

TITLE 8 SOCIAL SERVICES
CHAPTER 370 OVERSIGHT OF LICENSED HEALTHCARE FACILITIES AND COMMUNITY BASED
WAIVER PROGRAMS
PART 4 HEALTH FACILITY SANCTIONS AND CIVIL MONETARY PENALTIES

8.370.4.1 ISSUING AGENCY: New Mexico Health Care Authority ([HCA](#)).

[8.370.4.1 NMAC - N, 7/1/2024; A, xx/xx/xxxx]

8.370.4.2 SCOPE: These regulations apply to any health facility as defined by Subsection D of Section 24-1-2 NMSA 1978, as amended which is licensed or is required to be licensed, or any health facility which by federal regulations must be licensed to obtain or maintain federal funding.

[8.370.4.2 NMAC - N, 7/1/2024]

8.370.4.3 STATUTORY AUTHORITY: The regulations set forth herein govern the imposition of intermediate sanctions and civil monetary penalties levied on health facilities licensed by the authority. These regulations have been promulgated by the secretary of the New Mexico health care authority (authority), pursuant to the general authority granted under Subsection E of Section 9-8-6 of the Health Care Authority Act, NMSA 1978, as amended; and the authority granted under Subsection D of Section 24-1-2, Subsection I of Section 24-1-3, and Section 24-1-5 of the Public Health Act, NMSA 1978, as amended. Section 9-8-1 et seq. NMSA 1978 establishes the health care authority as a single, unified department to administer laws and exercise functions relating to health care purchasing and regulation.

[8.370.4.3 NMAC - N, 7/1/2024]

8.370.4.4 DURATION: Permanent.

[8.370.4.4 NMAC - N, 7/1/2024]

8.370.4.5 EFFECTIVE DATE: July 1, 2024, unless a different date is cited at the end of a section.

[8.370.4.5 NMAC - N, 7/1/2024]

8.370.4.6 OBJECTIVE: The purpose of these regulations is to:

A. comply with Section 24-1-5.2 NMSA 1978 which mandates that the authority adopt and promulgate regulations specifying the criteria for imposition of any intermediate sanction, including the amount of monetary penalties and the type and extent of intermediate sanctions;

B. encourage health facilities to maintain compliance with licensing requirements and accelerate compliance when found in violation; intermediate sanctions and civil monetary penalties are intended as alternatives to implementation of more drastic measures such as revocation or suspension of license.

(1) The objective of the base penalty component of the civil monetary penalty is deterrence. The base penalty is imposed without regard to the time required for the correction.

(2) The objective of the daily penalty component of the civil monetary penalty is principally to motivate prompt correction of the deficiency and to protect the health and safety of the residents.

[8.370.4.6 NMAC - N, 7/1/2024]

8.370.4.7 DEFINITIONS: For purposes of these regulations the following shall apply.

[A. "Abuse" means any act or failure to act performed intentionally, knowingly or recklessly that causes or is likely to cause harm to a resident, including:

(1) physical contact that harms or is likely to harm a resident of a health facility;

(2) inappropriate use of a physical restraint, isolation, or medication that harms or is likely to harm a resident;

(3) inappropriate use of a physical or chemical restraint, medication, or isolation as punishment or in conflict with a physician's order;

(4) medically inappropriate conduct that causes or is likely to cause physical harm to a resident;

(5) medically inappropriate conduct that causes or is likely to cause great psychological harm to a resident;

(6) an unlawful act, a threat or menacing conduct directed toward a resident that results and might reasonably be expected to result in fear or emotional or mental distress to a resident.

B. "Exploitation" of a resident consists of the act or process, performed intentionally, knowingly, or recklessly, of using a resident's property for another person's profit, advantage or benefit without legal entitlement to do so.

C. "Serious physical harm" means physical harm of a type that causes a temporary or permanent physical loss of a bodily member or organ or functional loss of a bodily member or organ or of a major life activity.

D. "Serious psychological harm" means psychological harm that causes a temporary or permanent mental or emotional incapacitation or that causes an obvious behavioral change or obvious physical symptoms or that requires psychological or psychiatric treatment or care.

