

[<<Prev Rule](#)

[Next Rule>>](#)

Texas Administrative Code

TITLE 40

SOCIAL SERVICES AND ASSISTANCE

PART 1

DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 19

NURSING FACILITY REQUIREMENTS FOR LICENSURE
AND MEDICAID CERTIFICATION

SUBCHAPTER V

ENFORCEMENT

DIVISION 1

ENFORCEMENT GENERALLY

RULE §19.2102

Enforcement Generally

The Texas Department of Human Services (DHS), as the state licensing agency and the survey and certification agency for the Medicaid program, may impose concurrently licensing remedies and Medicaid remedies on Medicaid-certified facilities.

Source Note: The provisions of this §19.2102 adopted to be effective May 1, 1995, 20 TexReg 2054; amended to be effective March 1, 1998, 23 TexReg 1314.

[Next Page](#)

[Previous Page](#)

[List of Titles](#)

[Back to List](#)

[HOME](#) | [TEXAS REGISTER](#) | [TEXAS ADMINISTRATIVE CODE](#) | [OPEN MEETINGS](#) | [HELP](#) |

[<<Prev Rule](#)

[Next Rule>>](#)

Texas Administrative Code

TITLE 40

SOCIAL SERVICES AND ASSISTANCE

PART 1

DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 19

NURSING FACILITY REQUIREMENTS FOR LICENSURE
AND MEDICAID CERTIFICATION

SUBCHAPTER V

ENFORCEMENT

DIVISION 2

LICENSING REMEDIES

RULE §19.2103

Warning Letter

When Texas Department of Human Services (DHS) personnel determine that a facility is out of compliance with licensure rules to a degree that places the facility at risk of the imposition of licensing actions, DHS may send a warning letter to the facility. The warning letter notifies the facility that the violations of licensing rules must be corrected.

Source Note: The provisions of this §19.2103 adopted to be effective May 1, 1995, 20 TexReg 2054.

[Next Page](#)

[Previous Page](#)

[List of Titles](#)

[Back to List](#)

[HOME](#) | [TEXAS REGISTER](#) | [TEXAS ADMINISTRATIVE CODE](#) | [OPEN MEETINGS](#) | [HELP](#) |

[<<Prev Rule](#)

Texas Administrative Code

[Next Rule>>](#)**TITLE 40****SOCIAL SERVICES AND ASSISTANCE****PART 1****DEPARTMENT OF AGING AND DISABILITY SERVICES****CHAPTER 19****NURSING FACILITY REQUIREMENTS FOR LICENSURE
AND MEDICAID CERTIFICATION****SUBCHAPTER V****ENFORCEMENT****DIVISION 2****LICENSING REMEDIES****RULE §19.2104****Suspension of a License**

(a) The Texas Department of Human Services (DHS) may suspend a facility's license when the license holder, or any other person described in §19.201(e) of this title (relating to Criteria for Licensing), has:

- (1) violated the requirements in either a repeated or substantial manner; or
- (2) committed any act described in §19.2112(a)(2)-(6) of this title (relating to Administrative Penalties).

(b) Suspension of a license may occur simultaneously with any other enforcement provision available to DHS.

(c) The facility will be notified by certified mail of DHS's intent to suspend the license, including the facts or conduct alleged to warrant the suspension. The facility has an opportunity to show compliance with all requirements of law for the retention of the license, as provided in §19.215 of this title (relating to Informal Reconsideration). If the facility requests an informal reconsideration, DHS will give the license holder a written affirmation or reversal of the proposed action.

(d) The facility will be notified by certified mail of DHS's suspension of the facility's license. The facility has 15 days from receipt of the certified mail notice to request a hearing in accordance with Chapter 79, Subchapter Q of this title (relating to Formal Appeals). The suspension is effective when the deadline for appeal of the suspension passes, unless the facility appeals the suspension. If the facility appeals the suspension, the status of the license holder is preserved until final disposition of the contested matter.

(e) The suspension remains in effect until DHS determines that the reason for suspension no longer exists. DHS will conduct an on-site investigation before making a determination. During the suspension, the license holder must return the license to DHS.

Source Note: The provisions of this §19.2104 adopted to be effective May 1, 1995, 20 TexReg 2054; amended to be effective March 1, 1998, 23 TexReg 1314; amended to be effective October 15, 1998, 23 TexReg 10496.

[Next Page](#)[Previous Page](#)

List of Titles

Back to List

HOME | TEXAS REGISTER | TEXAS ADMINISTRATIVE CODE | OPEN MEETINGS | HELP |

[<<Prev Rule](#)**Texas Administrative Code**[Next Rule>>](#)**TITLE 40****SOCIAL SERVICES AND ASSISTANCE****PART 1****DEPARTMENT OF AGING AND DISABILITY SERVICES****CHAPTER 19****NURSING FACILITY REQUIREMENTS FOR LICENSURE
AND MEDICAID CERTIFICATION****SUBCHAPTER V****ENFORCEMENT****DIVISION 2****LICENSING REMEDIES****RULE §19.2106****Revocation of a License**

(a) DADS may revoke a facility's license when the license holder, or any other person described in §19.201(f) of this title (relating to Criteria for Licensing), has:

(1) violated the requirements of the Health and Safety Code, Chapter 242, or the rules adopted under that chapter, in either a repeated or substantial manner;

(2) committed any act described in §19.2112(a)(2) - (6) of this title (relating to Administrative Penalties); or

(3) failed to notify DADS of a significant adverse change in financial condition, as required under §19.1925(b) of this title (relating to Financial Condition).

(b) Revocation of a license may occur simultaneously with any other enforcement provision available to DADS.

(c) The license holder will be notified by certified mail of DADS' intent to revoke the license, including the facts or conduct alleged to warrant the revocation, with a copy being sent to the facility. The license holder has an opportunity to show compliance with all requirements of law for the retention of the license as provided in §19.215 of this title (relating to Opportunity to Show Compliance). If the license holder requests an opportunity to show compliance, DADS gives the license holder a written affirmation or reversal of the proposed action.

