

## Assisted Living Fees and Fines

### Fees

The legislature has set the licensing fees for assisted living facilities in statute (Minn. Stat. § 144.122(d)):

- Assisted living facilities with dementia care: \$3,000 plus \$100 per resident, and
- Assisted living facilities: \$2,000 plus \$75 per resident.

Due to a conflict with other law, the department cannot set fees by rulemaking without further legislative action. The statutory fees are the fees. Rulemaking for fee setting is moot.

Minn. Stat. § 16A.1283 (a) explicitly requires legislative approval for fees “notwithstanding any law to the contrary,” the department cannot set fees in rulemaking.

### Fines

We are seeking information from MDH’s legal and budget staff on whether or not we can include fines in this rule. Preliminary information indicates we can. Here is the State Statute section governing fines.

#### 14.045 AGENCIES; LIMITS ON PENALTIES AND FINES.

Subdivision 1. Limit on penalties.

An agency may not, under authority of rule, levy a total fine or penalty of more than \$700 for a single violation unless the agency has specific statutory authority to levy a fine in excess of that amount.

Subd. 2. Criminal penalty.

An agency may not, by rule, establish a criminal penalty unless the agency has specific statutory authority to do so.

Subd. 3. Factors.

(a) If a statute or rule gives an agency discretion over the amount of a fine, the agency must take the following factors into account in determining the amount of the fine:

- (1) the willfulness of the violation;
- (2) the gravity of the violation, including damage to humans, animals, and the natural resources of the state;
- (3) the history of past violations;
- (4) the number of violations;
- (5) the economic benefit gained by the person by allowing or committing the violation; and
- (6) other factors that justice may require.

(b) For a violation after an initial violation, the following factors must be considered in addition to the factors in paragraph (a):

- (1) similarity of previous violations to the current violation to be penalized;
- (2) time elapsed since the last violation;
- (3) number of previous violations; and

(4) response of the person to the most recent previous violation identified.

Subd. 4. Effect on other law.

This section does not affect the right of an agency to deny a permit, revoke a license, or take similar action, other than the imposition of a fine, even if the cost of the denial, revocation, or other action to the affected party exceeds \$700.

Subd. 5. Application.

Subdivisions 1, 2, and 4 apply only to fines and penalties imposed under rules for which notice of intent to adopt rules is published after July 1, 1996.