



## Ohio Revised Code Section 5165.83 Fines.

Effective: September 29, 2013

Legislation: House Bill 59 - 130th General Assembly

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(A) As used in this section, "certified beds" means beds certified under Title XVIII or Title XIX.

(B) If the department of medicaid or a contracting agency imposes a fine on a nursing facility under section 5165.72, 5165.73, or 5165.74 of the Revised Code, it may impose one or more of the following:

(1) One hundred sixty per cent of the amount calculated under division (C) of this section for any deficiency or cluster of deficiencies that constitutes a severity level four and scope level four finding;

(2) One hundred forty per cent of the amount calculated under division (C) of this section for any deficiency or cluster of deficiencies that constitutes a severity level four and scope level three finding;

(3) One hundred twenty per cent of the amount calculated under division (C) of this section for any deficiency or cluster of deficiencies that constitutes a severity level four and scope level two finding;

(4) The amount calculated under division (C) of this section for any deficiency or cluster of deficiencies that constitutes a severity level four and scope level one finding or any deficiency or cluster of deficiencies that constitutes a severity level three and scope level four finding;

(5) Ninety per cent of the amount calculated under division (C) of this section for any deficiency or cluster of deficiencies that constitutes a severity level three and scope level three finding;

(6) Eighty per cent of the amount calculated under division (C) of this section for any deficiency or cluster of deficiencies that constitutes a severity level three and scope level two finding;



(7) Seventy per cent of the amount calculated under division (C) of this section for any deficiency or cluster of deficiencies that constitutes a severity level three and scope level one finding;

(8) Fifty per cent of the amount calculated under division (C) of this section for any deficiency or cluster of deficiencies that constitutes a severity level two and scope level four finding;

(9) Forty per cent of the amount calculated under division (C) of this section for any deficiency or cluster of deficiencies that constitutes a severity level two and scope level three finding.

(C) The amount subject to division (B) of this section shall be the product of multiplying two dollars and fifty cents for each day the fine is in effect by the total number of licensed nursing home beds or certified beds, whichever is greater, in the facility as of the date the deficiency or cluster of deficiencies that is the reason for the fine was cited.

(D)(1) The department of medicaid or contracting agency shall not impose on a facility, at any one time, more than four fines as a result of any one survey.

(2) The department of medicaid or contracting agency shall not impose more than one fine based on a deficiency or cluster of deficiencies. However, if the department of health, in a follow-up or other subsequent survey, finds a change in the scope or severity of the deficiency or cluster of deficiencies, the department of medicaid or contracting agency may increase or decrease the fine in accordance with division (B) of this section to reflect the change in scope or severity. The department or agency shall give the facility written notice of the change in the amount of the fine. The change shall take effect on the date the follow-up or other subsequent survey is completed.

If the department of health finds that a deficiency is a repeat deficiency, the department of medicaid or contracting agency may impose a fine that is one hundred per cent greater than the fine specified in division (B) of this section for the deficiency.

(E) The total amount of fines the department of medicaid or contracting agency may impose on a facility in a single calendar year shall not exceed five hundred dollars for each licensed nursing home bed or certified bed, whichever is greater in number, in the facility.



(F)(1) Except as provided in division (F)(2) of this section, the department of medicaid or contracting agency shall not impose a fine under section 5165.72, 5165.73, or 5165.74 of the Revised Code if the deficiency or cluster of deficiencies is substantially corrected within twenty days after the nursing facility receives the statement provided under division (B) of section 5165.75 of the Revised Code. The department or agency shall inform the nursing facility in that statement that the fine will not be imposed if the deficiency or cluster of deficiencies is substantially corrected within the twenty-day period.

(2) If a nursing facility has substantially corrected a deficiency or cluster of deficiencies within six months after the exit interview of a survey that was the basis for citing a deficiency or cluster of deficiencies, but after correcting it has been cited for the same deficiency or cluster of deficiencies by the department of health on the basis of a subsequent survey conducted during the remainder of the six-month period, the department of medicaid or contracting agency may impose a fine beginning on the date of the exit interview of the subsequent survey.

(G) Whenever a facility believes that it has completed implementation of the plan of correction it submitted under section 5165.69 of the Revised Code and substantially corrected the cited deficiency or cluster of deficiencies that is the basis for a fine, it may give written notice to that effect to the department of health. After receiving the notice, the department shall conduct a follow-up survey of the facility that focuses on the deficiency or cluster, unless the department is able to determine, on the basis of documentation provided by the facility, that the facility has substantially corrected the deficiency or cluster. If, based on the follow-up survey, the department establishes that the facility had not completed implementation of the plan of correction at the time the department received the notice, any fine based on the deficiency or cluster shall be doubled effective from the date the department received the notice. A facility that complies with this division shall not be considered to have admitted the existence of the deficiency or cluster that is the basis for the fine.

(H) Except for a fine imposed under division (C) of section 5165.72 of the Revised Code and as provided in division (F)(2) of this section, the department of medicaid or contracting agency shall impose a fine only if the facility fails to give notice under division (G) of this section within twenty days after it receives the statement required by division (B) of section 5165.75 of the Revised Code or if the department of health determines, based on a follow-up survey, that the deficiency or cluster



of deficiencies for which the fine is proposed has not been substantially corrected within the twenty-day period. The fine shall be imposed effective on the twenty-first day after the facility receives the statement under division (B) of section 5165.75 of the Revised Code. The fine shall remain in effect until the earliest of the following:

- (1) The date the department of health receives notice under division (G) of this section, unless the department determines, on the basis of a follow-up survey, that the deficiency or cluster of deficiencies that is the basis for the fine has not been substantially corrected as of that date;
- (2) The date on which the department of health makes a determination, on the basis of a follow-up survey, that the deficiency or cluster of deficiencies has been substantially corrected;
- (3) The date the facility substantially corrected the deficiency or cluster, as subsequently determined by the department of health on the basis of documentation provided by the facility.

(I) Any fine imposed by the department of medicaid or contracting agency under this section is subject to appeal under Chapter 119. of the Revised Code. If the facility does not request a hearing under Chapter 119. of the Revised Code and either pays or agrees in writing to pay the fine when payment becomes due under division (J) of this section, the department or agency shall reduce the fine by fifty per cent. The department or agency may compromise any claim for payment of a fine under sections 5165.60 to 5165.89 of the Revised Code.

(J) The department of medicaid or contracting agency shall collect interest on fines, at the rate per calendar month that equals one-twelfth of the rate per year prescribed by section 5703.47 of the Revised Code for the calendar year that includes the month for which the interest charge accrues. Payment of a fine is due, and interest begins to accrue on the unpaid fine or balance, on the thirty-first day after the department or agency issues a final adjudication order imposing the fine. If the deficiency or deficiencies on which the fine is based have not been corrected when the final adjudication order is issued, the payment is due, and interest begins to accrue on the unpaid fine or balance, on the thirty-first day after the deficiency or deficiencies are corrected and the department or agency mails a notice specifying the amount of the fine to the facility.

(K) The department of medicaid or contracting agency shall collect fines and interest imposed under



this section through one of the following means:

- (1) A lump sum payment from the provider;
- (2) Periodic payments for a period not to exceed twelve months, in accordance with a schedule approved by the department or agency;
- (3) Appropriately reducing the amounts of medicaid payments made to the facility for nursing facility services provided to medicaid eligible residents for a period not to exceed twelve months following the date on which payment of the fine becomes due under division (J) of this section. An amount equal to the amount by which each payment is reduced shall be deposited to the credit of the residents protection fund in accordance with section 5162.66 of the Revised Code.