(d) The license holder will be notified by certified mail of DADS' revocation of the facility's license, with a copy being sent to the facility. The license holder has 15 days from receipt of the certified mail notice to request a hearing in accordance with the Health and Human Services Commission's formal hearing procedures in 1 TAC, Chapter 357, Subchapter I. The revocation will take effect when the deadline for appeal of the revocation passes, unless the license holder appeals the revocation. If the license holder appeals the revocation, the status of the license holder is preserved until final disposition of the contested matter. Upon revocation, the license must be returned to DADS.

Source Note: The provisions of this §19.2106 adopted to be effective May 1, 1995, 20 TexReg 2054; amended to be effective July 1, 1997, 22 TexReg 5672; amended to be effective March 1, 1998, 23 TexReg 1314; amended to be effective October 15, 1998, 23 TexReg 10496; amended to be effective October 1, 1999, 24 TexReg 8314; amended to be effective July 1, 2001, 26 TexReg 3824; amended to be effective July 1, 2002, 27 TexReg 5245; amended to be effective September 1, 2007, 32 TexReg 4231

List of Titles

Back to List

HOME | TEXAS REGISTER | TEXAS ADMINISTRATIVE CODE | OPEN MEETINGS | HELP |

[<<Prev Rule](#)**Texas Administrative Code**[Next Rule>>](#)**TITLE 40****SOCIAL SERVICES AND ASSISTANCE****PART 1****DEPARTMENT OF AGING AND DISABILITY SERVICES****CHAPTER 19****NURSING FACILITY REQUIREMENTS FOR LICENSURE
AND MEDICAID CERTIFICATION****SUBCHAPTER V****ENFORCEMENT****DIVISION 2****LICENSING REMEDIES****RULE §19.2108****Emergency Suspension and Closing Order**

(a) The Texas Department of Human Services (DHS) will suspend a facility's license or order an immediate closing of part of the facility if:

- (1) DHS finds that the facility is operating in violation of the licensure rules; and
- (2) the violation creates an immediate threat to the health and safety of a resident.

(b) The order suspending a license or closing a part of a facility under this section is immediately effective on the date on which the license holder receives written notice or a later date specified in the order. Written notice includes notice by facsimile transmission.

(c) The order suspending a license or ordering an immediate closing of a part of the facility is valid for ten days after the effective date of the order.

(d) When an emergency suspension has been ordered and the conditions in the facility indicate that residents should be relocated, the following rules apply unless superseded by DHS's Medicaid discharge rules in §19.502 of this title (relating to Transfer and Discharge in Medicaid-Certified Facilities):

- (1) A resident's rights or freedom of choice in selecting treatment facilities must be respected.
- (2) If a facility or part of a facility is closed:

(A) DHS will notify the local health department director, city or county health authority, and representatives of the appropriate state agencies of the closure;

(B) the facility staff must notify each resident's guardian or responsible party and attending physician, advising them of the action in process;

(C) the resident or the resident's guardian or responsible person must be given opportunity to designate a preference for a specific facility or for other arrangements;

(D) DHS must arrange for relocation to other facilities in the area in accordance with the resident's preference. A facility chosen for relocation must be in good standing with DHS and, if certified under Titles XVIII and XIX of the Social Security Act, must be in good standing under its contract. The facility chosen must be able to meet the needs of the resident;

(E) if absolutely necessary, to prevent transport over substantial distances, DHS will grant a waiver to a receiving facility to temporarily exceed its licensed capacity, provided the health and safety of residents is not compromised and the facility can meet the increased demands for direct care personnel and dietary services. A facility may exceed its licensed capacity under these circumstances, monitored by DHS staff, until residents can be transferred to a permanent location;

(F) with each resident transferred, the following reports, records, and supplies must be transmitted to the receiving institution:

(i) a copy of the current physician's orders for medication, treatment, diet, and special services required;

(ii) personal information such as name and address of next of kin, guardian, or party responsible for the resident; attending physician; Medicare and Medicaid identification number; social security number; and other identification information as deemed necessary and available;

(iii) all medication dispensed in the name of the resident for which a physician's orders are current. The medications must be inventoried and transferred with the resident. Medications past an expiration date or discontinued by physician order must be inventoried for disposition in accordance with state law;

(iv) the residents' personal belongings, clothing, and toilet articles. An inventory of personal property and valuables must be made by the closing facility; and

(v) resident trust fund accounts maintained by the closing facility. All items must be properly inventoried and receipts obtained for audit purposes by the appropriate state agency;

(G) if the closed facility is allowed to reopen within 90 days, the relocated residents have the first right to return to the facility. Relocated residents may choose to return, may stay in the receiving facility (if the facility is not exceeding its licensed capacity), or choose any other accommodations;

(H) any return to the facility must be treated as a new admission in regard to exchange of medical information, medications, and completion of required forms; and

(I) a licensee whose facility is closed under this section is entitled to request an administrative hearing in accordance with Chapter 79, Subchapter Q of this title (relating to Formal Appeals), but requesting a hearing does not suspend the effectiveness of the order.

Source Note: The provisions of this §19.2108 adopted to be effective May 1, 1995, 20 TexReg 2054; amended to be effective October 15, 1998, 23 TexReg 10496.

[Next Page](#)

[Previous Page](#)

[List of Titles](#)

[Back to List](#)

[<<Prev Rule](#)

[Next Rule>>](#)

Texas Administrative Code

TITLE 40

SOCIAL SERVICES AND ASSISTANCE

PART 1

DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 19

NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

SUBCHAPTER V

ENFORCEMENT

DIVISION 2

LICENSING REMEDIES

RULE §19.2110

Referral to the Attorney General

In this section, "threatened violation" means a situation which, unless immediate steps are taken to correct, may cause injury or harm to a resident's health and safety. The Texas Department of Human Services (DHS) may refer a facility to the attorney general who may petition a district court for:

- (1) a temporary restraining order to restrain a person from a violation or threatened violation of the requirements or any other law affecting residents if DHS reasonably believes that the violation or threatened violation creates an immediate threat to the health and safety of a resident;
- (2) an injunction to restrain a person from a violation or threatened violation of the requirements or any other law affecting residents if DHS reasonably believes that the violation or threatened violation creates a threat to the health and safety of a resident; or
- (3) the assessment of civil penalties under the Texas Health and Safety Code, §242.065, for a violation that threatens the health and safety of a resident. DHS recognizes the limited immunity from civil liability granted to volunteers serving as officers, directors, or trustees of charitable organizations, under the Charitable Immunity and Liability Act of 1987 (Texas Civil Practice and Remedies Code, Chapter 84).

