



NOTICE OF PUBLIC HEARING

PLEASE TAKE NOTICE THAT on June 17, 2010, at 10:00 a.m., in the Board Room at the Department of Community Health, #2 Peachtree Street, 5th Floor, Atlanta, Georgia, a public hearing will be held for the presentation of proposed administrative rule changes.

The chapters affected by the proposed changes of administrative rules & regulations are listed below:

(Amend) Ga. Admin. Comp. Ch. 111-8-25, General Licensing and Enforcement Requirements

111-8-25-.01	Legal Authority
111-8-25-.02	Title and Purpose
111-8-25-.03	Definitions
111-8-25-.05	Enforcement
111-8-25-.06	Sanctions

All interested persons are hereby given the opportunity to participate by submitting data, views or arguments (orally or in writing). Oral comments may be limited to 10 minutes per person. If you need auxiliary aids or services because of a disability, please contact the Office of General Counsel at (404) 657-7195 at least (3) three business days prior to the hearing.

Written comments must be submitted to the Department and received no later than the close of business at 5:00 p.m. on June 18, 2010. Comments may be faxed to (404) 656-0663, emailed to pjohnson@dch.ga.gov or mailed to the address above, attention Office of General Counsel.

Unless revision of the proposed rule changes is indicated as a result of the public comments, it is the intent of the Department of Community Health to ask the Board of Community Health to approve the rule(s) as promulgated herein for final adoption on July 8, 2010.

This 13th day of May, 2010.

Clyde L. Reese, III, Esq.
Commissioner

CLR:pmj

Attachments

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

AMEND CHAPTER 111-8-25

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

SYNOPSIS OF PROPOSED RULE AMENDMENTS

STATEMENT OF PURPOSE: The Department of Community Health proposes to amend certain paragraphs of the Rules and Regulations for Enforcement of Licensing Requirements, Chapter 111-8-25. The amendments are being proposed as a result of the passage of Georgia House Bill 994 anticipated to take effect July 1, 2010. This law will require the Department to charge licensing activity fees for all licensure programs subject to regulation by the Department of Community Health, through the Healthcare Facility Regulation Division. These proposed rules would be subjected to public hearing in June, 2010 and would not be proposed for final adoption until after the anticipated effective date of the authorizing law.

In the formulation of these 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 amended 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 AMENDED RULES:

Rule 111-8-25-.01 Amends the title of the rule to reflect legal authority, title and purposes. Amends the paragraph to incorporate new general licensing requirements in the title and purposes of the rules. Previous rule did not address general licensing authority, title and purposes.

Rule 111-8-25-.02 Amends the title of the rule to reflect definitions and strikes the previous title, purpose and paragraph. Incorporates into this amended paragraph the definitions previously found in Rule 11-8-25-.03. No changes were made to the previous definitions.

Rule 111-8-25-.03 Amends the title of the rule to reflect general licensing requirements and fee schedules striking the previous title of definitions and subparagraphs. Incorporates into this amended paragraph general licensing requirements relating to

applications, fee schedules for various ongoing licensing activities and remedies for non-payment of fees. Provides for delayed enforcement of remedies to January 31, 2011 for non-payment for currently licensed facilities and providers. Definitions previously found in this paragraph have been restated in their entirety under Rule 111-8-25-.02 .

Rule 111-8-25-.05 Amends existing rule to insert language to clarify further that preliminary hearing on the Commissioner's emergency order is held internally by the Department. No other changes made to the existing rule.

Rule 111-8-25-.06. Amends title of this paragraph to incorporate requirement for plans of correction. Incorporates new subparagraph (6) that requires facilities to develop and submit written plans of corrections when rule violations are identified and to comply with accepted plans of correction.

**RULES
OF
DEPARTMENT OF COMMUNITY HEALTH**

**CHAPTER 111-8
HEALTHCARE FACILITY REGULATION**

**111-8-25
Enforcement of General Licensing and Enforcement Requirements**

TABLE OF CONTENTS

111-8-25-.01	<u>Legal Authority, Title and Purpose</u>
111-8-25-.02	<u>Title and Purpose Definitions</u>
111-8-25-.03	<u>Definitions-General Licensing Requirements and Fee Schedules</u>
111-8-25-.04	Enforcement
111-8-25-.05	Sanctions
111-8-25-.06	<u>Investigations, and Inspections and Plans of Correction</u>

111-8-25-.01 Legal Authority, Title and Purpose

These rules shall be known as the Rules and Regulations for Enforcement of General Licensing and Enforcement Requirements. The purposes of these rules are to provide for general licensing and enforcement actions requirements 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 licensing, payment of licensing activities fees, inspections, investigations and examinations of such facilities; compliance with plans of correction; 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. These rules are adopted and published pursuant to the Official Code of Georgia Annotated (O.C.G.A.) §§ 31-2-4, 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 Definitions

~~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.~~

(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. §§. 31-2-9, 31-2-11, 31-7-2.1, 31-7-2.2 and 31-7-3.2.

