

**RULES OF
DEPARTMENT OF COMMUNITY HEALTH
HEALTHCARE FACILITY REGULATION**

CHAPTERS 290-1-6 AND 290-5-44 (SUPERSEDED)

AND

ADOPTION OF CHAPTER 111-8-25

**RULES AND REGULATIONS FOR ENFORCEMENT OF
LICENSING REQUIREMENTS**

SYNOPSIS OF PROPOSED RULE CHANGES

STATEMENT OF PURPOSE: The Department of Community Health proposes to supersede the Department of Human Resources' Rules and Regulations for Enforcement of Licensing Requirements and for Monitoring, Suspension of Admissions, or Transfer of Patients or Residents of Hospitals and Related Institutions, set forth in Chapters 290-5-35- and 290-5-44, respectively, in their entireties as they relate to hospitals and related institutions and facilities now subject to regulation by the Department of Community Health. The Division of Healthcare Facility Regulation, in the Department of Community Health proposes the adoption of the Rules and Regulations for Enforcement of Licensing Requirements, Chapter 111-8-25. These rules are being proposed pursuant to the authority granted the Department of Community Health in O.C.G.A. §§ 26-5-6, 31-2-9, 31-2-11, 31-7-2.1, 31-7-2.2, 31-7-3, 31-7-12, 31-7-17 and 49-6-84 to create and promulgate rules and regulations which promote, safeguard and protect the well-being of persons being served through various licensed facilities and providers.

The proposed rules combine and basically restate two sets of rules relating to the enforcement of licensing requirements into one new chapter of rules applicable to all facilities and providers licensed by the Department of Community Health, Healthcare Facility Regulation Division. In the formulation of the proposed new rules, the Department has considered the economic costs associated with the regulations and the impact on small businesses in the state. To the extent possible, the proposed rules do not impose excessive regulatory costs on the regulated entities while supporting the quality of care being delivered and the health and safety of the participants receiving care.

MAIN FEATURES OF THE PROPOSED RULES: The Rules and Regulations for Enforcement of Licensing Requirements, Chapter 111-8-25-, include the following features:

- Restatement of existing authority and title in Rules 111-8-25-.01 through .02.

- Restatement of existing definitions necessary for one set of rules and clarifies in the definition of license that the facility must be physically located in Georgia in Rule 111-8-25-.03.
- Restatement of existing enforcement authority in Rule 111-8-25-.04 to impose sanctions upon a finding that an applicant or licensee has made false statements of material fact, failed to provide access to the premises subject to regulation or comply with licensing requirements.
- Restatement of existing authority in Rule 111-8-25-.05 for sanctions to include public reprimand, suspension or revocation of an existing license, denial of application, prohibition of persons in management or control, limitations of licenses or imposition of civil penalties.
- Restatement of existing provisions in Rule 111-8-25-.05(3) relating to monitoring, suspension of admissions or relocation of patients/residents where there is an imminent and substantial danger for the patients/residents in the care of institutions, community living arrangements or drug abuse treatment programs which were set forth in Chapter 290-5-44. Provides for existing preliminary hearing rights for extraordinary sanctions.
- Inclusion of a new requirement in Rule 111-8-25-.05(3)(b) regarding emergency relocations that requires the facility to make information regarding the patients/residents available to the Department in a usable format, to prepare records for transfer, to make patients'/residents' personal property available to the receiving facilities at the time of the transfers and not to interfere with the Department's communications with patients/residents.
- Restatement of existing requirement in Rule 111-8-25-.06 regarding investigations and inspections whereby applicants and licensees consent to entry and access to the premises by representatives of the Department who are properly identified for purposes of conducting an investigation or inspection. Also restates requirement that facilities cooperate with the investigation and pay reasonable fees when sought by the Department.
- Restatement of existing immunity authority in Rule 111-8-25-.07 for Department when personnel act under color of state law in connection with enforcement actions.
- Restatement of existing requirement in Rule 111-8-25-.08 regarding burden of proof if claiming exemption or exception from law, rule, or order.
- Restatement of existing right of facilities in Rule 111-8-25-.09 for sanctions to be administered in accordance with the Administrative Procedure Act which provides for opportunity for hearing, etc.
- Restatement of existing law in Rule 111-8-25-.10 requiring nursing homes to provide notice of violations to residents.
- Restatement of existing requirement in Rule 111-8-25-.11 whereby the Department is not prohibited from acting pursuant to other applicable laws which may authorize other remedial measures.
- Restatement of existing authority in Rule 111-8-25-.12 which permits Department to petition a court of competent jurisdiction for an inspection warrant if representatives of the Department are denied meaningful access to the premises.
- Restatement of existing authority in Rule 111-8-25-.13 which permits Department to seek injunctive relief against the continued operation of a facility in violation of licensing requirements.