Source Note: The provisions of this §19.2110 adopted to be effective May 1, 1995, 20 TexReg 2054; amended to be effective March 1, 1998, 23 TexReg 1314.

[Next Page](#)

[Previous Page](#)

[List of Titles](#)

[Back to List](#)

[<<Prev Rule](#)**Texas Administrative Code**[Next Rule>>](#)**TITLE 40****SOCIAL SERVICES AND ASSISTANCE****PART 1****DEPARTMENT OF AGING AND DISABILITY SERVICES****CHAPTER 19****NURSING FACILITY REQUIREMENTS FOR LICENSURE
AND MEDICAID CERTIFICATION****SUBCHAPTER V****ENFORCEMENT****DIVISION 2****LICENSING REMEDIES****RULE §19.2111****Suspension of Admissions**

(a) If the commissioner finds that a nursing facility has committed an act for which a civil penalty may be imposed under §242.065, Health and Safety Code, the commissioner may order the nursing facility to immediately suspend admissions. For the purpose of this remedy, the Texas Department of Human Services defines an admission as the entry into a facility of a new resident or of a resident who has been absent from the facility for 24 or more hours.

(1) A waiver to allow a resident to be admitted may be considered by the commissioner or his designee.

(2) In determining whether to grant a waiver under paragraph (1) of this subsection, factors that the commissioner or his or her designee may consider include, but are not limited to:

(A) the reason(s) for which admissions at the facility are suspended;

(B) the facility's ability to correct the reasons for which admissions at the facility are suspended;

(C) the relation between the reasons for which admissions at the facility are suspended and the health care needs of the resident who seeks to return to the facility;

(D) whether the resident who wants to return to the facility has a spouse or relative in the facility; or

(E) the effect that barring the resident's return to the facility or other alternative placement will have on the ability of the resident to maintain contact with the resident's attending physician, family, responsible party, and agent (if any) under a medical power of attorney.

(3) A facility, with regard to which admissions are suspended, must inform a resident or his responsible party upon leaving that facility, that if he leaves for more than 24 hours, he may not be able to return.

(b) A suspension of admissions is effective on the date a nursing facility receives notice of the order and of the manner in which the order may be appealed. The Texas Department of Human Services provides an opportunity for a hearing on the appeal of the order within 14 days of the date the suspension becomes effective.

(c) During the time admissions are suspended, a nursing facility must post a notice of the suspension on all entrance and exit doors. The notice must contain the dates of the suspension.

(d) A person commits a Class C misdemeanor if the person does not post the required notice or removes a

notice while the suspension of admissions is in effect.

Source Note: The provisions of this §19.2111 adopted to be effective March 1, 1998, 23 TexReg 1314; amended to be effective March 1, 2001, 26 TexReg 984

[Next Page](#)

[Previous Page](#)

[List of Titles](#)

[Back to List](#)

[HOME](#) | [TEXAS REGISTER](#) | [TEXAS ADMINISTRATIVE CODE](#) | [OPEN MEETINGS](#) | [HELP](#) |

[<<Prev Rule](#)

Texas Administrative Code

[Next Rule>>](#)**TITLE 40****SOCIAL SERVICES AND ASSISTANCE****PART 1****DEPARTMENT OF AGING AND DISABILITY SERVICES****CHAPTER 19****NURSING FACILITY REQUIREMENTS FOR LICENSURE
AND MEDICAID CERTIFICATION****SUBCHAPTER V****ENFORCEMENT****DIVISION 2****LICENSING REMEDIES****RULE §19.2112****Administrative Penalties**

(a) DADS may assess an administrative penalty against a person who:

(1) violates Chapter 242, Health and Safety Code or a rule, standard or order adopted or license issued under Chapter 242;

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

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

(B) with respect to a matter under investigation by DADS;

(3) refuses to allow a representative of DADS to inspect:

(A) a book, record, or file required to be maintained by a facility; or

(B) any portion of the premises of a facility;

(4) willfully interferes with the work of a representative of DADS or the enforcement of this chapter;

(5) willfully interferes with a representative of DADS preserving evidence of a violation of a rule, standard, or order adopted or license issued under Chapter 242, Health and Safety Code;

(6) fails to pay a penalty assessed by DADS under Chapter 242, Health and Safety Code by the 10th day after the date the assessment of the penalty becomes final; or

(7) fails to notify DADS of a change of ownership before the effective date of the change of ownership.

(b) The persons against whom DADS may impose an administrative penalty include:

(1) an applicant for a license;

(2) a license holder;

(3) a partner, officer, director, or managing employee of an applicant or a license holder; and

(4) a person who controls a nursing facility.

(c) DADS recognizes the limited immunity from civil liability granted to volunteers serving as officers, directors or trustees of charitable organizations, under the Charitable Immunity and Liability Act of 1987 (Texas Civil Practice and Remedies Code, Chapter 84).

(d) In determining whether a violation warrants an administrative penalty, DADS considers the facility's history of compliance and whether:

- (1) a pattern or trend of violations exists; or
- (2) the violation is recurrent in nature and type; or
- (3) the violation presents danger to the health and safety of at least one resident; or
- (4) the violation is of a magnitude or nature that constitutes a health and safety hazard having a direct or imminent adverse effect on resident health, safety, or security, or which presents even more serious danger or harm; or
- (5) the violation is of a type established elsewhere in DADS rules concerning licensing standards for long term care facilities.

(e) In determining the amount of the penalty, DADS considers at a minimum:

- (1) the gradations of penalties;
- (2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard or potential hazard to the health and safety of the residents;
- (3) the history of previous violations;
- (4) deterrence of future violations; and
- (5) efforts to correct the violation.

