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Title 22@ Social Security

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Division 5@ Licensing and Certification of Health Facilities, Home Health Agencies, Clinics, and Referral Agencies

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Chapter 4@ Intermediate Care Facilities

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Article 6@ Violations and Civil Penalties

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Section 73721@ Informal Conference

73721 Informal Conference

(a)

The district administrator or his designee shall hold, within four business days from the receipt of the licensee's request, an informal conference. (1) The licensee shall have the right to be represented by legal counsel, to present oral and written evidence or other information on its behalf, and to explain any mitigating circumstances. (2) The representatives of the Department who issued the citation should attend the conference and present whatever evidence or information, oral or written, in substantiation of the alleged violation. (3) The conference shall be a simple informal proceeding, and shall not be conducted in the manner of a judicial hearing or as a hearing under the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and need not be conducted according to technical rules relating to evidence and witnesses. (4) Neither the licensee nor the Department shall have the right to subpoena any witness to attend the conference, nor to formally cross-examine any person testifying at the conference. However, both the licensee and the Department may present any witness on its behalf at the conference. (5) At the conclusion of the informal conference, the district administrator or the designee conducting the conference, may affirm, modify or dismiss the citation, the proposed assessment of a civil penalty, or the date of correction of a violation.

(1)

The licensee shall have the right to be represented by legal counsel, to present oral and written evidence or other information on its behalf, and to explain any mitigating circumstances.

(2)

The representatives of the Department who issued the citation should attend the conference and present whatever evidence or information, oral or written, in substantiation of the alleged violation.

(3)

The conference shall be a simple informal proceeding, and shall not be conducted in the manner of a judicial hearing or as a hearing under the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and need not be conducted according to technical rules relating to evidence and witnesses.

(4)

Neither the licensee nor the Department shall have the right to subpoena any witness to attend the conference, nor to formally cross-examine any person testifying at the conference. However, both the licensee and the Department may present any witness on its behalf at the conference.

(5)

At the conclusion of the informal conference, the district administrator or the designee conducting the conference, may affirm, modify or dismiss the citation, the proposed assessment of a civil penalty, or the date of correction of a violation.

(b)

If the district administrator or his designee modifies or dismisses the citation or proposed assessment of a civil penalty, he shall state with particularity, in writing,

his reasons for such action and shall immediately transmit a copy to each party to the original complaint, if any.

(c)

If the licensee desires to contest the decision made after the informal conference, he shall inform the district administrator in writing by registered or certified mail within four business days after he receives the decision of the informal conference.

(d)

If the licensee fails to so notify the district administrator in writing that he further intends to contest the citation or the proposed assessment of a civil penalty or the decision made by the district administrator or his designee after an informal conference within the time specified, the citation or the proposed assessment of a civil penalty or the decision by the district administrator or his designee shall be deemed a final order of the Department and shall not be subject to further administrative review.

(e)

If a licensee notifies the district administrator, or his designee, in writing by registered or certified mail that he intends to contest a citation or the assessment of a proposed civil penalty, after an informal conference has been held, the department shall refer the matter immediately to the Attorney General for appropriate action in the Superior Court of the county in which the facility is located.