TITLE 40  SOCIAL SERVICES AND ASSISTANCE
PART 1  DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 92  LICENSING STANDARDS FOR ASSISTED LIVING  FACILITIES

§92.2. Definitions.

The following words and terms, when used in this chapter, have the following meaning, unless the context clearly indicates otherwise.

(1) Abuse--

(A) for a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes, the term has the meaning in Texas Family Code §261.401(1), which is an intentional, knowing, or reckless act or omission by an employee, volunteer, or other individual working under the auspices of a facility or program that causes or may cause emotional harm or physical injury to, or the death of, a child served by the facility or program as further described by rule or policy; and

(B) for a person other than one described in subparagraph (A) of this paragraph, the term has the meaning in Texas Health and Safety Code §260A.001(1), which is:

(i) the negligent or willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical or emotional harm or pain to a resident by the resident's caregiver, family member, or other individual who has an ongoing relationship with the resident; or

(ii) sexual abuse of a resident, including any involuntary or nonconsensual sexual conduct that would constitute an offense under Section 21.08, Penal Code (indecent exposure), or Chapter 22, Penal Code (assaultive offenses), committed by the resident's caregiver, family member, or other individual who has an ongoing relationship with the resident.

(2) Accreditation commission--Has the meaning given in Texas Health and Safety Code, §247.032.

(3) Actual harm--A negative outcome that compromises a resident’s physical, mental, or emotional well-being.

(3) Advance directive--Has the meaning given in Texas Health and Safety Code, §166.002.

(4) Affiliate--With respect to:

(A) a partnership, each partner thereof;

(B) a corporation, each officer, director, principal stockholder, subsidiary, and each
person with a disclosable interest, as the term is defined in this section; and

(C) a natural person:

(i) said person's spouse;

(ii) each partnership and each partner thereof of which said person or any affiliate of said person is a partner; and

(iii) each corporation in which said person is an officer, director, principal stockholder, or person with a disclosable interest.

(5) Alzheimer's Assisted Living Disclosure Statement form--The DADS HHSC-prescribed form a facility uses to describe the nature of care or treatment of residents with Alzheimer's disease and related disorders.

(6) Alzheimer's disease and related disorders--Alzheimer's disease and any other irreversible dementia described by the Centers for Disease Control and Prevention (CDC) or the most current edition of the Diagnostic and Statistical Manual of Mental Disorders.

(7) Alzheimer's facility--A type B assisted living facility that is certified to provide specialized services to residents with Alzheimer's or a related condition.

(8) Applicant--A person applying for a license to operate an assisted living facility under Texas Health and Safety Code, Chapter 247.

(9) Attendant--A facility employee who provides direct care to residents. This employee may serve other functions, including cook, janitor, porter, maid, laundry worker, security personnel, bookkeeper, activity director, and manager.

(10) Authorized electronic monitoring (AEM)--The placement of an electronic monitoring device in a resident's room and using the device to make tapes or recordings after making a request to the facility to allow electronic monitoring.

(11) Behavioral emergency--Has the meaning given in §92.41(p)(2) of this chapter (relating to Standards for Type A and Type B Assisted Living Facilities).

(12) Change of ownership--An event that results in a change to the federal taxpayer identification number of the license holder of a facility. The substitution of a personal representative for a deceased license holder is not a change of ownership.

(13) Commingles--The laundering of apparel or linens of two or more individuals together.

(14) Controlling person--A person with the ability, acting alone or with others, to directly or indirectly influence, direct, or cause the direction of the management, expenditure of money, or policies of an assisted living facility or other person. A controlling person includes:
(A) a management company, landlord, or other business entity that operates or contracts with others for the operation of an assisted living facility;

(B) any person who is a controlling person of a management company or other business entity that operates an assisted living facility or that contracts with another person for the operation of an assisted living facility;

(C) an officer or director of a publicly traded corporation that is, or that controls, a facility, management company, or other business entity described in subparagraph (A) of this paragraph but does not include a shareholder or lender of the publicly traded corporation; and

(D) any other individual who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of an assisted living facility, is in a position of actual control or authority with respect to the facility, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility, except an employee, lender, secured creditor, landlord, or other person who does not exercise formal or actual influence or control over the operation of an assisted living facility.

(15) Covert electronic monitoring--The placement and use of an electronic monitoring device that is not open and obvious, and the facility and DADS HHSC have not been informed about the device by the resident, by a person who placed the device in the room, or by a person who uses the device.

(16) DADS--The Department of Aging and Disability Services.

(17) DHS--Formerly, this term referred to the Texas Department of Human Services; it now refers to DADS and HHSC.

