

Bo. of Health  
W. I. A.

FILE NOTE

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TO: Board of County Commissioners, acting as the Board of Health

FROM: Trina Laidlaw, Assistant County Counsel

AGENDA DATE: April 15, 2009

AGENDA ITEM: Order/ In the Matter of Consideration of the Adoption of a Policy and Rules Requiring the Nutrition Labeling of Food Items at Chain Restaurants

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On April 1, 2009, the Board of Health conducted a first reading of the title of the proposed rules and the policy on requiring nutrition labeling of food items at chain restaurants.

I am attaching a revised order which adds several "WHEREAS" clauses relating to the procedural history of this item and how it has come before you. Mr. Rockstroh and other HHS Department staff have reviewed these changes and have no objection. These clauses cover the county's and the Public Health Division's responsibilities under the chronic disease prevention program, DHS policies and the county's plan. The original order did include a "WHEREAS" clause which noted that the County, as the local public health authority and through the Department of Health and Human Services is responsible for addressing the prevention of chronic diseases related to physical inactivity and poor nutrition, including obesity and promoting healthy eating habits. These new "WHEREAS" clauses expand this concept. The process used was consistent with the county's obligations as part of the statewide public health system and with DHS requirements and policies.

The revised order adds "WHEREAS" clauses which:

1. State the requirement of Lane County, as the public health authority to have plans, including work plans approved by DHS, and in order to receive DHS funding;
2. Lane County's approved plans include chronic disease prevention, including addressing the lack of physical activity, poor nutrition and promoting healthy eating habits, healthy retail environment, and the plan includes menu labeling for chain restaurants;
3. The Public Health Division has responsibility to implement the chronic disease prevention program and plans;
4. Adopting countywide menu labeling for chain restaurants would be consistent with the county's plan and the chronic disease prevention program and would assist the Public Health Division in its implementation responsibilities.

In addition, I have revised the initial preface of the Lane Code rules to reflect the Board of Health's procedure and authority for adopting its rules, and have not made any substantive changes to the rules themselves.

**THE BOARD OF COUNTY COMMISSIONERS, LANE COUNTY, OREGON  
SITTING AS THE LANE COUNTY BOARD OF HEALTH**

**ORDER:**        ) ORDER \_\_\_\_\_ IN THE MATTER OF CONSIDERATION OF  
                  ) THE ADOPTION OF A POLICY AND RULES REQUIRING THE  
                  ) NUTRITION LABELING OF FOOD ITEMS AT CHAIN  
                  ) RESTAURANTS  
                  )

THIS MATTER now comes before the Board of County Commissioners for Lane County, acting as the Lane County Board of Health; and

WHEREAS, the Lane County Board of Commissioners constitutes and is the Lane County Board of Health ("Board of Health") under ORS 431.410 and ORS 431.415; and

WHEREAS, Lane County as a public health authority is required to submit and obtain approval from the state Department of Human Services ("DHS") for a countywide public health plan and work plans, and in order to receive funding through DHS for public health activities; and

WHEREAS, Lane County's approved plan and work plans and funding includes a DHS program element relating to chronic disease prevention and management. This includes addressing lack of physical activity, poor nutrition and promoting healthy eating habits, healthy retail environments, and addressing menu labeling for chain restaurants; and

WHEREAS, the Public Health Division has responsibility to implement the chronic disease prevention program and plans; and

WHEREAS, the Nutrition Council of Oregon and the Oregon Coalition for Promoting Physical Activity published *A Healthy Active Oregon: Statewide Physical Activity and Nutrition Plan 2007-2012* (Community Objectives and Strategies III.n): "Restaurants shall expand and promote options for healthy foods, beverages, and meals by providing caloric content and other key nutritional information;" and

WHEREAS, consumers have difficulty making informed choices about food purchases in restaurants because of the absence of relevant nutrient information; and

WHEREAS, the Lane County Board of Health makes these findings:

A. Obesity is one of the greatest public health challenges facing the nation and the communities of Lane County.

B. Americans eat an increasing number of meals outside the home, and such meals are linked to higher caloric intake.

C. The Federal Nutrition Labeling and Education Act requires food manufacturers to provide nutrition information on nearly all packaged foods but exempts restaurants from that requirement.

D. Competition within the food industry is healthy and desirable, and the availability of nutrition information can serve as another factor to inform consumer choices.