E. "Health facility" means any health care entity identified in the Public Health Act which requires state licensure in order to provide health services.

F. "Intermediate sanction" means a measure imposed on a facility for a violation(s) of applicable licensing laws and regulations other than license revocation, suspension, denial of renewal of license or loss of certification.

G. "Licensing authority" means the New Mexico health care authority.

H. "Neglect" means subject to the resident's right to refuse treatment and subject to the caregiver's right to exercise sound medical discretion, the grossly negligent:

(1) failure to provide any treatment, service, care, medication or item that is necessary to maintain the health or safety of a resident;

(2) failure to take any reasonable precaution that is necessary to prevent damage to the health or safety of a resident;

(3) failure to carry out a duty to supervise properly or control the provision of any treatment, care, good, service or medication necessary to maintain the health or safety of a resident.

I. "Class A deficiency" means:

(1) any abuse or neglect of a patient, resident, or client by a facility employee or for which the facility is responsible which results in death, or serious physical or psychological harm; or

(2) any exploitation of a patient, resident, or client by a facility employee or for which the facility is responsible in which the value of the property exceeds \$1,500; or

(3) a violation or group of violations of applicable regulations, which results in death, serious physical harm, or serious psychological harm to a patient, resident, or client.

J. "Class B deficiency" means:

(1) any abuse or neglect of a patient, resident, or client by a facility employee or for which the facility is responsible; or

(2) any exploitation of a patient, resident, or client by a facility employee or for which the facility is responsible in which the value of the property exceeds \$100, but is less than \$1,500; or

(3) a violation or group of violations of applicable regulations which present a potential risk of injury or harm to any patient, resident or client.

K. "Class C deficiency" means:

(1) a violation or a group of violations of applicable regulations as cited by surveyors from the licensing authority which have the potential to cause injury or harm to any patient, resident or client if the violation is not corrected; or

(2) any exploitation of a patient, resident, or client by a facility employee in which the value of the property was less than \$100.]

A. Terms beginning with the letter "A": "Abuse" means any act or failure to act performed intentionally, knowingly or recklessly that causes or is likely to cause harm to a resident, including:

(1) physical contact that harms or is likely to harm a resident of a health facility;

(2) inappropriate use of a physical restraint, isolation, or medication that harms or is likely to harm a resident;

(3) inappropriate use of a physical or chemical restraint, medication, or isolation as punishment or in conflict with a physician's order;

(4) medically inappropriate conduct that causes or is likely to cause physical harm to a resident;

(5) medically inappropriate conduct that causes or is likely to cause great psychological harm to a resident;

(6) an unlawful act, a threat or menacing conduct directed toward a resident that results and might reasonably be expected to result in fear or emotional or mental distress to a resident.

B. Terms beginning with the letter "B": [RESERVED]

C. Terms beginning with the letter "C":

(1) "Class A deficiency" means:

- (a) any abuse or neglect of a patient, resident, or client by a facility employee or for which the facility is responsible which results in death, or serious physical or psychological harm; or
- (b) any exploitation of a patient, resident, or client by a facility employee or for which the facility is responsible in which the value of the property exceeds \$1,500; or
- (c) a violation or group of violations of applicable regulations, which results in death, serious physical harm, or serious psychological harm to a patient, resident, or client.

(2) "Class B deficiency" means:

- (a) any abuse or neglect of a patient, resident, or client by a facility employee or for which the facility is responsible; or
- (b) any exploitation of a patient, resident, or client by a facility employee or for which the facility is responsible in which the value of the property exceeds \$100, but is less than \$1,500; or
- (c) a violation or group of violations of applicable regulations which present a potential risk of injury or harm to any patient, resident or client.

(3) "Class C deficiency" means:

- (a) a violation or a group of violations of applicable regulations as cited by surveyors from the licensing authority which have the potential to cause injury or harm to any patient, resident or client if the violation is not corrected; or
- (b) any exploitation of a patient, resident, or client by a facility employee in which the value of the property was less than \$100.