(18) Dietitian--A person who currently holds a license or provisional license issued by the Texas State Board of Examiners of Dietitians.

(19) Direct ownership interest--Ownership of equity in the capital, stock, or profits of, or a membership interest in, an applicant or license holder.

(20) Disclosable interest--Five percent or more direct or indirect ownership interest in an applicant or license holder.

(21) Disclosure statement--A DADS An HHSC form for prospective residents or their legally authorized representatives that a facility must complete. The form contains information regarding the preadmission, admission, and discharge process; resident assessment and service plans; staffing patterns; the physical environment of the facility; resident activities; and facility services.

(22) Electronic monitoring device--Video surveillance cameras and audio devices installed in a resident's room, designed to acquire communications or other sounds that occur in
the room. An electronic, mechanical, or other device used specifically for the nonconsensual interception of wire or electronic communication is excluded from this definition.

(23) (21) Exploitation--

(A) for a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes, the term has the meaning in Texas Family Code §261.401(2), which is the illegal or improper use of a child or of the resources of a child for monetary or personal benefit, profit, or gain by an employee, volunteer, or other individual working under the auspices of a facility or program as further described by rule or policy; and

(B) for a person other than one described in subparagraph (A) of this paragraph, the term has the meaning in Texas Health and Safety Code §260A.001(4), which is the illegal or improper act or process of a caregiver, family member, or other individual who has an ongoing relationship with the resident using the resources of a resident for monetary or personal benefit, profit, or gain without the informed consent of the resident.

(24) (22) Facility--An entity required to be licensed under the Assisted Living Facility Licensing Act, Texas Health and Safety Code, Chapter 247.

(25) (23) Fire suppression authority--The paid or volunteer fire-fighting organization or tactical unit that is responsible for fire suppression operations and related duties once a fire incident occurs within its jurisdiction.

(26) (24) Flame spread--The rate of fire travel along the surface of a material. This is different than other requirements for time-rated "burn through" resistance ratings, such as one-hour rated. Flame spread ratings are Class A (0-25), Class B (26-75), and Class C (76-200).

(27) (25) Governmental unit--The state or any county, municipality, or other political subdivision, or any department, division, board, or other agency of any of the foregoing.

(28) (26) Health care professional--An individual licensed, certified, or otherwise authorized to administer health care, for profit or otherwise, in the ordinary course of business or professional practice. The term includes a physician, registered nurse, licensed vocational nurse, licensed dietitian, physical therapist, and occupational therapist.

(XX) HHSC—The Texas Health and Human Services Commission.

(29) (27) Immediate threat--There is considered to be an immediate threat to the health or safety of a resident, or a situation is considered to put the health or safety of a resident in immediate jeopardy, if there is a situation in which an assisted living facility's noncompliance with one or more requirements of licensure has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident.

(XX) Immediate threat to the health or safety of a resident--A situation that causes, or is
likely to cause, serious injury, harm, or impairment to or the death of a resident.

(30) (28) Immediately available--The capacity of facility staff to immediately respond to an emergency after being notified through a communication or alarm system. The staff are to be no more than 600 feet from the farthest resident and in the facility while on duty.

(31) Indirect ownership interest--Any ownership or membership interest in a person that has a direct ownership interest in an applicant or license holder.

(XX) Isolated--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.

(32) (29) Large facility--A facility licensed for 17 or more residents.

(33) (30) Legally authorized representative--A person authorized by law to act on behalf of a person with regard to a matter described in this chapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(34) License holder--A person that holds a license to operate a facility.

(35) (31) Listed--Equipment, materials, or services included in a list published by an organization concerned with evaluation of products or services, that maintains periodic inspection of production of listed equipment or materials or periodic evaluation of services, and whose listing states that either the equipment, material, or service meets appropriate designated standards or has been tested and found suitable for a specified purpose. The listing organization must be acceptable to the authority having jurisdiction, including DADS HHSC or any other state, federal or local authority.

(36) (32) Local code--A model building code adopted by the local building authority where the assisted living facility is constructed or located.

(37) (33) Management services--Services provided under contract between the owner of a facility and a person to provide for the operation of a facility, including administration, staffing, maintenance, or delivery of resident services. Management services do not include contracts solely for maintenance, laundry, transportation, or food services.

(38) (34) Manager--The individual in charge of the day-to-day operation of the facility.

(39) (35) Medication--

(A) Medication is any substance:

(i) recognized as a drug in the official United States Pharmacopoeia, Official Homeopathic Pharmacopoeia of the United States, Texas Drug Code Index or official National Formulary, or any supplement to any of these official documents;
(ii) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease;

(iii) other than food intended to affect the structure or any function of the body; and

(iv) intended for use as a component of any substance specified in this definition.