- Restatement of existing authority in Rule 111-8-25-.14 regarding validity of remaining portions of rules where some provisions are declared unenforceable.
- Inclusion of updated Georgia Code and rule cites and references to the Department of Community Health and corrects grammatical and typographical errors throughout rules.

RULES
OF
DEPARTMENT OF COMMUNITY HEALTH

CHAPTER 111-8-25
ENFORCEMENT OF LICENSING REQUIREMENTS

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111-8-25-.01 Legal Authority.

These rules are adopted and published pursuant to the Official Code of Georgia Annotated (O.C.G.A.) §§ 31-2-9, 31-2-11 and 31-7-2.2.

Authority O.C.G.A. §§ 31-2-4, 31-2-9, 31-2-11 and 31-7-2.2.

111-8-25-.02 Title and Purposes.

These rules shall be known as the Rules and Regulations for Enforcement of Licensing Requirements. The purposes of these rules are to provide for enforcement actions by the department with respect to violations of licensing requirements by certain applicants or licensees operating facilities subject to regulation by the department as set forth under Chapters 7, 13, 22, 23 and 44 of Title 31, Chapter 5 of Title 26, paragraph (8) of subsection (d) of Code § 31-2-4 and Article 7 of Chapter 5 of Title 49; to provide for inspections, investigations and examinations of such facilities; and to provide that certain facilities give notice of violations giving rise to the receipt of notice of the imposition of any sanction under federal or state laws or regulations.

Authority O.C.G.A. §§. 31-2-9, 31-2-11, 31-7-2.1, 31-7-2.2 and 31-7-3.2.

111-8-25-.03 Definitions.

(1) "Administrative action" means the initiation of a contested case as defined in the Georgia Administrative Procedures Act (APA), O.C.G.A. § 50-13-2(2).

(2) "Alter ego" means a person who acts pursuant to the control or influence of another while purporting to act independently.

(3) "Commissioner" means the Commissioner of the Department of Community Health.

(4) "Department" means the Department of Community Health, its agents and employees.

(5) "Document" means any book, record, paper, or other information related to initial and continued licensing.

(6) "Facility" means any agency, institution, entity or person subject to regulation by the department under Chapters 7, 13, 22, 23, 44 of Title 31, paragraph(8) of subsection (d) of Code § 31-2-4, Chapter 5 of Title 26, and Article 7 of Chapter 6 of Title 49 of the Official Code of Georgia Annotated.

(7) "Final Adverse Finding" means 1) the issuance of a ruling by the Commissioner on any appeal from a decision of a hearing officer or hearing examiner pursuant to a contested case involving the imposition of a sanction; 2) when a decision of the hearing officers or hearing examiner becomes final by operation of law because no appeal is made to the Commissioner; 3) where the parties to a contested case dispose of the case by settlement; or 4) where a facility does not contest within the allotted time period a sanction imposed by the department.

(8) "Formal Order" means any ruling following an administrative or judicial hearing or an emergency directive issued by the Commissioner as authorized by law related to the initial or continued licensing of a facility which requires the facility to take or refrain from taking specified action. Formal orders include, but are not limited necessarily to final administrative hearing decisions and settlement agreements between the department and facilities. Additionally, formal orders, as defined herein, may include any orders issued by the Commissioner as authorized by law, such as but not limited to O.C.G.A. § 31-7-2.2 or as authorized by similar statues enacted after the effective date of these rules.

(9) "Inspection" means any examination by the department or its representatives of a facility, including but not necessarily limited to the premises, and staff, persons in care, and documents pertinent to initial and continued licensing so that the department may determine whether a facility is operating in compliance with licensing requirements. The term "inspection" includes any survey, monitoring visit, or other inquiry conducted for the purpose of making a compliance determination with respect to licensing requirements.

(10) "Investigation" means any examination, conducted in response to an allegation or allegations of noncompliance, by the department or its representative of a facility, including but not necessarily limited to the premises, and staff, persons in care, and documents pertinent to initial and continued licensing so that the department may determine whether a facility has violated any licensing requirement.

(11) "License" means the official authorization granted by the department pursuant to any of the provisions of law cited in Rule .01 to operate a facility physically located in Georgia. The term "license" includes any permit, registration, commission, or similar designation reflecting such authorization.

(12) "Licensee" means any person holding a license.

(13) "Licensing requirements" means any provisions of law, rule, regulation, or formal order of the department which apply to facilities with respect to initial or continued authority to operate.

(14) "Management or Control", for the purpose of imposing the sanction pursuant to Rule .04(1)(c) or .04(2)(b), means the exercise of or authority to exercise direction, administration, or oversight over a facility's operations by certain persons which include owners, directors, or administrators.

(15) "Person" means any individual, agent, representative, governing authority, firm, organization, partnership, agency, association, corporation, facility, or other entity. Authority O.C.G.A. §§ 31-2-11.

111-8-25-.04 Enforcement.

