

CHAPTER 56
FINING AND CITATIONS
[Prior to 7/15/87, Health Department[470] Ch 56]

481—56.1(135C) Authority for citations. Pursuant to the authority vested in the director of the department of inspections and appeals to issue citations and assess penalties for violations of the statutes or departmental rules relating to the health care facilities, the following rules indicate the method by which citations may be issued when a particular statute or departmental rule is violated by a facility.

481—56.2(135C) Classification of violations—classes. There are three classifications for violations of statutes or departmental rules which may result in the issuance of a citation by the director of inspections and appeals and the assessment of a penalty therefor.

56.2(1) Class I. A class I violation is one which presents an imminent danger or a substantial probability of resultant death or physical harm to the residents of the facility in which the violation occurs. A physical condition or one or more practices in a facility may constitute a class I violation;

56.2(2) Class II. A class II violation is one that has a direct or immediate relationship to the health, safety, or security of residents of a health care facility, but which presents no imminent danger nor substantial probability of death or physical harm to them. A physical condition or one or more practices within a facility, including either physical abuse of any resident or failure to treat any resident with consideration, respect, and full recognition of the resident's dignity and individuality, in violation of a specific rule adopted by the department, may constitute a class II violation;

56.2(3) Class III. A class III violation is one which is not classifiable in the department's rules nor classifiable under the criteria stated in those rules as a class I or class II violation.

481—56.3(135C) Fines. Citations which are issued by the director of the department of inspections and appeals for violations of the statutes or rules relating to health care facilities will subject the facility to the following penalties:

56.3(1) Citation for a class I violation: Not less than \$2,000 nor more than \$10,000;

56.3(2) Citation for a class II violation: Not less than \$100 nor more than \$500. (The director of the department of inspections and appeals may waive the penalty if the violation is corrected within the time specified in the citation);

56.3(3) Citation for a class III violation: No penalty, except as provided in 56.5(135C).

481—56.4(135C) Time for compliance. Citations which are issued by the director of the department of inspections and appeals for violations of the statutes or rules related to health care facilities shall specify the length of time permitted for the violation to be abated or eliminated, as follows:

56.4(1) Citation for a class I violation: The violation shall be abated or eliminated immediately, unless the department determines that a stated period of time, specified in the citation, is required to correct the violation;

56.4(2) Citation for a class II violation: The violation shall be corrected within a stated period of time determined by the department and specified in the citation. The stated period of time specified in the citation may subsequently be modified by the department for good cause shown;

56.4(3) Citation for a class III violation: The violation shall be corrected within a reasonable time specified by the department in the citation.

481—56.5(135C) Failure to correct a violation within the time specified—penalty. Failure to correct any class of violation within the time specified in the citation, unless the licensee shows that the failure was due to circumstances beyond the licensee's control, shall subject the facility to a further penalty of \$50 for each day that the violation continues after the time specified for correction.

481—56.6(135C) Treble fines for repeated violations. The director of the department of inspections and appeals shall treble the penalties specified in 56.3(135C) for any second or subsequent class I or

class II violation occurring within any 12-month period, if a citation was issued for the same class I or class II violation occurring within that period and a penalty was assessed therefor.

481—56.7(135C) Notation of classes of violations. All rules relating to health care facilities, other than those which are informational in character, shall be followed by a notation at the end of each rule, or pertinent part thereof. This notation shall consist of a Roman numeral or numerals in parentheses. These Roman numerals refer to the class (either class I, class II, or class III) of violation which may be cited by the commissioner when that rule, or part of a rule carrying the notation is violated by the facility.

481—56.8(135C) Notation for more than one class of violation. In those instances where a particular rule, or part of a rule is followed by a notation consisting of more than one Roman numeral in parentheses, at the discretion of the director of the department of inspections and appeals, the director may issue a citation for a violation of that rule, or part thereof, designating any one of the multiple classes of violations specified in the notation.

481—56.9(135C) Factors determining selection of class of violation. In determining which class of violation will be designated in the citation, where more than one class is specified in the notation following the rule, the director of the department of inspections and appeals may consider evidence of the circumstances surrounding the violation, including, but not limited to, the following factors:

56.9(1) The length of time during which the violation occurred;

56.9(2) The frequency of the violation, i.e., whether the violation was an isolated or a widespread occurrence, practice, or condition;

56.9(3) The past history of the facility, as it relates to the nature of the violation, i.e., whether the violation was a first-time occurrence or one which has occurred in the past at that facility;

56.9(4) The intent of the facility, as it relates to the reasons the violation occurred;

56.9(5) The extent of any harm to the residents or the effect on the health, safety, or security of the residents which resulted from the violation;

56.9(6) The relationship of the violation to any other types of violations which have occurred in the facility, i.e., whether other violations in combination with the violation in question, caused increased harm or adverse effects to the residents of the facility;

56.9(7) The actions of the facility after the occurrence of the violation, including when corrective measures, if any, were implemented;

56.9(8) The accuracy and extent of records kept by the facility which relate to the violation, and the availability of such records to the department;

56.9(9) The number of other types of related violations occurring simultaneously or within a short period of time of the violation in question.