(B) Medication includes both prescription and over-the-counter medication, unless otherwise specified.

(C) Medication does not include devices or their components, parts, or accessories.

(40) Medication administration--The direct application of a medication or drug to the body of a resident by an individual legally allowed to administer medication in the state of Texas.

(41) Medication assistance or supervision--The assistance or supervision of the medication regimen by facility staff. Refer to §92.41(j) of this chapter.

(42) Medication (self-administration)--The capability of a resident to administer the resident's own medication or treatments without assistance from the facility staff.

(43) Neglect--

(A) for a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes, the term has the meaning in Texas Family Code, §261.401(3), which is a negligent act or omission by an employee, volunteer, or other individual working under the auspices of a facility or program, including failure to comply with an individual treatment plan, plan of care, or individualized service plan, that causes or may cause substantial emotional harm or physical injury to, or the death of, a child served by the facility or program as further described by rule or policy; and

(B) for a person other than one described in subparagraph (A) of this paragraph, the term has the meaning in Texas Health and Safety Code §260A.001(6), which is the failure to provide for one's self the goods or services, including medical services, which are necessary to avoid physical or emotional harm or pain or the failure of a caregiver to provide such goods or services.


(45) Ombudsman--Has the meaning given in §85.2 of this title (relating to Definitions).

(XX) Pattern of violation--Repeated, but not widespread in scope, failures of a facility to comply with this chapter or a rule, standard, or order adopted under this chapter that:
(A) result in a violation; and 
(B) are found throughout the services provided by the facility or that affect or involve the same residents or facility employees.

(46) (42) Person--Any individual, firm, partnership, corporation, association, or joint stock association, and the legal successor thereof.

(47) (44) Personal care services--Assistance with feeding, dressing, moving, bathing, or other personal needs or maintenance; or general supervision or oversight of the physical and mental well-being of a person who needs assistance to maintain a private and independent residence in the facility or who needs assistance to manage his or her personal life, regardless of whether a guardian has been appointed for the person.

(48) (45) Physician--A practitioner licensed by the Texas Medical Board.

(49) (46) Practitioner--An individual who is currently licensed in a state in which the individual practices as a physician, dentist, podiatrist, or a physician assistant; or a registered nurse approved by the Texas Board of Nursing to practice as an advanced practice registered nurse.

(50) (47) Qualified medical personnel--An individual who is licensed, certified, or otherwise authorized to administer health care. The term includes a physician, registered nurse, and licensed vocational nurse.

(51) (48) Resident--An individual accepted for care in a facility.

(52) (49) Respite--The provision by a facility of room, board, and care at the level ordinarily provided for permanent residents of the facility to a person for not more than 60 days for each stay in the facility.

(53) (50) Restraint hold--

(A) A manual method, except for physical guidance or prompting of brief duration, used to restrict:

(i) free movement or normal functioning of all or a portion of a resident's body; or

(ii) normal access by a resident to a portion of the resident's body.

(B) Physical guidance or prompting of brief duration becomes a restraint if the resident resists the guidance or prompting.

(54) (51) Restraints--Chemical restraints are psychoactive drugs administered for the purposes of discipline or convenience and are not required to treat the resident's medical symptoms. Physical restraints are any manual method, or physical or mechanical device, material, or equipment attached or adjacent to the resident that restricts freedom of movement.
Physical restraints include restraint holds.

(55) (52) Safety--Protection from injury or loss of life due to such conditions as fire, electrical hazard, unsafe building or site conditions, and the hazardous presence of toxic fumes and materials.

(56) (53) Seclusion--The involuntary separation of a resident from other residents and the placement of the resident alone in an area from which the resident is prevented from leaving.

(57) (54) Service plan--A written description of the medical care, supervision, or nonmedical care needed by a resident.

(58) (55) Short-term acute episode--An illness of less than 30 days duration.

(59) (56) Small facility--A facility licensed for 16 or fewer residents.

(60) (57) Staff--Employees of an assisted living facility.

(61) (58) Standards--The minimum conditions, requirements, and criteria established in this chapter with which a facility must comply to be licensed under this chapter.

(62) (59) Terminal condition--A medical diagnosis, certified by a physician, of an illness that will result in death in six months or less.

(63) (60) Universal precautions--An approach to infection control in which blood, any body fluids visibly contaminated with blood, and all body fluids in situations where it is difficult or impossible to differentiate between body fluids are treated as if known to be infectious for HIV, hepatitis B, and other blood-borne pathogens.

