

17—5.14 (231) Correction of deficiencies.

5.14(1) Remedies. The purpose of remedies is to ensure prompt action is taken by an area agency on aging to correct deficiencies arising from failure to perform as identified by this rule. The department shall determine the remedies to be applied to the area agency on aging for failure to perform.

5.14(2) Number of remedies. The department may apply one or more remedies for each deficiency constituting failure to perform or for all deficiencies constituting failure to perform.

5.14(3) Notification requirements. The department shall give the area agency on aging written notice of remedy at least 15 calendar days before the effective date of the remedy. The written notice of remedy shall include the following:

- a. The nature of the failure to perform.
- b. The remedy imposed.
- c. The effective date of the remedy.
- d. The right to appeal the determination leading to the remedy.

5.14(4) Factors to be considered in selecting remedies.

a. In order to select the appropriate remedy, the department shall determine the seriousness of the failure to perform. To determine the seriousness of the failure to perform, the department shall consider whether the area agency on aging's failure(s) to perform:

- (1) Is isolated.
- (2) Constitutes a pattern.
- (3) Is broad in scope.
- (4) Creates a financial burden for the department, other area agencies on aging, or the aging network.
- (5) Creates an administrative burden for the department, other area agencies on aging, or the aging network.

b. In selecting an appropriate remedy, the department may also consider the area agency on aging's prior history of failure to perform in general and specifically with reference to the cited failure to perform.

5.14(5) Available remedies. The department may select one or more of the following remedies with reference to a cited failure to perform:

a. *Directed in-service training.* The department may require the staff of an area agency on aging to attend an in-service training program if education is likely to correct the failure to perform. The area agency on aging is responsible for the payment for the directed in-service training.

b. *Department monitoring.* The department may require an area agency on aging to receive increased monitoring by the department. The frequency and duration of the monitoring is within the discretion of the department.

c. *Directed plan of correction.* The department may develop a plan of correction and require an area agency on aging to take action within specified time frames.

d. *Reduction of funding.* The department may reduce the amount of funding distributed.

e. *Investigative audit.* The department may require an area agency on aging receive an investigative audit. The area agency on aging is responsible for the payment for this investigative audit.

f. *Other remedies.* The department may also impose other remedies, as appropriate.

g. *Dedesignation.* The department may request dedesignation of an area agency on aging pursuant to rule 17—4.6(231).

5.14(6) Duration of remedies. Remedies shall continue until:

a. The area agency on aging has achieved substantial compliance as determined by the department or based upon a revisit or after an examination of credible written evidence that the department can verify without an on-site visit; or

b. The area agency on aging is dedesignated.

5.14(7) Mandatory plan of correction. Each area agency on aging that has been cited for a failure to perform shall submit a plan of correction for approval by the department regardless of which remedies are applied.

5.14(8) *Procedures for plan of correction.* Within 30 calendar days following receipt of the written notice of remedy pursuant to subrule 5.14(3), the area agency on aging shall submit a plan of correction to the department.

a. Contents of plan. The plan of correction shall contain the following information:

- (1) How the area agency on aging will correct the failure to perform;
- (2) How the area agency on aging will act to protect consumers within the affected area;
- (3) The measures the area agency on aging will take or the systems it will alter to ensure that the problem does not reoccur;
- (4) How the area agency on aging plans to monitor its performance to make sure that solutions are sustained; and
- (5) The date(s) when corrective action will be completed.

b. Review of plan. The department shall review the plan of correction within 30 calendar days of receipt. The department may request additional information or revisions to the plan, which shall be provided by the area agency on aging as requested.

5.14(9) *Appeal of a determination of failure to perform.*

a. An area agency on aging may request a hearing on a determination of a failure to perform that leads to a remedy citation. The affected area agency on aging shall file the request for hearing in writing to the department within 60 calendar days from receipt of the written notice of remedy.

b. Hearings shall be conducted pursuant to 17—Chapter 13, with an administrative law judge appointed as the presiding officer and with the department as the final decision maker with subject matter jurisdiction.

c. An area agency on aging may not appeal the choice of remedy, including the factors considered by the department in choosing the remedy.