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PROPOSED REGULATION PUBLICATION FORMS

Title 10

MARYLAND DEPARTMENT OF HEALTH

Subtitle 63 COMMUNITY-BASED BEHAVIORAL HEALTH PROGRAMS AND SERVICES

Authority: Health-General Article, §§7.5-204, 8-402, 8-404, [and] 10-901, and 10-1401—1405  
Annotated Code of Maryland

***10.63.09 NEW***

***Chapter .09 Civil Money Penalty***

***Authority: Health-General Article, §§ 2-104, 7.5-205, Annotated Code of Maryland***

***.01 Scope.***

*This chapter establishes standards for the imposition of civil money remedies against an organization or program determined to be in violation of 10.63.*

***.02 Civil Money Penalty — Imposition.***

*A. A civil money penalty may be imposed against an organization for violation of a State or federal law or accreditation standard governing a program.*

*B. A civil money penalty may be imposed regardless of whether any other civil, criminal, or administrative action is taken against the organization or program by any State, federal, or Departmental agency for the same covered period or violation.*

*C. If a violation occurs at multiple site locations of a provider organization, each location will constitute a separate violation. If there are multiple services at a location and the violation*

*occurs with multiple services, each service will constitute a separate violation.*

*D. If the Department determines that a material deficiency or a continuing pattern of deficiencies exists, the Department shall notify the agency of the deficiency or deficiencies and may:*

- (1) Permit the agency the opportunity to correct the deficiencies by a specified date;*
  - (2) Impose a civil money penalty of up to \$1,000 per day until sustained compliance is achieved;*
- or*
- (3) Impose a per incident civil money penalty for each instance of violation.*

*E. If the Department permits an agency the opportunity to correct the deficiencies by a specific date, and the agency fails to comply, the Department may impose a civil penalty of up to \$1,000 for each day of violation until the organization has submitted sufficient documentation of correction of the deficiency..*

*F. In determining whether a civil money penalty is to be imposed and in setting the amount of the civil money penalty, the Department shall consider:*

- (1) The number, nature, and seriousness of the violation or violations;*
- (2) The extent to which the deficiency or deficiencies are part of an ongoing pattern;*
- (3) The organization's history with the Department, including any prior actions that would indicate whether the violation is an isolated occurrence or represents a pattern of behavior.*
- (4) The efforts made by the organization to correct the violations and any continuation of conduct after notification of possible violations;*
- (5) The organization's level of cooperation with the Department or its agents as it relates to the review of the program;*
- (6) The degree of risk to the health, life, or safety of individuals as a result of the violations,*

*including possibly inhibiting an individual's ability to receive quality services, and appropriate care and treatment; and*

*(7) Any other reasonable factors.*

*G. The Department shall give consideration to the extent to which the provider's size, operations, or financial condition:*

*(1) May have contributed to the violations; and*

*(2) May affect the provider's ability to provide care and continue operations after payment of a civil money penalty.*

*H. If the civil money penalty is imposed under this chapter, the Department shall issue a written notice to the provider that:*

*(1) States the total amount of the civil money remedies being imposed; and*

*(2) Includes the following information:*

*(a) Each regulation or statute violated;*

*(b) The amount of each civil money penalty imposed for each violation;*

*(c) The manner in which the amount of the civil money penalty was calculated; and*

*(d) The provider's appeal rights.*

*I. The notice and order shall be sent to the provider, owner, resident agent and Board of*

*Directors, as appropriate, by certified mail.*

***.03 Penalty for Unlicensed Operation.***

*An organization that operates or purports to operate a service or site without a license that is required pursuant to this regulation may be assessed a civil money penalty by the Department not to exceed \$1,000 per day of operation per location site or service.*

***.04 Civil Money Penalty — Appeal.***

- A. An organization aggrieved by the imposition of a civil money penalty may appeal the action by filing a request for a hearing in accordance with State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland.*
- B. The Department has the burden of proof with respect to the basis for the imposition of the civil money penalty.*
- C. The Office of Administrative Hearings shall render a final decision within 30 days of the hearing.*
- D. An order that imposes a civil money penalty is final when the organization has exhausted all opportunities to contest the civil money penalty in accordance with State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland.*
- E. After exhaustion of all appeals, a provider shall pay a civil money penalty to the Department within 10 days after the provider receives a final order that affirms the imposition of the civil money penalty unless the Department negotiates and approves a repayment schedule.*
- F. If an organization does not pay the civil money penalty to the Department after receiving the final order or according to a negotiated repayment schedule, the balance due shall be referred to the Central Collection Unit.*