The department shall have the authority to impose any one or more of the sanctions enumerated in paragraphs (1), (2) and (3) of Rule 111-8-25-.05 upon a finding that an applicant or licensee has:

(a) Knowingly made any verbal or written false statement of material fact either in connection with the application for a license; or on documents submitted to the department as part of any inspection or investigation; or in the falsification or alteration of facility records made or maintained by the facility;

(b) Failed or refused, without legal cause, to provide the department with access to the premises subject to regulation or information pertinent to the initial and continued licensing of the facility.

(c) Failed to comply with the licensing requirements of this state; or

(d) Failed to comply with the provisions of O.C.G.A. § 31-2-11 or with the provisions of these rules.

Authority O.C.G.A §31-2-11.

111-8-25-.05 Sanctions.

(1) Sanctions against Licensees. When the department finds that any licensee has violated any provision of Rule .04, Enforcement, the department, subject to notice and opportunity for a hearing, may impose any one or more of the sanctions in subparagraphs (a) through (f) below.

(a) Administer a Public Reprimand. If the sanction of public reprimand is finally imposed, as defined by a final adverse finding, the public reprimand shall consist of a

notice prepared by the department that the facility has been reprimanded; such notice shall include a written report of the department's findings along with the facility's response and corrective action plan.

1. **Location of Notice.** The facility shall post the public reprimand in places readily accessible and continuously visible to persons in care and their representatives.

2. **Timing of Notice.** The facility shall post the public reprimand on the day the public reprimand is received by the facility and such reprimand shall remain posted for a period of 90 days.

3. **Notice for Service Inquiries.** During any period that the reprimand is required to be posted, the facility shall advise persons seeking services and representatives of persons seeking services of the reprimand. In response to a notice by the department of the imposition of a public reprimand, a facility may request that the department not require the facility to advise persons seeking services and representatives of persons seeking services of the reprimand if such requirement would compromise its ability to provide services, and is not feasible given the facility's range of services and the ways its services are provided. Such request must be made within 10 calendar days from receipt of the notice from the department. The department upon such a convincing showing, as well as a showing that the correction of the violation has been achieved and will be sustained by the facility, may elect not to enforce this requirement. If the department elects to enforce the requirement and the facility appeals the imposition of the sanction, the issue of this requirement may become an issue for consideration by the hearing examiner at any hearing held on the sanction, unless waived by the facility.

(b) **Suspend any License.** The department may suspend for a definite period or for an indefinite period in connection with any condition which may be attached to the restoration of said license.

1. The department may impose the sanction of suspension for a definite period calculated by it as the period necessary for the facility to implement long-term corrective measures and for the facility to be deterred from lapsing into noncompliance in the future. As an alternative to suspending a license for a definite period, the department may suspend the license for an indefinite period in connection with the imposition of any condition or conditions reasonably calculated to elicit long-term compliance with licensing requirements which the facility must meet and demonstrate before it may regain its license.

2. If the sanction of license suspension is finally imposed, as defined by a final adverse finding, the department shall effectuate it by requiring the facility to return its license to the department. Upon the expiration of any period of suspension, and upon a showing by the facility that it has achieved compliance with licensing requirements, the department shall reissue the facility a license. Where the license was suspended for an indefinite period in connection with conditions for the re-issuance of a license, once the facility can show that any and all conditions imposed by the department have been met, the department shall reissue the facility a license.

(c) **Prohibit Persons in Management or Control.** The department may prohibit a licensee from allowing a person who previously was involved in the management or control of any facility which has had its license revoked or application denied within the

past twelve months to be involved in the management or control of such facility. Any such person found by the department to have acted diligently and in good faith to ensure correction of violations in a facility which has had its license revoked or denied, however, shall not be subject to this prohibition if that person became involved in the management or control of the facility after the facility was notified by the department of violations of licensing requirements giving rise to a revocation or denial action. This subparagraph shall not be construed to require the department to obtain any information that is not readily available to it regarding any person's involvement with a facility. For the purpose of this Rule, the 12-month period will begin to run from the date of any final adverse finding or the date that any stay of enforcement ceased, whichever first occurs.

(d) Revoke any License. The department may revoke any license. If the sanction of license revocation is finally imposed, as defined by a final adverse finding, the department shall effectuate it by requiring the facility to return its license to the department.

(e) Impose a Civil Penalty Fine. The department may impose a civil penalty fine, not to exceed a total of \$25,000, of up to \$1,000 per day for each violation of a law, rule, regulation, or formal order related to the initial or continued licensing of a facility; provided, however, that no such fines shall exceed \$25,000 for violations found during the same inspection and provided, further, that no fine may be imposed against any nursing facility, nursing home, or intermediate care facility which is subject to intermediate sanctions under the provisions of 42 U.S.C. §1396r(h)(2)(A), as amended, whether or not those sanctions actually are imposed. If a violation is found on two consecutive inspections there shall exist a rebuttable presumption that the violation continued throughout the period of time between each inspection.

