

TITLE 410 INDIANA DEPARTMENT OF HEALTH

Proposed Rule

LSA Document #

DIGEST

Amends 410 IAC 15-1.3, 410 IAC 16.2-3.1, and 410 IAC 16.2-5 regarding civil penalties for hospitals, comprehensive care facilities, and residential care facilities. Effective 30 days after filing with the Publisher.

SECTION 1. 410 IAC 15-1.3-3 IS AMENDED TO READ AS FOLLOWS:

410 IAC 15-1.3-3 Suspension or revocation of license

Authority: IC 16-21-1-7

Affected: IC 4-21.5; IC 16-21-1

Sec. 3. (a) The commissioner may take any of the following actions on any of the grounds listed in subsection (b):

- (1) Issue a letter of correction.
- (2) Issue a probationary license.
- (3) Conduct a resurvey.
- (4) Deny renewal of a license.
- (5) Revoke a license.
- (6) Impose a civil penalty in an amount not to exceed ten thousand dollars (\$10,000).

(b) The commissioner may take action under subsection (a) on any of the following grounds:

- (1) Violation of any of the provisions of this article.
- (2) Permitting, aiding, or abetting the commission of any illegal act in an institution.
- (3) Conduct or practice found by the council to be detrimental to the welfare of the patients of an institution.

~~(c) IC 4-21.5 applies to an action under this section.~~ **In determining the seriousness of the violation and the specific amount of the civil penalty to be sought for each violation, the commissioner may consider, but is not limited to, the following:**

- (1) The potential for harm or imminent threat to patient health**
- (2) The extent of deviation from statutory or regulatory requirements**
- (3) The degree of willfulness or negligence**
- (4) The history of noncompliance.**

~~(d) A licensee or an applicant for a license aggrieved by an action under this rule may request review under IC 4-21.5.~~ **IC 4-21.5 applies to an action under this section.**

~~(e) The Indiana department of health shall appoint an appeals panel consisting of three (3) members as follows:~~

- ~~(1) One (1) member of the executive board.~~

~~(2) One (1) attorney admitted to the practice of law in Indiana.~~

~~(3) One (1) individual with qualifications determined by the Indiana department of health.~~

~~(f) An employee of the department may not be a member of the panel.~~

~~(g) The panel shall conduct proceedings for review of an order issued by an administrative law judge under this rule. The panel is the ultimate authority under IC 4-21-5.~~

(Indiana Department of Health; 410 IAC 15-1.3-3; filed Dec 21, 1994, 9:40 a.m.: 18 IR 1264; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234; readopted filed May 22, 2007, 1:44 p.m.: 20070613-IR- 410070141RFA; readopted filed Jul 14, 2011, 11:42 a.m.: 20110810-IR-410110253RFA; readopted filed Sep 13, 2017, 4:08 p.m.: 20171011-IR-410170339RFA; errata filed Jul 28, 2021, 9:46 a.m.: 20210811-IR-410210315ACA; readopted filed Nov 28, 2023, 12:13 p.m.: 20231227-IR-410230639RFA)

SECTION 2. 410 IAC 16.2-3.1-2 IS AMENDED TO READ AS FOLLOWS:

410 IAC 16.2-3.1-2 Licenses

Authority: IC 16-28-1-7

Affected: IC 16-18-2-167; IC 16-28-1-10; IC 16-28-2-2; IC 16-28-2-4; IC 16-28-5- 7

Sec. 2. (a) Any person, in order to lawfully operate a health facility as defined in IC 16-18-2-167, shall first obtain an authorization to occupy the facility or a license from the director. The applicant shall notify the director, in writing, before the applicant begins to operate a facility that is being purchased or leased from another licensee. Failure to notify the director precludes the issuance of a full license.

(b) The director may approve occupancy and use of the structure pending a final licensure decision.

