

MEMORANDUM

Texas Department of Human Services Long Term Care Policy-Regulatory * Survey and Certification Clarification

TO: Long Term Care-Regulatory
Regional Directors and State Office Managers

FROM: Evelyn Delgado
Assistant Deputy Commissioner
Long Term Care-Regulatory (LTC -R)

SUBJECT: Assisted Living Facility Administrative Penalties – **S&CC 03-01**

APPLIES TO: Assisted Living Facilities

DATE: December 15, 2003

As of September 1, 2003, enforcement began on the new administrative penalties enacted by the 77th Legislative 2001, Regular Session. The Department of Human Services' rules on administrative penalties are found in the Licensing Standards for Assisted Living Facilities at 40 Texas Administrative Code (TAC), Chapter 92, Subchapter H Enforcement, Division 9. Provider Letter 03-22, "Changes to the Licensing Standards for Assisted Living Facilities," dated August 29, 2003, notified providers of the administrative penalty rules.

Administrative penalties for assisted living facilities (ALFs) are assessed on a per occurrence basis. A per occurrence administrative penalty may be imposed for each instance of facility noncompliance. The administrative penalty fee schedule is based on the rule violated, the size of the facility and the size of the business owning entity. For each penalty, there are four possible penalty amounts:

- If an administrative penalty is recommended under §92.16, Change of Ownership, and the facility is a small facility and the owner owns only one facility, the penalty assessed is \$300.
- If the facility is a small facility and the owner owns more than one facility, then the administrative penalty is \$400.
- If the facility is a large facility and the owner has only one facility, the penalty is \$500.
- If the owner has more than one facility and the facility is a large facility, the penalty is \$600.

To determine the number of facilities owned by the assisted living facility owner, follow these procedures in CARES:

- Access the Facility Enrollment module;
- Click on "Open facility";
- Enter the owner ID number in the "Owner ID" field (use owner ID of the facility with the penalty);
- Hit "Search" button.

The search results will list all facilities the license holder currently owns for the specific date the search is made and by program type. A region is not required to ascertain if licenses for new facilities or change of ownership inspections are pending for the owning entity. **To determine if a license holder is a "multiple-facility owner," for the purpose of this policy, only currently licensed ALF's are considered.** The license status of a facility can be determined by opening the individual facility record and selecting the "License and Certification" tab.

At the present time, the ALF "Administrative Penalty Report," (Form 3719) cannot be generated electronically from CARES. Until further notice, regions should process the ALF penalties by using the Word documents that are attached to this memo.

The Administrative Penalty Report (Form 3719) is created by the regions and sent to the facility with the notice letter. Appeal rights will be offered by the region with the notice of the Administrative Penalty Report.

The Administrative Penalty Report (Form 3719) is processed as follows:

Form 3719 AL -No Right to Correct	Regions send form to owner/facility with notice letter and fax form to State Office Sanctions Unit at (512) 438-2729.
Form 3719AL2 -Right to Correct	Regions send form to owner/facility with notice letter.
Form 3719AL3 -Right to Correct, Corrected	Regions send form to owner/facility with notice letter.
Form 3719AL4 -Right to Correct, Not Corrected	Regions send form to owner/facility with notice letter and fax form to State Office Sanctions Unit at (512) 438-2729.

If you have questions about how to apply this policy, please contact the LTC-R Policy Unit at (512) 438-3161. For questions about a specific penalty, contact the LTC-R Enforcement and Sanctions Section at (512) 438-4425.

[signature on file]

Evelyn Delgado

ED:pc

Attachments

c: Bettye M. Mitchell, W-515
Paul Leche, W-615
Lawrence Parker, W-450
Regional Administrators

ADMINISTRATIVE PENALTY REPORT – AL
SUMMARY OF CHARGES

[owner name]
[owner address]
[owner city], [owner state] [owner zip code]

Facility: [facility id #] [facility name]
[facility address] [facility city] [facility state] [facility zip code]

Penalty Assessed Against: [owner name]
[owner address] [owner city], [owner state] [owner zip code]

Original Visit: [visit date]

Purpose of Visit: [purpose of visit]

Penalty 1 Basis: [TAC #] Penalty Amount [\$00.00] Right to Correct: No

Penalty Statement:
[TAC text]

In accordance with Health and Safety Code Section 247.0454, you have the right to a hearing on the occurrence of the violation, the amount of the penalty, or both. You may request a hearing by completing the attached Form 3646. The hearing must be requested no later than the 20th day after receipt of this notice. Form 3646 and a copy of this letter should be mailed to Fairy Rutland, Director, Hearings Department (W-613), P.O. Box 149030, Austin, TX 78714-9030.

If you have any questions, you may contact:

[Program Manager], Phone [phone number].