D. Terms beginning with the letter "D": [RESERVED]

E. Terms beginning with the letter "E": "Exploitation" of a resident consists of the act or process, performed intentionally, knowingly, or recklessly, of using a resident's property for another person's profit, advantage or benefit without legal entitlement to do so.

F. Terms beginning with the letter "F": [RESERVED]

G. Terms beginning with the letter "G": [RESERVED]

H. Terms beginning with the letter "H": "Health facility" means any health care entity identified in the Public Health Act which requires state licensure in order to provide health services.

I. Terms beginning with the letter "I": "Intermediate sanction" means a measure imposed on a facility for a violation(s) of applicable licensing laws and regulations other than license revocation, suspension, denial of renewal of license or loss of certification.

J. Terms beginning with the letter "J": [RESERVED]

K. Terms beginning with the letter "K": [RESERVED]

L. Terms beginning with the letter "L": "Licensing authority" means the New Mexico health care authority.

M. Terms beginning with the letter "M": [RESERVED]

N. Terms beginning with the letter "N": "Neglect" means subject to the resident's right to refuse treatment and subject to the caregiver's right to exercise sound medical discretion, the grossly negligent:

- (1) failure to provide any treatment, service, care, medication or item that is necessary to maintain the health or safety of a resident;
- (2) failure to take any reasonable precaution that is necessary to prevent damage to the health or safety of a resident;
- (3) failure to carry out a duty to supervise properly or control the provision of any treatment, care, good, service or medication necessary to maintain the health or safety of a resident.

O. Terms beginning with the letter "O": [RESERVED]

P. Terms beginning with the letter "P": [RESERVED]

Q. Terms beginning with the letter "Q": [RESERVED]

R. Terms beginning with the letter "R": [RESERVED]

S. Terms beginning with the letter "S":

(1) "Serious physical harm" means physical harm of a type that causes a temporary or permanent physical loss of a bodily member or organ or functional loss of a bodily member or organ or of a major life activity.

(2) "Serious psychological harm" means psychological harm that causes a temporary or permanent mental or emotional incapacitation or that causes an obvious behavioral change or obvious physical symptoms or that requires psychological or psychiatric treatment or care.

<u>T. Terms beginning with the letter "T": [RESERVED]</u>
<u>U. Terms beginning with the letter "U": [RESERVED]</u>
<u>V. Terms beginning with the letter "V": [RESERVED]</u>
<u>W. Terms beginning with the letter "W": [RESERVED]</u>
<u>X. Terms beginning with the letter "X": [RESERVED]</u>
<u>Y. Terms beginning with the letter "Y": [RESERVED]</u>
<u>Z. Terms beginning with the letter "Z": [RESERVED]</u>

[8.370.4.7 NMAC - N, 7/1/2024; A, xx/xx/xxxx]

8.370.4.8 TYPES OF INTERMEDIATE SANCTIONS AND CIVIL MONETARY PENALTIES THAT MAY BE IMPOSED ON ANY LICENSED HEALTH CARE FACILITY:

A. A directed plan of correction: The licensing authority may direct a licensee to correct violations in a time specified, detailed plan.

B. Facility monitors: The licensing authority may select a facility monitor for a specified period of time to closely observe a health facility's compliance efforts. The facility monitor shall have authority to review all applicable facility records, policies, procedures and financial records; and the authority to interview facility staff and residents. The facility monitor may also provide consultation to the facility management and staff in the correction of violations. The health facility must pay all reasonable costs of a facility monitor.

C. Temporary management: The licensing authority may appoint temporary management with expertise in the field of health services to oversee the operation of the health facility. The management appointed will ensure that the health and safety of the facility's patients, residents, or clients is protected. The health facility must pay all reasonable costs of temporary management.

D. Restricted admissions or provision of services: The licensing authority may restrict the health facility from providing designated services and from accepting any new patients, residents, or clients until deficiencies are corrected.

