

Notice of Development of Rulemaking

AGENCY FOR HEALTH CARE ADMINISTRATION Certificate of Need

RULE NO: RULE TITLE

59C-1.021: Certificate of Need Penalties

PURPOSE AND EFFECT: The Agency proposes to revise the rule that specifies the basis for assessing a fine for failure to comply with conditions required by a certificate of need.

SUBJECT AREA TO BE ADDRESSED: The proposed revision would specify the method for determining a degree of noncompliance with conditions on a certificate of need.

SPECIFIC AUTHORITY: 408.034(6), 408.15(8) FS.

LAW IMPLEMENTED: 408.040(1)(b), (e), (2)(a), 408.044 FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW:

TIME AND DATE: December 1, 2009, 2:00 p.m.

PLACE: Agency for Health Care Administration, Conference Room C, 2727 Mahan Drive, Tallahassee, FL 32308

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 days before the workshop/meeting by contacting: James McLemore, 2727 Mahan Drive, MS #28, Tallahassee, FL 32308 or (850)488-8672. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: James McLemore, 2727 Mahan Drive, MS #28, Tallahassee, FL 32308 or (850)488-8672

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

59C-1.021 Certificate of Need Penalties.

(1) through (2) No change.

(3) Penalties for Failure to Comply with Certificate of Need or Exemption Conditions. The agency shall review the annual compliance report submitted by the health care providers who are licensed and operate the facilities or services and other pertinent data to assess compliance with certificate of need or exemption conditions. Providers who are not in compliance with certificate of need or exemption conditions shall be fined. Failure to report compliance with any condition upon which the issuance of the certificate of need or exemption was predicated constitutes noncompliance. For community nursing homes or hospital-based skilled nursing units certified as such by Medicare, the first compliance report on the status of conditions must be submitted 30 calendar days following the eighteenth month of operation or the first month where an 85 percent occupancy is achieved, whichever comes first. The schedule of fines is as follows:

(a) Facilities failing to comply with any conditions or failing to provide the Certificate of Need office with a report on its compliance with conditions set forth on the Certificate of Need or exemption, will be assessed a fine, not to exceed \$1,000 per failure per day. In assessing the penalty the agency shall take into account the degree of noncompliance. The degree of noncompliance means the result of the mathematical calculation of the difference between the conditioned level of compliance and the reported level of compliance.

(b) The assessed fine shall be paid to the agency within 45 calendar days after written notification of assessment by certified mail or within 30 calendar days after final agency action if an administrative hearing has been requested. If a health care provider desires it may remit payment according to a payment schedule accepted by the agency. The health care provider must submit the schedule of payments to the agency within 30 calendar days after the date of receipt of the notification of assessment or 21 calendar days after final agency action. The final balance will be due no later than 6 months after the health care provider has been notified in writing by the agency of the amount of the assessed fine or 6 months after final agency action.

(4) No change.

Rulemaking Specific Authority 408.034(6), 408.15(8) FS. Law Implemented 408.040(1)(b), (d), (2)(a), 408.044, 408.061(6), 408.08(2) FS. History—New 7-25-89, Formerly 10-5.021, Amended 12-13-04,_____.