

245E.06 ADMINISTRATIVE SANCTIONS.

Subdivision 1. **Factors regarding imposition of administrative sanctions.** (a) The department shall consider the following factors in determining the administrative sanctions to be imposed:

- (1) nature and extent of financial misconduct;
- (2) history of financial misconduct;
- (3) actions taken or recommended by other state agencies, other divisions of the department, and court and administrative decisions;
- (4) prior imposition of sanctions;
- (5) size and type of provider;
- (6) information obtained through an investigation from any source;
- (7) convictions or pending criminal charges; and
- (8) any other information relevant to the acts or omissions related to the financial misconduct.

(b) Any single factor under paragraph (a) may be determinative of the department's decision of whether and what sanctions are imposed.

Subd. 2. **Written notice of department sanction; sanction effective date; informal meeting.** (a) The department shall give notice in writing to a person of an administrative sanction that is to be imposed. The notice shall be sent by mail as defined in section 245E.01, subdivision 11.

- (b) The notice shall state:
- (1) the factual basis for the department's determination;
 - (2) the sanction the department intends to take;
 - (3) the dollar amount of the monetary recovery or recoupment, if any;
 - (4) how the dollar amount was computed;
 - (5) the right to dispute the department's determination and to provide evidence;
 - (6) the right to appeal the department's proposed sanction; and
 - (7) the option to meet informally with department staff, and to bring additional documentation or information, to resolve the issues.

(c) In cases of determinations resulting in denial or termination of payments, in addition to the requirements of paragraph (b), the notice must state:

- (1) the length of the denial or termination;
- (2) the requirements and procedures for reinstatement; and
- (3) the provider's right to submit documents and written arguments against the denial or termination of payments for review by the department before the effective date of denial or termination.

(d) The submission of documents and written argument for review by the department under paragraph (b), clause (5) or (7), or paragraph (c), clause (3), does not stay the deadline for filing an appeal.

(e) Unless timely appealed, the effective date of the proposed sanction shall be 30 days after the license holder's, provider's, controlling individual's, or recipient's receipt of the notice. If a timely appeal is made, the proposed sanction shall be delayed pending the final outcome of the appeal. Implementation of a proposed sanction following the resolution of a timely appeal may be postponed if, in the opinion of the department, the delay of sanction is necessary to protect the health or safety of children in care. The department may consider the economic hardship of a person in implementing the proposed sanction, but economic hardship shall not be a determinative factor in implementing the proposed sanction.

(f) Requests for an informal meeting to attempt to resolve issues and requests for appeals must be sent or delivered to the department's Office of Inspector General, Financial Fraud and Abuse Division.

Subd. 3. Appeal of department sanction. (a) If the department does not pursue a criminal action against a provider, license holder, controlling individual, or recipient for financial misconduct, but the department imposes an administrative sanction under section 245E.02, subdivision 4, paragraph (c), any individual or entity against whom the sanction was imposed may appeal the department's administrative sanction under this section pursuant to section 119B.16 or 256.045 with the additional requirements in clauses (1) to (4). An appeal must specify:

(1) each disputed item, the reason for the dispute, and an estimate of the dollar amount involved for each disputed item, if appropriate;

(2) the computation that is believed to be correct, if appropriate;

(3) the authority in the statute or rule relied upon for each disputed item; and

(4) the name, address, and phone number of the person at the provider's place of business with whom contact may be made regarding the appeal.

(b) An appeal is considered timely only if postmarked or received by the department's Appeals Division within 30 days after receiving a notice of department sanction.

(c) Before the appeal hearing, the department may deny or terminate authorizations or payment to the entity or individual if the department determines that the action is necessary to protect the public welfare or the interests of the child care assistance program.

Subd. 4. Consolidated hearings with licensing sanction. If a financial misconduct sanction has an appeal hearing right and it is timely appealed, and a licensing sanction exists for which there is an appeal hearing right and the sanction is timely appealed, and the overpayment recovery action and licensing sanction involve the same set of facts, the overpayment recovery action and licensing sanction must be consolidated in the contested case hearing related to the licensing sanction.

Subd. 5. Effect of department's administrative determination or sanction. Unless a timely and proper appeal is received by the department, the department's administrative determination or sanction shall be considered a final department determination.

History: 2013 c 108 art 5 s 5