E. Nutrition labeling in fast food and chain restaurants is well-supported by the public.

F. The United States Surgeon General, the Food and Drug Administration, the National Academies' Institute of Medicine, the American Heart Association, the American Diabetes Association, and the American Medical Association have recommended the provision of nutritional information at restaurants as a strategy to address rising obesity rates.

G. The current system of voluntary nutritional labeling at restaurants is inadequate with approximately half of the largest chain restaurants failing to provide any nutritional information about their menu items.

H. Nutrition labeling is one tool to empower Lane County residents to take greater control of their own health and make healthier choices about what they eat.

WHEREAS, adopting countywide menu labeling rules for chain restaurants would provide consumers with basic nutrition information and other product information about foods sold at chain restaurants in Lane County so that consumers can make informed food choices; and

WHEREAS, adopting countywide menu labeling rules for chain restaurants would be consistent with the chronic disease prevention program, the county plans, and the Public Health Division's implementation responsibilities; and

WHEREAS, first and second readings of the proposed policy and order adopting rules have been completed; and

WHEREAS, Board of County Commissioners, sitting as the Lane County Board of Health, has heard public testimony, both for and against the proposed policy and order adopting rules and has carefully weighed the relative benefits and determined adoption to be of benefit to the residents of Lane County;

NOW THEREFORE, IT IS HEREBY RESOLVED AND ORDERED that the Lane County Board of Health adopts the policy and findings set forth in this order; and

IT IS HEREBY FURTHER RESOLVED AND ORDERED, that the following rules set forth in Exhibit A are adopted with respect to Chain Restaurant Nutrition Labeling, and

IT IS HEREBY FURTHER RESOLVED AND ORDERED, that these rules should be published in the Lane Code to provide ease of public access as follows:

**NEW SECTION**

9.710 – 9.730 (inserted as pages 9.29 to 9.34)

IT IS FURTHER HEREBY ORDERED that if any provision of this policy or its application to any person or circumstance is held invalid, the remainder of the policy or regulation of the policy to other persons or circumstances shall not be affected; and

IT IS FURTHER HEREBY RESOLVED that the Board of Commissioners, acting as the Lane County Board of Health, encourages the use of seasonal and fresh produce and products and encourages residents to support their local farmers' markets.

DATED this \_\_\_\_\_ day of April, 2009.

Pete Sorenson, Chair  
Lane County Board Of Commissioners

APPROVED AS TO FORM  
Date 4/13/09 Lane County  
[Signature]  
OFFICE OF LEGAL COUNSEL

## **CHAIN RESTAURANT NUTRITION LABELING**

The following rules were adopted by the Lane County Board of Health based on its policy order (Board of Health Order #04-1-2 with decision on April 15, 2009) and published here pursuant to LM 9.901. The Board of Health is granted specific authority by the state, including ORS 431.415, for these countywide actions.

### **A. 9.711 Authority, Purpose and Policy.**

The purpose of this policy is to provide Lane County residents with basic nutrition information about prepared foods sold at chain restaurants licensed by Lane County Public Health. Readily available product disclosures are necessary to allow customers to make informed purchasing decisions about the food that they and their children and dependents eat. Further, product disclosures help foster free market competition based on the true nutritional quality of chain restaurants' products. The Lane County Board of Health has adopted this policy and following rules pursuant to ORS 431.415.

### **B. 9.715 Definitions.**

The definitions in this section apply throughout these rules unless the context clearly requires otherwise:

(1) "Restaurant" means any establishment where food or drink is prepared for consumption by the public or any establishment where the public obtains food or drink so prepared in form or quantity consumable then and there, whether or not it is consumed within the confines of the premises where prepared, and also includes establishments that prepare food or drink in consumable form for service outside the premises where prepared, but does not include railroad dining cars, bed and breakfast facilities or temporary restaurants.

(2) "Chain Restaurant" means a Restaurant that is licensed by Lane County as a full service restaurant, and that is part of an affiliation of Restaurants and for which the affiliated Restaurants:

- (a) Have at least fifteen or more restaurants within the United States;
- (b) Sell Standard Menu Items that comprise at least eighty percent of Menu Items served in at least fifteen restaurants; and
- (c) Operate under the same or substantially the same brand name, regardless of whether the restaurants are subject to the same ownership or type of ownership (e.g., corporate ownership, individually-owned franchise, etc.).