(64) (61) Vaccine Preventable Diseases--The diseases included in the most current recommendations of the Advisory Committee on Immunization Practices of the CDC.

(XX) Widespread in scope--A violation of this chapter or a rule, standard, or order adopted under this chapter that:

(A) is pervasive throughout the services provided by the facility; or
(B) represents a systemic failure by the facility that affects or has the potential to affect a large portion of or all of the residents of the facility.

(65) (62) Working day--Any 24-hour period, Monday through Friday, excluding state and federal holidays.
§92.43. Direct Care Staff Training Requirements for Residents with Alzheimer’s Disease or Other Related Disorders.

In accordance with section 326.002 if THSC, a facility must adopt, implement, and enforce a written policy that:

(1) requires a facility employee who provides direct care to a person with Alzheimer’s disease or related disorder to successfully complete training in the provision of care to persons with Alzheimer’s disease and related disorders; and

(2) ensures the care and services provided by a facility employee to a person with Alzheimer’s disease or a related disorder meet the specific identified needs of the person relating to the person’s diagnosis of Alzheimer’s disease or a related disorder.

§92.551 Administrative Penalties

(a) Assessment of an administrative penalty. DADS HHSC may assess an administrative penalty if a license holder:

(1) violates:

(A) Texas Health and Safety Code, Chapter 247;

(B) a rule, standard, or order adopted under Texas Health and Safety Code, Chapter 247; or

(C) a term of a license issued under Texas Health and Safety Code, Chapter 247; or

(D) Texas Health and Safety Code, Chapter 326.

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

(A) on an application for issuance or renewal of a license;

(B) in an attachment to the application; or

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

(3) refuses to allow a DADS an HHSC representative to inspect:
(A) a book, record, or file that a facility must maintain; or

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

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

(5) willfully interferes with a DADS an HHSC representative preserving evidence of a violation of Texas Health and Safety Code, Chapter 247; a rule, standard, or order adopted under Texas Health and Safety Code, Chapter 247; or a term of a license issued under Texas Health and Safety Code, Chapter 247;

(6) fails to pay an administrative penalty not later than the 30th calendar day after the penalty assessment becomes final; or

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

(b) Criteria for assessing an administrative penalty. DADS HHSC considers the following in determining the amount of an administrative penalty:

(1) the gradations of penalties established in subsection (d) of this section;

(2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the situation, and the hazard or potential hazard created by the situation to the health or safety of the public;

(3) the history of previous violations;

(4) deterrence of future violations;

(5) the license holder's efforts to correct the violation;

(6) the size of the facility and of the business entity that owns the facility; and

(7) any other matter that justice may require.

(c) Late payment of an administrative penalty. A license holder must pay an administrative penalty within 30 calendar days after the penalty assessment becomes final. If a license holder fails to timely pay the administrative penalty, DADS HHSC may assess an administrative
penalty under subsection (a)(6) of this section, which is in addition to the penalty that was previously assessed and not timely paid.

(d) Administrative penalty schedule. **DADS HHSC** uses the schedule of appropriate and graduated administrative penalties in this subsection to determine which violations warrant an administrative penalty.

---

Figure: 40 TAC §92.551(d)

### ADMINISTRATIVE PENALTY SCHEDULE

<table>
<thead>
<tr>
<th><strong>SMALL FACILITY</strong></th>
<th><strong>LARGE FACILITY</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>(4-16 beds)</strong></td>
<td><strong>(17+ beds)</strong></td>
</tr>
<tr>
<td>Business entity owns one facility</td>
<td>Business entity owns multiple facilities</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Action</th>
<th>SMALL FACILITY</th>
<th>LARGE FACILITY</th>
</tr>
</thead>
<tbody>
<tr>
<td>§92.3 Types of Assisted Living Facilities</td>
<td>$300</td>
<td>$450</td>
</tr>
<tr>
<td>§92.4. License Fees</td>
<td>$300</td>
<td>$400</td>
</tr>
<tr>
<td>§92.11. Criteria for Licensing</td>
<td>$300</td>
<td>$450</td>
</tr>
<tr>
<td>§92.16. Change of Ownership</td>
<td>$300</td>
<td>$400</td>
</tr>
<tr>
<td>§92.18. Increase in Capacity</td>
<td>$300</td>
<td>$400</td>
</tr>
<tr>
<td>§92.21. Initial License for a Type A or Type B Facility for an Applicant in Good Standing</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>(g) health inspection disclosure</td>
<td>$500</td>
<td>$600</td>
</tr>
<tr>
<td>§92.22 Initial License for a Type B Facility with Alzheimer’s Certification</td>
<td>$500</td>
<td>$600</td>
</tr>
</tbody>
</table>
Figure: 40 TAC §92.551(d)

