

12-008 DENIAL, REFUSAL TO RENEW, AND DISCIPLINARY ACTION

12-008.01 Grounds for Denial, Refusal to Renew, or Disciplinary Action

12-008.01A The Department may deny or refuse to renew a facility license for failure to meet the requirements for licensure, including:

1. Failing an inspection specified in 175 NAC 12-005;
2. Having had a license revoked within the two-year period preceding an application; or
3. Any of the grounds specified in 175 NAC 12-008.01B.

12-008.01B The Department may take disciplinary action against a facility license for any of the following grounds:

1. Violation of any of the provisions of the Health Care Facility Licensure Act, the Nebraska Nursing Home Act, or 175 NAC 12;
2. Committing, permitting, aiding, or abetting the commission of any unlawful act;
3. Conduct or practices detrimental to the health or safety of a facility resident or employee;
4. A report from an accreditation body or public agency sanctioning, modifying, terminating, or withdrawing the accreditation or certification of the facility;
5. Failure to allow an agent or employee of the Department of Health and Human Services, the Department of Health and Human Services

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- Finance and Support, or the Department of Health and Human Services Regulation and Licensure access to the facility for the purposes of inspection, investigation, or other information collection activities necessary to carry out the duties of the departments;
6. Discrimination or retaliation against a facility resident or employee who has submitted a complaint or information to the Department of Health and Human Services, the Department of Health and Human Services Finance and Support, or the Department of Health and Human Services Regulation and Licensure;
  7. Discrimination or retaliation against a facility resident or employee who has presented a grievance or information to the office of the state long-term care ombudsman;
  8. Failure to allow a state long-term care ombudsman or an ombudsman advocate access to the facility for the purposes of investigation necessary to carry out the duties of the office of the state long-term care ombudsman as specified in 15 NAC 3;
  9. Violation of the Emergency Box Drug Act;
  10. Failure to file a report of payment made or action taken due to a liability claim or an alleged violation, as required by Neb. Rev. Stat. § 71-168.02;
  11. Violation of the Medication Aide Act; or
  12. Failure to file a report of suspected abuse or neglect as required by Neb. Rev. Stat. §§ 28-372 and 28-711.

12-008.02 Procedures for Denial, Refusal to Renew, or Disciplinary Action

12-008.02A If the Department determines to deny, refuse renewal of, or take disciplinary action against a license, the Department will send a notice to the applicant or licensee by certified mail to the last address shown on its records. The notice will state the determination, including a specific description of the nature of the violation and the statute or regulation violated, and the type of disciplinary action pending.

12-008.02B The denial, refusal to renew, or disciplinary action becomes final 15 days after the mailing of the notice unless the applicant or licensee, within the 15-day period, makes a written request to the Director for an informal conference or an administrative hearing.

12-008.02C Informal Conference

12-008.02C1 At the request of the applicant or licensee, the Department will hold an informal conference within 30 days of the receipt of the request. The conference may be held in person or by other means, at the request of the applicant or licensee.

If the pending action is based on an inspection, the Department's representative at the conference will not be the individual who did the inspection.

12-008.02C2 Within 20 working days of the conference, the Department representative will state in writing the specific reasons for affirming, modifying, or dismissing the notice. The representative will send a copy of the statement to the applicant or licensee by certified mail to the last address shown in the Department's records and a copy to the Director.

12-008.02C3 If the applicant or licensee successfully demonstrates at the informal conference that the deficiencies should not have been cited in the notice, the Department will remove the deficiencies from the notice and rescind any sanction imposed solely as a result of those cited deficiencies.

12-008.02C4 If the applicant or licensee contests the affirmed or modified notice, the applicant or licensee must submit a request for hearing in writing to the Director within five working days after receipt of the statement.

#### 12-008.02D Administrative Hearing

12-008.02D1 When an applicant or a licensee contests the notice and requests a hearing, the Department will hold a hearing in accordance with the Administrative Procedure Act (APA) and the Department's rules and regulations adopted and promulgated under the APA. Either party may subpoena witnesses, who must be allowed fees at the rate prescribed by Neb. Rev. Stat. §§ 33-139 and 33-139.01.

12-008.02D2 On the basis of evidence presented at the hearing, the Director will affirm, modify, or set aside the determination. The Director's decision will:

1. Be in writing;
  2. Be sent by registered or certified mail to the applicant or licensee;
- and

3. Become final 30 working days after mailing unless the applicant or licensee, within the 30-day period, appeals the decision.

12-008.02D3 An applicant or a licensee's appeal of the Director's decision must be in accordance with the Administrative Procedure Act.

#### 12-008.03 Types of Disciplinary Action

12-008.03A The Department may impose any one or a combination of the following types of disciplinary action against the license:

1. A fine not to exceed \$10,000 per violation;
2. A prohibition on admissions or re-admissions, a limitation on enrollment, or a prohibition or limitation on the provision of care or treatment;
3. A period of probation not to exceed two years during which the facility may continue to operate under terms and conditions fixed by the order of probation;

4. A period of suspension not to exceed three years during which the facility may not operate;  
and
5. Revocation, which is a permanent termination of the license. The licensee may not apply for a license for a minimum of two years after the effective date of the revocation.

