Methodology to Indicate Changes to
DPH-09-012 – Administrative Penalty Acute Care Hospitals

Originally noticed text shown with no single underline.

Changes to the originally noticed text are indicated as follows:

- Deleted text is indicated by double strike-through (~~strike-through~~).
- Additions to the regulation text are indicated by double underline (underline).

Adopt Section 70952 to read as follows:

§ 70952. Definitions.

(a)(1) through (4) No change to the initial proposal.

(a)(5) "Repeat deficiencies" means violations of hospital licensing requirements or federal certification standards in the same or substantially similar regulatory grouping of requirements, which ~~violations~~ are found during an inspection, subsequently corrected, and found again at a subsequent inspection.

(a)(6) through (8) No change to the initial proposal.

Authority: Sections 1280.3, 100275(a), 131050, 131051, 131052, and 131200, Health and Safety Code. Reference: Section 1280.3, Health and Safety Code.

Adopt Section 70954 to read as follows:

§ 70954. Determining the Initial Penalty for Each Violation.

(a) and (b) No change to the initial proposal.

(c) ~~Extent of Noncompliance with Requirements of Licensure~~

~~(1) The extent of noncompliance with hospital licensure requirements shall be considered using the matrix set forth in subdivision (d).~~

~~(2) The categories for extent of noncompliance from requirements are defined as follows:~~

~~(A) Major - The action or inaction deviates from the requirement to such an extent that the requirement is completely ignored and none of its provisions are complied with, or the function of the requirement is rendered ineffective because some of its provisions are not complied with.~~

~~(B) Moderate - The action or inaction deviates from the requirement, but it complies to some extent, although not all of its important provisions are complied with.~~

~~(C) Minimal - The action or inaction deviates somewhat from the requirement. The requirement functions nearly as intended, but not as well as if all provisions had been met.~~

~~(3) For a single requirement, the range of potential noncompliance from the requirement may vary from major to moderate to minimal. For example, if a hospital has no disaster/emergency plan, the noncompliance would be major. If a hospital has a disaster/emergency plan but significant elements are omitted, the noncompliance would be moderate. If a hospital has a disaster/emergency plan with only one or two minor elements missing, the deviation would be minimal. For requirements with more than one part, the extent of violation shall be determined based on the most significant requirement.~~

(c) Scope of the noncompliance.

(1) The scope of the noncompliance with hospital licensure requirements shall be considered using the matrix set forth in subsection (d).

(2) The scope of the noncompliance shall be assessed as follows:

(A) Isolated:

(i) One or a very limited number of patients affected, or

(ii) One or a very limited number of staff involved, or

(iii) The situation occurred only occasionally, or

(iv) The situation occurred in a very limited number of locations.

(B) Pattern:

(i) More than a very limited number of patients affected, or

(ii) More than a very limited number of staff involved, or

(iii) The situation occurred in several locations, or

(iv) The same patients had been affected by repeat occurrences.

(C) Widespread:

(i) Situation was pervasive throughout the hospital or

(ii) The situation represented a systemic failure that affected or had the potential to affect a large portion or all of the hospital's patients.

(d) The matrix set forth in this subdivision shall be used to determine the initial penalty for a deficiency by selecting a penalty percentage from the range provided in the matrix cell that corresponds to the appropriate ~~extent~~ scope of noncompliance and the severity of harm categories. The percentages in each cell of the following matrix shall be applied to the maximum administrative penalties as set forth in Health and Safety Code section 1280.3:

(1) $25,000 for any deficiency that does not constitute an immediate jeopardy,

(2) $75,000 for the first deficiency constituting an immediate jeopardy,

(3) $100,000 for the second deficiency constituting an immediate jeopardy, and

(4) $125,000 for the third deficiency and every subsequent deficiency constituting an immediate jeopardy.

An immediate jeopardy penalty shall be considered a first administrative penalty if the date the violation occurred is over three years from the date of violation of the last issued immediate jeopardy penalty, the hospital has not received additional immediate jeopardy violations, and the department finds that the hospital has been in substantial compliance for over three years prior to the date of the violation that is the subject of the penalty calculation.

