

96051.26 Adjustments to the Base Penalty

(a)

The base penalty determined in section 96051.25 shall be adjusted considering each of the following factors: (1) Nature, Scope, and Severity. The initial penalty shall be adjusted upward by 20 percent if the hospital's policies, postings, or screening practices are not in compliance with Health and Safety Code sections 127405 through 127435, inclusive. (2) Compliance history with related state and federal laws. A hospital's compliance history refers to its record of compliance with the Act and this chapter, and with related federal laws. Violations of the Act prior to January 1, 2022, and violations of this chapter prior to January 1, 2024, will not be considered. (A) The base penalty shall be adjusted downward by five percent if there are no violations of related state or federal laws within the three-year period immediately prior to the date of the violation. (B) The base penalty shall be increased by five percent if there are any violations of related state or federal laws within the three-year period immediately prior to the date of the violation. (C) The base penalty shall be increased 50 percent if all the following conditions are met: (i) The hospital has been assessed a penalty for prior violations of the Act or this chapter, within the three-year period immediately prior to the date of the violation. (ii) The previous violation is similar in nature to the current violation. (iii) The incident for which the current penalty is being assessed occurred after the hospital was notified of the Department's penalty

determination for the prior violation used to enhance the penalty. (3) Willful violation. The initial penalty shall be adjusted upward by 20 percent if the deficiency was the result of a willful violation. (A) "Willfulness," "willfully," or "willful" mean that the person doing an act or omitting to do an act intends the act or omission, and knows the relevant circumstances connected with the act or omission. (4) Factors beyond the hospital's control. For factors beyond the hospital's control that restrict the hospital's ability to comply with the requirements of the Act, the initial penalty shall be adjusted downward by 20 percent. (5) Immediate correction of the violation. When the Department determines that a hospital subject to an administrative penalty promptly corrects the noncompliance for which the administrative penalty was imposed, the base penalty shall be adjusted downward by 20 percent, provided all the following apply: (A) The hospital identified and immediately corrected the noncompliance before the noncompliance was identified by the Department. (B) The hospital initiated corrective action and took appropriate steps to prevent the violation from recurring, with prompt and detailed documentation of the action. (C) The hospital did not receive a penalty reduction under this subsection within the 12-month period prior to the violation.

(1)

Nature, Scope, and Severity. The initial penalty shall be adjusted upward by 20 percent if the hospital's policies, postings, or screening practices are not in compliance with Health and Safety Code sections 127405 through 127435, inclusive.

(2)

Compliance history with related state and federal laws. A hospital's compliance history refers to its record of compliance with the Act and this chapter, and with related federal laws. Violations of the Act prior to January 1, 2022, and violations of this chapter prior

to January 1, 2024, will not be considered. (A) The base penalty shall be adjusted downward by five percent if there are no violations of related state or federal laws within the three-year period immediately prior to the date of the violation. (B) The base penalty shall be increased by five percent if there are any violations of related state or federal laws within the three-year period immediately prior to the date of the violation. (C) The base penalty shall be increased 50 percent if all the following conditions are met: (i) The hospital has been assessed a penalty for prior violations of the Act or this chapter, within the three-year period immediately prior to the date of the violation. (ii) The previous violation is similar in nature to the current violation. (iii) The incident for which the current penalty is being assessed occurred after the hospital was notified of the Department's penalty determination for the prior violation used to enhance the penalty.

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The base penalty shall be adjusted downward by five percent if there are no violations of related state or federal laws within the three-year period immediately prior to the date of the violation.

(B)

The base penalty shall be increased by five percent if there are any violations of related state or federal laws within the three-year period immediately prior to the date of the violation.

(C)

The base penalty shall be increased 50 percent if all the following conditions are met: (i) The hospital has been assessed a penalty for prior violations of the Act or this chapter, within the three-year period immediately prior to the date of the violation. (ii) The previous violation is similar in nature to the current violation. (iii) The incident for which the current penalty is being assessed occurred after the hospital was notified of the Department's penalty determination for the prior violation used to enhance the penalty.

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The hospital has been assessed a penalty for prior violations of the Act or this chapter, within the three-year period immediately prior to the date of the violation.

(ii)

The previous violation is similar in nature to the current violation.

(iii)

The incident for which the current penalty is being assessed occurred after the hospital was notified of the Department's penalty determination for the prior violation used to enhance the penalty.

(3)

Willful violation. The initial penalty shall be adjusted upward by 20 percent if the deficiency was the result of a willful violation. (A) "Willfulness," "willfully," or "willful" mean that the person doing an act or omitting to do an act intends the act or omission, and knows the relevant circumstances connected with the act or omission.

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(4)

Factors beyond the hospital's control. For factors beyond the hospital's control that restrict the hospital's ability to comply with the requirements of the Act, the initial penalty shall be adjusted downward by 20 percent.

(5)

Immediate correction of the violation. When the Department determines that a hospital subject to an administrative penalty promptly corrects the noncompliance for which the administrative penalty was imposed, the base penalty shall be adjusted downward by 20 percent, provided all the following apply: (A) The hospital identified and

immediately corrected the noncompliance before the noncompliance was identified by the Department. (B) The hospital initiated corrective action and took appropriate steps to prevent the violation from recurring, with prompt and detailed documentation of the action. (C) The hospital did not receive a penalty reduction under this subsection within the 12-month period prior to the violation.

(A)

The hospital identified and immediately corrected the noncompliance before the noncompliance was identified by the Department.

(B)

The hospital initiated corrective action and took appropriate steps to prevent the violation from recurring, with prompt and detailed documentation of the action.

(C)

The hospital did not receive a penalty reduction under this subsection within the 12-month period prior to the violation.