**Section 350.287 Consideration of Factors for Assessing Penalties**

a) *In determining whether a penalty is to be imposed and in determining the amount of the penalty to be imposed, if any, for a violation, the Director shall consider the following factors*:

1) *The gravity of the violation, including the probability that death or serious physical or mental harm to a resident will result or has resulted; the severity of the actual or potential harm, and the extent to which the provisions of the* Act or this Part *were violated*. A penalty will be assessed when the Director finds that *death or serious physical or mental harm to a resident* has occurred or that the facility subjected residents to potential serious harm.

2) *The reasonable diligence exercised by the licensee and efforts to correct violations*. The Director will assess a monetary penalty upon finding that the violation recurred or continued, is widespread throughout the facility or evidences flagrant violation of the Act or this Part.

3) *Any previous violations committed by the licensee*. The Director will assess a penalty upon finding that the facility has been cited for similar violations and has failed to correct those violations as promptly as practicable or has failed to exercise diligence in taking necessary corrective action. The Director will also consider the compliance history of the facility for previous violations. Any change in the ownership and management of the facility will be considered in relation to the seriousness of previous violations.

4) *The financial benefit to the facility of committing or continuing the violation*. These benefits include, but are not limited to, diversion of costs associated with physical plant repairs, staff salaries, consultant fees or direct patient care services. (Section 3-306 of the Act)

b) At a hearing requested by a facility that challenges the appropriateness of any penalty imposed by the Department under this Section, the facility may present evidence as to any or all of the factors in subsections (a)(1) through (4). The Director will consider the evidence presented by the facility, or any evidence otherwise available to the Department, in determining whether a penalty is to be imposed and in determining the amount of the penalty to be imposed, if any, for a violation.

(Source: Added at 46 Ill. Reg. 10519, effective June 2, 2022)