111-8-25-.03 Definitions. General Licensing Requirements and Fee Schedules

~~(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).~~

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

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~~—(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.

(1) No facility shall offer or provide services which are required to be licensed under rules enforced by the department without a current license issued by the department.

(2) No license shall be issued by the department unless the facility is in compliance with applicable rules set forth in these rules, specific rules applicable to the particular facility type and all licensure activity fees due the department have been paid.

(3) Fees will be assessed to facilities and applicants for licensure for the following licensure activities: processing applications for a new license or a change in ownership, initial license fees, annual licensure activity fees to maintain current license, follow-up visits to periodic inspections, training materials, returned check and mail processing charges and civil monetary penalties.

(4) Application for License. An application for a license to provide regulated services shall be submitted on forms made available by the department in a format acceptable to the department. No application shall be acted upon by the department until the application is determined complete by the department with all required attachments and applicable fees submitted.

(5) Where the department denies an initial license for non-payment of fees or any other reason, such action may be taken by the department prior to an administrative hearing on the

denial being held. The applicant whose license has been denied may obtain an administrative hearing, subsequent to the decision to deny the license, as authorized under Georgia law.

(6) Ongoing Licensure Activity Fees. All licenses issued by the department require payment of ongoing licensure activity fees as calculated by the department each state fiscal year, including the state fiscal year that these rules take effect. For annual licenses, such licensure activity fees will be due on the anniversary date of the issuance of the previous year's license. For continuing licenses, such ongoing licensing activity fees will be due October 31st of each state fiscal year. The annual fees shall include the base licensure activity fee and any additional fees incurred during the previous year. Such fees are due and payable to the department within 30 days of receipt of the licensure activity fee invoice. Fees will be calculated by the department in a manner so as to help defray the direct and indirect costs incurred by the department in providing such licensure activities for all programs, but in no event shall exceed such costs.

(7) Effective January 31, 2011, the department may revoke any license if the facility has failed to pay the annually recurring licensure activity fees within 60 days of receipt of a written invoice from the department. The revocation action is subject to written notice of the proposed revocation and a right to receive an administrative hearing on the amount past due and owing prior to the revocation action becoming final.

(8) Schedule of Fees. Fees collected by the department are not refundable, except in extraordinary circumstances as determined by the department in its sole discretion. The decision of the department as to whether to refund a payment is final and may not be appealed. Payment of fees must be by check or money order. No cash payments are accepted by the Department. The following schedule of fees applies for the listed licensure activities:

<u>Licensure Activity</u>	<u>Fee</u>	<u>Fee Frequency</u>
<u>Application Processing Fee, Change in Ownership, Change in Service Level (requiring on site visit), Name Change—Any Program</u>	<u>\$300</u>	<u>Upon submission</u>
<u>Initial Provisional or Regular License (Same as annual licensure activity fee for each program type)</u>	<u>Varies by program</u>	<u>Submitted with application processing fee</u>
<u>Involuntary Application Processing Fee subsequent to unlicensed complaint investigation</u>	<u>\$550</u>	
<u>Follow-up Visit to Periodic Inspection—Any Program</u>	<u>\$250</u>	<u>License renewal date</u>
<u>Licenses:</u>		
<u>Adult Day Centers (rules to be developed)**</u>	<u>\$250 (social) \$350 (medical)</u>	<u>Annually</u>
<u>Ambulatory Surgical Treatment Centers**</u>	<u>\$750</u>	<u>Annually</u>
<u>Birthing Center**</u>	<u>\$250</u>	<u>Annually</u>
<u>Clinical Laboratories**</u>	<u>\$500</u>	<u>Annually</u>
<u>Community Living Arrangements**</u>	<u>\$350</u>	<u>Annually</u>

