

IC 16-28-5

Chapter 5. Remedies for Breaches; Plans of Correction

IC 16-28-5-1

Classification of rules

Sec. 1. The executive board shall adopt rules under IC 4-22-2 to classify each rule adopted by the executive board to govern a health facility under this article into one (1) of the following categories:

- (1) An offense, which presents a substantial probability that death or a life-threatening condition will result.
- (2) A deficiency, which presents an immediate or a direct, serious adverse effect on the health, safety, security, rights, or welfare of a patient.
- (3) A noncompliance, which presents an indirect threat to the health, safety, security, rights, or welfare of a patient.
- (4) A nonconformance, which is any other classified breach not covered by subdivision (1), (2), or (3).

As added by P.L.2-1993, SEC.11. Amended by P.L.179-1993, SEC.5.

IC 16-28-5-2

Citations

Sec. 2. On a determination by the commissioner that a breach of this article or a rule adopted under this article has occurred, the director shall issue a citation under IC 4-21.5-3-6 to the administrator of the health facility in which the breach occurred. The citation must state the following:

- (1) The nature of the breach.
- (2) The classification of the breach.
- (3) The corrective actions required of the health facility to remedy the breach and to protect the patients of the facility.
- (4) Any penalty imposed on the facility.

As added by P.L.2-1993, SEC.11.

IC 16-28-5-3

Review of citations

Sec. 3. A person aggrieved by a citation issued under this chapter may request a review under IC 4-21.5-3-7. If a request for a hearing is not filed within the fifteen (15) day period, the determination contained in the citation is final.

As added by P.L.2-1993, SEC.11.

IC 16-28-5-4

Remedies for breaches

Sec. 4. (a) The commissioner shall impose the following remedies for breaches of this article or a rule adopted under this article:

- (1) For an offense, the remedies specified in subsection (b)(1) through (b)(2). The commissioner may also impose the remedy specified in subsection (b)(3).

(2) For a deficiency, the remedies specified in subsection (b)(1). The commissioner may also impose the remedies specified in subsection (b)(4).

(3) For a breach that is a repeat of the same deficiency within a fifteen (15) month period, the remedies specified in subsection (b)(1) through (b)(2). The commissioner may also impose the remedy specified in subsection (b)(3).

(4) For a noncompliance, the remedies specified in subsection (b)(5) through (b)(6).

(5) For a breach that is a repeat of the same noncompliance within a fifteen (15) month period, the remedies specified in subsection (b)(1). The commissioner may also impose the remedies specified in subsection (b)(4).

(6) For a nonconformance, the remedies specified in subsection (b)(5).

(7) For a breach that is a repeat of the same nonconformance within a fifteen (15) month period, the remedies specified in subsection (b)(5) through (b)(6).

(b) The remedies for breaches of this article or rules adopted under this article are as follows:

(1) Issuance of an order for immediate correction of the breach.

(2) Imposition of a fine not to exceed ten thousand dollars (\$10,000) or suspension of new admissions to the health facility for a period not to exceed forty-five (45) days, or both.

(3) Revocation by the director of the health facility's license or issuance of a probationary license.

(4) Imposition of 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.

(5) A requirement that the health facility comply with any plan of correction approved or directed under section 7 of this chapter.

(6) If the health facility is found to have a pattern of breach, 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.

(c) If a breach is immediately corrected and the commissioner has imposed remedies under subsection (b)(2), the commissioner may waive not more than fifty percent (50%) of the fine imposed and reduce the number of days for suspension of new admissions by one-half (1/2).

(d) The commissioner may, with the concurrence of a licensed physician, impose the following:

(1) For an omission of care or an act that does not fall within a classification of a rule under this section and that the facility should reasonably have known would present a substantial probability that death or a life threatening condition will result, one (1) or any combination of the remedies specified in subsection (b)(1) through (b)(3).

- (2) For an omission of care or an act that:
 - (A) does not fall within a classification of a rule under this section; and
 - (B) the facility should reasonably have known would result in an immediate or a direct, serious adverse effect on the health, safety, security, rights, or welfare of a patient;

the remedies specified in subsection (b)(1) or (b)(4), or both.
As added by P.L.2-1993, SEC.11. Amended by P.L.179-1993, SEC.6.

IC 16-28-5-5

Determination of remedies

Sec. 5. (a) In determining appropriate remedies or waivers under section 4 of this chapter, the commissioner shall consider the following:

- (1) Whether the breach occurred for reasons outside of the health facility's control.
- (2) Whether the health facility has demonstrated that the health facility has taken the appropriate steps to reasonably ensure that the breach will not recur.
- (3) The history of breaches by the health facility.
- (4) The effect of the breach on the patient.

(b) If the health facility furnishes sufficient relevant financial information, the commissioner may consider the following in determining appropriate remedies or waivers under section 5 of this chapter:

- (1) Whether any financial savings or benefit accrued to the health facility as a result of the breach.
- (2) The cost incurred by the health facility in correcting the breach.

As added by P.L.2-1993, SEC.11. Amended by P.L.179-1993, SEC.7.

IC 16-28-5-6

Correction of breaches; time allowed

Sec. 6. An order for immediate correction under section 4(b)(1) of this chapter shall state a specific date by which the correction shall be made. The date shall be set by the commissioner according to the circumstances of the breach but may not exceed five (5) days from the time the health facility receives written notification from the commissioner.

As added by P.L.2-1993, SEC.11.

IC 16-28-5-7

Corrective period

Sec. 7. (a) A plan of correction submitted to the commissioner for approval and acceptance shall contain a fixed time within which the correction must be made.

(b) When accepting or directing a corrective period, the commissioner shall consider the following:

- (1) A reasonable amount of time needed by a health facility to

achieve compliance.

(2) The effects of the continuing breach on patients.

(3) Temporary measures that will be taken to protect patients during the time allowed for correction.

As added by P.L.2-1993, SEC.11. Amended by P.L.179-1993, SEC.8.

IC 16-28-5-8

Plans of correction; actions; notices of rejection; reports of correction

Sec. 8. (a) A plan of correction may be:

(1) accepted;

(2) modified upon agreement between the commissioner and the health facility; or

(3) rejected by the commissioner.

(b) If a plan of correction is rejected, the commissioner:

(1) shall send notice of the rejection and the reasons for the rejection to the health facility; and

(2) may impose a directed plan of correction on the health facility.

(c) If a breach was corrected before submission and approval of a plan of correction, the health facility may submit a report of correction in place of a plan of correction.

As added by P.L.2-1993, SEC.11. Amended by P.L.179-1993, SEC.9.

IC 16-28-5-9

Modification of plans of correction

Sec. 9. (a) A directed plan of correction imposed on a health facility by the commissioner may also be modified upon agreement between the commissioner and the health facility.

(b) A petition for modification of an approved plan of correction must be filed with the commissioner before the expiration of the correction time period approved by the commissioner. The burden of proof is on the petitioner to show good cause for not complying within the approved correction time.

As added by P.L.2-1993, SEC.11. Amended by P.L.179-1993, SEC.10.

IC 16-28-5-10

Failure to correct breaches; additional penalties

Sec. 10. If:

(1) a breach is not corrected within the time fixed by the order of correction or is not corrected within the time fixed by the plan of correction; and

(2) an extension has not been granted under section 9 of this chapter;

the commissioner may find a new breach that may be subject to the imposition of additional penalties as the class would warrant.

As added by P.L.2-1993, SEC.11.