

(1) THE EXISTENCE OF A DEFICIENCY OR DEFICIENCIES;
AND

(2) THE AMOUNT OF THE CIVIL MONEY PENALTY.

(L) (1) THE SECRETARY HAS THE BURDEN OF PROOF WITH RESPECT TO THE BASIS FOR IMPOSITION OF THE CIVIL MONEY PENALTY UNDER § 19-1402 AND THE AMOUNT OF THE CIVIL MONEY PENALTY UNDER § 19-1405.

(2) THE SECRETARY MUST MEET HIS BURDEN OF PROOF BY CLEAR AND CONVINCING EVIDENCE.

(M) A DECISION SHALL BE RENDERED BY THE HEARINGS OFFICE WITHIN 7 DAYS OF THE HEARING. THE DECISION SHALL BE THE FINAL AGENCY DECISION OF THE DEPARTMENT, SUBJECT TO JUDICIAL APPEAL.

19-1408.

(A) A NURSING FACILITY SUBJECT TO A CIVIL MONEY PENALTY SHALL HAVE THE RIGHT TO APPEAL A DECISION OF THE HEARINGS OFFICE UPHOLDING THE FINDING OF A DEFICIENCY OR DEFICIENCIES OR THE IMPOSITION OF A CIVIL MONEY PENALTY.

(B) SUCH APPEAL SHALL BE FILED WITHIN 30 DAYS OF THE ACTION TO BE APPEALED.

(C) THE APPEAL UNDER SUBSECTION (B) OF THIS SECTION SHALL BE TAKEN DIRECTLY TO THE CIRCUIT COURT OF THE JURISDICTION IN WHICH THE NURSING FACILITY IS LOCATED.

19-1409.

(A) ALL CIVIL MONEY PENALTIES IMPOSED UNDER THIS SECTION SHALL BE PLACED IN AN INTEREST BEARING ACCOUNT DURING ANY APPEAL UNDER § 19-1407 OR § 19-1408.

(B) IF THE CIVIL MONEY PENALTY IS REVERSED AS A RESULT OF AN APPEAL FILED BY THE NURSING FACILITY, THE AMOUNT OF THE CIVIL MONEY PENALTY, WITH INTEREST, SHALL BE RETURNED TO THE NURSING FACILITY WITHIN 14 DAYS OF THE REVERSAL.

(C) IF THE CIVIL MONEY PENALTY IS NOT APPEALED OR IF IT IS UPHOLD FOLLOWING AN APPEAL, THE AMOUNT COLLECTED, TOGETHER WITH AN ACCRUED INTEREST SHALL BE PLACED IN A FUND TO BE ESTABLISHED BY THE SECRETARY AND SHALL BE APPLIED EXCLUSIVELY FOR THE PROTECTION OF THE HEALTH OR PROPERTY OF RESIDENTS OF NURSING FACILITIES THAT HAVE BEEN FOUND TO HAVE DEFICIENCIES, INCLUDING PAYMENT FOR THE COSTS OF RELOCATION OF RESIDENTS TO OTHER FACILITIES, MAINTENANCE OR OPERATION OF A NURSING FACILITY PENDING CORRECTION OF DEFICIENCIES OR CLOSURE, AND REIMBURSEMENT OF RESIDENTS FOR PERSONAL FUNDS LOST.