<u>Drug Abuse Treatment Programs**</u>	<u>\$500</u>	<u>Annually</u>
<u>End Stage Renal Disease Centers**</u>		<u>Annually</u>
<u>1-12 stations</u>	<u>\$600</u>	<u>Annually</u>
<u>13-24 stations</u>	<u>\$1000</u>	<u>Annually</u>
<u>25 or more</u>	<u>\$1100</u>	<u>Annually</u>
<u>Stand Alone ESRD Facilities Offering Peritoneal Dialysis Only:</u>	<u>\$800</u>	<u>Annually</u>
<u>Eye Bank</u>	<u>\$250</u>	<u>Annually</u>
<u>HMOs (if subject to licensure)</u>	<u>\$2000</u>	<u>Annually</u>
<u>Home Health Agencies**</u>	<u>\$1000</u>	<u>Annually</u>
<u>Hospices**</u>	<u>\$1000</u>	<u>Annually</u>
<u>Hospitals**</u>		<u>Annually</u>
<u>CAHS< 25 beds</u>	<u>\$250</u>	<u>Annually</u>
<u>25 ≤50 Beds</u>	<u>\$750</u>	<u>Annually</u>
<u>>50 Beds</u>	<u>\$1500</u>	<u>Annually</u>
<u>Imaging Centers (rules to be developed)**</u>	<u>\$3000</u>	<u>Annually</u>
<u>Infirmaries</u>	<u>\$250</u>	<u>Annually</u>
<u>Intermediate Care Facilities/MR (private)**</u>	<u>\$250</u>	<u>Annually</u>
<u>Narcotic Treatment Programs**</u>	<u>\$1500</u>	<u>Annually</u>
<u>Nursing Homes**</u>		<u>Annually</u>
<u>1≤99</u>	<u>\$500</u>	<u>Annually</u>
<u>>99</u>	<u>\$750</u>	<u>Annually</u>
<u>Personal Care Homes**</u>		<u>Annually</u>
<u><25 beds</u>	<u>\$350</u>	<u>Annually</u>
<u>25≤50 beds</u>	<u>\$750</u>	<u>Annually</u>
<u>>50 beds</u>	<u>\$1500</u>	<u>Annually</u>
<u>Private Home Care Providers**</u>		<u>Annually</u>
<u>Companion Sitter or Personal Care</u>	<u>\$200 <50 FTEs ***</u> <u>\$400>49 FTEs</u>	<u>Annually</u>
<u>Nursing Services Only</u>	<u>\$500<50 FTEs</u> <u>\$750>49 FTEs</u>	<u>Annually</u>
<u>Nursing Services and Personal Care and/or Companion Sitter</u>	<u>\$750<50 FTEs</u> <u>\$1000>49 FTEs</u>	<u>Annually</u>
<u>Traumatic Brain Injury Facilities</u>	<u>\$250</u>	<u>Annually</u>
<u>X-Ray Facilities (per machine)</u>	<u>\$300</u>	<u>Annually</u>
<u>Miscellaneous Fees:</u>		
<u>Civil monetary penalties as finally determined</u>		<u>Case-by case basis</u>
<u>Late Fee: 60 days past due</u>	<u>\$150</u>	<u>Per instance</u>
<u>Lists of Facilities by license type(electronic only)</u>	<u>\$25</u>	<u>Per request</u>
<u>Replacement of Lost Permit</u>	<u>\$50</u>	<u>Per request</u>
<u>Returned check charge—as assessed by bank</u>	<u><\$50</u>	<u>Per instance</u>
<u>Special handling charges when required (special courier/mailling costs)</u>	<u>Cost</u>	<u>Per instance</u>

<u>Training materials—cost to reproduce for participant</u>	<u>\$.25/page, \$5.00 per disk</u>	<u>Per participant</u>
<u>**Eligible for a 25% discount if currently accredited by a nationally recognized accreditation organization approved by the department as having standards comparable to specific state licensure requirements, and complete copy of current decision is submitted to the department at the time of renewal or is already on file with the department.</u>		
<u>***FTEs Full-time equivalent (40 hrs/week) employees/contract workers rules, so a provider with less than 50 FTEs could utilize up to 99 half-time (20 hrs/week) employees/contract workers.</u>		

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

11-8-25-.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 within the department 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 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. §§. 31-2-11, 31-7-2.2 and 31-7-4.

111-8-25-.06 Investigations, and Inspections and Plans of Correction.

(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.

(6) Compliance with Plan of Correction. If violations of any licensing rules are identified, the facility will be given a written report of the violation that identifies the rule violated. The facility shall submit a written plan of correction in response to the report of violation, which states what the facility will do, and when, to correct each of the violations identified. The facility may offer an explanation or dispute the findings of violations in the written plan of correction, so long as an acceptable plan of correction is submitted within ten (10) days of the facility's receipt of the written report of inspection. If the initial plan of correction is unacceptable to the department, the facility will be provided with at least one(1) opportunity to revise the unacceptable plan of correction. The facility shall comply with the plan of correction accepted by the department.

Authority O.C.G.A. §§ 31-2-11 and 31-5-5., 31-7-2.2 and 31-7-4.