

§ 558.601 Enforcement Actions

(a) Enforcement actions. HHSC may take the following enforcement actions against an agency:

- (1) license suspension;
- (2) immediate license suspension;
- (3) license revocation;
- (4) immediate license revocation;
- (5) administrative penalties; and
- (6) denial of license application.

(b) Denial of license application. HHSC may deny a license application for the reasons set out in § 558.21 of this chapter (relating to Denial of an Application or a License).

(c) Suspension or revocation.

(1) HHSC may suspend or revoke an agency's license if the license holder, the controlling person, the affiliate, the administrator, or the alternate administrator:

- (A) fails to comply with this chapter;
- (B) fails to comply with the Statute; or
- (C) violates Texas Occupations Code § 102.001 (relating to Soliciting Patients; Offense) and §102.006 (relating to Failure to Disclose; Offense).

(2) HHSC may suspend or revoke an agency's license to provide licensed and certified home health services if the agency fails to maintain its certification qualifying the agency as a certified agency, as referenced in Texas Health and Safety Code § 142.011(c).

(d) Administrative penalties.

(1) HHSC may assess an administrative penalty against an agency in accordance with § 558.602 of this subchapter (relating to Administrative Penalties).

(2) HHSC may consider the assessment of past administrative penalties when considering another enforcement action against an agency.

(e) Immediate licensure suspension or revocation. HHSC may immediately suspend or revoke an agency's license when the health and safety of persons are threatened.

(1) If HHSC issues an order for immediate suspension or revocation of the agency's license, HHSC provides immediate notice to the controlling person, administrator, or alternate administrator of the agency by fax and either by certified mail with return receipt requested or hand-delivery. The notice includes:

- (A) the action taken;
- (B) legal grounds for the action;
- (C) the procedure governing appeal of the action; and
- (D) the effective date of the order.

(2) An order for immediate suspension or revocation goes into effect immediately.

(3) An agency is entitled to a formal administrative hearing not later than seven days after the effective date of the order for immediate suspension or revocation.

(4) If an agency requests a formal administrative hearing, the hearing is held in accordance with the Texas Government Code Chapter 2001, and with 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).

(f) Opportunity to show compliance.

(1) Before revocation or suspension of an agency's license or denial of an application for the renewal of an agency's license, HHSC gives the license holder:

(A) a notice by personal service or by registered or certified mail of the facts or conduct alleged to warrant the proposed action, with a copy sent to the agency; and

(B) an opportunity to show compliance with all requirements of law for the retention of the license by sending HHSC Regulatory Services office a written request. The request must:

(i) be postmarked within 10 days after the date of HHSC notice and be received in HHSC Regulatory Services office within 10 days after the date of the postmark; and

(ii) contain specific documentation refuting HHSC allegations.

(2) HHSC limits its review to the documentation submitted by the license holder and information HHSC used as the basis for its proposed action. An agency may not attend HHSC meeting to review the opportunity to show compliance. HHSC gives a license holder a written affirmation or reversal of the proposed action.

(3) After an opportunity to show compliance, HHSC sends a license holder a written notice that:

(A) informs the license holder of HHSC decision; and

(B) provides the agency with an opportunity to appeal HHSC decision through a formal hearing process.

(g) Notice of denial of application for license or renewal of a license, suspension or revocation of license. HHSC sends an applicant or license holder notice by fax and either by certified mail with return receipt requested or hand-delivery of HHSC denial of an application for an initial license or renewal of a license, suspension of a license or revocation of a license.

(h) Formal appeal. An applicant or license holder has the right to make a formal appeal after receipt of HHSC notification of denial of an application for an initial license or renewal of a license and suspension or revocation of a license.

(1) An agency must request a formal administrative hearing within 20 days of receipt of HHSC notice of denial of an application for an initial license or renewal of a license, suspension of a license, or revocation of a license. To make a formal appeal, the applicant or agency must comply with the formal hearing procedures in 1 TAC Chapter 357, Subchapter I and 40 TAC Chapter 91.

(2) HHSC presumes receipt of HHSC notice to occur on the 10th day after the notice is mailed to the last known address, unless another date is reflected on the return receipt.

(3) If an agency does not meet the deadline for requesting a formal hearing, the agency has lost its opportunity for a formal hearing, and HHSC takes the proposed action.

(4) A formal administrative hearing is held in accordance with Government Code, Chapter 2001, and the formal hearing procedures in 1 TAC Chapter 357, Subchapter I and 40 TAC Chapter 91.

(5) Except for the denial of an application for an initial license, if an agency appeals, the license remains valid until all appeals are final, unless the license expires without a timely

application for renewal submitted to HHSC. The agency must continue to submit a renewal application in accordance with § 558.17 of this chapter (relating to Application Procedures for a Renewal License) until the action to revoke, suspend, or deny renewal of the license is completed. However, HHSC does not renew the license until it determines the reason for the proposed action no longer exists.

(6) If an agency appeals, the enforcement action will take effect when all appeals are final, and the proposed enforcement action is upheld. If the agency wins the appeal, the proposed action does not happen.

(7) If HHSC suspends a license, the suspension remains in effect until HHSC determines that the reason for suspension no longer exists. A suspension may last no longer than the term of the license. HHSC conducts a survey of the agency before making a determination to recommend cancellation of a suspension.

(8) If HHSC revokes or does not renew a license and one year has passed following the effective date of revocation or denial of licensure renewal, a person may reapply for a license by complying with the requirements and procedures in § 558.13 of this chapter (relating to Obtaining an Initial License). HHSC does not issue a license if the reason for revocation or nonrenewal continues to exist.

(i) Agency dissolution. Upon suspension, revocation, or nonrenewal of a license, the license holder must:

(1) return the original license to HHSC; and

(2) implement its written plan required in § 558.291 of this chapter (relating to Agency Dissolution).

Notes

26 Tex. Admin. Code § 558.601

The provisions of this §558.601 adopted to be effective June 1, 2006, 31 TexReg 1455; amended to be effective July 1, 2012, 37 TexReg 4613; 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