E. Reduction of licensed capacity: The licensing authority may reduce the licensed capacity of a health facility.

F. Civil monetary penalty: The licensing authority may impose on any health facility a civil monetary penalty.

(1) The amount of the civil monetary penalty is based upon the total of:

(a) the initial base penalty;

(b) a daily penalty which is calculated based on the uncorrected deficiencies which exist for each day following the notice to the facility, and;

(c) any penalty doubling for repeat deficiencies. Civil monetary penalties shall not exceed a total of \$5,000 per day.

(2) Limitation: A civil monetary penalty is not intended to force the closure of a licensed facility in lieu of license revocation.

(3) Burden of proof; limitation: Any facility seeking to show that the imposition of a civil monetary penalty will result in the forced closure of the facility must prove the same by clear and convincing evidence.

[8.370.4.8 NMAC - N, 7/1/2024]

8.370.4.9 EMERGENCY APPLICATION: The intermediate sanctions may be imposed on an emergency basis when there exists an immediate threat to human health and safety. An administrative hearing will be scheduled within five working days, unless waived by the facility. A request for a hearing does not stay the imposition of the emergency sanction.

[8.370.4.9 NMAC - N, 7/1/2024]

8.370.4.10 ADDITIONAL TYPES OF INTERMEDIATE SANCTIONS AND CIVIL MONETARY PENALTIES THAT MAY BE IMPOSED ON MEDICAID CERTIFIED NURSING FACILITIES:

A. Denial of payment and a facility monitor: The licensing authority may recommend denial of payment and a facility monitor to the medical assistance division, New Mexico health care authority when survey findings document non-compliance with federal regulations governing conditions of participation. Substandard quality of care must be documented on three consecutive surveys. The facility monitor shall remain until the facility has demonstrated, to the satisfaction of the licensing authority, that it is in compliance with the conditions of participation and that it will remain in compliance with such requirements.

B. Temporary management or termination of medicaid participation: The licensing authority may impose temporary management or recommend termination of the medicaid provider participation agreement when survey findings document deficiencies which immediately jeopardize the health and safety of the residents. Notice of this sanction must provide that a hearing will be conducted within five working days of the imposition of the sanction.

[8.370.4.10 NMAC - N, 7/1/2024]

8.370.4.11 CONSIDERATIONS FOR IMPOSITION OF INTERMEDIATE SANCTIONS OR CIVIL MONETARY PENALTIES:

Before intermediate sanctions or civil monetary penalties are imposed, they will be reviewed and approved by the director of the public health division or their designee. The following factors shall be considered by supervisory personnel of the licensing authority when determining whether to impose one or more intermediate sanctions or civil monetary penalties:

- A. death or serious injury to a patient, resident or client;
- B. abuse, neglect or exploitation of a patient, resident or client;
- C. regulatory violations which immediately jeopardize the health or safety of the patients, residents or clients of a health facility;
- D. numerous violations, which combined, jeopardize the health or safety of patients, residents or clients of a health facility;
- E. repetitive violations of the same nature found during two or more consecutive on-site visits or surveys of a health facility;
- F. failure of a health facility to correct violations found during previous surveys or visits;
- G. compliance history;
- H. intentional deceit regarding condition of the facility;
- I. effect of a civil monetary penalty on financial viability of the facility;
- J. extenuating circumstances. Extenuating circumstances allow the licensing authority greater discretion to consider both mitigating and exacerbating circumstances not specifically defined.

[8.370.4.11 NMAC - N, 7/1/2024]

8.370.4.12 CORRECTION OF DEFICIENCIES: When the licensing authority has determined deficiencies exist, the facility must correct the deficiencies according to the following time frames:

A. Immediate response: The risk of injury or harm created or presented by the Class A and B deficiencies must be immediately eliminated. Under no circumstance should a situation that presents a risk of injury or harm to residents be allowed to continue. The facility must immediately stop the risk of injury or harm, even if the Class A or B deficiency is not corrected, by eliminating such risk of injury or harm. The facility, in addition to any other sanction imposed by the licensing authority, shall submit a plan of correction addressing systemic causes of the deficiencies within a determinate period of time approved by the licensing authority.

B. Plan of correction: All deficiencies must be corrected within a fixed period of time approved by the licensing authority.