(3) "Food Product" means a discrete item of Food such as a hamburger or a soda that is offered for sale separately or as a part of a combination meal. A "Food Product" includes each different size or flavor offered. A Food Product does not include ingredients except ingredients that are sold separately, such as a slice of cheese added to a hamburger for an additional charge.

(4) "Food Tag" means any informational label placed in proximity to an individual Food Product it identifies or characterizes for example:

- (a) A label placed next to a cherry pie showing a picture of a cherry and listing the price per slice, or
- (b) A label placed next to a container of pasta in a salad bar with the text, "Pesto Pasta Salad".

Food Tag is not synonymous with a Menu or a Menu Board.

(5) "Menu" means a printed or pictorial list of Food Products offered for sale. A Menu is intended to assist customers in ordering Food Products whether the ordering is done on the restaurant premises or off premises (for example, a phone-in menu or take out menu). A menu does

not include printed or pictorial materials intended for the purpose of marketing.

(6) "Menu Board" means any posted list or pictorial display of Food Products offered for sale. A Menu Board may be posted inside or outside a restaurant, and is typically designed to be visible to multiple customers, and/or visible at a moderate distance. A Menu Board is intended to assist customers in ordering Food Products, and may take various forms, including but not limited to, a back-lit marquee sign above an ordering counter, a chalk board or other hand-written board, or a drive-through area signboard. A Menu Board does not include posted text or pictorial materials intended for the purpose of marketing.

(7) "Menu Item" means

(a) A single Food Product listed on a Menu, Menu Board, or Food Tag, or

(b) A combination of Food Products offered together on a Menu, Menu Board, or Food Tag, for example, a "kids meal" combining a hamburger, french-fries, and a carton of milk.

(8) "Standard Menu Item" means a Menu Item that is essentially the same between affiliated restaurants and prepared using a consistent standardized recipe.

(9) "Self-Service Item" means any Food Product or Menu Item that customers in a restaurant are permitted to obtain without assistance of a Restaurant employee or agent, for example, foods offered at a salad bar or buffet line. Condiments placed on a dining table or on a counter for general use without charge are not considered "Self Service Items".

(10) A Supplemental Menu Board is an alternative printed or pictorial list of Menu Items offered for sale and provides the full set of nutrition information required by Lane Code 9.720(1) for each Menu Item. A "Supplemental Menu Board" must be similar in appearance to the Menu Board, and must list food categories and Menu Items in the same order as these appear on the Menu Board. All nutritional information required by Lane Code 9.720(1) shall be displayed next to each Menu Item on the Supplemental Menu Board. The nutrition labeling shall be easily readable, in a typeface similar to the Menu Board, clear and conspicuous, and at least as prominent in size and appearance as that used to post either the name or price of the Menu Item. The use of abbreviations is acceptable (e.g. cal for calorie). The Supplemental Menu Board shall include, in an easily readable, clear and conspicuous manner, the following statement: "Recommended limits for a 2,000 calorie daily diet are 20 grams of saturated fat and 2,300 milligrams of sodium. A supplemental menu is not required to contain photos or menu item descriptions that may appear on the menu.

(11) A "Supplemental Menu" is an alternative printed or pictorial list of Menu Items offered for sale and provides the full set of nutrition information required by Lane Code 9.720(1) for each Menu Item. A "Supplemental Menu" must be similar in appearance to the Menu, and must list food categories and Menu Items in the same order as these appear on the Menu. All nutritional information required by Lane Code 9.720(1) shall be displayed next to each Menu Item on the Supplemental Menu. The nutrition labeling shall be easily readable, in a typeface similar to the Menu, and in a font no less than nine point. The use of abbreviations is acceptable (e.g. cal for calorie). A supplemental menu is not required to contain photos or menu item descriptions that may appear on the menu.

(12) A "Menu Insert" is an additional printed or pictorial list of Menu Items offered for sale that is intended to be used along with a Menu in order to provide the full set of nutrition information required by Lane Code 9.720(1) for each Menu Item. A "Menu Insert" must be similar in appearance to the Menu it accompanies, and must list food categories and Menu Items in the same order as these appear on the Menu. All nutritional information required by Lane Code 9.720(1) shall be displayed next to each Menu Item on the Menu Insert. The nutrition labeling shall be easily readable, in a typeface similar to the Menu, and in a font no less than nine point. The use of abbreviations is acceptable (e.g. cal for calorie). A Menu Insert is not required to contain photos or menu item descriptions that may appear on the menu.

