facility or agency or which presents a clear hazard to the public health.

(b) "Class II Violation" means any violation of a statute or rule relating to the operation or maintenance of a health facility or agency which has a direct or immediate relationship to the health, safety, or security of patients or residents in a health facility or agency.

(3) The Department may cite a facility or agency with one or more rule or statute violations. If the Department finds that there are no violations, a letter shall be sent to the facility acknowledging the inspection findings.

(4) The Statement of Findings shall include:

- (a) the statute or rule violated;
- (b) a description of the violation;
- (c) the facts which constitute the violation; and
- (d) the classification of the violation.

R432-3-6. Plan of Correction.

(1) A health facility or agency shall submit within 14 calendar days of receipt of a Statement of Findings a Plan of Correction outlining the following:

- (a) how the required corrections shall be accomplished;
- (b) who is the responsible person to monitor the correction is accomplished; and
- (c) the date the facility or agency will correct the violation.

(2) Within ten working days of receipt of the Plan of Correction, the Department shall make a determination as to the acceptability of the Plan of Correction.

(3) If the Department rejects the Plan of Correction, the Department shall notify the facility or agency of the reasons for rejection and may request a revised Plan of Correction or issue a Notice of Agency Action directing a Plan of Correction and imposing a deadline for the correction. If the Department requests a revised Plan of Correction, the facility or agency shall submit the revised Plan of Correction within 14 days of receipt of the Department request.

(4) If the facility or agency corrects the violation prior to submitting the Plan of Correction, the facility or agency shall submit a report of correction.

(5) If violations remain uncorrected after the time specified for completion in the Plan of Correction or if the facility or agency fails to submit a Plan of Correction as specified, the Department shall notify the facility or agency.

(6) Any person aggrieved by the agency action shall have the right to seek review under the provisions outlined in Rule R432-30, Adjudicative Proceedings.

(7) If a licensed health facility or agency is served with a Statement of Findings citing a Class I violation, the facility or agency shall correct the situation, condition, or practice constituting the Class I violation immediately, unless a fixed period of time is determined by the Department and is specified in the Plan of Correction.

(a) The Department shall conduct a follow-up inspection within 14 calendar days or within the agreed-upon correction period to determine correction of Class I violations.

(b) If a health facility or agency fails to correct a Class I violation as outlined in the accepted Plan of Correction, the Department may issue sanctions or penalties.

(8) A facility or agency served with a Statement of Findings citing a Class II violation shall correct the violation within the time specified in the Plan of Correction or within a time-frame approved by the Department which does not exceed 60 days unless justification is provided in the accepted Plan of Correction.

(9) The Department may issue a conditional license or impose sanctions to the license or initiate a formal adjudicative proceeding to close the facility or agency if a facility or agency is cited with a Class II violation and fails to take required corrective action as outlined in Rule R432-30.

(10) The Department shall determine which sanction to impose by considering the following:

- (a) the gravity of the violation;
- (b) the effort exhibited by the licensee to correct violations;
- (c) previous facility or agency violations; and
- (d) other relevant facts.

R432-3-7. Sanction Action on License.

(1) The Department may initiate an action against a health facility or agency pursuant to Section 26-21-11. That action may include the following sanctions:

(a) denial or revocation of a license if the facility or agency fails to comply with the rules established by the Committee, or demonstrates conduct adverse to the public health, morals, welfare, and safety of the people of the state;

(b) restriction or prohibition on admissions to a health facility or agency for:

(i) any Class I deficiency,

(ii) Class II deficiencies that have resulted in the substandard quality of care of patients,

(iii) repeat Class I or II deficiencies that demonstrate continuous noncompliance or chronic noncompliance with the rules, or

(iv) permitting, aiding, or abetting the commission of any illegal act in the facility or agency;

(c) distribution of a notice of public disclosure to at least one newspaper of general circulation or other media form stating the violation of licensing rules or illegal conduct permitted by the facility or agency and the Department action taken;

- (d) placement of Department employees or Department-approved individuals as monitors in the facility or agency until such time as corrective action is completed or the facility or agency is closed;
- (e) assessment of the cost incurred by the Department in placing the monitors to be reimbursed by the facility or agency;
- (f) during the correction period, placement of a temporary manager to ensure the health and safety of the patients;
- (g) issuance of a civil money penalty pursuant to UCA 26-23-6, not to exceed the sum of \$10,000 per violation; or
- (h) issuance of a conditional license.
- (2) If the Department imposes a restriction or prohibition on admissions to a health care facility or agency, the Department shall send a written notice to the licensee.
 - (a) The licensee shall post the copies of the notice on all public entry doors to the licensed health care facility or agency.
 - (b) The Department may impose the restriction or prohibition if:
 - (i) the health care facility or agency has previously received a restriction or prohibition on admissions within the previous 24 month period; or
 - (ii) the health care facility or agency has failed to meet the timeframes in the Plan of Correction which is the basis for the restriction or prohibition on admissions; or
 - (iii) circumstances in the facility or agency indicate actual harm, a pattern of harm, or a serious and immediate threat to patients.

