

§ 558.602 Administrative Penalties

(a) Assessing penalties. HHSC may assess an administrative penalty against a person who violates:

(1) the Statute;

(2) a provision in this chapter for which a penalty may be assessed; or

(3) Texas Occupations Code § 102.001 (relating to Soliciting Patients; Offense) or §102.006 (relating to Failure to Disclose; Offense), if related to the provision of home health, hospice, or personal assistance services.

(b) Criteria for assessing penalties. HHSC assesses administrative penalties in accordance with the schedule of appropriate and graduated penalties established in this section.

(1) The schedule of appropriate and graduated penalties for each violation is based on the following criteria:

(A) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard of the violation to the health or safety of clients;

(B) the history of previous violations by a person or a controlling person with respect to that person;

(C) whether the affected agency identified the violation as part of its internal quality assurance process and made a good faith, substantial effort to correct the violation in a timely manner;

(D) the amount necessary to deter future violations;

(E) efforts made to correct the violation; and

(F) any other matters that justice may require.

(2) In determining which violation warrants a penalty, HHSC considers:

(A) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard of the violation to the health or safety of clients; and

(B) whether the affected agency identified the violation as part of its internal quality assurance program and made a good faith, substantial effort to correct the violation in a timely manner.

(c) Opportunity to correct. Except as provided in subsections (e) and (f) of this section, HHSC provides an agency with an opportunity to correct a violation in accordance with the time frames established in § 558.527(g)(2) of this chapter (relating to Post-Survey Procedures) before assessing an administrative penalty if a plan of correction has been implemented.

(d) Minor violations.

(1) HHSC may not assess an administrative penalty for a minor violation unless the violation is of a continuing nature or is not corrected in accordance with an accepted plan of correction.

(2) HHSC may assess an administrative penalty for a subsequent occurrence of a minor violation when cited within three years from the date the agency first received written notice of the violation.

(3) HHSC does not assess an administrative penalty for a subsequent occurrence of a minor

violation when cited more than three years from the date the agency first received written notice of the violation.

(e) No opportunity to correct. HHSC may assess an administrative penalty without providing an agency with an opportunity to correct a violation if HHSC determines that the violation:

(1) results in serious harm to or death of a client;

(2) constitutes a serious threat to the health or safety of a client;

(3) substantially limits the agency's capacity to provide care;

(4) involves the provisions of Texas Human Resources Code Chapter 102, Rights of the Elderly;

(5) is a violation in which a person:

(A) makes a false statement, that the person knows or should know is false of a material fact:

(i) on an application for issuance or renewal of a license or in an attachment to the application; or

(ii) with respect to a matter under investigation by HHSC;

(B) refuses to allow a representative of HHSC to inspect a book, record, or file required to be maintained by an agency;

(C) willfully interferes with the work of a representative of HHSC or the enforcement of this chapter;

(D) willfully interferes with a representative of HHSC preserving evidence of a violation of this chapter or a rule, standard, or order adopted, or license issued under this chapter;

(E) fails to pay a penalty assessed by HHSC under this chapter within 10 days after the date the assessment of the penalty becomes final; or

(F) fails to submit:

(i) a plan of correction within 10 days after the date the person receives a statement of licensing violations; or

(ii) an acceptable plan of correction within 30 days after the date the person receives notification from HHSC that the previously submitted plan of correction is not acceptable.

(f) Violations relating to Advance Directives. As provided in Texas Health and Safety Code § 142.0145, HHSC assesses an administrative penalty of \$500 for a violation of § 558.283 of this chapter (relating to Advance Directives) without providing an agency with an opportunity to correct the violation.

(g) Penalty calculation and assessment.

(1) Each day that a violation occurs before the date on which the person receives written notice of the violation is considered one violation.

(2) Each day that a violation occurs after the date on which an agency receives written notice of the violation constitutes a separate violation.

(h) Schedule of appropriate and graduated penalties.