(13) "Reasonable basis or reasonable bases" means any reliable and verifiable method for determining calorie and nutrient contents of Food Products offered for sale by the Chain Restaurant. These may include the use of calorie and nutrient databases, cookbooks, laboratory analyses,

and other reliable and verifiable methods of analysis.

**C. 9.720 Food Nutrition Labeling Requirements.**

(1) **Required Product Information.** Each Chain Restaurant shall accurately ascertain, and make available to customers the following product information for each Menu Item, as the item is usually prepared and offered for sale:

- (a) Total calories;
- (b) Total grams of saturated fat;
- (c) Total grams of trans fat;
- (d) Total grams of carbohydrates;
- (e) Total milligrams of sodium.

(2) **Food Item Exclusions and Exemptions.** Requirement Lane Code 9.720(1) does not apply to:

- (a) Food Products or Menu Items that are offered for sale for less than ninety (90) days in a calendar year;
- (b) Condiments available for use without charge.
- (c) Alcoholic beverages not listed as Menu Items.
- (d) Unopened pre-packaged food products that are not intended to be part of the standard menu item or combination meal. Examples include a jar of sauce or dressing intended primarily for home use, or a bag of coffee beans. In contrast, pre-packaged food products that are intended to be part of the standard menu item or combination meal (e.g. a bag of potato chips that comes as part of the meal) must be included in Required Product Information per Lane Code 9.720(1).

(3) **Nutrition Labeling on Menus.** Each Chain Restaurant that uses a Menu shall list the total number of calories next to each Standard Menu Item in a size and typeface that is easily readable, clear and conspicuous, and at least as prominent in size and appearance as that used to post either the name or price of the Menu Item. The use of abbreviations is acceptable (e.g. cal for calorie). The Menu shall include, in an easily readable, clear and conspicuous manner, a statement substantially similar to the following: "Recommended limits for a 2,000 calorie daily diet are 20 grams of saturated fat and 2,300 milligrams of sodium. Additional nutrition information available upon request."

(4) **Nutrition Labeling on Menu Boards.** Each Chain Restaurant that uses a Menu Board shall list the total number of calories next to each Menu Item on the Menu Board in a size and typeface that is clear and conspicuous, and at least as prominent in size and appearance as that used to post either the name or price of the Menu Item. The use of abbreviations is acceptable (e.g. cal for calories).no less prominent than the price. The Menu Board shall include, in an easily readable, clear and conspicuous manner, a statement substantially similar to the following: "Recommended limits for a 2,000 calorie daily diet are 20 grams of saturated fat and 2,300 milligrams of sodium. Additional nutrition information available upon request."

(5) **Nutrition Labeling of Food Tags.** Each Chain Restaurant that uses a Food Tag shall list the total number of calories for each Standard Menu Item represented on the Food Tag in a size and typeface that is clear and conspicuous and at least as prominent in size and appearance as that used to post either the name or price of the Menu Item. The use of abbreviations is acceptable (e.g. cal for calories). Menu Items labeled with Food Tags do not need to be labeled on Menu Boards.

(6) **Nutrition Labeling of Self-Service and Buffet Items.** Each Self-Service and Buffet Item shall be accompanied by a Food Tag or the Self-Service/Buffer Item shall be listed on a Menu Board that is readily visible from the self-service/buffet location. Each Standard Buffet Menu Item must specify the size of the serving and nutrition information for an individual serving.

(7) **Nutrition Labeling of Variable Items.** For any Standard Menu Item that comes in more than one flavor, variety, or size (e.g. varieties of bagels), the Chain Restaurant shall provide



required nutrition information for Standard Menu Items as follows:

(a) If both the highest and lowest value of the Standard Menu Item that comes in more than one flavor, variety, or size are within 0-10% of the median value, the median value alone of the required nutrition information may be listed; .

(b) If both the highest and lowest value of the Standard Menu Item that comes in more than one flavor, variety, or size are within 11-20% of the median value, the range of values of the required nutrition information may be listed; and

(c) If neither subsection (1) or (2) applies, each flavor, variety, or size of the Standard Menu Item must be listed as a separate Standard Menu Item and accompanied by the appropriate ascertained values of the required nutrition information.

