

**RULES OF
DEPARTMENT OF COMMUNITY HEALTH**

**CHAPTER 111-8
HEALTHCARE FACILITY REGULATION**

**SUBJECT 111-8-25
GENERAL LICENSING AND ENFORCEMENT
REQUIREMENTS**

SYNOPSIS OF PROPOSED RULES

STATEMENT OF PURPOSE: The Georgia Department of Community Health proposes to amend Rules and Regulations for Rules and Regulations for Healthcare Facility Regulation, General Licensing and Enforcement Requirements, Sanctions, Ga. Comp. Rules & Regs., R. 111-8-25-.05. This rule is being proposed pursuant to the authority granted the Department of Community Health in O.C.G.A. §§ 31-2-8, 31-7-2.2, 31-7-4, and 31-7-3.5.

MAIN FEATURE OF THE PROPOSED RULE: This is an amendment to existing rule Ga. Comp. R. & Regs. r. 111-8-25-.05 regarding sanctions imposed by the Department arising out of the General Licensing and Enforcement Requirements. The amendment makes reference to the Department's mandatory fines for nursing homes related to closure, change of ownership, or other material changes set forth in Rule 111-8-56-.20(5). The amendment also sets forth mandatory fines for hospitals and related institutions for violations of O.C.G.A. § 31-7-3.5.

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(1) Sanctions against Licensees. When the department finds that any licensee has violated any provision of Rule 111-8-25-.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. Additionally, if the facility maintains a website, it shall post a web link in a prominent

location on the main page of the website that provides access to a copy of the public reprimand.

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 ninety (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 ten (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 (12) 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 twelve (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 of up to \$2,000 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 \$40,000 for violations found during the same inspection. If a violation is found on two (2) 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 (\$1,201-\$2,000 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 (\$601-\$1,200 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 (\$100-\$600 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 twenty-four (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 twenty-four (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 (2) 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.

5. Mandatory Fines. The Department shall impose mandatory fines in the following circumstances:

(i) Long-Term Care Facilities. The Department shall impose a mandatory fine of no less than \$5,000.00 for a violation of a law, rule, regulation, or formal order related to the initial or ongoing licensing of a long-term care facility which has caused the death of or serious physical harm to a resident in such facility. For purposes of this subparagraph, the term 'serious physical harm' means an injury which causes any significant impairment of the physical condition of the resident as determined by qualified medical personnel which may be proven by testimony or by submission of the medical record. Any mandatory fine imposed by the Department may not be reduced on the basis of financial hardship. Mandatory fines for nursing homes related to closure, change of ownership or other material changes are set forth in Rule 111-8-56-.20(5).

(ii) Hospitals and Related Institutions. The Department shall impose a mandatory fine of no less than \$5,000.00 for a violation of O.C.G.A. § 31-7-3.5.

6. Federal Preemption. No fine, whether discretionary or mandatory, 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.

(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:

(i) 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;

(ii) 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

(iii) 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 111-8-25-.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 surrendered the license or transferred ownership or governing authority of a facility within one year of the date of a new application when such surrender or transfer was made in order to avert denial, revocation, or suspension of a license or payment of fines. 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 (12) 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 twelve (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 (1) year of the date of an application, or where the applicant has surrendered the license or transferred ownership of governing authority of a facility within one (1) year of

the date of a new application when such surrender or transfer was made in order to avert denial, revocation, suspension of a license, or payment of fines. For the purpose of determining the one (1) 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 thirty (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 ten (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 twelve (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 within the department on the validity of the order and the need for its continuation. Such hearing shall occur within ten (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 (10) 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 (7) calendar days of the close of the preliminary 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 affected institution's right to obtain an administrative hearing regarding the Commissioner's emergency order pursuant to O.C.G.A. § 50-13-13, if the emergency order is found valid as a result of the department's preliminary hearing.

6. Pending final appeal of the validity of any emergency order issued as provided herein through the administrative hearing process, 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. §§ 31-2-8, 31-7-2.2, 31-7-4, and 31-7-3.5.



PUBLIC NOTICE OF PROPOSED RULE CHANGES

The Georgia Department of Community Health proposes to amend Rules and Regulations for Rules and Regulations for Healthcare Facility Regulation, General Licensing and Enforcement Requirements, Sanctions, Ga. Comp. Rules & Regs., R. 111-8-25-.05. This rule is being proposed pursuant to the authority granted the Department of Community Health in O.C.G.A. §§ 31-2-8, 31-7-2.2, 31-7-4, and 31-7-3.5.

NOTICE OF PUBLIC HEARING

An opportunity for public comment will be held on August 23, 2023, at 2:00 p.m. via Zoom. There will be no in-person attendance at the Department of Community Health. The Zoom meeting ID number is **832 2047 6504** and the event passcode is “**923210**”. Follow these instructions to join the event:

1. Click the link or copy and paste the link text to a browser:
<https://us02web.zoom.us/j/83220476504?pwd=N00rK3BhcmVNRlpsRkFzSnFVYUV4dz09>

2. Click “Join Now”

To join by telephone: One tap mobile
+16465588656,,83220476504# US (New York)

+16469313860,,83220476504# US

Meeting ID: **832 2047 6504**

Oral comments will be limited to ten (10) minutes per person. Individuals who are disabled and require assistance to participate during this meeting should contact the Office of General Counsel at (404) 657-7195 at least three (3) business days prior to the meeting.

Individuals wishing to comment in writing on any of the proposed changes must do so on or before August 30, 2023. DCH encourages written public comments submitted in accordance with O.C.G.A. § 50-13-4(a)(2) to be submitted via e-mail to the following e-mail address: **Public.Comment@dch.ga.gov**.

Written comments may be submitted via regular mail to the following address:

Attention: Alycia Allgood
Office of General Counsel
Georgia Department of Community Health
2 Martin Luther King Jr, Drive SE, 18th Floor



**GEORGIA DEPARTMENT
OF COMMUNITY HEALTH**

Atlanta, GA 30334

Comments from written and public testimony will be provided to the Board of Community Health. The Board will vote on the proposed changes on September 14, 2023.

NOTICE IS HEREBY GIVEN THIS 13th DAY OF JULY 2023

Caylee Noggle, Commissioner