C. Failure to timely correct: A separate civil monetary penalty may be imposed for each uncorrected Class A, Class B or Class C deficiency for each day that the particular violation continues beyond the date specified for correction.

[8.370.4.12 NMAC - N, 7/1/2024]

8.370.4.13 CIVIL MONETARY PENALTIES; INITIAL BASE PENALTY: The authority shall impose civil monetary penalties in accordance with these regulations on licensed facilities, not to exceed \$5,000 per day.

A. Civil monetary penalty; initial base penalty assessed: An initial base penalty amount is assessed when a civil monetary penalty is imposed. The base penalty amount is calculated at the rate of the most serious deficiency. For example, the base penalty amount is assessed at the rate applicable to a class A deficiency when the survey or investigation results in citation of regulatory violations comprising class A, class B and class C deficiencies, because the most serious regulatory violation is the class A deficiency. The base penalty is assessed once for the deficiencies cited by the licensing authority during any particular survey or investigation. The base penalty amount is usually greater than the daily penalty amount for the same deficiency.

B. Civil monetary penalty; initial base penalty amount: The licensing authority has the discretion to impose an initial base penalty at any amount within the range for each deficiency level.

- (1) Class A deficiency: not less than \$500 and not greater than \$5,000.
- (2) Class B deficiency: not less than \$300 and not greater than \$3,000.

(3) Class C deficiency: not less than \$100 and not greater than \$500.

C. **Doubling authorized for repeat violations:** Where the facility was assessed a civil monetary penalty for class A or B deficiencies within the previous 24 months, the initial base penalty amount is doubled for each instance of the licensed facility's noncompliance with applicable regulation(s) previously assessed as a class A or B deficiency. Where the facility was assessed a civil monetary penalty for a class C deficiency within the previous 24 months, the initial base penalty amount may be doubled for the facility's noncompliance with the applicable regulation(s) previously assessed as a class C deficiency. If such doubling results in civil monetary penalties in excess of \$5,000 per day, then the civil monetary penalty is \$5,000 per day.

[8.370.4.13 NMAC - N, 7/1/2024]

8.370.4.14 CIVIL MONETARY PENALTY; DAILY PENALTY:

A. **Accrual:** The daily civil monetary penalty amount accrues from the date of harm or injury, or from the date of the regulatory noncompliance, or from the date of the facility's receipt of notice of the intermediate sanction, at the discretion of the licensing authority. The daily civil monetary penalty continues until notice is provided to the licensing authority that all the deficiencies which were originally cited and relied upon in calculating the amount of the daily penalty are corrected. No piecemeal reduction of the daily penalty is available for partial correction of regulatory violations cited as the basis for all or part of the daily penalty.

B. **Calculation of amount:** For a class A, class B, or class C deficiency, a daily civil monetary penalty is determined by multiplying the facility's licensed capacity times the facility penalty rate, times the severity index. The sum of the civil penalties for each class A, class B and class C deficiency is the total daily civil monetary penalty amount for all class A, class B and class C deficiencies. For each day that the total daily civil monetary penalty for each class A, class B and repeat class C deficiency exceeds \$5,000, the civil monetary penalty is \$5,000. Expressed as a formula, the calculation of the civil monetary penalty amount per deficiency equals the lesser of either:

- (1) \$5,000; or
- (2) (licensed capacity) x (facility penalty rate) x (severity index).

[8.370.4.14 NMAC - N, 7/1/2024]

8.370.4.15 CALCULATION OF AMOUNT OF CIVIL MONETARY PENALTY - DOUBLING FOR REPEAT DEFICIENCIES:

A. **General:** In addition to doubling the base penalty, doubling the daily civil monetary penalty is authorized and is intended to eliminate repeat regulatory violations. Doubling occurs in instances where the facility was assessed a base penalty or a daily civil monetary penalty for class A or B deficiencies cited within the previous 24 months, and the facility is cited for noncompliance with one or more of the same regulations on the current survey or investigation for which the previous civil monetary penalty was assessed. The licensing authority has greater discretion to double the civil monetary penalty for class C deficiencies. Where the facility was assessed a civil monetary penalty for a class C deficiency within the previous 24 months, the civil monetary penalty may be doubled for the facility's noncompliance with the same regulation that previously was assessed as a class C deficiency. If such doubling of the civil monetary penalty results in civil monetary penalties in excess of \$5,000 per day, then the civil monetary penalty is \$5,000 per day.