1. Categories of Violations. Violations shall be assigned a category based upon the following criteria:

(i) Category I (\$601-\$1000 per violation per day): A violation or combination of violations of licensing requirements which has caused death or serious physical or emotional harm to a person or persons in care or poses an imminent and serious threat or hazard to the physical or emotional health and safety of one or more persons in care;

(ii) Category II (\$301-\$600 per violation per day): A violation or combination of violations of licensing requirements which has direct adverse effect on the physical or emotional health and safety of a person or persons in care; and

(iii) Category III (\$50-\$300 per violation per day): A violation or combination of violations of licensing requirements which indirectly or over a period of time has or is likely to have an adverse effect on the physical or emotional health and safety of a person or persons in care, or a violation or violations of administrative, reporting, or notice requirements.

2. Fine Amounts. The specific amount of the fine for each violation in each category shall be determined based upon whether and when the particular or similar rule, law, or order, or the act, omission, incident, circumstance, or conduct giving rise to the violation of the same regulatory requirement, or one substantially similar thereto, has been cited by the department previously. In no case, however, shall a facility be sanctioned for a violation characterized as a subsequent or repeat violation unless the time frame

identified in the acceptable plan of correction has passed and the facility nonetheless has failed to attain or maintain correction.

(i) Initial Violation. If the same or a substantially similar violation has not been cited previously by the department within the past 24 months against the facility, it shall be considered to be an initial violation. The fine amount for initial violations shall be the bottom figure in the appropriate category.

(ii) Subsequent Violation. If the present violation or a substantially similar violation had been found and cited by the department as the result of the last inspection of the facility, or as the result of any one other inspection during the previous 24 months, the violations shall be considered to be a subsequent violation. The fine amount for subsequent violations shall be in the range between the top and bottom figures of the appropriate category and other factors, such as the existence of mitigating or aggravating circumstances, shall be considered in determining the fine amount within the range.

(iii) Repeat Violation. If the present violation or a substantially similar violation also had been found and cited any two other times during the past twenty-four (24) months, it shall be considered to be a repeat violation. The fine amount for repeat violations shall be the top figure in the category.

3. Limitation of Fines. A single act, omission, incident, circumstance, or conduct shall not give rise to the imposition of more than one fine even though such act, omission, incident, circumstance, or conduct may have violated more than one licensing requirement. In such a case, the fine shall be based upon the highest category in which any one violation resulting from the same act, omission, incident, circumstance, or conduct falls. Correction by the facility of cited violations tolls the continuation of the assessment of the daily fine, provided, however, that the department shall confirm that such cited violations were corrected.

4. Financial Hardships. In response to a notice by the department of the imposition a fine, a facility may request that the department reduce the fine amount if the fine would cause significant financial hardship that would compromise its ability to provide care or services in compliance with licensing requirements. The department, in its discretion, upon such a convincing showing as well as a showing that correction of the violation has been achieved and will be sustained by the facility, may reduce the amount of the fine. If the department proceeds with the imposition of the fine as proposed, the issue of significant financial hardship may become an issue for consideration by the hearing examiner at any hearing held on the sanction, unless waived by the facility.

(f) Limit or Restrict any License. The department may limit or restrict any license as the department deems necessary for the protection of the public (a provisional or temporary time-limited license granted by the department shall not be considered to be a limited or restricted license).

1. Limitation or restriction of a license may occur to: 1) prohibit the provision of a particular service or services when a facility is unable or unwilling to render or perform the service or services in compliance with licensing requirements; 2) restrict the authorized number of persons cared for by a facility when the facility is unable or unwilling to render care in compliance with licensing requirements; and/or 3) prohibit a

facility from caring for persons with specific types or degrees of needs that the facility is not capable of meeting in compliance with licensing requirements.

2. If the sanction of license limitation or restriction is finally imposed, as defined by a final adverse finding, the department shall effectuate it by sending the facility a restricted or limited license. Upon receipt of the restricted or limited license, the facility shall return to the department its original license. Upon expiration of the restriction or limitation period, and upon proof by the facility that it has taken effective corrective action and has sustained that action during the period of the sanction, the department shall fully restore the facility's license. The department shall take any steps it deems necessary to verify compliance prior to the expiration of the sanction period so that a compliant facility is restored its license without delay.

(2) Sanctions against Applicants. When the department finds that any applicant for a license has violated any provision of Rule .04, Enforcement, the department, subject to notice and opportunity for a hearing, may impose any one or more of the following sanctions in subparagraphs (a) through (c) below.

(a) Refuse to Grant License. The department may refuse to grant (deny) a license; provided, however, that the department may refuse to grant an initial license without holding a hearing prior to taking such action.