(f) Administrative penalties may be levied for each violation found in a single survey. Each day of a continuing violation constitutes a separate violation. The administrative penalties for each day of a continuing violation cease on the date the violation is corrected. A violation that is the subject of a penalty is presumed to continue on each successive day until it is corrected. The date of correction alleged by the facility in its written plan of correction will be presumed to be the actual date of correction unless it is later determined by DADS that the correction was not made by that date or was not satisfactory.

(1) Table of administrative penalties. The following table contains the gradations of penalties in accordance with the relative seriousness of the violation. While the table addresses most administrative penalty situations, administrative penalties for unique circumstances to which the table does not apply are established elsewhere in the requirements. The amount of the administrative penalty listed in subsection (a)(7) of this section is \$500.

Attached Graphic

(2) Definitions. The following terms when used in this section have the following meanings, unless the context clearly indicates otherwise.

(A) Severity.

(i) No actual harm with a potential for minimal harm is a deficiency that has the potential for causing no more than a minor negative impact on the resident(s).

(ii) No actual harm with a potential for more than minimal harm is noncompliance that results in minimal physical, mental and/or psychological discomfort to the resident and/or has the potential (not yet realized) to compromise the resident's ability to maintain and/or reach his/her highest practicable physical, mental, and/or psychosocial well-being as defined by an accurate and comprehensive resident assessment, plan of care and provision of services.

(iii) Actual harm that is not immediate jeopardy is non-compliance that results in a negative outcome that has compromised the resident's ability to maintain and/or reach his/her highest practicable physical, mental and/or psychosocial well-being as defined by an accurate and comprehensive resident assessment, plan of care and provision of services. This does not include a deficient practice that only has limited consequence for the resident and would be included in (i) or (ii) above.

(iv) Immediate jeopardy to resident health and safety is a situation in which immediate corrective action is necessary because the facility's non-compliance with one or more requirements has caused, or likely to cause, serious injury, harm, impairment or death to a resident receiving care in the facility.

(B) Scope.

(i) Isolated means one or a very limited number of residents are affected and/or one or a very limited number of staff are involved, or the situation has occurred only occasionally or in a very limited number of locations.

(ii) Pattern means more than a very limited number of residents are affected and/or more than a very limited number of staff are involved, or the situation has occurred in several locations, and/or the same residents have been affected by repeated occurrences of the same deficient practice. The effect of the deficient practice is not found to be pervasive throughout the facility.

(iii) Widespread means the problems causing the deficiencies are pervasive in the facility and/or represent systemic failure that affected or has the potential to affect a large portion or all of the facility's residents.

(g) The penalties for a violation of the requirement to post notice of the suspension of admissions, additional reporting requirements found at §19.601(a) of this chapter (relating to Resident Behavior and Facility Practice), or residents' rights cannot exceed \$1,000 a day for each violation, unless the violation of a resident's right also violates a rule in Subchapter H of this chapter (relating to Quality of Life), or Subchapter J of this chapter (relating to Quality of Care).

(h) No facility will be penalized because of a physician's or consultant's nonperformance beyond the facility's control or if documentation clearly indicates the violation is beyond the facility's control.

(i) DADS may issue a preliminary report regarding an administrative penalty. Within 10 days of the issuance of the preliminary report, DADS will give the facility written notice of the recommendation for an administrative penalty. The notice will include:

- (1) a brief summary of the violations;
 - (2) a statement of the amount of penalty recommended;
 - (3) a statement of whether the violation is subject to correction under §19.2114 of this subchapter (relating to Right to Correct) and if the violation is subject to correction, a statement of:
 - (A) the date on which the facility must file a plan of correction (POC) to be approved by DADS; and
 - (B) the date on which the POC must be completed to avoid assessment of the penalty; and
 - (4) a statement that the facility has a right to a hearing on the violation, the amount of the penalty, or both.
- (j) Within 20 days after the date on which written notice of recommended assessment of a penalty is sent to a facility, the facility must give DADS written consent to the penalty, make a written request for a hearing, or if the violation is subject to correction, submit a plan of correction in accordance with §19.2114 of this subchapter (relating to Right to Correct). If the facility does not make a response within the 20-day period, DADS will assess the penalty.
- (k) The procedures for notification of recommended assessment, opportunity for hearing, actual assessment, payment of penalty, judicial review, and remittance will be in accordance with Health and Safety Code, §§242.067 - 242.069. Hearings will be held in accordance with Health and Human Services Commission's rules at 1 TAC, Chapter 357, Subchapter I. Interest on penalties is governed by Health and Safety Code §242.069(g).

Source Note: The provisions of this §19.2112 adopted to be effective May 1, 1995, 20 TexReg 2054; amended to be effective September 1, 1996, 21 TexReg 7859; amended to be effective March 1, 1998, 23 TexReg 1314; amended to be effective January 1, 2000, 24 TexReg 11781; amended to be effective August 1, 2000, 25 TexReg 6779; amended to be effective April 1, 2001, 26 TexReg 1547; amended to be effective May 4, 2008, 33 TexReg 3446

[Next Page](#)[Previous Page](#)[List of Titles](#)[Back to List](#)[HOME](#) | [TEXAS REGISTER](#) | [TEXAS ADMINISTRATIVE CODE](#) | [OPEN MEETINGS](#) | [HELP](#) |

[<<Prev Rule](#)**Texas Administrative Code**[Next Rule>>](#)**TITLE 40****SOCIAL SERVICES AND ASSISTANCE****PART 1****DEPARTMENT OF AGING AND DISABILITY SERVICES****CHAPTER 19****NURSING FACILITY REQUIREMENTS FOR LICENSURE
AND MEDICAID CERTIFICATION****SUBCHAPTER V****ENFORCEMENT****DIVISION 2****LICENSING REMEDIES****RULE §19.2114****Right To Correct**

(a) The Texas Department of Human Services (DHS) may not collect an administrative penalty if, not later than the 45th day after the date the facility receives notice, the facility corrects the violation.

