**Section 390.287 Consideration of Factors for Assessing Penalties**

At any hearing requested by a facility that challenges the appropriateness of any penalty imposed by the Department, the facility may present evidence as to any or all of the following factors. The Director will then consider any evidence presented by the facility, or any evidence otherwise available to the Department, regarding the following factors 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.

a) *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 has knowingly subjected residents to potential serious harm.

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

c) *Any previous violations committed by the licensee*. The Director will assess a penalty when he or she finds 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 any evidence that the violations constitute a pattern of deliberate action by the facility. Any change in the ownership and management of the facility will be considered in relation to the seriousness of previous violations.

d) *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)

(Source: Added at 43 Ill. Reg. 3564, effective February 26, 2019)