B. **Doubling; repeat class A or B deficiencies:** The amount of the daily civil monetary penalty for a deficiency, as calculated above, shall be doubled for a second or subsequent violation of the same regulatory requirement or provision, the violation of which within the prior 24 month period, resulted in, or was part of a group of violations that resulted in, the imposition of intermediate sanctions or civil monetary penalties as class A or B deficiencies.

C. **Doubling; repeat class C deficiencies:** The amount of the daily civil monetary penalty may be doubled, in the discretion of the licensing authority, for a second or subsequent violation of the same regulatory requirement or provision, the violation of which within the prior 24 month period, resulted in, or was part of a group of violations that resulted in, the imposition of intermediate sanctions or in civil monetary penalties as a class C deficiency.

[8.370.4.15 NMAC - N, 7/1/2024]

8.370.4.16 LICENSED CAPACITY AND FACILITY PENALTY RATES:

A. **Licensed capacity:** For purposes of calculating the amount of civil monetary penalties, the facility's licensed capacity is determined by one of the following two methods, depending on the type of facility:

(1) For a facility having a capacity stated on its license, that capacity amount is employed in calculating the daily civil monetary penalty imposed by the licensing authority.

(2) For facilities not having a capacity reflected on the license, the licensed capacity will be based on the average number of patients or clients receiving services from the facility each day for the five working days preceding the day deficiencies were noted during the survey or investigation by the licensing authority.

B. Facility penalty rates: For purposes of calculation of the amount of civil monetary penalties the following penalty rates for facilities are as listed below:

	TYPE OF FACILITY	PENALTY RATE
(1)	Adult residential facilities:	
(a)	adult residential shelter care home	\$10.00
(b)	community residential facility for developmentally disabled individuals	\$10.00
(c)	residential treatment home	\$10.00
(d)	boarding home	\$10.00
(e)	halfway home	\$10.00
(f)	new or innovative programs	\$10.00
(2)	Adult day care facilities:	
(a)	adult day care center	\$10.00
(b)	adult day care home	\$10.00
(c)	new or innovative programs	\$10.00
(3)	General and special hospitals:	
(a)	rehabilitation hospital	\$10.00
(b)	general hospital	\$10.00
(c)	psychiatric hospital	\$10.00
(d)	specialty hospitals	\$10.00
(e)	rural primary care hospital	\$10.00
(4)	Long term care facilities:	
(a)	intermediate care facility (ICF)	\$10.00
(b)	medicaid certified nursing facilities (NF)	\$10.00
(c)	skilled nursing facility (SNF)	\$10.00
(d)	intermediate care facility for <u>the mentally retarded (ICF/MR)</u> individuals with <u>intellectual disabilities (ICF/IID)</u>	\$10.00
(5)	Facilities providing outpatient medical services and infirmaries:	
(a)	ambulatory surgical center	\$65.00
(b)	diagnostic and treatment center	\$10.00
(c)	limited diagnostic and treatment center	\$10.00
(d)	rural health clinic	\$10.00
(e)	infirmary	\$10.00
(f)	new or innovative clinic	\$10.00
(6)	Other facilities:	
(a)	home health agency	\$10.00
(b)	end stage renal disease	\$65.00
(c)	hospice	\$10.00

[8.370.4.16 NMAC - N, 7/1/2024; A, xx/xx/xxxx]

8.370.4.17 SEVERITY INDEX: Three index ratings, in descending order of severity, are established and applied as follows:

A. **Class A:** Severity index of five is applied for class A deficiencies.

B. **Class B:** Severity index of three is applied for class B deficiencies.

C. **Class C:** Severity index of one is applied for class C deficiencies.

[8.370.4.17 NMAC - N, 7/1/2024]

8.370.4.18 CIVIL MONETARY PENALTIES CUMULATIVE: The civil monetary penalties imposed by the licensing authority are cumulative and are in addition to any other fines or penalties, remedies, or other intermediate sanctions provided by law.