R432-3-8. Immediate Closure of Facility.

- (1) The Department may order the immediate closure of any licensed or unlicensed health facility or agency when the health, safety, or welfare of the patients or residents cannot be assured pending a full formal adjudicative proceeding.
- (2) The provisions for an emergency adjudicative proceeding as provided in section 63G-4-502 shall be followed.
- (3) If the Department determines to close a facility or agency, it shall serve an order that the facility or agency is ordered closed as of a given date. The order shall:
 - (a) state the reasons the facility is ordered closed;
 - (b) cite the statute or rule violated; and
 - (c) advise as to the commencement of a formal adjudicative proceeding in accordance with this rule.
- (4) The Department may maintain an action in the name of the state for injunction or other process against the health facility or agency which disobeys a closure order as provided in section 26-21-15.
- (5) The Department may assist in relocating patients or residents to another licensed facility or agency.
- (6) The Department may pursue other lesser sanctions in lieu of the closure order.
- (7) The Department may, in addition to emergency closure, seek criminal penalties.

R432-3-11. Alternative Remedies for Nursing Facilities.

- (1) The department conducts on-site inspections of nursing facilities to determine compliance with state and federal nursing home requirements. When the department finds that a nursing facility is out of compliance with requirements of participation, the department may recommend to CMS or the state Medicaid agency the imposition of remedies, including Federal civil money penalties (CMP) to compel the facility to implement corrective measures to achieve compliance.
- (2) For Medicare and/or Medicaid certified nursing facilities the authority to apply the remedies described in this section is defined in the federal Omnibus Budget Reconciliation Act (OBRA) of 1987 (P.L. 100-203), which mandates compliance with requirements for participation in the program. Section 1819(h) and 1919(h) of the Social Security Act specifies remedies available to CMS or the state Medicaid agency when a skilled nursing facility (SNF) or nursing facility (NF) is out of compliance with the participation requirements. The available remedies are intended to compel facilities to prompt compliance with participation requirements or be subject to termination from the Medicare or Medicaid program.
- (3) This rule establishes criteria for the imposition of remedies authorized by statute.
- (4) The department adopts and incorporates by reference the regulations in 42 CFR, Part 488-Survey, Certification, and Enforcement Procedures, as amended in the Federal Register for October 4, 2016, 81 FR 68688. Remedies available for non-compliance with one or more participation requirements may include:
 - (a) temporary management;
 - (b) denial of payment for new admissions;
 - (c) transfer of residents;
 - (d) closure of the facility and transfer of residents;
 - (e) directed plan of correction;
 - (f) directed inservice training;
 - (g) state monitoring; and
 - (h) Civil Money Penalties. Civil Money Penalties may be imposed for either:
 - (i) the number of days a facility is out of compliance with one or more participation requirements; or
 - (ii) for each instance that a facility is not in substantial compliance.
- (5) Interest shall be assessed on the unpaid balance of the Federal CMP, beginning on the due date. The interest rate charged shall be the average of the bond equivalent of the weekly 90-day U.S. Treasury bill auction rates during the period for which interest will be charged.

(6) Federal CMP collected by the department must be applied in accordance with Section 1819 and 1919 of the act for the protection of the health and property of residents.

R432-3-11. Annual Reporting Requirements.

(1) A nursing care facility approved for a health facility license under Section 26-21-23(2)(c) shall submit an annual financial report within 90 days of the end of each calendar year.

(2) the financial report shall contain:

(a) total of all revenues received within the calendar year;

(b) total of all Medicare inpatient revenue received within the calendar year;

(c) total of all Medicare Advantage revenue received within the calendar year; and

(d) Percentage of Medicare inpatient revenue including Medicare Advantage revenue in relation to the total of all revenues received within the calendar year.

(3) The department shall review the submitted reports for compliance with 26-21-23(7)(a). The Department may perform financial audits as part of the review. If the department determines a facility is not in compliance with 26-21-23(7)(a) a CMP of \$50,000 will be issued for the facility's failure to comply.

KEY: health care facilities

Date of Last Change: August 27, 2018

Notice of Continuation: January 23, 2023

Authorizing, and Implemented or Interpreted Law: 26-21-5; 26-21-14 through 26-21-16