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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 13@ Medical Information Breach

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Article 1@ Administrative Penalties

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Section 79904@ Penalty Adjustment Factors

## 79904 Penalty Adjustment Factors

### (a)

Using the following factors, the base penalty assessed pursuant to sections 79903(b) and (c) shall be increased or decreased by up to \$10,000 to calculate the final penalty: (1) The health care facility's history of compliance with Health and Safety Code section 1280.15 and other related state and federal law for the past three calendar years. (2) The extent to which the health care facility detected violations and took preventative action to immediately correct and prevent past violations from recurring. (3) Factors outside the control of the health care facility as defined by section 79901(i). There shall be no penalty if the health care facility developed and maintained disaster and emergency policies and procedures that were appropriately implemented during a disaster or emergency, if factors outside the control of the health care facility as referenced in 79901(i) were the sole cause of a breach. (4) Any other factors applicable to the specific circumstances surrounding the breach, as identified by the Department.

### (1)

The health care facility's history of compliance with Health and Safety Code section 1280.15 and other related state and federal law for the past three calendar years.

### (2)

The extent to which the health care facility detected violations and took preventative action to immediately correct and prevent past violations from recurring.

**(3)**

Factors outside the control of the health care facility as defined by section 79901(i).

There shall be no penalty if the health care facility developed and maintained disaster and emergency policies and procedures that were appropriately implemented during a disaster or emergency, if factors outside the control of the health care facility as referenced in 79901(i) were the sole cause of a breach.

**(4)**

Any other factors applicable to the specific circumstances surrounding the breach, as identified by the Department.

**(b)**

The Department may reduce a final penalty amount as calculated pursuant to section 79904 if the Department determines that the administrative penalty is unduly burdensome or excessive.