<table>
<thead>
<tr>
<th>ADMINISTRATIVE PENALTY SCHEDULE</th>
<th>SMALL FACILITY (4-16 beds)</th>
<th>LARGE FACILITY (17+ beds)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Business entity owns one facility</td>
<td>Business entity owns multiple facilities</td>
</tr>
<tr>
<td>an Applicant in Good Standing</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(i) health inspection disclosure</td>
<td>$500</td>
<td>$600</td>
</tr>
<tr>
<td>§92.41. Standards for Type A and Type B Assisted Living Facilities</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>(a) employees</td>
<td>$350</td>
<td>$550</td>
</tr>
<tr>
<td>(b) social services</td>
<td>$200</td>
<td>$300</td>
</tr>
<tr>
<td>(c) resident assessment</td>
<td>$400</td>
<td>$550</td>
</tr>
<tr>
<td>(d) resident policies</td>
<td>$250</td>
<td>$350</td>
</tr>
<tr>
<td>(e) admission policies</td>
<td>$300</td>
<td>$400</td>
</tr>
<tr>
<td>(f) inappropriate placement in Type A or Type B facilities</td>
<td>$700</td>
<td>$800</td>
</tr>
<tr>
<td>(g) advance directives</td>
<td>$500</td>
<td>$500</td>
</tr>
<tr>
<td>(h) resident records</td>
<td>$200</td>
<td>$300</td>
</tr>
<tr>
<td>(i) personnel records</td>
<td>$200</td>
<td>$300</td>
</tr>
<tr>
<td>(j) medications</td>
<td>$400</td>
<td>$500</td>
</tr>
<tr>
<td>(k) accident, injury, or acute illness</td>
<td>$400</td>
<td>$500</td>
</tr>
</tbody>
</table>
**Figure: 40 TAC §92.551(d)**

<table>
<thead>
<tr>
<th>ADMINISTRATIVE PENALTY SCHEDULE</th>
<th>SMALL FACILITY (4-16 beds)</th>
<th>LARGE FACILITY (17+ beds)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(l) resident finances</td>
<td>Business entity owns one facility</td>
<td>$200</td>
</tr>
<tr>
<td></td>
<td>Business entity owns multiple facilities</td>
<td>$400</td>
</tr>
<tr>
<td>(m) food and nutrition services</td>
<td>$400</td>
<td>$550</td>
</tr>
<tr>
<td>(n) infection control</td>
<td>$400</td>
<td>$550</td>
</tr>
<tr>
<td>(o) access to residents</td>
<td>$150</td>
<td>$200</td>
</tr>
<tr>
<td>(p) restraints</td>
<td>$700</td>
<td>$800</td>
</tr>
<tr>
<td>(q) accreditation status</td>
<td>$700</td>
<td>$800</td>
</tr>
</tbody>
</table>

§92.51. Licensure of Facilities for Persons with Alzheimer's Disease

§92.53. Standards for Certified Alzheimer's Assisted Living Facilities

§92.54. Advertisements, Solicitations, and Promotional Material

§92.61. Facility Construction—Introduction and Application

§92.62. General Requirements

§92.81. Inspections and Surveys
Figure: 40 TAC §92.551(d)