481—56.10(135C) Factors determining imposition of citation and fine. The director of the department of inspections and appeals may consider evidence of the circumstances surrounding the violation including, but not limited to, those factors set out in rule 56.9(135C) when:

1. Determining whether a violation will be subject to a fine or citation; and

2. Determining the monetary amount of the penalty to be specified in the citation, when such a fine is authorized to be levied for a particular class of violation.

481—56.11(135C) Class I violation not specified in the rules. The director of the department of inspections and appeals may issue a citation for a class I violation when a physical condition or one or more practices exists in a facility which are not in violation of a specific statute or rule, but which constitute an imminent danger or a substantial probability of resultant death or physical harm to the residents of the facility.

481—56.12(135C) Class I violation as a result of multiple lesser violations. The director of the department of inspections and appeals may issue a citation for a class I violation when a physical condition or one or more practices exist in a facility which are a result of multiple lesser violations of the

statutes or rules, but which taken as a whole constitute an imminent danger or a substantial probability of resultant death or physical harm to the residents of the facility.

481—56.13(135C) Form of citations. Each citation issued by the director of the department of inspections and appeals shall contain the following information:

56.13(1) A description of the nature of the violation;

56.13(2) A statement of the Code section or subsection or the rule or standard violated. (In the case of class I violations as described in 56.11(135C), a statement of the specific physical condition or one or more practices may be made in lieu of this statement.);

56.13(3) A statement of the classification of the violation, as specified in section 56.2(135C);

56.13(4) When appropriate, a statement of the period of time allowed for correction of the violation, which shall in each case be the shortest period of time the department deems feasible.

481—56.14(135C) Licensee's response to a citation. Within 20 business days after service of a citation, the facility shall respond in the following manner, according to the type of citation issued.

56.14(1) If the facility does not desire to contest the citation:

a. For each class I violation, the facility shall remit to the department of inspections and appeals the amount specified by the department of inspections and appeals in the citation;

b. For each class I violation issued in conjunction with a federal civil money penalty, the facility shall remit the amounts specified by the department of inspections and appeals only after the results of the revisit have been determined;

c. For each class II violation issued in conjunction with a federal civil money penalty, the facility shall remit the amounts specified by the department of inspections and appeals only after the results of the revisit have been determined;

d. For each class II violation for which the penalty has not been waived, the facility shall remit to the department of inspections and appeals the amount specified by the department of inspections and appeals in the citation;

e. For each class II violation for which the penalty has been waived or for each class III violation, the facility shall send a written response to the department of inspections and appeals, acknowledging that the citation has been received and stating that the violation will be corrected within the specified period of time allowed by the citation.

56.14(2) If the facility desires to contest a citation for a class I violation, the facility shall follow the procedure as set out in 56.16(135C).

56.14(3) If the facility desires to contest a citation for a class II or class III violation, the facility shall notify the director of the department of inspections and appeals in writing that it desires to contest such citation and request in writing an informal conference with a representative of the department of inspections and appeals.

481—56.15(135C) Procedure for facility after informal conference. After the conclusion of an informal conference requested by the licensee and provided pursuant to 56.14(3):

56.15(1) If the facility does not desire to further contest an affirmed or modified citation for a class II or class III violation, the facility shall, within five working days after the informal conference, or within five working days after receipt of the written decision and explanation of the department of inspections and appeals' representative at the informal conference, as the case may be, comply with the provisions of 56.14(1) "b" or 56.14(1) "c."

56.15(2) If the facility does desire to further contest an affirmed or modified citation for a class II or class III violation, the facility shall, within five working days after the informal conference, or within five working days after receipt of the written decision and explanation of the department of inspections and appeals' representative at the informal conference, as the case may be, notify the department of inspections and appeals in writing of the facility's intent to formally contest the citation.

481—56.16(135C) Contesting a citation for a class I violation. If a facility desires to contest a citation for a class I violation, the facility shall, within five working days after service of such citation, notify the department of inspections and appeals in writing of the facility's intent to formally contest the citation.

481—56.17(135C) Formal contest. The procedures for contested cases, as set out in Iowa Code chapter 17A, and the rules adopted by the department of inspections and appeals shall be followed in all cases where proper notice has been made to the department of inspections and appeals of the intent to formally contest any citation.

These rules are intended to implement Iowa Code sections 10A.202, 10A.402, 135C.14(8), 135C.25 and 135C.36.

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² See IAB Inspections and Appeals Department.