[8.370.4.18 NMAC - N, 7/1/2024]

8.370.4.19 PAYMENT OF MONETARY PENALTIES: The following will govern the payment of monetary penalties:

- A. Unless an appeal has been filed, the facility has 30 calendar days to pay the monetary penalty. Calculation begins from the date the facility received the notice of penalty assessment.
- B. Payment of monetary penalties must be in the form of a money order, certified check, business or personal check payable to state of New Mexico.
- C. The check or money order must clearly indicate the purpose for the payment, i.e. payment of monetary penalty.
- D. Payment shall be sent to health facility licensing and certification bureau, public health division, health care authority.

[8.370.4.19 NMAC - N, 7/1/2024]

8.370.4.20 COLLECTION OF CIVIL MONETARY PENALTY: A civil monetary penalty assessed under these regulations shall be paid to the authority within 30 days following such assessment or following the resolution of any appeal. Interest shall accrue at the current judgment interest rate after 30 days of such assessment or following the resolution of any appeal. If the facility fails to submit payment of the civil monetary penalty, then the authority is authorized to take any of the following actions:

- A. The authority may add the amount of the civil monetary penalty together with accrued interest to the facility's annual license fee. If the facility fails to pay such civil monetary penalty and accrued interest, the license shall not be renewed.
- B. The authority may bring action in a court of competent jurisdiction to recover the amount of the civil monetary penalty and accrued interest.

[8.370.4.20 NMAC - N, 7/1/2024]

8.370.4.21 DAILY ACCRUAL OF CIVIL MONETARY PENALTIES: The daily penalty of the civil monetary penalty is imposed for each day that any cited deficiency exists.

- A. **Begin date:** The accrual of the daily civil monetary penalties begins from the date of harm or injury, or from the date of the regulatory noncompliance, or from the date of the facility's receipt of notice of the intermediate sanction, at the discretion of the licensing authority.
- B. **End date:** Daily civil monetary penalties cease accruing on the first full day that all deficiencies are corrected.
- C. **Retroactive accrual for uncorrected deficiencies:** A civil monetary penalty may be assessed for uncorrected deficiencies cited in a revisit or follow up survey, when the facility was cited for such deficiencies, but was not assessed daily civil monetary penalties at the time of the preceding survey. The daily civil monetary penalty may accrue beginning with the date the uncorrected deficiencies were cited at the preceding survey.

[8.370.4.21 NMAC - N, 7/1/2024]

8.370.4.22 CESSATION OF DAILY ACCRUAL OF CIVIL MONETARY PENALTIES: The licensing authority will terminate the daily accrual of civil monetary penalties attributable to any class A, B, or C deficiency upon the facility's provision of evidence to the licensing authority that the specific deficiency has been corrected.

[8.370.4.22 NMAC - N, 7/1/2024]

8.370.4.23 SERVICE OF NOTICE: The authority shall provide notification, by certified mail, personal delivery, or by facsimile if the notice is also mailed, of its intent to impose any intermediate sanction or civil monetary penalty. Notice may be given of the intent to impose a civil monetary penalty where the total accrued amount of the civil monetary penalty is not yet determined. Notice setting out the base amount and final total accrued amount of the daily civil monetary penalty shall be provided at the time of the determination. Notification of other actions contemplated under these regulations may be by regular mail, certified mail, or personal delivery or by facsimile if the notice is also mailed. All time periods for response shall be calculated beginning on the date of service, unless otherwise provided.

[8.370.4.23 NMAC - N, 7/1/2024]

8.370.4.24 RIGHT TO APPEAL: The facility may appeal the authority's notice of license suspension, license revocation, imposition of intermediate sanctions, or civil monetary penalties. The administrative appeal hearing shall be conducted by an impartial hearing officer appointed by the secretary of the authority.