<table>
<thead>
<tr>
<th>ADMINISTRATIVE PENALTY SCHEDULE</th>
<th>SMALL FACILITY (4-16 beds)</th>
<th>LARGE FACILITY (17+ beds)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Business entity owns one facility</td>
<td>Business entity owns multiple facilities</td>
</tr>
<tr>
<td>§92.82. Determinations and Actions Pursuant to Inspections</td>
<td>$200</td>
<td>$300</td>
</tr>
<tr>
<td>§92.102. Abuse, Neglect, Exploitation Reportable to DADS by Facilities</td>
<td>$700</td>
<td>$800</td>
</tr>
<tr>
<td>§92.123. Investigation of Facility Employees</td>
<td>$450</td>
<td>$550</td>
</tr>
<tr>
<td>§92.125. Resident's Bill of Rights and Provider Bill of Rights</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>(a) resident's bill of rights</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>(1) post and provide copy of bill</td>
<td>$100</td>
<td>$150</td>
</tr>
<tr>
<td>(2) right to exercise civil rights</td>
<td>$150</td>
<td>$200</td>
</tr>
<tr>
<td>(3) each resident has the right to:</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>(A) be free from physical, mental abuse, corporal punishment, physical, chemical restraints for discipline/convenience</td>
<td>$700</td>
<td>$800</td>
</tr>
<tr>
<td>(B) participate in activities</td>
<td>$150</td>
<td>$200</td>
</tr>
<tr>
<td>(C) religion of choice</td>
<td>$150</td>
<td>$200</td>
</tr>
<tr>
<td>ADMINISTRATIVE PENALTY SCHEDULE</td>
<td>SMALL FACILITY (4-16 beds)</td>
<td>LARGE FACILITY (17+ beds)</td>
</tr>
<tr>
<td>---------------------------------</td>
<td>-----------------------------</td>
<td>----------------------------</td>
</tr>
<tr>
<td>(D) if MR, participate in behavior modification with guardian consent</td>
<td>$150</td>
<td>$200</td>
</tr>
<tr>
<td>(E)(i) (iii)—be treated with respect, consideration, dignity</td>
<td>$200</td>
<td>$250</td>
</tr>
<tr>
<td>(F) safe, decent living environment</td>
<td>$100</td>
<td>$150</td>
</tr>
<tr>
<td>(G) communicate in native language</td>
<td>$100</td>
<td>$150</td>
</tr>
<tr>
<td>(H) complain about care, treatment</td>
<td>$200</td>
<td>$250</td>
</tr>
<tr>
<td>(I) receive and send mail</td>
<td>$100</td>
<td>$150</td>
</tr>
<tr>
<td>(J) unrestricted communication</td>
<td>$150</td>
<td>$200</td>
</tr>
<tr>
<td>(K) make community contacts</td>
<td>$100</td>
<td>$150</td>
</tr>
<tr>
<td>(L) manage financial affairs</td>
<td>$100</td>
<td>$150</td>
</tr>
<tr>
<td>(M)(i) (ii) access resident records</td>
<td>$100</td>
<td>$150</td>
</tr>
<tr>
<td>(N) choose physician and be informed about treatment and care</td>
<td>$100</td>
<td>$150</td>
</tr>
<tr>
<td>(O) help develop individual service plan</td>
<td>$100</td>
<td>$150</td>
</tr>
<tr>
<td>(P)(i)-(ii) opportunity to refuse medical</td>
<td>$100</td>
<td>$150</td>
</tr>
</tbody>
</table>
## ADMINISTRATIVE PENALTY SCHEDULE

<table>
<thead>
<tr>
<th>Treatment or Services</th>
<th>SMALL FACILITY (4-16 beds)</th>
<th>LARGE FACILITY (17+ beds)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business entity owns one facility</td>
<td>Business entity owns multiple facilities</td>
<td></td>
</tr>
<tr>
<td>(Q) unaccompanied access to telephone</td>
<td>$100</td>
<td>$150</td>
</tr>
<tr>
<td>(R) privacy</td>
<td>$100</td>
<td>$150</td>
</tr>
<tr>
<td>(S) retain and use personal possessions</td>
<td>$100</td>
<td>$150</td>
</tr>
<tr>
<td>(T) determine personal preference in dress, hair style, personal effects</td>
<td>$100</td>
<td>$150</td>
</tr>
<tr>
<td>(U) retain and use personal property</td>
<td>$100</td>
<td>$150</td>
</tr>
<tr>
<td>(V) refuse to perform services</td>
<td>$100</td>
<td>$150</td>
</tr>
<tr>
<td>(W)(i)-(ii) be informed about Medicare, Medicaid, and covered items/services</td>
<td>$100</td>
<td>$150</td>
</tr>
<tr>
<td>(X)(i)-(v) not be transferred/discharged except under specific conditions</td>
<td>$300</td>
<td>$350</td>
</tr>
<tr>
<td>(Y)(i)-(v) not be transferred/discharged except in an emergency without specific written notice</td>
<td>$300</td>
<td>$350</td>
</tr>
<tr>
<td>(Z) leave facility temporarily or permanently</td>
<td>$100</td>
<td>$150</td>
</tr>
<tr>
<td>(AA) access the Ombudsman program</td>
<td>$100</td>
<td>$150</td>
</tr>
</tbody>
</table>
Figure: 40 TAC §92.551(d)

