

Testimony
Health and Human Services Committee
Thursday, December 10, 2009
North Dakota Department of Health

Good afternoon, Chairman Klein and members of the Administrative Rules Committee. My name is Arvy Smith, and I am the Deputy State Health Officer for the North Dakota Department of Health. I am here to provide testimony regarding fines and penalties of the Department of Health.

Most of the fines and penalties the department enforces are contained in North Dakota Century Code. These include environmental penalties, food and lodging licensing penalties, vital records fines, penalties for loan repayment programs, and domestic violence penalties. Penalties are included in administrative rule for violation of nursing facility rules, violation of electrolysis rules, violations of licensing standards of emergency medical services personnel and instructors, and failure to provide requested health-care data.

Nursing Facility Rules – The majority of the deficiencies cited are federal deficiencies, and the penalties are imposed by the U.S. Centers for Medicare and Medicaid (CMS). The state rules are needed for those facilities that do not participate in Medicare or Medicaid; however, they are seldom used. Staff does not recall an appeal of a licensure sanction in the last 20 years and would use the administrative agency adjudicative process if an appeal was requested. The validity of these rules has not been challenged.

Electrolysis Rules – The department has required corrective action for deficient practices and has not had to impose penalties. In some cases, annual licensure has been delayed due to failure to meet requirements. If there were a proceeding, the department would file a complaint with the appropriate county state's attorney and take it through the court system; however, the department has not had to do this. The validity of the rules has not been challenged.

Health-Care Data Rules – The penalties for failure to provide requested health-care data are duplicated in statute. The department has not imposed penalties regarding health-care data rules.

Emergency Medical Services Rules – The department may revoke licenses of emergency medical services personnel and training institutions and instructors through administrative rule (chapter 33-36). The department has processed actions through the administrative hearings office. One hearing has been

requested and the judge upheld our position. The validity of the rules has not been challenged.

At this time, we are not experiencing a need to transfer penalty provisions to statute.

This concludes my prepared comments. I am happy to answer any questions you may have.