

§ 58-56A-30. Civil penalties for violations; administrative procedure.

(a) Whenever the Commissioner has reason to believe that a pharmacy benefits manager has violated any of the provisions of this Article with such frequency as to indicate a general business practice, the Commissioner may, after notice and opportunity for a hearing, proceed under the appropriate subsections of this section.

(b) If, under subsection (a) of this section, the Commissioner finds a violation of this Article, the Commissioner may order the payment of a monetary penalty or petition the Superior Court of Wake County for an order directing payment of restitution as provided in subsections (d) and (e) of this section, or both. Each day during which a violation occurs constitutes a separate violation.

(c) If the Commissioner orders the payment of a monetary penalty pursuant to subsection (b) of this section, the penalty shall not be less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000) per day for each prescription drug resulting from the pharmacy benefit manager's failure to comply with G.S. 58-56A-5. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation, the amount of money that inured to the benefit of the violator as a result of the violation, whether the violation was committed willfully, and the prior record of the violator in complying or failing to comply with laws, rules, or orders applicable to the violator. The clear proceeds of the penalty shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Payment of the civil penalty under this section shall be in addition to payment of any other penalty for a violation of the criminal laws of this State.

(d) Upon petition of the Commissioner to the court pursuant to subsection (b) of this section, the court may order the pharmacy benefits manager who committed a violation under this Article to make restitution in an amount that would make whole any pharmacist harmed by the violation. The petition may be made at any time and also in any appeal of the Commissioner's order.

(e) Upon petition of the Commissioner to the court pursuant to subsection (b) of this section, the court may order the pharmacy benefits manager who committed a violation under this Article to make restitution to the Department for expenses under subsection (f) of this section, incurred in the investigation, hearing, and any appeals associated with the violation in such amount that would reimburse the agency for the expenses. The petition may be made at any time and also in any appeal of the Commissioner's order.

(f) The Commissioner may contract with consultants and other professionals with relevant expertise as necessary and appropriate to conduct investigation, hearing, and appeals activities as provided in this section. These contracts shall not be subject to G.S. 114-2.3, G.S. 147-17, or Articles 3, 3C, and 8 of Chapter 143 of the General Statutes, together with rules and procedures adopted under those Articles concerning procurement, contracting, and contract review.

(g) Nothing in this section prevents the Commissioner from negotiating a mutually acceptable agreement with any pharmacy benefits manager as to any civil penalty or restitution.

(h) Unless otherwise specifically provided for, all administrative proceedings under this Article are governed by Chapter 150B of the General Statutes. Appeals of the Commissioner's orders under this section shall be governed by G.S. 58-2-75. (2015-273, s. 2; 2016-78, s. 6.3; 2021-161, s. 1(b).)