(8) Nutrition Labeling of Combination Meals. A combination meal means a Standard Menu Item that is comprised of two or more food products and gives the consumer a choice of food items to be in Pizzas intended to serve more than one individual can be listed by two options: 1) by the slice or 2) the whole pizza.

(10) Listing of Additional Nutrition Information. Chain Restaurants shall provide, upon the request by a customer, at the time of ordering a list of values for nutrition information other than calories required under Lane Code 9.720(1). The nutrition information shall be in an easily readable format, in a typeface similar to the Menu, and in a font no less than nine point. The use of abbreviations is acceptable (e.g. cal for calories). This listing is not required to contain photos or Menu Item descriptions that may appear on the Menu. Approved methods for providing this information to a customer, if requested, include:

(a) A Supplemental Menu, or

(b) A Menu Insert, or

(c) A brochure or printed handout, or an electronic kiosk, or

(d) An alternate method not otherwise provided for in this section, only after the method has been submitted to and approved by the Department of Health & Human Services, and found to be substantially equivalent to the identified methods for providing the additional nutritional information. A Chain Restaurant shall seek approval of the proposed method by submitting a written proposal to the Department of Health & Human Services that describes how the proposed nutrition labeling approach will operate, including sample nutrition labeling materials and other documents that demonstrate the form in which nutrition information would be provided to customers.

(11) Nutrition Labeling of Alcoholic Beverages. A Chain Restaurant may use the following average nutritional values for beers, wines, and spirits:

(a) Wine – 5 ounces: 122 calories, 4 grams carbohydrates, 7 milligrams sodium;

(b) Regular beer – 12 ounces: 153 calories, 13 grams carbohydrates, 14 milligrams sodium;

(c) Light beer – 12 ounces: 103 calories, 6 grams carbohydrates, 14 milligrams sodium;

(d) Distilled spirits (80 proof gin, rum, vodka, whiskey) – 1.5 ounces: 96 calories. Calorie values may be rounded in accordance with Lane Code 9.720(12), which follows.

(12) Rounding Rules. Whenever a Restaurant, pursuant to this policy, is required to disclose information to the public, the Restaurant shall round numerical values as follows:

(a) For values above 50 calories, the disclosed value shall be rounded to the nearest value evenly divisible by 10 (e.g., 322 calories is rounded to 320, 435 calories is rounded to 440, etc);

(b) For values equal to or less than 50 calories, the disclosed value shall be rounded to the nearest value evenly divisible by 5 (e.g., 43 calories is rounded to 45, 21 calories is rounded to 20, etc.).

(13) **Verifiable and Accurate Information Required.** If requested by the Department of Health & Human Services, Chain Restaurants shall provide information and documentation of the reasonable basis or bases of calorie and nutrient content of Food Products.

(14) **Disclaimers Permitted.** Nothing in this policy prohibits the Restaurant from publishing truthful disclaimers, including on the Menus, Menu Boards, and Food Tags, notifying customers that there may be small variations in nutritional content across servings, due to differences in preparation, service sizes, ingredients, or custom orders.

(15) **Additional Nutrition Labeling Permitted.** Nothing in this policy precludes Restaurants from voluntarily providing additional nutrition labeling of Menu Items.

(16) **Restaurant Exemptions.** The following types of Restaurants are exempted from the requirements of this policy:

(a) A food facility that is not a full service facility licensed by Lane County Department of Health & Human Services. Examples include:

- (b) Public and private school cafeterias
- (c) Hospital cafeterias serving patients and staff only
- (d) Government operated food facilities
- (e) Private organization or association facilities
- (f) Facilities whose revenue exceeds 51% from retail sales
- (g) Movie theatres and other theatrical venues
- (h) Licensed, temporary food service points-of-sale

#### **D. 9.730 Enforcement.**

The Director of the Lane County Department of Health & Human Services or his or her authorized designees are authorized to enforce the nutrition labeling requirements of this chapter.

(1) The Department of Health & Human Services shall maintain a system for receiving reports of failures to comply, providing educational materials and site visits, and issuing notices of failure to comply.

