

Administrative Rule Language Answers by State

Question: We are cleaning up our Administrative Rules now that they are (mostly) operationalized-with some trepidation at the process, by they really need it. The question I have of you is language related to withdrawal of designation or “Denial, Suspension, and Revocation”. That was never actually spelled out in our Rules. Do you have language you think is really clear and have you ever had to use it? Or wish you had written your language more clearly? I have some older examples (Texas 2006, Minnesota 2005) just wondered if you could share your wisdom.

Arizona

Here is Arizona’s rules regarding denial or revocation of designation. Although, we haven’t needed them yet, I believe they are fairly clear, that is if you have the rest of the rules to refer back to.

R9-25-1312. Denial or Revocation of Designation (A.R.S. §§ 36-2202(A)(4), 36-2209(A)(2), and 36-2225(A)(4))

- A. The Department may deny or revoke designation if an owner:
 - 1. Has provided false or misleading information to the Department;
 - 2. Is not eligible for designation under R9-25-1302(A) or (B) or, if applicable, R9-25-1305(B) or (F);
 - 3. Fails to submit to the Department all of the information requested in a written request for additional information within the time prescribed in R9-25-1315 and Table 1;
 - 4. Fails to submit a written corrective action plan as requested and required under R9-251310 or R9-25-1311;
 - 5. Fails to comply with a written corrective action plan accepted by the Department under R9-25-1310 or R9-25-1311;
 - 6. Fails to allow the Department to enter the premises of the owner’s health care institution, to interview personnel, or to review documents that are not documents privileged under federal or state law; or
 - 7. Fails to comply with any applicable provision in A.R.S. Title 36, Chapter 21.1 or this Article.
- B. In determining whether to deny or revoke designation, the Department shall consider:
 - 1. The severity of each violation relative to public health and safety;
 - 2. The number of violations;
 - 3. The nature and circumstances of each violation;

Colorado

I'm including our language on all discipline since it is inter-related. And yes we have had to use it. While we have never had to actually go to court, we have used the rules to have frank discussions with facilities about what will happen next when we move toward a denial or revocation. The reality of that process is somewhat ugly and potentially very public. It costs time, money and does not necessarily get us all to our common goal which is great trauma care. In light of those discussions we have had several facilities withdraw applications entirely and drop out of the system for a while or permanently. We have had other facilities request that their application and site review be considered for a lower level of designation than originally planned.

Basically, I think these rules work pretty well. I wish we had the power to do a conditional designation, but our statute does not authorize us to do so. Instead, we have to designate or deny. If we designate a facility that has a less than stellar review, then it is still for a full three years, with a plan of correction and a re-review in a year. The clear expectation is that all criteria will be met at the re-review or the department will move toward revocation.

The full citation is 6 CCR 1015-4, Chapter Three -Designation of Trauma Facilities

“302. Enforcement and Disciplinary Process

1. Unscheduled or Interim, Focused or Re-Reviews

A. At any time the department may require and conduct an unscheduled or interim, focused or re-review of a currently designated facility based upon, but not limited to, the following criteria:

- (1) Recent review results,
- (2) A complaint, or
- (3) Monitoring of the EMTS system.

2. Plans of Correction

A. Prior to making a designation decision, or after an unscheduled or interim, focused or re-review, the department shall require a plan of correction from any facility with review deficiencies and/or met with reservations.

B. A plan of correction shall include, but not be limited to, the following:

- (1) Identification of the problem(s) with the current activity and what the facility will do to correct each deficiency,
- (2) A description of how the facility will accomplish the corrective action,
- (3) A description of how the facility will monitor the corrective action to ensure the deficient practice is remedied and will not recur,
- (4) A timeline with the expected implementation and completion date. Completion date is the date that the facility deems it can achieve compliance.

C. Completed plans of correction shall be:

- (1) Submitted to the department in the form and manner required by the department,
- (2) Submitted within thirty (30) calendar days after the date of the department's written notice of deficiencies and/or criteria identified as met with reservations when areas of non-compliance with rules pertaining to the designation of trauma centers have been identified, and
- (3) Signed by the facility administrator and facility trauma director.