(c) The director may issue a health facility license for a new facility upon receipt, review, and approval of the following requirements:

(1) The applicant shall submit a license application on the prescribed form in accordance with IC 16-28-2-2. The applicant shall identify direct and indirect ownership interests of five percent (5%) or more and of officers, directors, and partners.

(2) The applicant shall submit the appropriate license fee.

(3) Prior to the start of construction, detailed architectural and operational plans shall be submitted to the division for consideration and approval. The plans shall state the licensure classification sought. Plans for projects involving less than thirty thousand (30,000) cubic feet require suitable detailed plans and sketches. Plans for projects involving more than thirty thousand (30,000) cubic feet require certification by an architect or an engineer registered in Indiana. A plan of operation, in sufficient detail to facilitate the review of functional areas, that is, nursing unit, laundry, and kitchen, shall accompany the submitted plan.

(4) The director shall be notified of the design release from the department of fire and building services.

(5) The director shall be provided with written notification that construction of the building is substantially complete.

(6) The applicant shall submit to the director the following:

(A) Corporate or partnership structure.

(B) A complete list of facilities previously and currently owned or operated by the officers, directors, agents, and managing employees.

(C) A copy of agreements and contracts.

(D) If registration is required by the secretary of state, a copy of the registration.

(E) A staffing plan to include the number, educational level, and personal health of employees.

(F) A disaster plan.

(7) The applicant shall submit information and supporting documents required by the director documenting that the facility will be operated in reasonable compliance with this article and applicable statutes.

(8) The applicant shall submit a report by the state fire marshal that the facility is in reasonable compliance with the fire safety rules of the fire prevention and building safety commission (675 IAC).

(9) The applicant shall submit information verified by the appropriate building official that the building is in reasonable compliance with the building rules of the fire prevention and building safety commission (675 IAC).

(10) The facility shall meet the environmental and physical standards of section 19 of this rule.

(11) The applicant shall submit an independent verification of assets and liabilities demonstrating working capital adequate to operate the facility. The verification shall be performed by a certified public accountant. The verification shall be submitted to the director on a form approved by the department. The verification shall be accompanied by documents required by the application form and other documents or information as required by the department to evidence adequate working capital to operate the facility.

(d) The director may issue a health facility license for an existing facility that proposes a change from a previously approved plan review upon receipt, review, and approval of the following requirements:

(1) The applicant shall submit the appropriate licensure fee.

(2) Prior to the start of construction, detailed architectural and operational plans shall be submitted to the division for consideration and approval. The plans shall state the licensure classification sought. Plans for projects involving less than thirty thousand (30,000) cubic feet require suitable detailed plans and sketches. Plans for projects involving more than thirty thousand (30,000) cubic feet require certification by an architect or an engineer registered in Indiana. A plan of operation, in sufficient detail to facilitate the review of functional areas, that is, nursing unit, laundry, and kitchen, shall accompany the submitted plan.

(3) The director shall be notified of the design release from the department of fire and building services.

(4) The director shall be provided with written notification that construction of the building is substantially complete.

(5) The applicant shall submit information and supporting documents required by the director that the facility will be operated in reasonable compliance with this article and applicable statutes.

(6) The applicant shall submit a report by the state fire marshal that the facility is in reasonable compliance with the fire safety rules of the fire prevention and building safety commission (675 IAC).

(7) Information verified by the appropriate building official that the building is in reasonable compliance with the building rules of the fire prevention and building safety commission (675 IAC).

(e) The director may issue a health facility license for an existing facility that proposes a change in beds upon receipt, review, and approval of the following requirements:

(1) The applicant shall submit the appropriate license fee.

(2) The facility shall meet the environmental and physical standards of section 19 of this rule.

(3) The applicant shall submit a report by the state fire marshal that the facility is in reasonable compliance with the fire safety rules of the fire prevention and building safety commission (675 IAC).

(f) The director may issue a health facility license for a facility that has changed ownership upon receipt, review, and approval of the following requirements:

(1) The applicant shall submit a license application on the prescribed form in accordance with IC 16-28-2-2. The applicant shall identify direct and indirect ownership interests of five percent (5%) or more and of officers, directors, and partners.