1. The department may deny an application for a license where the facility has failed to demonstrate compliance with licensing requirements. Additionally, the department may deny an application for a license where the applicant or alter ego of the applicant has had a license denied, revoked, or suspended within one year of the date of an application, or where the applicant has transferred ownership or governing authority of a facility within one year of the date of a new application when such transfer was made in order to avert denial, revocation, or suspension of a license. For the purpose of determining the one year denial period, the period shall begin to run from the date of the final adverse finding, or the date any stay of enforcement ceased, whichever first occurs. In further determining whether to grant or deny a license, the department may consider the applicant's overall record of compliance with licensing requirements.

(b) Prohibit Persons in Management or Control. The department may prohibit an applicant from allowing a person who previously was involved in the management or control of any facility which has had its license revoked or application denied within the past twelve months to be involved in the management or control of such facility. Any such person found by the department to have acted diligently and in good faith to ensure correction of violations in a facility which has had its license revoked or denied, however, shall not be subject to this prohibition if that person became involved in the management or control of the facility after the facility was notified by the department of violations of licensing requirements giving rise to denial action. This subparagraph shall not be construed to require the department to obtain any information that is not readily available to it regarding any person's involvement with a facility. For the purpose of this rule, the 12-month period will begin to run from the date of any final adverse finding or the date that any stay of enforcement ceased, whichever first occurs.

(c) Limit or Restrict any License. The department may limit or restrict any license as it deems necessary for the protection of the public (a provisional or temporary time-

limited license granted by the department shall not be considered to be a limited or restricted license).

1. Limitations or restrictions of a license may include any or all of the following as determined necessary by the department:

(i) prohibiting the provision of a particular service or services when a facility is unable or unwilling to render or perform the service or services in compliance with licensing requirements;

(ii) restricting the authorized number of persons cared for by a facility when the facility is unable or unwilling to render care in compliance with licensing requirements; and

(iii) prohibiting a facility from caring for persons with specific types or degrees of needs that the facility is not capable of meeting in compliance with licensing requirements.

2. The department may restrict a license where any applicant or alter ego of the applicant has had a license denied, revoked, or suspended within one year of the date of an application, or where the applicant has transferred ownership of governing authority of a facility within one year of the date of a new application when such transfer was made in order to avert denial, revocation, or suspension of a license. For the purpose of determining the one year denial period, the period shall begin to run from the date of the final adverse finding or the date any stay of enforcement ceased, whichever occurs first.

3. If the sanction of license limitation or restriction is finally imposed, as defined by a final adverse finding, the department shall effectuate it by sending the facility a restricted or limited license. Upon receipt of the restricted or limited license, the facility shall return to the department its original license if one was granted. Upon expiration of the restriction or limitation period, and upon proof by the facility that it has taken effective corrective action and has sustained that action during the period of the sanction, the department may issue the facility a license. The department shall take any steps it deems necessary to verify compliance prior to the expiration of the sanction period so that a compliant facility may be issued a license without delay.

(3) Extraordinary Sanctions Where Imminent and Substantial Danger. Where the Commissioner of the department determines that the patients or residents in the care of an institution, community living arrangement or drug abuse treatment program subject to licensure are subject to an imminent and substantial danger, the Commissioner may order any of the extraordinary sanctions listed in subsections (b), (c), (d) and (e), of this rule, 111-8-25-.05(3), to take effect immediately unless otherwise specified in the order, without notice and opportunity for hearing prior to the order taking effect.

(a) **Content of the Order.** The order shall contain the following:

1. the scope of the order;
2. reasons for the issuance of the order;
3. effective date of the order if other than the date the order is issued;

4. person to whom questions concerning the order are to be addressed; and
5. notice of the right to obtain after the issuance of the order, a preliminary hearing and an administrative hearing regarding the emergency order as a contested case.

(b) Emergency Relocation. The Commissioner may order emergency relocation of the patients or residents of any institution, community living arrangement or drug abuse treatment program subject to licensure to the nearest appropriate institution, community living arrangement or drug abuse treatment program. Prior to issuing an emergency order, the Commissioner may consult with persons knowledgeable in the field of medical care and a representative of the facility to determine if there is a potential for greater adverse effects on patient or resident care as a result of the proposed issuance of an emergency order. The Commissioner shall provide for notice to the patient or resident, his or her next of kin or guardian and his or her physician of the emergency relocation and the reasons therefore; relocation to the nearest appropriate institution, community living arrangement or drug abuse treatment and education program and other protection designed to ensure the welfare and, when possible, the desires of the patient or resident.

1. When provided with the notice of the execution of the emergency relocation order, the institution, community living arrangement or drug abuse treatment program shall make patient/resident information available to the department in usable formats.

2. The institution, community living arrangement or drug abuse treatment program that is the subject of the emergency relocation order shall not impede in any way the Department's communications with the patients/residents, next of kin or guardians of the patients/residents and attending physicians.

3. The institution, community living arrangement or drug abuse treatment program shall continue to provide care and services to the patients/residents and shall prepare records required by the receiving facility which are necessary to facilitate continuity of patient/resident care for the patients/residents to be relocated.

