

39-946. Civil penalty; issuance; notice of assessment; factors in determining amount of civil penalty; enforcement. (a) If upon reinspection by the state fire marshal or the marshal's representative or a duly authorized representative of the secretary for aging and disability services, which reinspection shall be conducted within 14 days from the day the correction order is served upon the licensee, it is found that the licensee of the adult care home which was issued a correction order has not corrected the deficiency or deficiencies specified in the order, the secretary for aging and disability services may assess a civil penalty in an amount not to exceed \$500 per day per deficiency against the licensee of an adult care home for each day subsequent to the day following the time allowed for correction of the deficiency as specified in the correction order that the adult care home has not corrected the deficiency or deficiencies listed in the correction order, but the maximum assessment shall not exceed \$2,500. A written notice of assessment shall be served upon the licensee of an adult care home either personally or by certified mail, return receipt requested.

(b) Before the assessment of a civil penalty, the secretary for aging and disability services shall consider the following factors in determining the amount of the civil penalty to be assessed: (1) The severity of the violation; (2) the good faith effort exercised by the adult care home to correct the violation; and (3) the history of compliance of the ownership of the adult care home with the rules and regulations. If the secretary for aging and disability services finds that some or all deficiencies cited in the correction order have also been cited against the adult care home as a result of any inspection or investigation which occurred within 18 months prior to the inspection or investigation which resulted in such correction order, the secretary for aging and disability services may double the civil penalty assessed against the licensee of the adult care home, the maximum not to exceed \$5,000.

(c) All civil penalties assessed shall be due and payable within 10 days after written notice of assessment is served on the licensee, unless a longer period of time is granted by the secretary. If a civil penalty is not paid within the applicable time period, the secretary for aging and disability services may file a certified copy of the notice of assessment with the clerk of the district court in the county where the adult care home is located. The notice of assessment shall be enforced in the same manner as a judgment of the district court.

History: L. 1978, ch. 161, § 2; L. 1980, ch. 127, § 2; L. 1988, ch. 146, § 2; L. 2003, ch. 149, § 12; L. 2014, ch. 115, § 135; July 1.