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Memorandum

TO: Long-Term Care Facilities

FROM: Elizabeth Kelley, MBA, MPH, Director, Bureau of Health Care Safety and Quality

SUBJECT: Fines for Violations of, or Continued Non-Compliance with, State Long-term Care Facility Regulations

DATE: October 13, 2021

The purpose of this memorandum is to provide information regarding the Bureau of Health Care Safety and Quality's (the "Bureau") process for imposing fines for initial violations of state long-term care facility ("LTCF") regulations, for continued non-compliance after the agreed upon "correct-by-date" in an accepted plan of correction, and the consequences for not paying such fines.

1. Statutory and Regulatory Basis for Imposing Fines for Violations of State LTCF Regulations

Under M.G.L. ch. 111 sec. 73 and 105 CMR 153.024, (i) the Bureau may impose a fine not to exceed \$50 for each initial violation of any rule or regulation made under M.G.L. ch. 111 section 71, 72, or 72C, including 105 CMR 150.000 and 105 CMR 153.000, referred in this memorandum collectively as the "state LTCF regulations". In the event that the initial violation(s) cited is/are not corrected on or before the "correct-by-date" (which includes any extensions of that date approved by the Bureau), each day after the correct-by-date during which a person fails or refuses to remedy the condition that caused the person to be in violation of the state LTCF regulations ("continued non-compliance") constitutes a separate violation for which the Bureau may impose a fine not to exceed \$50 per day.

2. Fines for Violations of State LTCF Regulations

A. Fines for Initial Violations

For each cited violation of a state LTCF regulation (each violation, an "initial violation"), the licensee will be sent a notice from the Bureau that includes the following information:

- a summary of each initial violation of a state LTCF regulation for which the Bureau is imposing a fine;

- the total amount of the fine, which will be the number of initial violations x \$50;
- the date by which payment of the fine must be sent to the Bureau;
- information on method of payment and where to send payment;
- process for disputing a cite for a violation of a state LTCF regulation(s) and the imposition of the related fine(s) (see section 3); and
- impact of not timely paying the fine(s) imposed for initial violation(s) (see section 2.C).

B. Per Day Fine for each day of Continued Non-Compliance after Correct-By-Date

If a facility licensee fails or refuses to correct any initial violation(s) by the correct-by-date, the Bureau will impose a fine of \$50 per day for each calendar day after the correct-by-date during which the facility licensee remains out of compliance with the state LTCF regulations.

For each instance of continued non-compliance after the correct-by-date, once the Bureau determines that the facility licensee has corrected the initial violation(s), the license will be sent a notice from the Bureau that includes the following information:

- a summary of each initial violation that was not corrected by the correct-by-date;
- the number of calendar days after the correct-by-date during which the non-compliance continued, which will start on the day after the correct-by-date and will end on the date the Bureau determines that the initial violation was corrected;
- the total amount of the fine for each instance of continued non-compliance;
- the total amount due for all instances of continued non-compliance cited in the notice;
- the date by which payment of the fine must be sent to the Bureau;
- information on the method of payment and where to send payment;
- the process for disputing a cite for a violation of a state LTCF regulation(s) and the imposition of the related fine(s) (see section 3); and
- the impact of not timely paying the fine(s) imposed for continued non-compliance (see section 2.C).

C. Fine for Failure to Pay a Fine

Failure to pay a fine under M.G.L. c. 111 s. 73 is a violation of 105 CMR 153.024(C). If payment of a fine imposed for an initial violation or continued non-compliance is not timely received as indicated in the notice issued by the Bureau, the Bureau will impose an additional fine of \$50 per calendar day for each day after the payment deadline during which a fine remains unpaid, up to a maximum of \$5,000.

3. **Process for Disputing a Cited Violation or a Fine**

The process for disputing a cited violation of state LTCF regulations and the related fines is known as administrative reconsideration. A summary of the process follows.

No later than 5:00 pm on the 10th business day after the notice of a violation(s) is sent to or electronically posted by the Bureaus for the LTCF, the licensee (or its legally authorized representative) may submit to the Bureau a written request for administrative reconsideration of the state LTCF

regulation violation(s) cited in the notice or statement of deficiency (“SOD”) or for a related fine. The written request from the licensee must:

- clearly identify the licensee and the facility;
- include a copy of the SOD (or provide the date and reference number of the SOD) if an initial violation is being disputed and clearly state each initial violation being disputed;
- include a copy of the fine notice if an imposed fine is being disputed and clearly state which fine(s) are being disputed;
- state with specificity the grounds on which the licensee requests reconsideration, including cites to any authority referenced in the request;
- include any documentation to support the request;
- include the date on which the request is submitted; and
- be signed by the licensee or its legally authorized representative.

The Bureau will have 10 business days to act on the reconsideration request. Failure of the Bureau to grant, deny, or otherwise act on a request for administrative reconsideration during the 10 days following its receipt of a written request for reconsideration will be deemed a denial of the request. Submission of a written request for administrative reconsideration does not in any way impact the deadline for the submission of a plan of correction. If the Bureau rescinds a violation of a state LTCF regulation for which it imposed a fine, the Bureau will also rescind the fine related to that violation.

4. Effective Date

The processes outlined above in Sections 2 and 3 go into effect on the date of issuance of this memorandum stated above.

Please send an e-mail to the Bureau at DPH.BHCSQ@mass.gov if you have any questions about the information in this memorandum.

This memorandum is not a rule or regulation. The Bureau may revise, change, update, or rescind this memorandum at any time. Prior to implementing any changes to the process described in this memorandum, the Bureau will issue a revised memorandum.