~~Determination of Initial Penalty Matrix~~

Scope and Severity Matrix

		~~Extent of noncompliance~~ SCOPE		
		~~Minimal~~ Isolated	~~Moderate~~ Pattern	~~Major~~ Widespread
SEVERITY	Severity Level 6—Immediate jeopardy to patient health or safety—Death	100%	100%	100%
	Severity Level 5—Immediate jeopardy to patient health or safety—Serious injury	60%	70%	80%
	Severity Level 4—Immediate jeopardy to patient health or safety—Likely to cause serious injury or death	40%	50%	60%
	Severity Level 3—Actual harm that is not immediate jeopardy	60%	80%	100%
	Severity Level 2—No actual harm but with potential for more than minimal harm, not immediate jeopardy	20%	~~35%~~ 50%	~~50%~~ 70%
	Severity Level 1—No actual harm but with potential for no more than minimal harm	~~Minor violation~~ No penalty		
	Minor Violation	No Penalty		

Authority: Sections 1280.3, 100275(a), 131050, 131051, 131052, and 131200, Health and Safety Code. Reference: Section 1280.3, Health and Safety Code.

Adopt Section 70958.1 to read as follows:

§ 70958.1 Penalties Imposed by Department of Managed Health Care

A penalty assessment under Health and Safety Code section 1280.3 may be adjusted under Health and Safety Code section 1280.6 after the department reviews the investigation report and penalty issued by the Department of Managed Health Care to determine whether the criteria in Health and Safety Code section 1280.6 are satisfied.

Authority: Sections 1280.3, 100275(a), 131050, 131051, 131052, and 131200, Health and Safety Code. Reference: Sections 1280.3 and 1280.6, Health and Safety Code.

Adopt Section 70959 to read as follows:

§ 70959. Penalties for Violations of Hospital Fair Pricing Policies Requirements.

(a) No change to the initial proposal.

(b)(1) Major - The action or inaction deviates from the requirement to such an extent that the requirement is completely ignored and none of its provisions are complied with, or the function of the requirement is rendered ineffective because some of its provisions are not complied with. The initial penalty for this category is ~~$2,000~~$25,000.

(2) Moderate - The action or inaction deviates from the requirement, but it complies to some extent, although not all of its important provisions are complied with. The initial penalty for this category is ~~$1,000~~$12,500.

(3) Minimal - The action or inaction deviates somewhat from the requirement. The requirement functions nearly as intended, but not as well as if all provisions had been met. A violation in this category is a minor ~~penalty~~ violation and no administrative penalty is assessed.

(c) through (f) No change to the initial proposal.

Authority: Sections 1280.3, 100275(a), 131050, 131051, 131052, and 131200, Health and Safety Code. Reference: Section 1280.3, Health and Safety Code.

Adopt Section 70960 to read as follows:

§ 70960. Small and Rural Hospitals.

(a) A small and rural hospital that has been assessed an administrative penalty under H&SC Section 1280.3 may request:

(1) Payment of the penalty extended over a period of time if immediate, full payment would cause ~~extreme~~ financial hardship or a significant danger of reducing the provision of needed health care services, or

(2) Reduction of the penalty, if extending the penalty payment over a period of time would cause ~~extreme~~ financial hardship or a significant danger of reducing the provision of needed health care services, or

(3) Both a penalty payment plan and reduction of the penalty.

(b) The small and rural hospital shall submit its written request for penalty modification as described in ~~subdivision~~ subsection (a) to the department within ten days after the issuance of the administrative penalty. The request shall describe the special circumstances showing ~~extreme~~ financial hardship to the hospital and the potential severe adverse effects on access to quality care in the hospital.

(c) Upon timely request from a small and rural hospital under subsection (b), the department may approve a penalty payment plan, reduce the final penalty, or both, if in the judgment of the department, ~~if~~ immediate, full payment of the penalty would cause ~~extreme~~ financial hardship to the hospital and thereby severely reduce access to quality care in the hospital. The department's decision shall be based on information provided by the small and rural hospital in support of its request and on hospital financial information from the Office of Statewide Health Planning and Development or other governmental agency.

Authority: Sections 1280.3, 100275(a), 131050, 131051, 131052, and 131200, Health and Safety Code. Reference: Sections 1280.1 and 1280.3, Health and Safety Code.