D. The department has the discretion to approve, modify or reject plans of correction.

Code of Colorado Regulations 31

(1) If the plan of correction is accepted, the department shall notify the facility by issuing a written notice of acceptance within thirty (30) calendar days of receipt of the plan.

(2) If the plan of correction is unacceptable, the department shall notify the facility in writing, and the facility shall re-submit changes to the department within fifteen (15) calendar days of the date of the written notice.

(3) If the facility fails to comply with the requirements or deadlines for submission of a plan or fails to submit requested changes to the plan, the department may reject the plan of correction and impose disciplinary sanctions as set forth below.

(4) If the facility fails to timely implement the actions agreed to in the plan of correction, the department may impose disciplinary sanctions as set forth below.

3. Re-Review Fee Structure

A. In the event the department designates a facility with a required interim, focused or re-review per Section 302.1.A.(1) above, the facility shall submit the required fee in the manner specified by the department. The methodology used to determine the re-review fee for an existing facility is:

Levels I and II:

100% of costs of review team excluding state observer time

Levels III through V:

75% of costs of review team excluding state observer time

B. These fees shall apply to all on-site trauma re-reviews conducted subsequent to the effective date of these rules.

4. Denials

A. The department may deny an application for Level I-V designation to a new, replacement or existing facility for reasons including, but not limited to, the following:

(1) The facility does not meet the criteria for designation as set forth in these regulations,
(2) The facility's application or accompanying documents contain a false statement of material fact,

(3) The facility refuses any part of an on-site review,

(4) The facility's failure to comply with or to successfully complete a plan of correction, or

(5) The facility is substantially out of compliance with any of the department's regulations.

B. If the facility does not meet the level of designation criteria for which it has applied, the department may recommend designation at a lesser level. Such action, unless agreed to by the applicant, shall represent a denial of the application.

C. If the department denies an application for designation or waiver, the department shall provide the facility with a notice explaining the basis for the denial. The notice shall also inform the facility of its right to appeal the denial and the procedure for appealing the denial.

Code of Colorado Regulations 32

D. Appeals of departmental denials shall be conducted in accordance with the State Administrative Procedure Act, Section 24-4-101, et seq. , C.R.S.

5. Revocation or Temporary Suspension

A. The department may revoke the designation of a facility if any owner, officer, director, manager, or other employee:

(1) Fails or refuses to comply with the provisions of these regulations,

(2) Makes a false statement of material fact about facility capabilities or other pertinent circumstances in any record or in a matter under investigation for any purposes connected with this chapter,

(3) Prevents, interferes with, or attempts to impede in any way, the work of a representative of the department in implementing or enforcing these regulations or the statute,

(4) Falsely advertises or in any way misrepresents the facility's ability to care for trauma patients based on its designation status,

(5) Is substantially out of compliance with these regulations and has not rectified such noncompliance,

(6) Fails to provide reports required by the registry or the state in a timely and complete fashion, or

(7) Fails to comply with or complete a plan of correction in the time or manner specified.

B. If the department revokes or temporarily suspends a designation or waiver, it shall provide the facility with a notice explaining the basis for the action. The notice shall also inform the facility of its right to appeal and the procedure for appealing the action.

C. Appeals of departmental revocations or suspensions shall be conducted in accordance with the State Administrative Procedure Act, Section 24-4-101, et seq. , C.R.S.

6. Summary Suspension

A. The department may summarily suspend a designation or waiver if it finds, after investigation, that a facility has engaged in a deliberate and willful violation of these regulations or that the public health, safety, or welfare requires immediate action.

B. If the department summarily suspends a designation or waiver, it shall provide the facility with a notice explaining the basis for the summary suspension. The notice shall also inform the facility of its right to appeal and that it is entitled to a prompt hearing on the matter.

C. Appeals of summary suspensions shall be conducted in accordance with the State Administrative Procedure Act, Section 24-4-101, et. seq. , C.R.S.

7. Redesignation at a lesser level

Code of Colorado Regulations 33

A. The department may determine that a facility be redesignated at a lesser level due to the facility's inability to meet the designation criteria at its current level, notwithstanding any waiver previously granted.

B. If the department seeks to redesignate the facility, it shall provide the facility with a notice explaining the basis for its action. The notice shall also inform the facility of its right to appeal and the procedure for appealing the action.