(2) The applicant shall submit the appropriate license fee.

(3) The applicant shall submit information and supporting documents required by the director documenting that the facility will be operated in reasonable compliance with this article and applicable statutes.

(4) The applicant shall submit to the director the following:

(A) Corporate or partnership structure.

(B) A complete list of facilities previously or currently owned or operated by the officers, directors, agents, and managing employees.

(C) A copy of agreements and contracts.

(D) If registration is required by the secretary of state, a copy of the registration.

(E) A staffing plan to include the number, educational level, and personal health of employees.

(F) A disaster plan.

(5) An applicant for a license shall submit an independent verification of assets and liabilities demonstrating working capital adequate to operate the facility. The verification shall be performed by a certified public accountant. The verification shall be submitted to the director on a form approved by the department. The verification shall be accompanied by documents required by the application form and other documents or information as required by the department to evidence adequate working capital to operate the facility.

(g) The director may issue a provisional license to a new facility or to a facility under new ownership in accordance with IC 16-28-2-4(2).

(h) For the renewal of a license, the director may issue a full license for any period up to one (1) year, issue a probationary license, or deny a license application upon receipt and review of the following requirements:

(1) The facility shall submit a renewal application to the director at least forty-five (45) days prior to the expiration of the license. The renewal application shall be on a form provided and approved by the division. The applicant shall identify direct or indirect ownership interests of five percent (5%) or more and of officers, directors, and partners.

(2) The applicant shall submit the appropriate license fee.

(3) The director shall verify that the facility is operated in reasonable compliance with IC 16-28-2 and this article.

(4) The state fire marshal shall verify that the facility is in reasonable compliance with the applicable fire safety statutes and rules (675 IAC).

(i) If the director issues a probationary license, the license may be granted for a period of three (3) months. However, no more than three (3) probationary licenses may be issued in a twelve (12) month period. Although the license fee for a full twelve (12) month period has been paid, a new fee shall be required prior to the issuance of a probationary license.

(j) Any change in direct or indirect corporate ownership of five percent (5%) or more that occurs during the licensure period shall be reported to the director, in writing, at the time of the change. The facility must also provide written notice at the time the change occurs in the officers, directors, agents, or managing employees, or the corporation, association, or other company responsible for the management of the facility.

(k) For a good cause shown, waiver of any nonstatutory provisions of this rule may be granted by the executive board for a specified period in accordance with IC 16-28-1-10.

(l) A licensure survey finding or complaint allegation does not constitute a breach for the purposes of IC 16-28-2 until or unless the commissioner makes a specific determination that a breach has occurred. Moreover, the director shall issue a citation only upon a determination by the commissioner that a breach has occurred. Regardless of whether the commissioner makes a determination that a breach has occurred, a licensure survey finding or complaint allegation may be used as evidence as to whether a violation actually occurred for the purposes of licensure hearings or any other proceedings initiated under IC 16-28-2 or this article.

(m) The classification of rules into the categories that are stated at the end of each section of this rule and 410 IAC 16.2-5 through 410 IAC 16.2-7 shall be used to determine the corrective actions and penalties, if appropriate, to be imposed by the commissioner upon a determination that a breach has occurred, as follows:

(1) An offense presents a substantial probability that death or a life-threatening condition will result. For an offense, the commissioner shall issue an order for immediate correction of the offense. In addition, the commissioner shall:

(A) impose a fine not to exceed ten thousand dollars (\$10,000); or

(B) order the suspension of new admissions to the health facility for a period not to exceed forty-five (45) days; or both. If the offense is immediately corrected, the commissioner may waive up to fifty percent (50%) of any fine imposed and reduce the number of days for suspension of new admissions by one-half (1/2). The commissioner may also impose revocation by the director of the facility's license or issuance of a probationary license.