4. The institution, community living arrangement or drug abuse treatment program shall make any personal property, such as but not limited to patient/resident funds, available to the receiving facility at the time of transfer.

(c) Emergency Placement of Monitor. The Commissioner may order the emergency placement of a monitor in an institution, community living arrangement or drug abuse treatment program subject to licensure when conditions at the facility require immediate oversight for the safety of the patients or residents.

1. **Conditions** The placement of a monitor may be required when one or more of the following circumstances are present:

- (i) the institution, community living arrangement or drug abuse treatment program is operating without a permit or license;

- (ii) the department has denied the application for a permit or a license or has initiated an action to revoke the existing permit or license of the institution, community living arrangement or drug abuse treatment program;

(iii) the institution, community living arrangement or drug abuse treatment program is closing or plans to close and adequate arrangement for the relocation of the patients or residents have not been made at 30 days before the date of closure; or

(iv) the health, safety, security, rights or welfare of the patients or residents cannot be adequately assured by the institution, community living arrangement or drug abuse treatment program. For example, the department is informed that essential service vendors (electricity, gas, water, food or pharmacy) have not been paid and anticipate discontinuing service and the institution, community living arrangement or drug abuse treatment program does not have a signed contract with another vendor establishing that there will be no disruption in service.

2. Role of Monitor. The monitor may be placed in the institution, community living arrangement or drug abuse treatment program for no more than 10 days during which time the monitor shall observe conditions and compliance with remedial action recommended by the department. The monitor shall not assume any administrative responsibility for the institution, community living arrangement or drug abuse treatment program, nor shall the monitor be liable for any of the actions of the institution, community living arrangement or drug abuse treatment program.

3. Cost of Monitor. The institution, community living arrangement or drug abuse treatment program shall pay the costs associated with the placement of the monitor unless the Commissioner's order placing the monitor is determined to be invalid in a contested case proceeding under the Georgia Administrative Procedure Act, Chapter 13 of Title 50.

(d) Emergency Prohibition of Admissions. The Commissioner may order the emergency prohibition of admissions to an institution, community living arrangement or drug abuse treatment program when such facility has failed to correct a violation of departmental permit rules within a reasonable period of time, as specified in the department's corrective order, and the violation could either jeopardize the health and safety of the residents/patients if allowed to remain uncorrected or is a repeat violation over a 12-month period, which is intentional or due to gross negligence.

(e) Emergency Suspension of Admissions. The Commissioner may order admissions to an institution, community living or drug abuse treatment program, may be suspended until the department has determined that the violation has been corrected or until the department has determined that the facility has undertaken the action necessary to effect correction of the violation.

(f) Preliminary Hearing. The institution, community living arrangement or drug abuse treatment program affected by the Commissioner's emergency order, may request that the department hold a preliminary hearing on the validity of the order and the need for its continuation. Such hearing shall occur within 10 days following the request.

1. A request for a preliminary hearing shall be made in writing to the representative of the department designated in the emergency order. Unless a request is made to appear in person, the preliminary hearing shall consist of an administrative review of the record, written evidence submitted by the institution affected, and a preliminary written argument in support of its contentions.

2. If a request is made to appear in person at the preliminary hearing, the following information shall be included in the request, or provided prior to the hearing:

(i) the name and address of person or persons, if any, who will be representing the institution in the preliminary hearing;

(ii) the names and titles of all other persons who will attend the preliminary hearing;
and

(iii) any additional evidence the institution wishes to submit for consideration at the hearing.

3. Upon receipt of a request for a preliminary hearing, the department shall set and give notice of the date, time, and location of the preliminary hearing. The preliminary hearing shall be held within ten calendar days of receipt of the request.

4. If a personal appearance is requested, the preliminary hearing shall consist of a review of the evidence in the record; any additional evidence introduced at the hearing; and any arguments made. A sound recording shall be made of the hearing.

5. Within seven calendar days of the close of the hearing, the department shall render a written decision. The decision shall be divided as follows:

(i) description of additional evidence submitted by the affected institution;

(ii) summary of the arguments and/or brief submitted by the institution in support of its contention that the emergency order is invalid;

(iii) a statement as to whether the emergency order issued by the department is found valid and the reasons therefore; and

(iv) notice of the right to an administrative hearing pursuant to O.C.G.A. 50-13-13, if the emergency order is found valid.

6. Pending final appeal of the validity of any emergency order issued as provided herein, such emergency order shall remain in full effect until vacated or rescinded by the Commissioner.

(g) Cumulative Remedy. The department is not limited to a single emergency action under these rules, nor is the department precluded from other actions permitted by other law or regulations during the time an emergency order is in force.

(4) Standards for Taking Sanctions. In taking any of the actions pursuant to subparagraphs (1), (2) or (3) of this rule, the department shall consider the seriousness of the violation or violations, including the circumstances, extent, and gravity of the prohibited act or acts or failure to act, and the hazard or potential hazard created to the physical or emotional health and safety of the public.

