

## AP FAQs for CDPH Internet

### **Q: What is an administrative penalty?**

**A:** An administrative penalty (AP) is a monetary penalty issued for a facility's violation of the requirements of licensure that impacts, or is likely to impact, the health and safety of patients. A penalty can be issued in an amount of up to \$75,000 for a first deficiency constituting an immediate jeopardy (IJ) to the health and safety of a patient up to \$100,000 for the second subsequent IJ deficiency, and up to \$125,000 for a third and every subsequent IJ deficiency (Health and Safety Code (HSC) section 1280.3). APs for non-IJ licensing deficiencies can be in an amount up to \$25,000. The California Department of Public Health (CDPH), Center for Health Care Quality's Licensing and Certification Program (L&C), completes investigations of these deficiencies and assesses penalties for those violations as applicable.

### **Q: What types of facilities are impacted by the administrative penalty laws?**

**A:** General acute care hospitals, acute psychiatric hospitals, and special hospitals are impacted by these laws.

### **Q: What is an immediate jeopardy?**

**A:** An IJ is a situation in which the hospital's noncompliance with one or more requirements of licensure has caused, or is likely to cause, serious injury or death to the patient. Correction of the situation does not mean it is no longer an IJ. If an IJ occurs the facility can still be cited for the situation at a later time even after the IJ has been abated and the Department has completed its investigation and evaluation of the situation.

### **Q. What is a non-Immediate Jeopardy (non-IJ)?**

**A:** A non-IJ is a violation of state law relating to the operation or maintenance of a hospital that affects the health or safety of hospital patients that does not rise to the level of an IJ violation, but that is at a higher level than a minor violation. A minor violation is a violation of a law relating to the operation or maintenance of a hospital that the Department determines has only a minimal relationship to the health or safety of hospital patients.

### **Q: When did the CDPH receive the authority to issue administrative penalties for hospitals?**

**A:** Originally, L&C received authority to issue administrative penalties for IJ violations pursuant to HSC section 1280.1 in Senate Bill 1312, Statutes of 2006, Chapter 895, which became effective on January 1, 2007. This law authorized the issuance of IJ APs for up to \$25,000 per violation. This law also created HSC section 1280.3 which, upon the adoption of regulations, would authorize L&C to issue IJ APs for \$50,000 and provide new authority to issue APs for non-IJ violations for \$17,500.

Senate Bill 541, Statutes of 2008, Chapter 605, increased the amount for IJ APs pursuant to HSC 1280.1 beginning on January 1, 2009, and upon adoption of regulations to implement HSC section 1280.3, further increased the amount for IJ and non-IJ APs. Until L&C adopted regulations, Senate Bill 541 authorized L&C to issue APs under HSC section 1280.1 of up to \$50,000 for the first IJ deficiency, up to \$75,000 for the second subsequent IJ deficiency, and up to \$100,000 for the third and every subsequent IJ deficiency. Upon adoption of regulations, the AP amounts for IJ violations would increase, up to a maximum of \$75,000 for the first IJ AP, up to \$100,000 for the second subsequent IJ AP, and up to \$125,000 for the third and every subsequent IJ violation. SB 541 increased APs for non-IJ violations to up to \$25,000.

To implement HSC section 1280.3, CDPH adopted regulations for issuing hospital APs (Title 22 CCR starting at Section 70951), effective April 1, 2014. The regulations detail the methodology for calculating APs that takes into account the nature of the violation, the severity and scope of the deficiency, and contains penalty enhancements and reductions based on the circumstances surrounding the deficiency. Note: These regulations apply to incidents occurring on or after April 1, 2014.

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**Q: What are the current amounts for administrative penalties?**

**A:** The maximum administrative penalties allowed pursuant to HSC section 1280.3 are as follows:

- \$25,000 for any deficiency that constitutes a non-IJ;
- \$75,000 for the first deficiency constituting an IJ;
- \$100,000 for the second deficiency constituting an IJ within three years of the date of the first IJ violation; and
- \$125,000 for the third and every subsequent deficiency constituting an IJ within three years of the date of the first IJ violation.

**Q: What happens to the fine money? Where does it go?**

**A:** The fines are deposited in the Internal Departmental Quality Improvement Account pursuant to HSC section 1280.15. This is a special fund for L&C. These funds are tracked and, upon approval by the legislature, are to be used for internal quality improvement activities in L&C.

**Q: What is the intent of an administrative penalty?**

**A:** CDPH expects the issuance of administrative penalties to lead to improvements in patient safety and health care quality for the residents of California.

**Q: Will there be an effort to measure this law's effectiveness in improving patient safety and health care?**

**A:** Yes. The department will evaluate the data collected and be able to compare the number of violations/deficiencies to the number of IJ and non-IJ deficiencies issued from year to year in order to determine if the number of violations/deficiencies has changed over time. Hospitals are required to develop plans of corrections for IJ and non-IJ deficiencies issued.

**Q: Prior to administrative penalties, what enforcement actions were available to CDPH to use against hospitals out of compliance with the law?**

**A:** Similar to the current administrative penalty process, CDPH had the authority to issue a statement of deficiencies to hospitals for any identified violations of state licensing or federal certification requirements, and hospitals were required to develop plans of correction for identified deficiencies. Unlike administrative penalties, previous law only granted CDPH the authority to issue a civil monetary penalty, not to exceed \$50 per patient affected by the deficiency, for each day the deficiency remained uncorrected beyond the date specified for correction.

**Q: Who decides what hospital receives an administrative penalty?**

**A:** The decision to assess an administrative penalty is based on the level of the hospital's noncompliance with licensing requirements. Any deficiency that has more than a minimal effect on the health or safety of hospital patients may receive an administrative penalty. Any proposed penalties are reviewed for concurrence with L&C management and CDPH's Office of Legal Services.

**Q: Does a hospital risk losing its license if it receives a certain number of administrative penalties within a certain period of time like nursing homes?**

**A:** No, not at this time. The determination to terminate a license is made after investigations and assessments of a facility's ability and capacity to implement plans of correction to assure the health and safety of patients is protected. The determinations also take into account the severity of the deficiencies/violations that occurred; the ability to implement corrections; and their assurance, through demonstration and assessment, that such occurrences will not happen in the future.

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**Q: Can a hospital appeal an administrative penalty?**

**A:** Facilities can appeal the administrative penalties by requesting a hearing within 10 calendar days of notification. If a hearing is requested, the penalties are to be paid if upheld following appeal. In addition to the penalties, the facility is required to implement a plan of correction to prevent future incidents.