

3701-83-05.2

**Civil penalties.**

- (A) Except as provided under paragraph (B) of this rule, civil penalties imposed under paragraph (A)(4) or paragraph (C)(4) of rule 3701-83-05.1 of the Administrative Code for a violation of section 3702.30 of the Revised Code, Chapter 3701-83 of the Administrative Code, or any other rule adopted by the director under section 3702.30 of the Revised Code shall be imposed as follows:
- (1) If no harm has occurred to any patient, one thousand to fifty thousand dollars;
  - (2) If harm has occurred to one or more patients, fifty-one thousand to one hundred thousand dollars;
  - (3) If there has been permanent injury to one or more patients, one hundred one thousand to one hundred fifty thousand dollars; and
  - (4) If death has occurred to one or more patients, one hundred fifty-one thousand to two hundred fifty thousand dollars.
- (B) Except as otherwise required by law, if there has been a history of uncorrected violations of section 3702.30 of the Revised Code, Chapter 3701-83 of the Administrative Code, or any other rule adopted under section 3702.30 of the Revised Code that caused no actual harm to a patient, but had the potential to cause more than minimal harm, a fine of up to two hundred fifty thousand dollars may be imposed.
- (C) In determining the level of civil monetary penalties imposed under this paragraph, the total amount of fines for violations discovered during one inspection shall not exceed two hundred fifty thousand dollars.
- (D) Additional civil penalties imposed under paragraph (A)(5) of rule 3701-83-05.1 of the Administrative Code shall be imposed on a per day basis of one thousand to ten thousand dollars for each day that the HCF continues to operate without a license in violation of a written order issued under paragraph (A) of rule 3701-83-05.1 of the Administrative Code.
- (E) Additional civil penalties imposed under paragraph (C)(5) of rule 3701-83-05.1 of the Administrative Code shall be imposed on a per day basis of five hundred to ten thousand dollars for each day the HCF fails to correct the violation.
- (F) Civil penalties imposed under paragraph (F) of rule 3701-83-05.1 of the Administrative Code shall be imposed as follows:

- (1) If a physician failed to obtain informed consent from less than ten patients, but no patients were harmed, one thousand to twenty-five thousand dollars;
  - (2) If a physician failed to obtain informed consent from ten or more patients, but no patients were harmed, twenty-six thousand to fifty thousand dollars; and
  - (3) If harm occurs to one or more patients as a result of a physician's failure to obtain informed consent, thirty thousand to fifty thousand dollars per patient.
- (G) In determining the amount of civil penalties imposed under paragraphs (A) and (F) of this rule, the director may consider, but is not limited to, any or all of the following factors:
- (1) The compliance history of the HCF;
  - (2) The number of patients directly affected;
  - (3) The impact of the noncompliance on the patient or patients;
  - (4) Whether the violation is repetitive in nature or is similar to previous violations;
  - (5) The length or duration of the violation; and
  - (6) The time period between the current violation and any similar previous violation.
- (H) Except for civil penalties imposed upon an HCF under paragraph (A)(4) of rule 3701-83-05.1 of the Administrative Code, the HCF may appeal the imposition of civil penalties imposed under this rule in accordance with Chapter 119. of the Revised Code. If the HCF obtains a license or comes into compliance and waives the right to a hearing provided under Chapter 119. of the Revised Code, the civil penalty may be reduced up to fifty percent but shall not be less than one thousand dollars.
- (I) If the department issues more than one order, any administrative hearing resulting from such orders may be consolidated into one hearing. Consolidation of the hearings does not affect any effective dates prescribed in the orders.