(2) A deficiency presents an immediate or direct, serious adverse effect on the health, safety, security, rights, or welfare of a resident. For a deficiency, the commissioner shall issue an order for immediate correction of the deficiency. In addition, the commissioner may:

(A) impose a fine not to exceed five thousand dollars (\$5,000); or

(B) order the suspension of new admissions to the health facility for a period not to exceed thirty (30) days; or both. For a repeat of the same deficiency within a fifteen (15) month period, the commissioner shall order immediate correction of the deficiency and impose a fine not to exceed ten thousand dollars (\$10,000) or suspension of new admissions to the facility for a period not to exceed forty-five (45) days, or both. If the deficiency is immediately corrected, the commissioner may waive up to fifty percent (50%) of any fine imposed and reduce the number of days for suspension of new admissions by one-half (1/2). The commissioner may also impose revocations by the director of the facility license or issuance of a probationary license.

(3) A noncompliance presents an indirect threat on the health, safety, security, rights, or welfare of a resident. For a noncompliance, the commissioner shall require the health facility to comply with any plan of correction approved or directed under IC 16-28-5-7. If the facility is found to have a pattern of noncompliance, the commissioner may suspend new admissions to the health facility for a period not to exceed fifteen (15) days or impose a fine not to exceed one thousand dollars (\$1,000), or both. Additionally, if the health facility is found to have a repeat of the same noncompliance in any fifteen (15) month period, the commissioner shall issue an order for immediate correction of the noncompliance. The commissioner may impose a fine not to exceed five thousand dollars (\$5,000) or suspension of new admissions to the health facility for a period not to exceed thirty (30) days, or both.

(4) A nonconformance is any other classified rule that does not fall in the three (3) categories established in subdivisions (1) through (3). For a nonconformance, the commissioner shall require the health facility to comply with any plan of correction approved or directed in accordance with IC 16-28-5-7. For a repeat of the same nonconformance within a fifteen (15) month period, the commissioner shall require the health facility to comply with any plan of correction approved or directed in accordance with IC 16-28-5-7. For a repeat pattern of nonconformance the commissioner may suspend new admissions to the health facility for a period not to exceed fifteen (15) days or impose a fine not to exceed one thousand dollars (\$1,000), or both.

(n) ~~For Medicare or Medicaid certified facilities, or both, the department shall not collect both a civil money penalty under 42 CFR 488 and a fine under IC 16-28 and this article.~~ **In determining the seriousness of the**

violation and the specific amount of the civil penalty to be sought for each violation, the department may consider, but is not limited to, the following:

- (1) The potential for harm or imminent threat to patient health
- (2) The extent of deviation from statutory or regulatory requirements
- (3) The degree of willfulness or negligence
- (4) The history of noncompliance.

(o) For Medicare or Medicaid certified facilities, or both, the department shall not collect both a civil money penalty under 42 CFR 488 and a fine under IC 16-28 and this article.

(Indiana Department of Health; 410 IAC 16.2-3.1-2; filed Jan 10, 1997, 4:00 p.m.: 20 IR 1526, eff Apr 1, 1997; errata filed Apr 10, 1997, 12:15 p.m.: 20 IR 2414; filed May 16, 2001, 2:09 p.m.: 24 IR 3022; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234; filed Aug 19, 2004, 3:15 p.m.: 28 IR 182; readopted filed May 22, 2007, 1:44 p.m.: 20070613-IR-410070141RFA; readopted filed Sep 11, 2013, 3:19 p.m.: 20131009-IR-410130346RFA; readopted filed Nov 13, 2019, 3:14 p.m.: 20191211-IR-410190391RFA)

SECTION 3. 410 IAC 16.2-5-1.1 IS AMENDED TO READ AS FOLLOWS:

410 IAC 16.2-5-1.1 Licenses

Authority: IC 16-28-1-7

Affected: IC 16-18-2-167; IC 16-28-1-10; IC 16-28-2-2; IC 16-28-2-4; IC 16-28-5- 7

Sec. 1.1. (a) Any person, in order to lawfully operate a health facility as defined in IC 16-18-2-167, shall first obtain an authorization to occupy the facility or a license from the director. The applicant shall notify the director, in writing, before the applicant begins to operate a facility that is being purchased or leased from another licensee. Failure to notify the director precludes the issuance of a full license.

