

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Pursuant to the authority of Iowa Code section 135C.14, the Department of Inspections and Appeals hereby amends Chapter 56, “Fining and Citations,” Iowa Administrative Code.

The amendments implement changes to Iowa Code chapter 135C, “Health Care Facilities,” resulting from 2015 Iowa Acts, House File 579. The legislation permits health care facilities to request a contested case hearing pursuant to Iowa Code chapter 17A without first going through the informal conference process. The legislation also requires any state penalty, including a fine or citation, to be retained or reinstated if a corresponding federal deficiency is retained or reinstated.

The Department does not believe that the amendments impose any financial hardship on any regulated entity, body, or individual.

The State Board of Health initially reviewed the amendments at its July 8, 2015, meeting, and approved them at the Board’s September 9, 2015, meeting.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 5, 2015, as **ARC 2081C**. The Department received no comments during the public comment period. These amendments are identical to those published under Notice of Intended Action.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 135C.14 and 2015 Iowa Acts, House File 579.

These amendments shall become effective November 4, 2015.

The following amendments are adopted.

ITEM 1. Adopt the following new paragraph **56.3(5)“c”**:

c. Any state penalty, including a fine or citation, shall be retained or reinstated if the federal deficiency is retained or reinstated.

ITEM 2. Amend paragraph **56.14(1)“a”** as follows:

a. The violation was issued in conjunction with a federal civil money penalty, and the department holds the fine issued pursuant to this chapter in abeyance pursuant to Iowa Code section 249A.19 249A.57, or

ITEM 3. Amend subrule 56.14(3) as follows:

56.14(3) Informal conference. ~~If the facility desires to contest a citation for a class I, class II or class III violation, the facility shall notify the department of inspections and appeals in writing that it the facility desires to contest such citation and request in writing an informal conference with an independent reviewer. The informal conference will be held concurrently with any informal dispute resolution held pursuant to 42 CFR Section 488.331 for those health care facilities certified under Medicare or the medical assistance program. shall do one of the following:~~

~~a.—*Definition.* For purposes of these rules, “independent reviewer” means an attorney licensed in the state of Iowa who is not currently and has not been employed by the department in the past eight years, or has not appeared in front of the department on behalf of a health care facility in the past eight years. Preference shall be given to an attorney with background knowledge, experience or training in long-term care.~~

~~b.—*Request for informal conference.* The request for an informal conference must be in writing, addressed to the compliance officer and include the following:~~

- ~~(1) Identification of the citation(s) being disputed;~~
- ~~(2) The type of informal conference requested: face-to-face or telephone conference; and~~
- ~~(3) A request for surveyor worksheets for the citation(s) being disputed, if desired.~~

~~c.—*Submission of documentation.* Within the same ten-day period required for submission of a plan of correction pursuant to 481—subrule 50.10(7), the facility shall submit the following:~~

- ~~(1) The names of those who will be attending the informal conference, including legal counsel; and~~

~~(2) Documentation supporting the facility's position. The facility must highlight or use some other means to identify written information pertinent to the disputed deficiency(ies). Supporting documentation that is not submitted within the required time frame will not be considered, except as otherwise permitted by the independent reviewer upon good cause shown. "Good cause" means substantial or adequate grounds for failing to submit documentation in a timely manner. In determining whether the facility has shown good cause, the independent reviewer shall consider what circumstances kept the facility from submitting the supporting documentation within the required time frame.~~

~~d. Face-to-face or telephone conference. A face-to-face or telephone conference, if requested, will be scheduled to occur within ten business days of the receipt of the written request, all supporting documentation, and the plan of correction required by 481—subrule 50.10(7).~~

~~(1) Failure to submit supporting documentation will not delay scheduling.~~

~~(2) The conference will be scheduled for one hour to allow the facility to informally present information and explanation concerning the contested deficiencies. Due to the confidential nature of the conference, attendance may be limited.~~

~~(3) If additional information is requested during the informal conference, the facility will have two business days to deliver the additional materials to the department.~~

~~(4) When extenuating circumstances preclude a face-to-face conference, a telephone conference will be held or the facility may be given one opportunity to reschedule the face-to-face conference.~~