(1) If two or more rules listed in paragraphs (2) and (3) of this subsection relate to the same or similar matter, one administrative penalty may be assessed at the higher severity level violation.

(2) Severity Level A violations.

- (A) The penalty range for a Severity Level A violation is \$100 - \$250 per violation.
- (B) A Severity Level A violation is a violation that has or has had minor or no client health or safety significance.
- (C) HHSC assesses a penalty for a Severity Level A violation only if the violation is of a continuing nature or was not corrected in accordance with an accepted plan of correction.
- (D) HHSC may assess a separate Severity Level A administrative penalty for each of the rules listed in the following table.

Attached Graphic

(3) Severity Level B violations.

- (A) The penalty range for a Severity Level B violation is \$500-\$1,000 per violation.
- (B) A Severity Level B violation is a violation that:
 - (i) results in serious harm to or death of a client;
 - (ii) constitutes an actual serious threat to the health or safety of a client; or
 - (iii) substantially limits the agency's capacity to provide care.
- (C) The penalty for a Severity Level B violation that:
 - (i) results in serious harm to or death of a client is \$1,000;
 - (ii) constitutes an actual serious threat to the health or safety of a client is \$500 - \$1,000;and
 - (iii) substantially limits the agency's capacity to provide care is \$500 - \$750.
- (D) As provided in subsection (e) of this section, a Severity Level B violation is a violation for which HHSC may assess an administrative penalty without providing an agency with an opportunity to correct the violation.
- (E) HHSC may assess a separate Severity Level B administrative penalty for each of the rules listed in the following table.

Attached Graphic

- (i) Violations for which HHSC may assess an administrative penalty of \$500.
- (1) HHSC may assess an administrative penalty of \$500 for each of the violations listed in subsection (e)(4) and (5) of this section, without providing an agency with an opportunity to correct the violation.
- (2) A separate penalty may be assessed for each of these violations.
- (j) Proposal of administrative penalties.
 - (1) If HHSC assesses an administrative penalty, HHSC provides a written notice of violation letter to an agency. The notice includes:
 - (A) a summary of the violation;
 - (B) the amount of the proposed penalty; and
 - (C) a statement of the agency's right to a formal administrative hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.
 - (2) An agency may accept HHSC determination within 20 days after the date on which the agency receives the notice of violation letter, including the proposed penalty, or may make a written request for a formal administrative hearing on the determination.
 - (A) If an agency notified of a violation accepts HHSC determination, the HHSC executive commissioner or the HHSC executive commissioner's designee issues an order approving

the determination and ordering that the agency pay the proposed penalty.

(B) If an agency notified of a violation does not accept HHSC determination, the agency must submit to the Health and Human Services Commission a written request for a formal administrative hearing on the determination and must not pay the proposed penalty.

Remittance of the penalty to HHSC is deemed acceptance by the agency of HHSC determination, is final, and waives the agency's right to a formal administrative hearing.

(C) If an agency notified of a violation fails to respond to the notice of violation letter within the required time frame, the HHSC executive commissioner or the HHSC executive commissioner's designee issues an order approving the determination and ordering that the agency pay the proposed penalty.

(D) If an agency requests a formal administrative hearing, the hearing is held in accordance with the Statute §142.0172, §142.0173, and the formal hearing procedures in 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act), and 40 TAC Chapter 91 (relating to Hearings Under the Administrative Procedure Act).

Notes

26 Tex. Admin. Code § 558.602

The provisions of this §558.602 adopted to be effective January 15, 2009, 34 TexReg 254; amended to be effective September 1, 2010, 35 TexReg 7879; amended to be effective August 1, 2011, 36 TexReg 4673; amended to be effective July 1, 2012, 37 TexReg 4613; amended to be effective October 1, 2013, 38 TexReg 6628; Transferred from Title 40, Chapter 97 by Texas Register, Volume 44, Number 15, April 12, 2019, TexReg 1893, eff. 5/1/2019; Amended by Texas Register, Volume 46, Number 15, April 9, 2021, TexReg 2432, eff. 4/25/2021