(b) If the facility reports to DHS that the violation has been corrected, DHS will inspect the correction or take any other steps necessary to confirm that the violation has been corrected and notify the facility that:

- (1) the correction is satisfactory and a penalty is not assessed; or
- (2) the correction is not satisfactory and a penalty is recommended.

(c) The facility must request a hearing on the violation no later than the 20th day after the date on which the notice is sent.

(d) Subsection (a) of this section does not apply:

- (1) to a violation that DHS determines:
 - (A) results in serious harm to or death of a resident;
 - (B) constitutes a serious threat to the health or safety of a resident; or
 - (C) substantially limits the facility's capacity to provide care;
- (2) to the violations listed in §19.214(a)(2)-(6) of this title (relating to Criteria for Denying a License or Renewal of a License); or
- (3) to the violation of a resident right.

(e) A facility that corrects a violation under subsection (a) of this section must maintain the correction. If the facility fails to maintain the correction until the first anniversary of the date the correction was made, DHS may assess an administrative penalty equal to three times the amount of the original penalty assessed, but not collected. DHS does not provide a facility an opportunity to correct the subsequent violation.

Source Note: The provisions of this §19.2114 adopted to be effective March 1, 1998, 23 TexReg 1314.

List of Titles

Back to List

HOME | TEXAS REGISTER | TEXAS ADMINISTRATIVE CODE | OPEN MEETINGS | HELP |

[<<Prev Rule](#)

Texas Administrative Code

[Next Rule>>](#)**TITLE 40****SOCIAL SERVICES AND ASSISTANCE****PART 1****DEPARTMENT OF AGING AND DISABILITY SERVICES****CHAPTER 19****NURSING FACILITY REQUIREMENTS FOR LICENSURE
AND MEDICAID CERTIFICATION****SUBCHAPTER V****ENFORCEMENT****DIVISION 2****LICENSING REMEDIES****RULE §19.2115****Amelioration of Violation**

(a) In lieu of demanding payment of an administrative penalty, the commissioner may allow the person to use, under supervision of the Texas Department of Human Services (DHS), a portion of the penalty to ameliorate the violation or to improve services, other than administrative services, in the nursing facility.

(b) DHS will offer amelioration to a person for a violation if DHS determines that the violation does not constitute immediate jeopardy to the health and safety of an institution resident. In this section, "immediate jeopardy to health and safety" means a situation in which immediate corrective action is necessary because the facility's noncompliance with one or more requirements has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident.

(c) DHS will not offer amelioration to a person if:

- (1) the person has been charged with a violation that is subject to the right-to-correct, or
- (2) DHS determines that the violation constitutes immediate jeopardy to the health and safety of a resident.

(d) DHS will offer amelioration to a person not later than the 10th day after the date the person receives from DHS a final notification of assessment of administrative penalty that is sent to the person after an informal dispute resolution process but before an administrative hearing.

(e) A person to whom amelioration has been offered must file a plan for amelioration not later than the 45th day after the date the person receives the offer of amelioration from DHS. In submitting the plan, the person must agree to waive the person's right to an administrative hearing if DHS approves the plan.

(f) At a minimum, a plan for amelioration must:

- (1) propose changes to the management or operation of the facility that will improve services to or quality of care of residents,
- (2) identify, through measurable outcomes, the ways in which and the extent to which the proposed changes will improve services to or quality of care of residents,
- (3) establish clear goals to be achieved through the proposed changes,
- (4) establish a timeline for implementing the proposed changes, and

(5) identify specific actions necessary to implement the proposed changes.

(g) DHS may require that an amelioration plan propose changes that would result in conditions that exceed the minimum requirements for nursing facility licensure.

(h) DHS will approve or deny an amelioration plan not later than the 45th day after the date DHS receives the plan. On approval of a person's plan, DHS will deny a pending request for a hearing submitted by the person.

(i) DHS will not offer amelioration to a person:

(1) more than three times in a two-year period; or

(2) more than one time in a two-year period for the same or similar violation.

Source Note: The provisions of this §19.2115 adopted to be effective March 1, 1998, 23 TexReg 1314; amended to be effective June 1, 2002, 27 TexReg 4367

[Next Page](#)

[Previous Page](#)

[List of Titles](#)

[Back to List](#)

[HOME](#) | [TEXAS REGISTER](#) | [TEXAS ADMINISTRATIVE CODE](#) | [OPEN MEETINGS](#) | [HELP](#) |

[<<Prev Rule](#)**Texas Administrative Code**[Next Rule>>](#)**TITLE 40****SOCIAL SERVICES AND ASSISTANCE****PART 1****DEPARTMENT OF AGING AND DISABILITY SERVICES****CHAPTER 19****NURSING FACILITY REQUIREMENTS FOR LICENSURE
AND MEDICAID CERTIFICATION****SUBCHAPTER V****ENFORCEMENT****DIVISION 2****LICENSING REMEDIES****RULE §19.2116****Involuntary Appointment of a Trustee**

(a) The Texas Department of Human Services (DHS) may petition a court of competent jurisdiction for the involuntary appointment of a trustee to operate a facility if one or more of the following conditions exist:

- (1) the facility is operating without a license;
- (2) the facility's license has been suspended or revoked;
- (3) license suspension or revocation procedures against a facility are pending and an imminent threat to the health and safety of the residents exists;
- (4) an emergency exists that presents an immediate threat to the health and safety of the residents; and/or
- (5) the facility is closing (whether voluntarily or through an emergency closure order) and arrangements for relocation of the residents to other licensed institutions have not been made before closure.

(b) A trustee appointed under this section is entitled to a reasonable fee as determined by the court, to be paid from the Nursing and Convalescent Home Trust Fund, unless the trustee is placed in a veterans home. When a trustee is placed in a veterans home (as defined in Natural Resources Code, §164.002), the Veterans Land Board pays the trustee's fee.

(c) The trustee may use the emergency assistance funds in the trust fund only to alleviate an immediate threat to the health and safety of the residents, through such disbursements as payments for food; medication; sanitation services; minor repairs; supplies necessary for personal hygiene; or services necessary for the personal care, health, and safety of the residents.