12-008.03B In determining the type of disciplinary action to impose, the Department will consider:

1. The gravity of the violation, including the probability that death or serious physical or mental harm will result;
2. The severity of the actual or potential harm;
3. The extent to which the provisions of applicable statutes, rules, and regulations were violated;
4. The reasonableness of the diligence exercised by the facility in identifying or correcting the violation;
5. Any previous violations committed by the facility; and
6. The financial benefit to the facility of committing or continuing the violation.

12-008.03C If the licensee fails to correct a violation or to comply with a particular type of disciplinary action, the Department may take additional disciplinary action as described in 175 NAC 12-008.03.

12-008.03D Temporary Suspension or Temporary Limitation: If the Department determines that residents of the facility are in imminent danger of death or serious physical harm, the Director may:

1. Temporarily suspend or temporarily limit the facility license, effective when the order is served upon the facility. If the licensee is not involved in the daily operation of the facility, the Department will mail a copy of the order to the licensee, or if the licensee is a corporation, to the corporation's registered agent;
2. Order the immediate removal of residents; and
3. Order the temporary closure of the facility pending further action by the Department.

The Department will simultaneously institute proceedings for revocation, suspension, or limitation of the license, and will conduct an administrative hearing no later than ten days after the date of the temporary suspension or temporary limitation.

12-008.03D1 The Department will conduct the hearing in accordance with the Administrative Procedure Act and the Department's rules and regulations adopted and promulgated under the APA. Either party may subpoena witnesses, who must be allowed fees at the rate prescribed by Neb. Rev. Stat. §§ 33-139 and 33-139.01.

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12-008.03D2 If a written request for continuance of the hearing is made by the licensee, the Department will grant a continuance, which may not exceed 30 days.

12-008.03D3 On the basis of evidence presented at the hearing, the Director will:

1. Order the revocation, suspension, or limitation of the license; or
2. Set aside the temporary suspension or temporary limitation.

If the Director does not reach a decision within 90 days of the date of the temporary suspension or temporary limitation, the temporary suspension or temporary limitation will expire.

12-008.03D4 Any appeal of the Department's decision after hearing must be in accordance with the APA.

#### 12-008.04 Reinstatement from Disciplinary Probation or Suspension, and Re-Licensure After Revocation

##### 12-008.04A Reinstatement at the End of Probation or Suspension

12-008.04A1 Reinstatement at the End of Probation: A license may be reinstated at the end of probation after the successful completion of an inspection, if the Department determines an inspection is warranted.

12-008.04A2 Reinstatement at the End of Suspension: A license may be reinstated at the end of suspension following;

1. Submission of an application to the Department for renewal that conforms to the requirements of 175 NAC 12-003.02;
2. Payment of the renewal fee as specified in 175 NAC 12-004.09; and
3. Successful completion of an inspection.

The Department will reinstate the license when it finds, based on an inspection as provided for in 175 NAC 12-005, that the facility is in compliance with the operation, care, treatment, and physical plant requirements of 175 NAC 12-006 and 12-007.

##### 12-008.04B Reinstatement Prior to Completion of Probation or Suspension

12-008.04B1 Reinstatement Prior to the Completion of Probation: A licensee may request reinstatement prior to the completion of probation and must meet the following conditions:

1. Submit a petition to the Department stating:
  - a. The reasons why the license should be reinstated prior to the probation completion date; and

b. The corrective action taken to prevent recurrence of the violation(s) that served as the basis of the probation; and

2. Successfully complete any inspection the Department determines necessary.

12-008.04B2 Reinstatement Prior to Completion of Suspension: A licensee may request reinstatement prior to the completion of suspension and must meet the following conditions:

1. Submit a petition to the Department stating:
  - a. The reasons why the license should be reinstated prior to the suspension completion date; and
  - b. The corrective action taken to prevent recurrence of the Violation(s) that served as the basis of the suspension;
2. Submit a written renewal application to the Department as specified 175 NAC 12-003.02;
3. Pay the renewal fee as specified in 175 NAC 12-004; and
4. Successfully complete an inspection.

12-008.04B3 The Director will consider the petition submitted and any results of the inspection or investigation conducted by the Department and:

1. Grant full reinstatement of the license;
2. Modify the probation or suspension; or
3. Deny the petition for reinstatement.

12-008.04B4 The Director's decision is final 30 days after mailing the decision to the licensee unless the licensee requests a hearing within the 30-day period. The requested hearing will be held according to rules and regulations of the Department for administrative hearings in contested cases.

12-008.04C Re-Licensure After Revocation: A facility license that has been revoked is not eligible for re-licensure until two years after the date of revocation.

12-008.04C1 A facility seeking re-licensure must apply for an initial license and meet the requirements for initial licensure in 175 NAC 12-003.01.

12-008.04C2 The Department will process the application for re-licensure in the same manner as specified in 175 NAC 12-003.01.

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