

**RULES
OF
THE DEPARTMENT OF HEALTH
OFFICE ON CIVIL RIGHTS COMPLIANCE**

**CHAPTER 1200—24—3
CIVIL RIGHTS COMPLIANCE PENALTY PROGRAM
RULES AND REGULATIONS**

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1200—24—3—.01 PURPOSE.

The purpose of these rules is to provide regulatory guidance for assessing civil penalties pursuant to *T.C.A. §68—1—113*. The rules apply only to nursing homes as defined at *T.C.A. §68—11—201* and licensed by the department for the purpose of assisting in enforcing compliance with Title VI of the Civil Rights Act of 1964, as amended and requirements of *Linton v. Commissioner*, M.D. Tenn., No. 3—87—0941.

Authority: *T.C.A. §§4—3—1803(1), 68—1—103(b), 68—1—113 and 4—5—209. Administrative History:* Original rule filed February 22, 1991; effective April 8, 1991.

1200—24—3—.02 DEFINITIONS.

- (1) HEALTH CARE FACILITY: Any facility licensed under the authority of the Board for Licensing Health Care Facilities as defined in *T.C.A. §68-11-201*.
- (2) CIVIL RIGHTS: Personal and individual rights guaranteed by the federal or state constitution and/or any federal or state statute.
- (3) COMMISSIONER: The commissioner of the Tennessee Department of Health or his designated representative.
- (4) DEPARTMENT: Tennessee Department of Health
- (5) TITLE VI: Title VI of the Civil Rights Act of 1964, as amended (42 USC §2000d).
- (6) MINORITY: Persons who fall within the following categories: Black, not Hispanic origin; Hispanic; American Indian; Alaskan Native; Asian or Pacific Islander.
- (7) DISCRIMINATION: Any act, policy, practice, or procedure which results in different treatment based on race, color, national origin or method of payment that impacts adversely upon minorities and others protected under Title VI of the Civil rights Act of 1964.
- (8) OFFICE ON CIVIL RIGHTS COMPLIANCE (OCRC): The administrative, regulatory and enforcement unit established within the Department of Health charged with the responsibility of monitoring and investigating complaints related to civil rights compliance of facilities regulated by the Board.

Authority: *T.C.A. §§4—3—1803(1), 68—1—103(b), 68—1—113 and 4—5—209. Administrative History:* Original rule filed February 22, 1991; effective April 8, 1991.

1200—24—3—.03 SANCTIONS.

- (1) Pursuant to T.C.A. §68—1—113, the Commissioner of the Department of Health shall have the authority to impose civil penalties upon deficient health care facilities licensed as nursing homes. Based upon the investigation of the Office on Civil Rights Compliance and the severity of the discriminatory practice, the Commissioner may impose civil penalties as provided in this section. Civil penalties may be assessed in minimum and maximum amounts as follows:
 - (a) Type I civil penalties may be assessed in the amount of not less than three thousand five hundred dollars (\$3,500) and not more than five thousand dollars (\$5,000);
 - (b) Type II civil penalties may be assessed in the amount of not less than one thousand five hundred dollars (\$1,500) and no more than three thousand five hundred dollars (\$3,500).
 - (c) Type III civil penalties may be assessed in the amount of not less than five hundred dollars (\$500) and no more than one thousand five hundred dollars (\$1,500).

Authority: T.C.A. §4—3—1803(1), 68—1—103(b), 68—1—113 and 4—5—209. *Administrative History:* Original rule filed February 22, 1991; effective April 8, 1991.

1200—24—3—.04 TYPES OF CIVIL PENALTIES.

- (1) A Type I civil penalty may be assessed if the health care facility engages in discrimination which impacts negatively on the health, safety and welfare of multiple minority patients. Examples of practices which may lead to the imposition of a Type I civil penalty are:
 - (a) Denying persons admission to the facility on the basis of race, color, and national origin, or method of payment as provided by state or federal law, rules or regulations.
 - (b) Transferring multiple patients from one room to another on the basis of racial or source of payment considerations (except for affirmative action remedies which pose no risk to patients and as otherwise permitted by law).
 - (c) Clustering patients on the basis of race, color, or national origin or source of payment, except as otherwise permitted by law, on specific floors, sections, or wings of the facility.
 - (d) Not admitting applicants to a facility on a first come first serve basis as required by State or Federal laws, rules or regulations.
 - (e) Retaliating against residents or staff because of complaints made to the Department.
- (2) A Type II civil penalty may be assessed if the Health Care Facility engages in discrimination as defined by these rules, which impacts upon a single minority patient, and the facility refuses to correct the violation. Examples of practices which may lead to the imposition of a Type II civil penalty are:
 - (a) Denial of admission of a single individual on the basis of race, color, or national origin or method of payment as provided by state or federal law or rules or regulations.
 - (b) Assigning a room or transferring a single individual on the basis of race, color or national origin or method of payment contrary to state or federal law, rules or

regulations.

- (c) Providing segregated services, e.g., beauty and barbershops, dining rooms, lounges.
 - (d) Denial of an individual the opportunity to participate on a planning or advisory board on the basis of race, color, national origin, or method of payment as required by state or federal law, rules or regulations.
 - (e) Retaliating against an individual resident or staff member because of complaints made in good faith to the Department.
- (3) A Type II civil penalty may be assessed for civil rights violations that do not directly involve a specific individual. Examples which may lead to a Type III civil penalty may include:
- (a) Failure to develop and submit an acceptable plan of correction as required.
 - (b) Failure to maintain and make available to the OCRC for the purpose of demonstrating compliance and upon request, all data and information necessary to determine the facility's compliance with Title VI.
 - (c) Failure to notify, as required by state or federal law, rules or regulations, referral sources and the minority community that services are provided in a non-discriminatory manner.
 - (d) Failure to display in prominent places the compliance statements required by state or federal law, rules or regulations.
 - (e) Failure to make adequate or appropriate notification of the facility's commitment to providing services in a non-discriminatory manner as required by state or federal law, rules or regulations.
 - (f) Failure to include a non-discriminatory statement in all vendor contracts and brochures and other information distributed to the public as required by state or federal law, rules or regulations.

Authority: T.C.A. §§4—3—1803(1), 68—1—103(b), 68—1—113 and 4—5—209. **Administrative History:** Original rule filed February 22, 1991; effective April 8, 1991.

1200—24—3—.05 HEARINGS AND APPEALS.

Any facility that is aggrieved by action of the Commissioner pursuant to these rules, may, within thirty (30) days of receipt of a penalty assessment, request a hearing before the Commissioner or his designee. All hearings shall be conducted pursuant to the Uniform Administrative Procedures Act, Title 4, Chapter 5, Part 3. A properly perfected appeal stays the running of a daily assessment of civil penalty.

Authority: T.C.A. §§4—3—1803(1), 68—1—103(b), 68—1—113 and 4—5—209. **Administrative History:** Original rule filed February 22, 1991; effective April 8, 1991.