(d) Before emergency assistance funds may be dispersed, a court order must be entered authorizing DHS to disburse emergency assistance funds to the facility.

(e) A facility that receives emergency assistance funds under this section must reimburse DHS for the amounts received not later than one year after the date on which the funds were received by the trustee. The owner of the facility at the time the trustee was appointed is responsible for the reimbursement and must pay interest from the date the funds were disbursed on the amount outstanding at a rate equal to the rate of interest determined under Texas Civil Statutes, Article 5069-1.05, to be applicable to judgments rendered during the month in which the money was disbursed to the facility. DHS will deposit the reimbursement and the interest received under this subsection to the credit of the Nursing and Convalescent Home Trust Fund. If the funds are not repaid within the year, DHS may determine that the facility is not eligible for a Medicaid contract.

(f) Any amount remaining due at the end of one year becomes delinquent and will be referred to the attorney general.

Source Note: The provisions of this §19.2116 adopted to be effective May 1, 1995, 20 TexReg 2054; amended to be effective September 1, 2003, 28 TexReg 6939

[Next Page](#)

[Previous Page](#)

[List of Titles](#)

[Back to List](#)

[HOME](#) | [TEXAS REGISTER](#) | [TEXAS ADMINISTRATIVE CODE](#) | [OPEN MEETINGS](#) | [HELP](#) |

[<<Prev Rule](#)

[Next Rule>>](#)

Texas Administrative Code

TITLE 40

SOCIAL SERVICES AND ASSISTANCE

PART 1

DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 19

NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

SUBCHAPTER V

ENFORCEMENT

DIVISION 2

LICENSING REMEDIES

RULE §19.2118

Appointment of a Trustee by Agreement

(a) A person holding a controlling interest in a facility may, at any time, request the Texas Department of Human Services (DHS) to assume the operation of the facility through the appointment of a trustee.

(b) If DHS believes that the appointment of a trustee is desirable, DHS may enter into an agreement with the person holding the controlling interest for appointment of the trustee to take charge of the facility.

(c) Any agreement entered into under this section must:

- (1) specify all terms and conditions of the trustee's appointment and authority; and
- (2) preserve all rights of the residents as granted by law.

(d) The agreement will terminate either at a time specified in the agreement or upon receipt of notice of intent to terminate sent by either party.

(e) If DHS determines that termination of the agreement by the person holding a controlling interest in the facility would not be in the best interest of the residents, DHS will petition a court for an involuntary appointment under the terms of §19.2116 of this title (relating to Involuntary Appointment of a Trustee).

(f) The appointment of a trustee by agreement does not suspend the obligation of a facility to pay assessed monetary, civil, or administrative penalties.

Source Note: The provisions of this §19.2118 adopted to be effective May 1, 1995, 20 TexReg 2054.

[Next Page](#)

[Previous Page](#)

[List of Titles](#)

[Back to List](#)

[<<Prev Rule](#)**Texas Administrative Code**[Next Rule>>](#)**TITLE 40****SOCIAL SERVICES AND ASSISTANCE****PART 1****DEPARTMENT OF AGING AND DISABILITY SERVICES****CHAPTER 19****NURSING FACILITY REQUIREMENTS FOR LICENSURE
AND MEDICAID CERTIFICATION****SUBCHAPTER V****ENFORCEMENT****DIVISION 2****LICENSING REMEDIES****RULE §19.2119****Open Hearing**

(a) The Texas Department of Human Services (DHS) will hold an open hearing in a facility if DHS:

- (1) has taken a punitive action against the facility in the preceding 12 months; or
- (2) receives a complaint that DHS has reasonable cause to believe is valid from an ombudsman, advocate, resident, or relative of a resident relating to a serious or potentially serious problem in the facility.

(b) Only one hearing regarding a specific facility will be held each year unless DHS determines that, in the interest of resident health and safety, more should be held.

(c) Notice of the time, date, and place of the hearing will be mailed not less than ten days before the hearing to:

- (1) the facility;
- (2) the designated closest living relative or legal guardian of each resident; and
- (3) appropriate state and federal agencies that work with the facility.

(d) The facility is responsible for furnishing DHS a listing of the name and current mailing address of each resident's designated closest living relative, legal guardian, or responsible party.

(e) DHS may exclude a facility's administrator and personnel from the hearing.

(f) DHS will notify, confidentially, the complainant of the results of the investigation which followed the complaint.

(g) DHS will notify the facility of any complaints which are received at the hearing and provide a summary of those complaints to the facility. In providing this information to the facility, the source of the complaints will not be identified.

Source Note: The provisions of this §19.2119 adopted to be effective May 1, 1995, 20 TexReg 2054.

List of Titles

Back to List

HOME | TEXAS REGISTER | TEXAS ADMINISTRATIVE CODE | OPEN MEETINGS | HELP |

[<<Prev Rule](#)

[Next Rule>>](#)

Texas Administrative Code

TITLE 40

SOCIAL SERVICES AND ASSISTANCE

PART 1

DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 19

NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

SUBCHAPTER V

ENFORCEMENT

DIVISION 3

REMEDIES IN MEDICAID-CERTIFIED FACILITIES

RULE §19.2120

Definitions Pertaining to Medicaid Remedies

The following term, when used in this undesignated head, Remedies in Medicaid-Certified Facilities, shall have the following meaning, unless the context clearly indicates otherwise. Accountability period--A 24-month period which begins each time the Texas Department of Human Services (DHS) imposes on a facility a required Category II or III remedy. Accountability periods may overlap.

Source Note: The provisions of this §19.2120 adopted to be effective May 1, 1995, 20 TexReg 2054; amended to be effective July 31, 1995, 20 TexReg 5259.

[Next Page](#)

[Previous Page](#)

[List of Titles](#)

[Back to List](#)

[<<Prev Rule](#)

[Next Rule>>](#)

Texas Administrative Code

TITLE 40

SOCIAL SERVICES AND ASSISTANCE

PART 1

DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 19

NURSING FACILITY REQUIREMENTS FOR LICENSURE
AND MEDICAID CERTIFICATION

SUBCHAPTER V

ENFORCEMENT

DIVISION 3

REMEDIES IN MEDICAID-CERTIFIED FACILITIES

RULE §19.2121

General Provisions

Enforcement actions in Medicaid-certified facilities are performed according to regulations found in 42 Code of Federal Regulations §§431.151, 431.153, 488.301, 488.325(g), 488.330, 488.331, 488.335, and 488.400-488.456.