(5) Non-Compliance with Sanctions. Failure on the part of any facility to abide by any sanction, including payment of a fine, which is finally imposed against it, shall constitute grounds for the imposition of additional sanctions, including revocation.

(6) Settlements. With regard to any contested case instituted by the department pursuant to this Chapter or other provisions of law or regulation which may now or hereafter authorize remedial or disciplinary grounds and action, the department may, in its discretion, dispose of the action so instituted by settlement. In such cases, the department, the facility, and those persons deemed by the department to be successors in interest to any settlement agreement, shall be bound by the terms specified therein. Violation thereof by any applicant or licensee, their agents, employees, or others acting on their behalf, shall constitute grounds for the imposition of any sanctions enumerated in this Chapter, including revocation.

(7) Sanctions for Nursing Facilities. With respect to any facility classified as a nursing facility, nursing home, or intermediate care home, the department may not take an action to fine or restrict the license of any such facility based on the same act, occurrence, or omission for which: the facility has received an intermediate sanction under the provisions of 42 U.S.C. § 1396r(h)(2)(A), as amended, or 42 U.S.C. §1395i-3(h)(2)(B); or such facility has been served formal notice of intent to take such a sanction which the Division of Medical Assistance, based on administrative review, or any other appropriate body, based on administrative or judicial review, determines not to impose, provided however, that nothing in this subparagraph shall prohibit the department from using the provisions authorized by law in paragraph (5) above. Authority O.C.G.A. §§. 31-2-11, 31-7-2.2 and 31-7-4.

111-8-25-.06 Investigations and Inspections.

(1) Authority to Investigate. The department shall have the authority to make public or private investigations inside or outside this state. Such investigations may be initiated at any time, in the discretion of the department, and may continue during the pendency of any action initiated by the department pursuant to Rule .05 of this Chapter.

(2) Consent to Entry and Access. An application for a license or the issuance of the same by the department constitutes consent by the applicant or licensee and the owner of the premises for the department's representatives, after displaying identification to any facility staff, to enter the facility for the purpose of conducting an investigation or an inspection.

(a) Department representatives shall be allowed reasonable and meaningful access to the facility's premises, and information pertinent to licensure including staff and persons in care. The department shall have the authority to require the production of any documents related to the initial and continued licensing of any facility.

(3) Cooperation with Inspection. Facility staff shall cooperate with any inspection or investigation conducted by the department and shall provide, without unreasonable delay, any documents which the department is entitled hereunder.

(4) Assessment of Expenses. Pursuant to the inspection, investigation, and enforcement powers given to the department by O.C.G.A. §31-2-11 and other applicable laws, and the provisions of this Chapter, the department may assess against a facility

reasonable and necessary expenses incurred by the department pursuant to any administrative or legal actions required by the failure of a facility to fully comply with licensing requirements. Such expenses may be assessed only pursuant to the initiation of sanction actions under this Chapter and may only be collected if such actions result in final adverse findings. A facility shall be notified of the department's action to assess expenses when the department sends a facility a notice of the sanction. If the sanction is appealed, the assessment may become an issue for consideration by the hearing examiner at any hearing held on the sanction.

(a) Reasonable and Necessary Expenses. Reasonable and necessary expenses, as used in this subparagraph, shall include, but not necessarily be limited to: hourly compensation of department representatives, commuting expenses (including mileage at the current state reimbursement rate), and lodging and meal expenses (at the rate approved for reimbursement by the state) associated with overnight out-of-town travel; and other similar costs. Assessments shall not include attorney's fees and expenses of litigation, shall not exceed actual expenses, and shall be made only if inspections, investigations, or enforcement actions result in final adverse findings.

(b) Payment of Assessed Expenses. Expenses assessed against a facility shall be paid within 30 days of receipt of a statement of expenses. In response to an assessment, a facility may request that the department reduce the assessment or agree to a payment plan if full payment within 30 days would cause significant financial hardship that would compromise its ability to provide care or services in compliance with licensing requirements. The issue of significant financial hardship caused by the assessment may become an issue for consideration by the hearing examiner at any hearing held on the sanction.

(5) Outcome of Investigation Available. When an investigation is initiated due to an allegation of noncompliance by any person acting on his or her own or another's behalf, the outcome of the investigation shall be provided by the department to that person and to the facility upon request after the investigation is completed; provided however, that the names and identifying information regarding the complainants are classified as confidential. Nothing in this rule shall be construed to require the department to release the name or identifying information regarding a complainant without first obtaining proper authorization from such complainant. Nor shall this rule be construed to require the department to release any other confidential or privileged information without first obtaining proper authorization.

Authority O.C.G.A. §§. 31-2-11 and 31-5-5.

111-8-25-.07 Immunity.

For any action taken or any proceeding held under this Chapter or under color of law, except for gross negligence or willful or wanton misconduct, the department, when acting in its official capacity, shall be immune from liability and suit to the same extent that any judge of any court of general jurisdiction in this state would be immune.