(b) The director may approve occupancy and use of the structure pending a final licensure decision.

(c) The director may issue a health facility license for a new facility upon receipt, review, and approval of the following requirements:

(1) The applicant shall submit a license application on the prescribed form in accordance with IC 16-28-2-2. The applicant shall identify direct and indirect ownership interests of five percent (5%) or more and of officers, directors, and partners.

(2) The applicant shall submit the appropriate license fee.

(3) Prior to the start of construction, detailed architectural and operational plans shall be submitted to the division for consideration and approval. The plans shall state the licensure classification sought. Plans for projects involving less than thirty thousand (30,000) cubic feet require suitable detailed plans and sketches. Plans for projects involving more than thirty thousand (30,000) cubic feet require certification by an architect or an engineer registered in Indiana. A plan of operation, in sufficient detail to facilitate the review of functional areas, that is, nursing unit, laundry, and kitchen, shall accompany the submitted plan.

(4) The director shall be notified of the design release from the department of fire and building services.

(5) The director shall be provided with written notification that construction of the building is substantially complete.

(6) The applicant shall submit to the director the following:

(A) Corporate or partnership structure.

(B) A complete list of facilities previously and currently owned or operated by the officers, directors, agents, and managing employees.

(C) A copy of agreements and contracts.

(D) If registration is required by the secretary of state, a copy of the registration.

(E) A staffing plan to include the number, educational level, and personal health of employees.

(F) A disaster plan.

(7) The applicant shall submit information and supporting documents required by the director documenting that the facility will be operated in reasonable compliance with this article and applicable statutes.

(8) The applicant shall submit a report by the state fire marshal that the facility is in reasonable compliance with the fire safety rules of the fire prevention and building safety commission (675 IAC).

(9) The applicant shall submit information verified by the appropriate building official that the building is in reasonable compliance with the building rules of the fire prevention and building safety commission (675 IAC).

(10) The facility shall meet the environmental and physical standards of section 1.6 of this rule.

(11) The applicant shall submit an independent verification of assets and liabilities demonstrating working capital adequate to operate the facility. The verification shall be performed by a certified public accountant. The verification shall be submitted to the director on a form approved by the department. The verification shall be accompanied by documents required by the application form and other documents or information as required by the department to evidence adequate working capital to operate the facility.

(d) The director may issue a health facility license for an existing facility that proposes a change from a previously approved plan review upon receipt, review, and approval of the following requirements:

(1) The applicant shall submit the appropriate licensure fee.

(2) Prior to the start of construction, detailed architectural and operational plans shall be submitted to the division for consideration and approval. The plans shall state the licensure classification sought. Plans for projects involving less than thirty thousand (30,000) cubic feet require suitable detailed plans and sketches. Plans for projects involving more than thirty thousand (30,000) cubic feet require certification by an architect or an engineer registered in Indiana. A plan of operation, in sufficient detail to facilitate the review of functional areas, that is, nursing unit, laundry, and kitchen, shall accompany the submitted plan.

(3) The director shall be notified of the design release from the department of fire and building services.

(4) The director shall be provided with written notification that construction of the building is substantially complete.

(5) The applicant shall submit information and supporting documents required by the director that the facility will be operated in reasonable compliance with this article and applicable statutes.

(6) The applicant shall submit a report by the state fire marshal that the facility is in reasonable compliance with the fire safety rules of the fire prevention and building safety commission (675 IAC).

(7) Information verified by the appropriate building official that the building is in reasonable compliance with the building rules of the fire prevention and building safety commission (675 IAC).