Source Note: The provisions of this §19.2121 adopted to be effective July 31, 1995, 20 TexReg 5259; amended to be effective February 1, 1997, 21 TexReg 11822.

[Next Page](#)

[Previous Page](#)

[List of Titles](#)

[Back to List](#)

[HOME](#) | [TEXAS REGISTER](#) | [TEXAS ADMINISTRATIVE CODE](#) | [OPEN MEETINGS](#) | [HELP](#) |

[<<Prev Rule](#)

[Next Rule>>](#)

Texas Administrative Code

TITLE 40

SOCIAL SERVICES AND ASSISTANCE

PART 1

DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 19

NURSING FACILITY REQUIREMENTS FOR LICENSURE
AND MEDICAID CERTIFICATION

SUBCHAPTER V

ENFORCEMENT

DIVISION 3

REMEDIES IN MEDICAID-CERTIFIED FACILITIES

RULE §19.2129

Interest on Civil Money Penalties

Interest on civil money penalties accrues at the rate of 10% from the date specified in Code of Federal Regulations §488.442 until paid.

Source Note: The provisions of this §19.2129 adopted to be effective January 1, 1997, 21 TexReg 11822.

[Next Page](#)

[Previous Page](#)

[List of Titles](#)

[Back to List](#)

[HOME](#) | [TEXAS REGISTER](#) | [TEXAS ADMINISTRATIVE CODE](#) | [OPEN MEETINGS](#) | [HELP](#) |

[<<Prev Rule](#)[Next Rule>>](#)

Texas Administrative Code

TITLE 40

SOCIAL SERVICES AND ASSISTANCE

PART 1

DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 19NURSING FACILITY REQUIREMENTS FOR LICENSURE
AND MEDICAID CERTIFICATION**SUBCHAPTER V**

ENFORCEMENT

DIVISION 3**REMEDIES IN MEDICAID-CERTIFIED FACILITIES****RULE §19.2144****Procedures Following Termination of the Provider
Agreement**

(a) The Texas Department of Human Services (DHS) may continue payments for no more than 30 days from the date DHS cancels a facility's provider agreement if DHS determines that:

(1) reasonable efforts are being made to transfer the residents to another facility, to community care, or to other alternate care; and

(2) additional time is needed to effect an orderly transfer of the residents.

(b) When a facility's provider agreement is terminated by DHS, the department will not enter into another provider agreement with the facility until 30 days have expired. If the facility reapplies for a provider agreement, DHS conducts an on-site visit to determine if the facility is complying with Medicaid requirements. If the facility is complying with Medicaid requirements and a provider agreement with the facility is not prohibited by DHS debarment rules, DHS enters into a provider agreement with the facility. This remedy will be applied in any category which results in the termination of the provider agreement.

Source Note: The provisions of this §19.2144 adopted to be effective July 31, 1995, 20 TexReg 5259.

[Next Page](#)[Previous Page](#)[List of Titles](#)[Back to List](#)[HOME](#) | [TEXAS REGISTER](#) | [TEXAS ADMINISTRATIVE CODE](#) | [OPEN MEETINGS](#) | [HELP](#) |

[<<Prev Rule](#)**Texas Administrative Code**[Next Rule>>](#)**TITLE 40****SOCIAL SERVICES AND ASSISTANCE****PART 1****DEPARTMENT OF AGING AND DISABILITY SERVICES****CHAPTER 19****NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION****SUBCHAPTER V****ENFORCEMENT****DIVISION 3****REMEDIES IN MEDICAID-CERTIFIED FACILITIES****RULE §19.2146****Termination of Provider Agreement on the Basis of the Imposition of Enforcement Actions Three Times Within an Accountability Period**

(a) If DADS determines that DADS or CMS has imposed a required Category II or III remedy (as defined in 42 Code of Federal Regulations (CFR)) on a facility three times within an accountability period, a recommendation is made to terminate the facility's provider agreement, unless DADS waives termination after considering the factors described in subsection (e) of this section.

(b) DADS notifies a facility in writing of its intention to terminate the facility's provider agreement. Notification occurs within:

(1) three calendar days after receipt of the recommendation of remedies for a facility found in immediate jeopardy; or

(2) 15 calendar days after receipt of the recommendation of remedies for a facility not found in immediate jeopardy.

(c) The provider agreement is terminated on the 20th calendar day after the facility receives notice of DADS' decision to terminate the provider agreement.

(d) An appeal for this remedy is the appeal on the issue of noncompliance that led to the imposition of a Category II or III remedy for the third time within the accountability period. The appeal for this remedy follows the federal procedures in 42 CFR Part 498 for a dually-participating facility or in 42 CFR Part 431 for a facility that is Medicaid-certified only.

(e) DADS may waive termination of a facility's provider agreement when a facility has received a Category II or III remedy three times within an accountability period of 24 consecutive months. DADS may consider one or more of the following to waive termination of a facility's provider agreement:

(1) the history of violations committed by the facility resulting in three Category II or III remedies within an accountability period and the resulting enforcement action compared with the history of violations committed by other facilities that received Category II or III remedies three times within an accountability period and the resulting enforcement action;

(2) the history of ownership of the facility when the Category II or III remedies were imposed; or

(3) the efforts the facility has made to correct the violations that resulted in the imposition of the Category II or

III remedies.