(2) The Department of Health & Human Services shall: 1) develop procedures to identify Chain Restaurant Status, 2) provide education and assistance to restaurants to help them comply with nutrition labeling requirements, and 3) receive, respond to, and investigate reports of failure to comply and take appropriate action to assure compliance.

(3) An Environmental Health Specialist who notes a possible failure to comply of these rules during a regular inspection of a full service chain restaurant licensed and inspected by the Department of Health & Human Services shall note a possible failure to comply of these rules and report the possible failure to comply to Department of Health & Human Services staff delegated to supervise compliance with these rules.

(4) **Complaint Response.** The Department of Health & Human Services shall respond to a report of failure to comply as follows:

(a) The Department of Health & Human Services shall determine status as a Chain Restaurant and if confirmed:

(i) Provide the owner or operator with a notice of possible failure to comply,

(ii) Provide the owner or operator with educational materials and other assistance to come into compliance with these rules,

(iii) Gather information to make the determination if the Restaurant is in compliance with these rules. This may include but is not limited to conducting site visits, requesting additional information from the Restaurant, carrying out additional independent analyses of nutritional content of Menu Items, and obtaining consultation from nutrition professionals.

(b) **Finding of Failure to comply:** A failure to comply is deemed to have occurred if the Department of Health & Human Services finds that:

(i) Nutrition information required by this policy is not present or is not in the form required by Lane Code 9.720(1); or

(ii) The nutritional content of one or more Standard Menu Items as posted on a Menu, Menu Board, Food Tag or other authorized method of display deviates by more than twenty percent (20%) from what actual analysis or other reliable evidence shows to be the actual nutritional content.

(c) **Remediation Plan:** After a finding of a failure to comply, the Department of Health & Human Services representative and the Restaurant will jointly agree on the contents of a plan contemplated to bring the restaurant into compliance with these rules by a clearly identified date. The Restaurant will submit and initiate implementation of a remediation plan that remedies the failure to comply within 14 days of reaching agreement with the Department of Health & Human Services representative. A restaurant owner or operator may request in writing an extension of time in which to complete implementation of the remediation plan for good cause.

(d) **Follow-up Visit:** A Department of Health & Human Services representative shall make a follow-up visit within 14 days of the remediation plan completion date to confirm implementation.

(e) **Failure to Complete the Remediation Plan on Schedule.** If during the follow-up visit, the Department of Health & Human Services representative finds that the remediation plan has not been implemented, the representative shall document the finding and notify the Restaurant that a citation will be issued. The citation, including a civil fine, shall be personally delivered to the restaurant employer or agent or mailed to the business address by both first class mail certified mail, return receipt requested.

(5) **Civil Fine Schedule:**

(a) A fine of \$100 will be assessed for failure to submit a remediation plan that remedies the failure to comply within 14 days of reaching agreement with the Health Department of Health & Human Services representative.

(b) A fine of \$500 will be assessed for failure to fully implement the remediation plan within 60 days of the implementation date specified in the plan.

(c) Additional fines of \$250 will be assessed for each 30 day period that the remediation plan has not been fully implemented.

(6) **Phased-in Implementation:** The rules take effect on April 15, 2009. However, from April 15, 2009, through December 31, 2009, a Chain Restaurant shall not be deemed to be in failure to comply

(7) **Appeals Process:** A Chain Restaurant cited with a failure to comply may request and shall be provided an opportunity to challenge the citation, including an opportunity to refute any evidence against it.

(a) The owner or operator of a Restaurant receiving a notice of failure to comply or citation as provided in these rules may request a hearing by writing the Director of the Lane County Department of, Health & Human Services or designee within seven days of the date of notice.

(b) The Director or the Public Health Manager shall designate an hearings official who shall schedule and oversee the hearing and submit a recommended ruling to the Director within 20 days of the date of it conclusion. In the absence of the Director of Health & Human Services, the Public Health Manager has designated authority to make a final ruling. The Director or Public Health Manager's ruling shall be final.

(c) If the Director finds the failure to comply to exist, the ruling shall set a date for remedy of the failure to comply to be accomplished by the Chain Restaurant.

(d) If the Director determines that the failure to comply was issued in error, the ruling may order the Department of Health & Human Services representative to vacate any fines and take other necessary and appropriate actions to remedy the situation.

(8) If any provision of these rules or its application to any person or circumstance is held invalid, the remainder of these rules of the application to other persons or circumstances is not affected.