~~e. Results. The results of the informal conference will generally be sent within ten business days after the date of the informal conference, or within ten business days after the receipt of additional information, if requested.~~

~~(1) The independent reviewer may affirm or may modify or dismiss the citation. The independent reviewer shall state in writing the specific reasons for the affirmation, modification or dismissal of the citation.~~

~~(2) The department will issue an amended (changes in factual content) or corrected (changes in typographical/data errors) citation if changes result from the informal conference.~~

~~(3) The facility must submit to the department a new plan of correction for the amended or corrected citation within ten calendar days from the date of the letter conveying the results of the informal conference.~~

~~a. Request an informal conference with an independent reviewer pursuant to rule 481—56.15(135C); or~~

~~b. Request a contested case hearing in the manner provided by Iowa Code chapter 17A for contested cases.~~

ITEM 4. Renumber rule **481—56.15(135C)** as **481—56.16(135C)**.

ITEM 5. Adopt the following **new** rule 481—56.15(135C):

481—56.15(135C) Informal conference. An informal conference will be held concurrently with any informal dispute resolution held pursuant to 42 CFR Section 488.331 for those health care facilities certified under Medicare or the medical assistance program.

56.15(1) Definition. For purposes of these rules, "independent reviewer" means an attorney licensed in the state of Iowa who is not currently employed by the department, has not been employed by the department in the past eight years, and has not appeared in front of the department on behalf of a health care facility in the past eight years. Preference shall be given to an attorney with background knowledge, experience or training in long-term care.

56.15(2) Request for informal conference. The request for an informal conference must be in writing, addressed to the compliance officer and include the following:

a. Identification of the citation(s) being disputed;

b. The type of informal conference requested: face-to-face or telephone conference; and

c. A request for surveyor worksheets for the citation(s) being disputed, if desired.

56.15(3) Submission of documentation. Within the same ten-day period required for submission of a plan of correction pursuant to 481—subrule 50.10(7), the facility shall submit the following:

- a. The names of those who will be attending the informal conference, including legal counsel; and
- b. Documentation supporting the facility's position. The facility must highlight or use some other means to identify written information pertinent to the disputed deficiency(ies). Supporting documentation that is not submitted within the required time frame will not be considered, except as otherwise permitted by the independent reviewer upon good cause shown. "Good cause" means substantial or adequate grounds for failing to submit documentation in a timely manner. In determining whether the facility has shown good cause, the independent reviewer shall consider what circumstances kept the facility from submitting the supporting documentation within the required time frame.

56.15(4) *Face-to-face or telephone conference.* A face-to-face or telephone conference, if requested, will be scheduled to occur within ten business days of the receipt by the department of the written request, all supporting documentation, and the plan of correction required by 481—subrule 50.10(7).

- a. Failure to submit supporting documentation will not delay scheduling.
- b. The conference will be scheduled for one hour to allow the facility to informally present information and explanation concerning the contested deficiencies. Due to the confidential nature of the conference, attendance may be limited.

c. If additional information is requested during the informal conference, the facility will have two business days to deliver the additional materials to the department.

d. When extenuating circumstances preclude a face-to-face conference, a telephone conference will be held or the facility may be given one opportunity to reschedule the face-to-face conference.

56.15(5) *Results.* The results of the informal conference will generally be sent to the facility within ten business days after the date of the informal conference or, if additional information is requested, within ten business days after the department's receipt of the additional information.

a. The independent reviewer may affirm or may modify or dismiss the citation. The independent reviewer shall state in writing the specific reasons for the affirmation, modification or dismissal of the citation.

b. The department will issue an amended (changes in factual content) or corrected (correction of typographical/data errors) citation if changes result from the informal conference.

c. The facility must submit to the department a new plan of correction for the amended or corrected citation within ten calendar days from the date of the letter conveying the results of the informal conference.

ITEM 6. Amend renumbered subrule 56.16(2) as follows:

56.16(2) If the facility does desire to further contest an affirmed or modified citation for a class I, class II or class III violation, the facility shall, within five business days after ~~the informal conference, or within five business days after~~ receipt of the written decision and explanation of the independent reviewer, ~~whichever occurs later,~~ notify the department of inspections and appeals in writing of the facility's intent to formally contest the citation.

[Filed 9/9/15, effective 11/4/15]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/30/15.