[8.370.4.24 NMAC - N, 7/1/2024]

8.370.4.25 TIMELINESS: To obtain an administrative appeal hearing, the facility must make a timely request in writing.

A. **Suspensions, revocations, intermediate sanctions, or civil monetary penalties:** The authority must receive written request for an appeal hearing within 10 working days after the facility receives the authority's final notice of suspension, revocation, intermediate sanction, or civil monetary penalty. In any appeal of the authority's imposition of civil monetary penalties, final notice from which an appeal may be taken is that notice which sets out the total civil monetary penalty, including both the base amount and the daily accrual amount.

B. **Emergency suspension and emergency intermediate sanctions:** The authority shall provide notice of an administrative appeal hearing concurrently with notice of an emergency suspension or emergency intermediate sanction. The administrative appeal hearing is scheduled within five working days of the date of imposition of the authority's emergency action. The facility may waive this hearing and request a hearing at a later date. The authority must receive such a waiver and written request for a later hearing within four working days after the facility receives notice of the emergency action.

C. **Cease and desist order:** The authority must receive written request for an appeal hearing within five working days after the facility receives the cease and desist order.

[8.370.4.25 NMAC - N, 7/1/2024]

8.370.4.26 APPEAL PROCEDURES: Adjudicatory hearings, New Mexico Health care authority, 8.370.2 NMAC shall apply in all administrative appeals provided by these regulations.

[8.370.4.26 NMAC - N, 7/1/2024]

8.370.4.27 RESOLUTION WITHOUT HEARING - PENALTY REDUCTION: The facility may satisfy, in full, the amount of any civil monetary penalty imposed under these regulations if, within 10 working days following receipt of the notice:

A. the authority receives the facility's written waiver of any right to appeal; and

B. the authority receives the facility's payment of one-half (fifty percent) of the amount of the civil monetary penalty imposed.

[8.370.4.27 NMAC - N, 7/1/2024]

8.370.4.28 STAY OF SANCTION: The authority's receipt of the facility's notice of appeal shall operate as a stay of suspension, revocation, intermediate sanction (except temporary manager or monitor), or civil monetary penalty. In the case of emergency suspension or emergency intermediate sanctions, however, neither the immediate five day hearing nor the facility's request for a later hearing will stay the authority's action.

[8.370.4.28 NMAC - N, 7/1/2024]

8.370.4.29 PREHEARING NEGOTIATIONS; NO TOLLING: Discussions and negotiations between the authority and a facility prior to hearing do not postpone any deadlines for an appeal, unless as a result of negotiations the authority and facility agree to postponement in writing.

[8.370.4.29 NMAC - N, 7/1/2024]

8.370.4.30 RELATED REGULATION AND CODES: Health facilities subject to these regulations are also subject to other regulations, codes and standards as the same may from time to time be amended as follows:

A. Adjudicatory hearings, New Mexico health care authority, 8.370.2 NMAC.

B. Requirements for long term care facilities, New Mexico health care authority, 8.370.16 NMAC.

C. Requirements for general and special hospitals, New Mexico health care authority, 8.370.12

NMAC.

D. Health facility licensure fees and procedures, New Mexico health care authority, 8.370.3 NMAC.

E. Requirements for adult day care facilities, New Mexico health care authority, 8.370.20 NMAC.

F. Requirements for adult residential care facilities, New Mexico health care authority, 8.370.14

NMAC.

G. Requirements for inhome and inpatient hospice care, New Mexico health care authority, 8.370.19

nmac.

H. Requirements for home health agencies, New Mexico health care authority, 8.370.24 NMAC.

I. Requirements for facilities providing outpatient medical services and infirmaries, New Mexico health care authority, 8.370.18 NMAC.

J. Requirements for intermediate care facilities for ~~the mentally retarded~~ individuals with intellectual disabilities, New Mexico health care authority, 8.370.22 NMAC.

K. Requirements for end stage renal disease facilities, New Mexico health care authority, 8.370.26 NMAC.

[8.370.4.30 NMAC - N, 7/1/2024; A, xx/xx/yyyy]

History of 8.370.4 NMAC: [RESERVED]