Program Manager

Date

ADMINISTRATIVE PENALTY REPORT - AL
SUMMARY OF CHARGES

[owner name]
[owner address]
[owner city], [owner state] [owner zip code]

Facility: [facility id #] [facility name]
[facility address] [facility city] [facility state] [facility zip code]

Penalty Assessed Against: [owner name]
[owner address] [owner city], [owner state] [owner zip code]

Original Visit: [visit date]

Purpose of Visit: [purpose of visit]

Penalty 1 Basis: [TAC #] Penalty Amount [\$00.00] Right to Correct: Yes

Penalty Statement:
[TAC text]

The facility has the right to correct the cited violation(s) and must submit a plan of correction to be approved by Texas Department of Human Services. You must submit the plan of correction no later than the 10th calendar day after receipt of this notice. The correction(s) for the cited violation(s) must be completed no later than the 45th day after receipt of this notice.

In accordance with Health and Safety Code Section 247.0454, you have the right to a hearing on the occurrence of the violation, the amount of the penalty, or both. You may request a hearing by completing the attached Form 3646. The hearing must be requested no later than the 20th day after receipt of this notice. Form 3646 and a copy of this letter should be mailed to Fairy Rutland, Director, Hearings Department (W-613), P.O. Box 149030, Austin, TX 78714-9030. You will have an additional opportunity to request a hearing if the violation(s) are not corrected within 45 days and penalties are imposed.

If you have any questions, you may contact:

[Program Manager], Phone [phone number].

Program Manager

Date

ADMINISTRATIVE PENALTY REPORT – AL
SUMMARY OF CHARGES

[owner name]
[owner address]
[owner city], [owner state] [owner zip code]

Facility: [facility id #] [facility name]
[facility address] [facility city] [facility state] [facility zip code]

Penalty Assessed Against: [owner name]
[owner address] [owner city], [owner state] [owner zip code]

Original Visit: [visit date]

Purpose of Visit: [purpose of visit]

Penalty 1 Basis: [TAC #] Penalty Amount [\$00.00] Right to Correct: Yes

The Texas Department of Human Services conducted a revisit on [follow-up visit date] and determined that the violation(s) cited above on the visit of [original visit date] (was/were) corrected; therefore, the penalty for the violation(s) will not be imposed.

If you have any questions, you may contact:

[Program Manager], Phone [phone number].

Program Manager

Date

ADMINISTRATIVE PENALTY REPORT – AL
SUMMARY OF CHARGES

[owner name]
[owner address]
[owner city], [owner state] [owner zip code]

Facility: [facility id #] [facility name]
[facility address] [facility city] [facility state] [facility zip code]

Penalty Assessed Against: [owner name]
[owner address] [owner city], [owner state] [owner zip code]

Original Visit: [visit date]

Purpose of Visit: [purpose of visit]

Penalty 1 Basis: [TAC #] Penalty Amount [\$00.00] Right to Correct: Yes

The Department of Human Services conducted a revisit on [follow-up visit date] and determined that the violation(s) cited above on the visit of [original visit date] (was/were) **not corrected**; therefore, the penalty for the violation(s) will be imposed.

In accordance with Health and Safety Code Section 247.0454, you have the right to a hearing on the occurrence of the violation, the amount of the penalty, or both. You may request a hearing by completing the attached Form 3646. The hearing must be requested no later than the 20th day after receipt of this notice. Form 3646 and a copy of this letter should be mailed to Fairy Rutland, Director, Hearings Department (W-613), P.O. Box 149030, Austin, TX 78714-9030.

If you have any questions, you may contact:

[Program Manager], Phone [phone number].

Program Manager

Date

§92.559. What is the administrative penalty schedule? The administrative penalty schedule lists the gradations of administrative penalty fees:

ADMINISTRATIVE PENALTY SCHEDULE	SMALL FACILITY (4-16 beds)		LARGE FACILITY (17+ beds)	
	Business entity owns one facility	Business entity owns multiple facilities	Business entity owns one facility	Business entity owns multiple facilities
§92.2. Basis and Scope	\$300	\$450	\$500	\$650
§92.4. Types of Assisted Living Facilities	\$300	\$450	\$500	\$650
§92.10. Criteria for Licensing	\$300	\$450	\$500	\$650
§92.11. Building Approval	\$250	\$350	\$450	\$550
§92.14. Increase in Capacity	\$300	\$400	\$500	\$600
§92.15. Renewal Procedures and Qualifications	\$300	\$400	\$500	\$600
§92.16. Change of Ownership	\$300	\$400	\$500	\$600
§92.20. License Fees	\$300	\$400	\$500	\$600
§92.21. Advertisements, Solicitations, and Promotional Material	\$250	\$350	\$450	\$550
§92.41. Standards for Type A, Type B, and Type E Assisted Living Facilities				
(a) employees	\$350	\$550	\$750	\$950
(b) social services	\$200	\$300	\$400	\$500
(c) resident assessment	\$400	\$550	\$600	\$750
(d) resident policies	\$250	\$350	\$450	\$550
(e) admission policies	\$300	\$400	\$500	\$600
(f) inappropriate placement in Type A or Type B facilities	Not applicable	Not applicable	Not applicable	Not applicable
(g) advance directives	\$500	\$500	\$500	\$500
(h) resident records	\$200	\$300	\$400	\$500
(i) personnel records	\$200	\$300	\$400	\$500
(j) medications	\$400	\$500	\$600	\$700
(k) accident, injury, or acute illness	\$400	\$500	\$600	\$700
(l) resident finances	\$200	\$300	\$400	\$500
(m) food and nutrition services	\$400	\$550	\$700	\$850
(n) infection control	\$400	\$550	\$700	\$850
(o) access to residents	\$150	\$200	\$250	\$300
§92.51. Licensure of Facilities for Persons with Alzheimer's Disease	\$200	\$300	\$400	\$500
§92.53. Standards for Certified Alzheimer's Assisted Living Facilities	\$400	\$500	\$600	\$700
§92.61. Facility Construction-Introduction and Application	\$300	\$400	\$500	\$600

§92.62. General Requirements	\$350	\$450	\$550	\$650
§92.71. Introduction and Application: Type E Facilities	\$300	\$400	--	--
§92.72. General Requirements: Type E Facilities	\$300	\$400	--	--
§92.81. Inspections and Surveys	\$300	\$400	\$500	\$600
§92.82. Determinations and Actions Pursuant to Inspections	\$200	\$300	\$400	\$500
§92.102. Abuse, Neglect, Exploitation Reportable to DHS by Facilities	\$700	\$800	\$900	\$1,000
§92.123. Investigation of Facility Employees	\$450	\$550	\$650	\$750
§92.125. Resident's Bill of Rights and Provider Bill of Rights				
(a) resident's bill of rights	--	--	--	--
(1) post and provide copy of bill	\$100	\$150	\$200	\$250
(2) right to exercise civil rights	\$150	\$200	\$250	\$300
(3) each resident has the right to:	--	--	--	--
(A) be free from physical, mental abuse, corporal punishment, physical, chemical restraints for discipline/convenience	\$700	\$800	\$900	\$1,000
(B) participate in activities	\$150	\$200	\$250	\$300
(C) religion of choice	\$150	\$200	\$250	\$300
(D) if MR, participate in behavior modification with guardian consent	\$150	\$200	\$250	\$300
(E)(i)-(iii)--be treated with respect, consideration, dignity	\$200	\$250	\$300	\$350
(F) safe, decent living environment	\$100	\$150	\$200	\$250
(G) communicate in native language	\$100	\$150	\$200	\$250
(H) complain about care, treatment	\$200	\$250	\$300	\$350
(I) receive and send mail	\$100	\$150	\$200	\$250
(J) unrestricted communication	\$150	\$200	\$250	\$300
(K) make community contacts	\$100	\$150	\$200	\$250
(L) manage financial affairs	\$100	\$150	\$200	\$250
(M) access resident records(i)-(ii)	\$100	\$150	\$200	\$250
(N) choose physician and be informed about treatment and care	\$100	\$150	\$200	\$250
(O) help develop individual service plan	\$100	\$150	\$200	\$250
(P)(i)-(ii) opportunity to refuse medical treatment or	\$100	\$150	\$200	\$250

services				
(Q) unaccompanied access to telephone	\$100	\$150	\$200	\$250
(R) privacy	\$100	\$150	\$200	\$250
(S) retain and use personal possessions	\$100	\$150	\$200	\$250
(T) determine personal preference in dress, hair style, personal effects	\$100	\$150	\$200	\$250
(U) retain and use personal property	\$100	\$150	\$200	\$250
(V) refuse to perform services	\$100	\$150	\$200	\$250
(W)(i)-(ii) be informed about Medicare, Medicaid, and covered items/services	\$100	\$150	\$200	\$250
(X)(i)-(v) not be transferred/discharged except under specific conditions	\$300	\$350	\$400	\$450
(Y)(i)-(v) not be transferred/discharged except in an emergency without specific written notice	\$300	\$350	\$400	\$450
(Z) leave facility temporarily or permanently	\$100	\$150	\$200	\$250
(AA) access the Ombudsman program	\$100	\$150	\$200	\$250
(BB) execute an advance directive or designate a guardian for decisions	\$200	\$250	\$300	\$350
§92.127. Required Posting	\$250	\$350	\$450	\$550
§§92.351-92.374. Emergency License Suspension and Closing Order	\$150	\$250	\$350	\$450
§§92.551-92.595. Administrative Penalties	\$400	\$500	\$600	\$700