<table>
<thead>
<tr>
<th>ADMINISTRATIVE PENALTY SCHEDULE</th>
<th>SMALL FACILITY (4-16 beds)</th>
<th>LARGE FACILITY (17+ beds)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(BB) execute an advance directive or designate a guardian for decisions</td>
<td>$200</td>
<td>$250</td>
</tr>
<tr>
<td>§92.127. Required Posting</td>
<td>$250</td>
<td>$350</td>
</tr>
<tr>
<td>§92.129. Authorized Electronic Monitoring (AEM)</td>
<td>$100</td>
<td>$150</td>
</tr>
<tr>
<td>§§92.351-92.374. Emergency License Suspension and Closing Order</td>
<td>$150</td>
<td>$250</td>
</tr>
<tr>
<td>§§92.551-92.595. Administrative Penalties</td>
<td>$400</td>
<td>$500</td>
</tr>
<tr>
<td></td>
<td>Isolated</td>
<td>Pattern</td>
</tr>
<tr>
<td>------------------</td>
<td>----------------</td>
<td>---------------</td>
</tr>
<tr>
<td>Immediate Threat</td>
<td>$1500-3000</td>
<td>$2000-4000</td>
</tr>
<tr>
<td>Actual Harm</td>
<td>$250-1000</td>
<td>$500-1500</td>
</tr>
<tr>
<td>Potential for Actual Harm</td>
<td>$50-300</td>
<td>$100-400</td>
</tr>
<tr>
<td>Potential for Minimum Harm</td>
<td>$0</td>
<td>$0</td>
</tr>
</tbody>
</table>

Note: To assist in reading the administrative penalty table, the following example is provided: a facility cited for a violation that constitutes an immediate threat to the health and safety of residents and is widespread in scope will receive the highest penalty range reflected in category “L” as indicated on the Scope and Severity chart.
(e) Administrative penalty assessed against a resident. **DADS HHSC** does not assess an administrative penalty against a resident, unless the resident is also an employee of the facility or a controlling person.

(f) Proposal of administrative penalties.

1. **DADS HHSC** issues a preliminary report stating the facts on which **DADS HHSC** concludes that a violation has occurred after **DADS HHSC** has:

   (A) examined the possible violation and facts surrounding the possible violation; and

   (B) concluded that a violation has occurred.

2. **DADS HHSC** may recommend in the preliminary report the assessment of an administrative penalty for each violation and the amount of the administrative penalty.

3. **DADS HHSC** provides a written notice of the preliminary report to the license holder not later than 10 calendar days after the date on which the preliminary report is issued. The written notice includes:

   (A) a brief summary of the violation;

   (B) the amount of the recommended administrative penalty;

   (C) a statement of whether the violation is subject to correction in accordance with subsection (g) of this section and, if the violation is subject to correction, a statement of:

   (i) the date on which the license holder must file with **DADS HHSC** a plan of correction for approval by **DADS HHSC**; and

   (ii) the date on which the license holder must complete the plan of correction to avoid assessment of the administrative penalty; and

   (D) a statement that the license holder has a right to an administrative hearing on the occurrence of the violation, the amount of the penalty, or both.

4. Not later than 20 calendar days after the date on which a license holder receives a written notice of the preliminary report, the license holder may:
(A) give DADS HHSC written consent to the preliminary report, including the recommended administrative penalty; or

(B) make a written request to the Texas Health and Human Services Commission (HHSC) HHSC for an administrative hearing.

(5) If a violation is subject to correction under subsection (g) of this section, the license holder must submit a plan of correction to DADS HHSC for approval not later than 10 calendar days after the date on which the license holder receives the written notice described in paragraph (3) of this subsection.

(6) If a violation is subject to correction under subsection (g) of this section, and after the license holder reports to DADS HHSC that the violation has been corrected, DADS HHSC inspects the correction or takes any other step necessary to confirm the correction and notifies the facility that:

(A) the correction is satisfactory and DADS HHSC will not assess an administrative penalty; or

(B) the correction is not satisfactory and a penalty is recommended.

(7) Not later than 20 calendar days after the date on which a license holder receives a notice under paragraph (6)(B) of this subsection (notice that the correction is not satisfactory and recommendation of a penalty), the license holder may:

(A) give DADS HHSC written consent to DADS HHSC report, including the recommended administrative penalty; or

(B) make a written request to HHSC for an administrative hearing.

(8) If a license holder consents to the recommended administrative penalty or does not timely respond to a notice sent under paragraph (3) of this subsection (written notice of the preliminary report) or paragraph (6)(B) of this subsection (notice that the correction is not satisfactory and recommendation of a penalty):

(A) the commissioner or the commissioner's designee assesses the recommended administrative penalty;

(B) DADS HHSC gives written notice of the decision to the license holder; and
(g) Opportunity to correct.

(1) A license holder has an opportunity to correct a violation, except a violation described in paragraph (2) of this subsection, to avoid paying an administrative penalty, if the license holder corrects the violation not later than 45 calendar days after the date the facility receives the written notice described in subsection (f)(3) of this section.