(e) The director may issue a health facility license for an existing facility that proposes a change in beds upon receipt, review, and approval of the following requirements:

(1) The applicant shall submit the appropriate license fee.

(2) The facility shall meet the environmental and physical standards of section 1.6 of this rule.

(3) The applicant shall submit a report by the state fire marshal that the facility is in reasonable compliance with the fire safety rules of the fire prevention and building safety commission (675 IAC).

(f) The director may issue a health facility license for a facility that has changed ownership upon receipt, review, and approval of the following requirements:

(1) The applicant shall submit a license application on the prescribed form in accordance with IC 16-28-2-2. The applicant shall identify direct and indirect ownership interests of five percent (5%) or more and of officers, directors, and partners.

(2) The applicant shall submit the appropriate license fee.

(3) The applicant shall submit information and supporting documents required by the director documenting that the facility will be operated in reasonable compliance with this article and applicable statutes.

(4) The applicant shall submit to the director the following:

(A) Corporate or partnership structure.

(B) A complete list of facilities previously or currently owned or operated by the officers, directors, agents, and managing employees.

(C) A copy of agreements and contracts.

(D) If registration is required by the secretary of state, a copy of the registration.

(E) A staffing plan to include the number, educational level, and personal health of employees.

(F) A disaster plan.

(5) An applicant for a license shall submit an independent verification of assets and liabilities demonstrating working capital adequate to operate the facility. The verification shall be performed by a certified public accountant. The verification shall be submitted to the director on a form approved by the department. The verification shall be accompanied by documents required by the application form and other documents or information as required by the department to evidence adequate working capital to operate the facility.

(g) The director may issue a provisional license to a new facility or to a facility under new ownership in accordance with IC 16-28-2-4(2).

(h) For the renewal of a license, the director may issue a full license for any period up to one (1) year, issue a probationary license, or deny a license application upon receipt and review of the following requirements:

(1) The facility shall submit a renewal application to the director at least forty-five (45) days prior to the expiration of the license. The renewal application shall be on a form provided and approved by the division. The applicant shall identify direct or indirect ownership interests of five percent (5%) or more and of officers, directors, and partners.

(2) The applicant shall submit the appropriate license fee.

(3) The director shall verify that the facility is operated in reasonable compliance with IC 16-28-2 and this article.

(4) The state fire marshal shall verify that the facility is in reasonable compliance with the applicable fire safety statutes and rules (675 IAC).

(i) If the director issues a probationary license, the license may be granted for a period of three (3) months. However, no more than three (3) probationary licenses may be issued in a twelve (12) month period. Although the license fee for a full twelve (12) month period has been paid, a new fee shall be required prior to the issuance of a probationary license.

(j) Any change in direct or indirect corporate ownership of five percent (5%) or more that occurs during the licensure period shall be reported to the director, in writing, at the time of the change. The facility must also provide written notice at the time the change occurs in the officers, directors, agents, or managing employees, or the corporation, association, or other company responsible for the management of the facility.

(k) For a good cause shown, waiver of any nonstatutory provisions of this rule may be granted by the executive board for a specified period in accordance with IC 16-28-1-10.

(l) A licensure survey finding or complaint allegation does not constitute a breach for the purposes of IC 16-28-2 until or unless the commissioner makes a specific determination that a breach has occurred. Moreover, the director shall issue a citation only upon a determination by the commissioner that a breach has occurred. Regardless of whether the commissioner makes a determination that a breach has occurred, a licensure survey finding or complaint allegation may be used as evidence as to whether a violation actually occurred for the purposes of licensure hearings or any other proceedings initiated under IC 16-28-2 or this article.

