

3701-83-05.1 **Compliance actions, revocation, and operating without a license.**

(A) If the director determines that an HCF is operating without a license in violation of division (E)(1) of section 3702.30 of the Revised Code, the director shall do one or more of the following:

- (1) Notify the HCF that it is operating without a license and issue a written order that the HCF apply for a license. The order shall specify the time frame for filing a complete application in accordance with rule 3701-83-04 of the Administrative Code that shall not exceed thirty days after the date of the order;
- (2) Issue a written order that the HCF cease its operations. The department shall deliver the written order issued under section 3702.32 of the Revised Code to the HCF. The order shall be effective no later than fifteen days after the facility receives the order, and shall stay in effect until such time as specified by the director or until a license is issued;
- (3) Issue a written order that prohibits the HCF from performing certain types of services. The department shall deliver the written order issued under section 3702.32 of the Revised Code to the HCF. The order shall be effective on the date specified in the order and shall stay in effect until such time as specified by the director or until a license is issued;
- (4) Impose a civil penalty as provided under paragraph (A) of rule 3701-83-05.2 of the Administrative Code. The civil penalty shall not be less than one thousand dollars and not more than two hundred fifty thousand dollars;
- (5) Impose an additional civil penalty as provided under paragraph (D) of rule 3701-83-05.2 of the Administrative Code. The civil penalty shall not be less than one thousand dollars and not more than ten thousand dollars for each day that the HCF continues to operate without a license in violation of an order issued under paragraph (A) of this rule.

(B) The director may file a petition in the court of common pleas of the county in which a HCF is located for an injunction enjoining the facility from operating if the HCF is subject to an order issued:

- (1) Under paragraph (A)(1) of this rule but the HCF continues to operate in violation of such order after the time frame specified for filing an application;
or

- (2) Under paragraph (A)(2) of this rule but the HCF continues to operate or provide services in violation of such order.
- (C) If the director determines that the HCF is not complying with any provision of section 3702.30 of the Revised Code, other than a violation under division (E)(1) or (E)(2) of that section, any provision of Chapter 3701-83 of the Administrative Code, or any other rule adopted by the director under section 3702.30 of the Revised Code, the director may do any or all of the following ~~in accordance with Chapter 119. of the Revised Code:~~
- (1) Provide an opportunity to correct the violation within a specified period of time;
 - (2) Revoke, suspend, or refuse to renew the license;
 - (3) Prior to or during the pendency of an administrative hearing under Chapter 119. of the Revised Code, issue an order that prohibits the HCF from performing certain types of services. The order shall be effective on the date specified in the order;
 - (4) Impose a civil penalty as provided under paragraph (A) of rule 3701-83-05.2 of the Administrative Code. The civil penalty shall not be less than one thousand dollars and not more than two hundred fifty thousand dollars;
 - (5) Impose an additional civil penalty as provided under paragraph (E) of rule 3701-83-05.2 of the Administrative Code. The civil penalty shall not be less than five hundred dollars and not more than ten thousand dollars for each day that the HCF fails to correct the violation.
- (D) In determining which of the actions to take under paragraph (C) of this rule, the director may consider, but is not limited to, any or all of the following factors:
- (1) The danger of serious physical or life threatening harm to one or more patients of the HCF;
 - (2) The nature, duration, gravity, and extent of the violation;
 - (3) Whether the violation directly relates to patient care;
 - (4) The number, if any, of patients directly affected by the violation;

- (5) The extent of any actual or potential harm to patients;
 - (6) The actions taken by the HCF to correct the violation; and
 - (7) The compliance history of the HCF.
- (E) The director may file a petition in the court of common pleas of the county in which the facility is located for an injunction enjoining:
- (1) A HCF that is operating without a license from performing certain types of services if the HCF is subject to an order issued under paragraph (A)(3) of this rule but continues to perform the types of services prohibited by the order; or
 - (2) A licensed HCF from performing certain types of services if the HCF is subject to an order issued under paragraph (C)(3) of this rule but continues to perform the types of services prohibited by the order.
- (F) If, after reporting under division (E)(2) of section 3702.30 of the Revised Code that a physician failed to obtain informed consent under any provision of the Revised Code, the department finds that the physician has continued to engage in a pattern of violating the same informed consent provision at the HCF and that the HCF has failed to take reasonable steps to ensure that the physician does not continue the same violation at the HCF, the department may, after providing the HCF an opportunity for a hearing pursuant to Chapter 119. of the Revised Code, impose a civil penalty on the HCF. The penalty shall be not less than one thousand dollars and not more than fifty thousand dollars. For the purpose of this paragraph, "pattern" means a violation of the same provision of the Revised Code that reasonably could have been prevented by a facility's corrective action and was determined by the department to have occurred at least twice after the department made its report as provided in division (E)(2) of section 3702.30 of the Revised Code.