

**RULES
OF
THE DEPARTMENT OF HEALTH
DIVISION OF HEALTH CARE FACILITIES QUALITY ASSURANCE**

**CHAPTER 1200—26—1
NURSING HOME CIVIL MONETARY PENALTIES**

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1200—26—1—.01 PURPOSE.

The purpose of this chapter is to provide for civil monetary penalties to comply with 42 U.S.C. §1396r(h)(2)(A)(ii).

Authority: *T.C.A. §§4—5—202 and 68—11—801. Administrative History: Original rule filed September 19, 1990; effective November 3, 1990.*

1200—26—1—.02 CIVIL PENALTY CALCULATION.

- (1) In addition to civil monetary penalties set forth in *T.C.A. §68—11—801 et seq.*, a civil monetary penalty of no greater than \$5,000 plus a daily civil monetary penalty for each day of noncompliance may be assessed for violation of any requirements of 42 USC 1396r(b), (c), or (d) and any rules and regulations pursuant thereto in effect at the time of the violation. The amount of the daily penalty shall not exceed the amount of the initial penalty for each day of noncompliance but in no event more than \$1,000 per day. In determining the amount of the daily penalty, the commissioner may consider the following:
- (a) The harm or potential harm to the resident;
 - (b) The economic benefit gained by the facility as a result of its failure to comply immediately;
 - (c) The efforts made by the facility to attain compliance;
 - (d) Any extraordinary enforcement cost incurred by the Department; and
 - (e) Whether the civil penalty imposed will be a substantial economic deterrent to the non-compliant activity.

Authority: *T.C.A. §§4—5—202 and 68—11—801. Administrative History: Original rule filed September 19, 1990; effective November 3, 1990. Amendment filed September 11, 1991; effective October 26, 1991.*

1200—26—1—.03 PENALTY AND INTEREST.

Procedures for paying or contesting assessments of civil monetary penalties, administrative hearings, recovery, collection, deposit and expenditure of the penalties shall be consistent with *T.C.A. §§68—11—801 et seq.*, except that if the facility does not pay the amount of the penalty on or before the date the answer is due, it shall pay interest on the amount due computed at the applicable formula rate defined by *T.C.A. §47—14—102* retroactive to the date of the original penalty assessment.

Authority: *T.C.A. §§4—5—202 and 68—11—801. Administrative History: Original rule filed September 19, 1990; effective November 3, 1990.*