(m) The classification of rules into the categories that are stated at the end of each section of this rule and 410 IAC 16.2-6 through 410 IAC 16.2-7 shall be used to determine the corrective actions and penalties, if appropriate, to be imposed by the commissioner upon a determination that a breach has occurred as follows:

(1) An offense presents a substantial probability that death or a life-threatening condition will result. For an offense, the commissioner shall issue an order for immediate correction of the offense. In addition, the commissioner shall:

(A) impose a fine not to exceed ten thousand dollars (\$10,000); or

(B) order the suspension of new admissions to the health facility for a period not to exceed forty-five (45) days; or both. If the offense is immediately corrected, the commissioner may waive up to fifty percent (50%) of any fine imposed and reduce the number of days for suspension of new admissions by one-half (1/2). The commissioner may also impose revocation by the director of the facility's license or issuance of a probationary license.

(2) A deficiency presents an immediate or direct, serious adverse effect on the health, safety, security, rights, or welfare of a resident. For a deficiency, the commissioner shall issue an order for immediate correction of the deficiency. In addition, the commissioner may:

(A) impose a fine not to exceed five thousand dollars (\$5,000); or

(B) order the suspension of new admissions to the health facility for a period not to exceed thirty (30) days; or both. For a repeat of the same deficiency within a fifteen (15) month period, the commissioner shall order immediate correction of the deficiency, and impose a fine not to exceed ten thousand dollars (\$10,000), or suspension of new admissions to the facility for a period not to exceed forty-five (45) days, or both. If the deficiency is immediately corrected, the commissioner may waive up to fifty percent (50%) of any fine imposed and reduce the number of days for suspension of new admissions by one-half (1/2). The commissioner may also impose revocation by the director of the facility license or issuance of a probationary license.

(3) A noncompliance presents an indirect threat on the health, safety, security, rights, or welfare of a resident. For a noncompliance, the commissioner shall require the health facility to submit a plan of correction approved or directed under IC 16-28-5-7. If the facility is found to have a pattern of noncompliance, the commissioner may suspend new admissions to the health facility for a period not to exceed ten (10) days or impose a fine not to exceed one thousand dollars (\$1,000), or both. Additionally, if the health facility is found to have a repeat of the same noncompliance in any eighteen (18) month period, the commissioner shall issue an order for immediate correction of the noncompliance. The commissioner may impose a fine not to exceed five thousand dollars (\$5,000) or suspension of new admissions to the health facility for a period not to exceed thirty (30) days, or both.

(4) A nonconformance is any other classified rule that does not fall in the three (3) categories established in subdivisions (1) through (3). For a nonconformance, the commissioner shall require the health facility to comply with any plan of correction approved or directed in accordance with IC 16-28-5-7. For a repeat of

the same nonconformance within a fifteen (15) month period, the commissioner shall require the health facility to comply with any plan of correction approved or directed in accordance with IC 16-28-5-7. For a repeat pattern of nonconformance, the commissioner may suspend new admissions to the health facility for a period not to exceed fifteen (15) days or impose a fine not to exceed one thousand dollars (\$1,000), or both.

(n) In determining the seriousness of the violation and the specific amount of the civil penalty to be sought for each violation, the department may consider, but is not limited to, the following:

- (1) The potential for harm or imminent threat to patient health**
- (2) The extent of deviation from statutory or regulatory requirements**
- (3) The degree of willfulness or negligence**
- (4) The history of noncompliance.**

(Indiana Department of Health; 410 IAC 16.2-5-1.1; filed Jan 10, 1997, 4:00 p.m.: 20 IR 1560, eff Apr 1, 1997; errata filed Apr 10, 1997, 12:15 p.m.: 20 IR 2415; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234; filed Jan 21, 2003, 8:34 a.m.: 26 IR 1912, eff Mar 1, 2003; filed Aug 19, 2004, 3:15 p.m.: 28 IR 185; readopted filed May 22, 2007, 1:44 p.m.: 20070613-IR-410070141RFA; readopted filed Sep 11, 2013, 3:19 p.m.: 20131009-IR-410130346RFA; readopted filed Nov 13, 2019, 3:14 p.m.: 20191211-IR-410190391RFA)