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Administrative Penalties in ICF/IIDs

**Private Providers Association of Texas
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Objectives



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During this presentation we will:

- review the roles and responsibilities of Long-Term Care Regulation (LTCR);
- examine Health and Safety Code Chapter 252.065 as it relates to administrative penalties and scope and severity;
- review reasons administrative penalties may be assessed; and
- review the scope and severity chart and definitions of terms associated with the chart.

HHSC Regulatory Services Division

HHSC regulates long-term care facilities, agencies, programs, and individual providers of long-term care services.



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HHSC Regulatory Services Division cont.

HHSC regulates long-term care facilities and agencies through:

- inspections and surveys;
- follow-up visits;
- complaint and incident investigations;
- investigations of abuse, neglect, or exploitation (ANE);
- State and federal enforcement; and
- other duties required for carrying out state and federal licensure and certification responsibilities.



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Long-term Care Regulation

Long-term Care Regulation:

1. conducts surveys and other certification activities;
2. develops survey and investigation reports;
3. shares survey and investigation reports with providers; and
4. recommends certification and enforcement actions.



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Texas Health and Safety Code

Chapter 252 applies to intermediate care facilities for individuals with an intellectual disability or related condition (ICFs/IID).

[Section 252.065 - Administrative Penalties](#)



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Administrative Penalties

HSC 252.062. HHSC may assess an administrative penalty against a facility license holder if the license holder:

- violates a rule, standard, or order adopted under the Texas Health and Safety Code chapter associated with their program;
- makes a false statement on a license application, or with respect to an investigation;
- refuses to allow a representative of HHSC to inspect a record, file or any portion of a facility; or
- fails to pay an administrative penalty on time.



Criteria for Assessing an Administrative Penalty

When determining the amount of an administrative penalty, HHSC considers at a minimum:

- the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;
- the hazard, or potential hazard to the health and safety of the resident(s);
- the history of previous violations;
- deterrence of future violations; and
- efforts to correct the violation.



Administrative Penalties

HSC 252.065 provides that:

- the penalty for a facility with fewer than 60 beds shall be not less than \$100 or more than \$1,000 for each violation;
- the penalty for a facility with 60 beds or more shall be not less than \$100 or more than \$5,000 for each violation;
- each day a violation occurs or continues is a separate violation; and



Administrative Penalties (cont.)

- the total amount of penalties assessed under this subsection for an on-site regulatory visit or complaint investigation, regardless of the duration of any ongoing violations, may not exceed:
 - (1) \$5,000 for a facility with fewer than 60 beds; and
 - (2) \$25,000 for a facility with 60 beds or more.

Survey Process

The survey process consists of:

- Entrance conference
- Interviews, observations, record reviews
- Exit conference



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What are Scope and Severity?

If the survey team determines that a violation exists, they assess the effect on the individuals served by the facility (severity) and determine the number of individuals potentially or actually affected (scope).



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Severity Levels

There are four severity levels:

- Immediate threat
- Actual harm
- No actual harm with a potential for more than minimal harm
- No actual harm with a potential for minimal harm



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Definitions

Potential for minimal harm is a violation that has the potential for causing no more than a minor negative impact on a resident.

Actual harm means a negative outcome that compromises a resident's physical, mental, or emotional well-being.

Immediate threat to the health and safety of a resident is a situation that causes, or is likely to cause, serious injury, harm, or impairment to or the death of a resident.

Scope Levels

There are three scope levels:

- Isolated
- Pattern
- Widespread



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Isolated

Isolated means a very limited number of residents are affected and a very limited number of staff are involved, or the situation has occurred only occasionally.



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Pattern

Pattern is repeated, but not widespread in scope, failures of a facility that:

- result in a violation; and
- are found throughout the services provided by the facility or that affect or involve the same residents or facility employees.



Widespread

Widespread in scope means a violation that:

- is pervasive throughout the services provided by the facility; or
- represents a systemic failure by the facility that affects or has the potential to affect a large portion of or all of the residents of the facility.

Scope & Severity Chart

All violations will fall into a box on the gradation tables, with A being the lowest level of scope and severity and L being the highest level.



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Gradation of Administrative Penalties: Licensed Capacity of 60 or more

Severity	Scope: Isolation	Scope: Pattern	Scope: Widespread
Immediate Threat	J \$ 2,000 - \$ 3,000	K \$3,000 - \$4,000	L \$4,000 - \$5,000
Actual harm	G \$500 - \$1,000	H \$1,000 - \$1500	I \$1500 - \$2,000
No actual harm with a potential for more than minimal harm	D \$200 - \$300	E \$300 - \$400	F \$400 - \$500
No actual harm with a potential for minimal harm	A \$0	B \$0	C \$0



Gradation of Administrative Penalties: Licensed Capacity Fewer than 60

Severity	Scope: Isolation	Scope: Pattern	Scope: Widespread
Immediate Threat	J \$ 700 – \$ 800	K \$800 - \$900	L \$900 - \$1,000
Actual harm	G \$300 - \$400	H \$400 - \$500	I \$500 - \$600
No actual harm with a potential for more than minimal harm	D \$100 - \$150	E \$150 - \$200	F \$200 - \$300
No actual harm with a potential for minimal harm	A \$0	B \$0	C \$0

Additional Information to Consider

- During the exit conference the facility will receive a list of preliminary findings from the survey.
- Findings are subject to administrative review by the manager and regional enforcement team.
- The facility will receive the official notification of violations from HHSC.
- When violations are cited, a provider may request an informal dispute resolution.



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Enforcement Methodology

- F.A.C.T.
- Independent reporting structure
 - Case handoff
 - Enforcement-only analysis
 - Clarification touch base
- Penalty ranges - midpoint
- Penalty factor review
- Documented Rationale
- Due process
- Settlement



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Questions?

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Thank you

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