Source Note: The provisions of this §19.2146 adopted to be effective July 31, 1995, 20 TexReg 5259; amended to be effective February 1, 1997, 21 TexReg 11822; amended to be effective March 1, 1998, 23 TexReg 1314; amended to be effective April 21, 2009, 34 TexReg 2541

[Next Page](#)

[Previous Page](#)

[List of Titles](#)

[Back to List](#)

[HOME](#) | [TEXAS REGISTER](#) | [TEXAS ADMINISTRATIVE CODE](#) | [OPEN MEETINGS](#) | [HELP](#) |

[<<Prev Rule](#)

[Next Rule>>](#)

Texas Administrative Code

TITLE 40

SOCIAL SERVICES AND ASSISTANCE

PART 1

DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 19

NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

SUBCHAPTER V

ENFORCEMENT

DIVISION 3

REMEDIES IN MEDICAID-CERTIFIED FACILITIES

RULE §19.2147

Informal Dispute Resolution

The Texas Department of Human Services (DHS) provides an informal dispute resolution process (IDR) in the central office, as follows:

(1) A written request, all supporting documentation, and registration information as required under paragraph (3) of this section, must be submitted to the Texas Department of Human Services, Long Term Care-Regulatory, ATTN: IDR Coordinator, P.O. Box 149030 (MC-E-343), Austin, TX 78714-9030, no later than the 10th calendar day after receipt of the official statement of deficiencies.

(2) DHS will complete the IDR process no later than the 30th calendar day after receipt of the facility's written request, all documentation, and required registration information.

(3) Any individual representing a facility in an IDR must register with DHS and disclose the following:

(A) the individual's employment history during the preceding five years, including employment in regulatory agencies of this state and other states;

(B) ownership, including the identity of the controlling person or persons, of the facility the person is representing before DHS; and

(C) the identity of other entities the person represents or has represented before the agency during the previous 24 months.

Source Note: The provisions of this §19.2147 adopted to be effective March 1, 1998, 23 TexReg 1314; amended to be effective January 1, 2000, 24 TexReg 11781

[Next Page](#)

[Previous Page](#)

[List of Titles](#)

[Back to List](#)

[<<Prev Rule](#)

[Next Rule>>](#)

Texas Administrative Code

TITLE 40

SOCIAL SERVICES AND ASSISTANCE

PART 1

DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 19

NURSING FACILITY REQUIREMENTS FOR LICENSURE
AND MEDICAID CERTIFICATION

SUBCHAPTER V

ENFORCEMENT

DIVISION 3

REMEDIES IN MEDICAID-CERTIFIED FACILITIES

RULE §19.2148

Arbitration

A facility may elect arbitration as provided in 1 TAC Chapter 163 (concerning Arbitration Procedures for Certain Enforcement Actions of the Department of Human Resources).

Source Note: The provisions of this §19.2148 adopted to be effective March 1, 1998, 23 TexReg 1314.

[Next Page](#)

[Previous Page](#)

[List of Titles](#)

[Back to List](#)

[HOME](#) | [TEXAS REGISTER](#) | [TEXAS ADMINISTRATIVE CODE](#) | [OPEN MEETINGS](#) | [HELP](#) |

[<<Prev Rule](#)[Next Rule>>](#)

Texas Administrative Code

TITLE 40**SOCIAL SERVICES AND ASSISTANCE****PART 1****DEPARTMENT OF AGING AND DISABILITY SERVICES****CHAPTER 19****NURSING FACILITY REQUIREMENTS FOR LICENSURE
AND MEDICAID CERTIFICATION****SUBCHAPTER V****ENFORCEMENT****DIVISION 3****REMEDIES IN MEDICAID-CERTIFIED FACILITIES****RULE §19.2149****Exclusions**

This undesignated head governs the cancellation of current Texas Department of Human Services (DHS) Medicaid contracts with nursing facilities; debarment of former or potential contractors is governed by §§69.275-69.279 of this title (relating to Debarment and Suspension of Current and Potential Contractor's Rights, Causes for and Conditions of Debarment, Causes for and Conditions of Suspension, Proof Required for Debarment and Suspension, and Notice Requirements for Debarment and for Suspension).

Source Note: The provisions of this §19.2149 adopted to be effective July 31, 1995, 20 TexReg 5259.

[Next Page](#)[Previous Page](#)[List of Titles](#)[Back to List](#)

[HOME](#) | [TEXAS REGISTER](#) | [TEXAS ADMINISTRATIVE CODE](#) | [OPEN MEETINGS](#) | [HELP](#) |

[<<Prev Rule](#)

[Next Rule>>](#)

Texas Administrative Code

TITLE 40

SOCIAL SERVICES AND ASSISTANCE

PART 1

DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 19

NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

SUBCHAPTER V

ENFORCEMENT

DIVISION 3

REMEDIES IN MEDICAID-CERTIFIED FACILITIES

RULE §19.2150

Fraud Referral

None of the options described in this undesignated head are intended to restrict the Texas Department of Human Services (DHS) from imposing, as necessary, appropriate remedies for program violations listed in §79.2105 of this title (relating to Grounds for Fraud Referral and Administrative Sanction).

Source Note: The provisions of this §19.2150 adopted to be effective July 31, 1995, 20 TexReg 5259.

[Next Page](#)

[Previous Page](#)

[List of Titles](#)

[Back to List](#)

[HOME](#) | [TEXAS REGISTER](#) | [TEXAS ADMINISTRATIVE CODE](#) | [OPEN MEETINGS](#) | [HELP](#) |

[<<Prev Rule](#)

[Next Rule>>](#)

Texas Administrative Code

TITLE 40

SOCIAL SERVICES AND ASSISTANCE

PART 1

DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 19

NURSING FACILITY REQUIREMENTS FOR LICENSURE
AND MEDICAID CERTIFICATION

SUBCHAPTER V

ENFORCEMENT

DIVISION 3

REMEDIES IN MEDICAID-CERTIFIED FACILITIES

RULE §19.2151

Construction

The remedies provided under this undesignated head are in addition to those otherwise available under state and federal law and are not to be construed as limiting any other remedies, including any remedy available to an individual at common law.

Source Note: The provisions of this §19.2151 adopted to be effective July 31, 1995, 20 TexReg 5259.

[Next Page](#)

[Previous Page](#)

[List of Titles](#)

[Back to List](#)

[HOME](#) | [TEXAS REGISTER](#) | [TEXAS ADMINISTRATIVE CODE](#) | [OPEN MEETINGS](#) | [HELP](#) |