Authority O.C.G.A. §31-2-11.

111-8-25-.08 Exemptions.

In an administrative or legal proceeding under this Chapter, a person claiming an exemption or an exception granted by law, rule, regulation, or formal order has the burden of proving this exemption or exception.

Authority O.C.G.A. §31-2-11.

111-8-25-.09 Applicability of Administrative Procedures Act.

This Chapter and all sanction actions resulting from its provisions shall be administered in accordance with Chapter 13 of Title 50 of the Official Code of Georgia Annotated, the "Georgia Administrative Procedure Act." Any request for hearing in response to any sanction action undertaken pursuant to this Chapter shall be in writing and shall be submitted to the department no later than 10 calendar days from the date of receipt of any notice of intent by the department to impose a sanction setting forth the proposed sanction or sanctions and the basis therefore.

Authority O.C.G.A. §§ 31-2-11 and 50-13-18.

111-8-25-.10 Notice of Violations.

(1) Where a nursing home or intermediate care home is required by the provisions of O.C.G.A. § 31-7-3.2 to give notice of violations giving rise to the imposition of any sanction, the notice shall contain the information required by that code section and shall conform to the following requirements:

(a) **Size and Format of Notice.** The facility may post the Report of Licensure Inspection and Medicare/Medicaid Statement of Deficiencies, along with the notices by the department, the department's Division of Medical Assistance and/or the Center for Medicare and Medicaid Services of intent to impose any sanction. These may be posted in their original forms as the notice required by O.C.G.A. § 31-7-3.2(a) and (b). If the facility chooses to post the notice of the agency taking the action and the Report of Licensure Inspection and Statement of Deficiencies, there shall be a conspicuous heading clearly visible from at least twenty feet away, calling the attention of the observer to them. As an alternative, the facility may post its own notice which accurately and thoroughly reflects the violations found which give rise to the sanctions imposed or proposed and which describes each sanction or notice of sanction issued by any of the above-described agencies. Any such notice shall be at least 11 1/2 inches by 17 1/2 inches in size. Words and letters shall be in bold print and shall be at least one centimeter in size;

(b) **Location of Notice.** The facility shall post the notice in a place readily accessible and continuously visible to persons in care and their representatives;

(c) **Timing of Notice.** The facility shall post the notices within fourteen days after it receives notification of the imposition of a sanction for a violation which requires the notice. The notices shall remain in place until the department has determined that cited violations no longer exist, at which time the notice may be removed; and

(d) **Mailing of Notices.** Where any person has made a written request for a copy of the notice or notices, the facility shall mail the same to the requester within 5 business

days of receipt of the request when such request is accompanied by a postage paid self addressed envelope.

Authority O.C.G.A. §§31-2-11, 31-7-2.1 and 31-7-3.2.

111-8-25-.11 Applicability of Other Laws.

The provisions of this Chapter shall be supplemental to and shall not operate to prohibit the department from acting pursuant to those provisions of law which may now or hereafter authorize remedial or disciplinary grounds and action for the department. In cases where those other provisions of law so authorize other disciplinary grounds and actions, but this Chapter limits such grounds or actions, those other provisions shall apply.

Authority O.C.G.A. Sec. 31-2-11.

111-8-25-.12 Inspection Warrants.

In addition to the enforcement actions authorized by this Chapter with respect to refusal to provide the department with access to a facility, the department may make application to a court of competent jurisdiction for an inspection warrant if its representatives are denied meaningful access to the premises, staff, persons in care, and documents or other information of a licensed facility or of a facility which the department believes is required to have a license but which does not have one. Upon the grant of such a warrant, the department may gain entry and meaningful access to such facility, its staff, and persons in care therein, facility documents, and other information deemed pertinent by the department to making a compliance determination, unless the warrant specifically limits the entry or access allowed to department representatives. This rule shall not be construed to require the department to seek entry and be denied the same before it may apply for an inspection warrant.

Authority O.C.G.A. §§31-2-11 and 31-5-20 et seq.

111-8-25-.13 Injunctive Relief.

The department may, without regard to the availability of other remedies, including the remedies set forth in this Chapter, seek an injunction against the continued operation of a facility without a license. The department likewise may seek injunctive relief against the continued operation of a facility in violation of licensing requirements.

Authority O.C.G.A. §§31-2-11 and 31-5-9.

111-8-25-.14 Severability.

In the event that any rule, sentence, clause or phrase of any of these rules and regulations may be construed by any court of competent jurisdiction to be invalid, illegal, unconstitutional, or otherwise unenforceable, such determination or adjudication shall in no manner affect the remaining rules or portions thereof. The remaining rules or portions thereof shall remain in full force and effect as if such rule or portions thereof so determined, declared or adjudicated invalid or unconstitutional were not originally part of these rules.

Authority O.C.G.A. Sec. 31-2-11