(2) A license holder does not have an opportunity to correct a violation:

(A) that DADS determines results in serious harm to or death of a resident;

(B) described by subsection (a)(2)-(7) of this section;

(C) related to advance directives as described in §92.41(g);

(D) that is the second or subsequent violation of:

(i) a right of the same resident under §92.125 of this chapter (relating to Resident’s Bill of Rights and Provider Bill of Rights); or

(ii) the same right of all residents under §92.125 of this chapter; or

(iii) written policy requirements concerning training of direct care staff who care for a person with Alzheimer’s disease or a related disorder as described in §92.43 of this chapter that occurs on or before the second anniversary of the date of the first violation.

(E) a violation that is written because of an inappropriately placed resident, except as described in §92.41(f) of this chapter (relating to Inappropriate Placement).

(3) A license holder does not have an opportunity to correct a violation that HHSC determines:

(A) is a pattern of violation that results in actual harm;

(B) is widespread in scope and results in actual harm;
(C) is widespread in scope, constitutes a potential for actual harm, and relates to:

(i) resident assessment as described in §92.41(c) of this chapter;
(ii) staffing, including staff training, as described in §92.41(a) of this chapter;
(iii) administration of medication as described in §92.41(j) of this chapter;
(iv) infection control as described in §92.41(n) §92.41(r) of this chapter;
(v) restraints as described in §92.41(p) of this chapter; or
(vi) emergency preparedness and response as described in §92.62(a)-(d).

(D) is an immediate threat to the health or safety of a resident.

(4) (3) Maintenance of violation correction.

(A) A license holder that corrects a violation must maintain the correction. If the license holder fails to maintain the correction until at least the first anniversary of the date the correction was made, DADS HHSC may assess and collect an administrative penalty for the subsequent violation.

(B) An administrative penalty assessed under this paragraph is equal to three times the amount of the original administrative penalty that was assessed but not collected.

(C) DADS HHSC is not required to offer the license holder an opportunity to correct the subsequent violation.

(h) Hearing on an administrative penalty. If a license holder timely requests an administrative hearing as described in subsection (f)(3) or (f)(7) of this section, the administrative hearing is held in accordance with HHSC rules at 1 TAC Chapter 357, Subchapter I (relating to Hearings under the Administrative Procedure Act).

(i) DADS HHSC may charge interest on an administrative penalty. The interest begins the day after the date the penalty becomes due and ends on the date the penalty is paid in accordance with Texas Health and Safety Code, §247.0455(e).

(j) Amelioration of a violation.
(1) In lieu of demanding payment of an administrative penalty, the commissioner may allow a license holder to use, under DADS HHSC supervision, any portion of the administrative penalty to ameliorate the violation or to improve services, other than administrative services, in the facility affected by the violation. Amelioration is an alternate form of payment of an administrative penalty, not an appeal, and does not remove a violation or an assessed administrative penalty from a facility's history.

(2) A license holder cannot ameliorate a violation that DADS HHSC determines constitutes immediate jeopardy to the health or safety of a resident.

(3) DADS HHSC offers amelioration to a license holder not later than 10 calendar days after the date a license holder receives a final notification of the recommended assessment of an administrative penalty that is sent to the license holder after an informal dispute resolution process but before an administrative hearing.

(4) A license holder to whom amelioration has been offered must:

   (A) submit a plan for amelioration not later than 45 calendar days after the date the license holder receives the offer of amelioration from DADS HHSC; and

   (B) agree to waive the license holder's right to an administrative hearing if DADS HHSC approves the plan for amelioration.

(5) A license holder's plan for amelioration must:

   (A) propose changes to the management or operation of the facility that will improve services to or quality of care of residents;

   (B) 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;

   (C) establish clear goals to be achieved through the proposed changes;

   (D) establish a time line for implementing the proposed changes; and

   (E) identify specific actions the license holder will take to implement the proposed changes.

(6) A license holder's plan for amelioration may include proposed changes to:
(A) improve staff recruitment and retention;

(B) offer or improve dental services for residents; and

(C) improve the overall quality of life for residents.

(7) DADS HHSC may require that an amelioration plan propose changes that would result in conditions that exceed the requirements of this chapter.

(8) DADS HHSC approves or denies a license holder's amelioration plan not later than 45 calendar days after the date DADS HHSC receives the plan. If DADS HHSC approves the amelioration plan, any pending request the license holder has submitted for an administrative hearing must be withdrawn by the license holder.

(9) DADS HHSC does not offer amelioration to a license holder:

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

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