C. Appeals of involuntary redesignation shall be conducted in accordance with the State Administrative Procedure Act, Section 24-4-101, et. seq. , C.R.S."

Idaho

Here is Idaho's. Ours is pretty straight forward. Since we just started designating, we have not had to use it yet.

REVOCAION AND SUSPENSION.

01. Revocation. The TSE Council may revoke the designation of a center or a waiver when an owner, officer, director, manager, or other employee: (3-24-16)

- a. Fails or refuses to comply with the provisions of these rules; (3-24-16)
- b. Makes a false statement of material fact about the center's capabilities or other pertinent circumstances in any record or matter under investigation for any purposes connected with these rules; (3-24-16)
- c. Prevents, interferes with, or attempts to impede in any way, the work of a representative of the TSE
- d. Falsely advertises, or in any way misrepresents the facility's ability to care for patients based on its designation status; (3-24-16)
- e. Is substantially out of compliance with these rules and has not rectified such noncompliance; (3-24-16)
- f. Fails to provide reports required by the TSE registry or the Department in a timely and complete fashion; or (3-24-16)
- g. Fails to comply with or complete a plan of correction in the time or manner specified. (3-24-16)

02. Suspension. The TSE Council may suspend a center's designation or waiver when it finds, after investigation, that the center has engaged in a deliberate and willful violation of these rules, or that the public's health, safety, or welfare is endangered. (3-24-16)

03. Notification and Appeal. When the TSE Council revokes or suspends a center's designation or waiver, it must provide the center with a written notification of the action and the basis for the action. The notice will inform the center of the right to appeal and the procedure to appeal the action under the provisions in IDAPA

16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." (3-24-16)

Minnesota

144.605 DESIGNATING TRAUMA HOSPITALS

Subd. 8. Loss of designation.

The commissioner may refuse to designate or redesignate or may revoke a previously issued trauma hospital designation if a hospital does not meet the criteria of the statewide trauma plan, in the interests of patient safety, or if a hospital denies or refuses a reasonable request by the commissioner or the commissioner's designee to verify information by correspondence or an on-site visit.

Oregon

Below is the specific verbiage regarding suspension /revocation:

333-200-0295

(6) The Division may re-survey a trauma system hospital, immediately suspend or revoke a trauma system hospital approval or place a hospital on probation under any of the following circumstances:

(a) Substantial failure, for any reason, of a hospital to comply with these rules, all current state and area trauma system standards, and all policies, protocols and procedures as set forth in the approved area trauma system plan; or

(b) Submission of reports to the Division that are incorrect or incomplete in any material aspect.

(7) Except as set forth in OAR 333-200-0285(3), occasional failure of a trauma system hospital to meet its obligations will not be grounds for probation, suspension or revocation by the Division if the circumstances under which the failure occurred:

(a) Do not reflect an overall deterioration in quality of and commitment to trauma care; and

(b) Are corrected immediately by the hospital.

(8) Failure of a trauma system hospital to timely and accurately report to the Division all data required by rule or statute is grounds for suspension or revocation as a trauma hospital.

(9) A hospital which is dissatisfied with the decision of the Division regarding revocation, suspension, or probation in section (6) or (8) of this rule may request a contested case hearing pursuant to ORS chapter 183.

Washington State

Washington state rule language related to revoke and suspension is below. The entire rule can be found here (RCW 70.168.070 Provision of trauma care service — Designation)

<http://app.leg.wa.gov/rcw/default.aspx?cite=70.168.070>

Designations are valid for a period of three years and are renewable upon receipt of a request for renewal prior to expiration from the hospital or health care facility. When an authorization for designation is due for renewal other hospitals and health care facilities in the area may also apply and compete for designation. Regional emergency medical and trauma care councils shall be notified promptly of designated hospitals and health care facilities in their region so they may incorporate them into the regional plan as required by this chapter. The department may revoke or suspend the designation should it determine that the hospital or health care facility is substantially out of compliance with the standards and has refused or been unable to comply after a reasonable period of time has elapsed. The department shall promptly notify the regional emergency medical and trauma care planning and service region of suspensions or revocations. Any facility whose designation has been revoked or suspended may request a hearing to review the action by the department as provided for in chapter 34.05 RCW.