TITLE 25 HEALTH SERVICES

PART 1 DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 133 HOSPITAL LICENSING

SUBCHAPTER F INSPECTION AND INVESTIGATION PROCEDURES

§133.101. Inspections.

(a) The Texas Health and Human Services Commission (HHSC) may conduct an unannounced, on-site inspection of a facility at any reasonable time, including when treatment services are provided, to inspect, investigate, or evaluate:

(1) compliance with any applicable statute or rule;

(2) a facility’s plan of correction;

(3) an order of the commissioner or the commissioner’s designee;

(4) a court order granting injunctive relief; or

(5) for other purposes relating to regulation of the facility.

(b) An applicant or licensee, by applying for or holding a license, consents to entry and inspection of any of its facilities by HHSC.

(c) HHSC inspections to evaluate a facility’s compliance may include:

(1) Initial, change of ownership, or relocation inspections for the issuance of a new license;

(2) Inspections related to changes in status, such as new construction or changes in services, designs, or bed numbers;

(3) Routine inspections, which may be conducted without notice and at HHSC’s discretion, or prior to renewal;

(4) Follow-up on-site inspections, conducted to evaluate implementation of a plan of correction for previously cited deficiencies;

(5) Inspections to determine if an unlicensed facility is offering or providing, or purporting to offer or provide, treatment; and

(6) Entry in conjunction with any other federal, state, or local agency’s entry.

(d) A facility shall cooperate with any HHSC inspection and shall permit HHSC to examine the facility’s grounds, buildings, books, records, and other documents and information maintained by or on behalf of the facility.

(e) A facility shall permit HHSC access to interview members of the governing body, personnel, and patients. Members of the governing body and personnel shall provide a written statement upon request from HHSC.

(f) A facility shall permit HHSC to inspect and copy any requested information. If it is necessary for HHSC to remove documents or other records from the facility, HHSC provides a written description of the information being removed and when it is expected to be returned. HHSC makes a reasonable effort, consistent with the circumstances, to return any records removed in a timely manner.

(g) Upon entry, HHSC holds an entrance conference with the facility’s designated representative to explain the nature, scope, and estimated duration of the inspection.

(h) During the inspection, the HHSC representative gives the facility an opportunity to submit information and evidence relevant to matters of compliance being evaluated.

(i) When an inspection is complete, HHSC holds an exit conference with the facility representative to inform the facility representative of any preliminary findings of the inspection. The facility may provide any final documentation regarding compliance during the exit conference.

§133.102. Complaint Investigations.

(a) A facility shall provide each client and applicable consenter at the time of admission with a written statement identifying the Texas Health and Human Services Commission (HHSC) as the agency responsible for investigating complaints against the facility.

(1) The statement shall inform persons that they may direct a complaint to HHSC Complaint and Incident Intake (CII) and include current CII contact information, as specified by HHSC.

(2) The facility shall prominently and conspicuously post this information in patient common areas and in visitor’s areas and waiting rooms so that it is readily visible to patients, employees, and visitors. The information shall be in English and in a second language appropriate to the demographic makeup of the community served.

(b) HHSC evaluates all complaints. A complaint must be submitted using HHSC’s current CII contact information for that purpose, as described in subsection (a) of this section.

(c) HHSC documents, evaluates, and prioritizes complaints based on the seriousness of the alleged violation and the level of risk to patients, personnel, and the public.

(1) Allegations determined to be within HHSC’s regulatory jurisdiction relating to health care facilities may be investigated under this chapter.

(2) Complaints outside HHSC’s jurisdiction may be referred to an appropriate agency, as applicable.

(d) Investigations to evaluate a facility’s compliance shall be conducted following a complaint of abuse, neglect, or exploitation; or a complaint related to the health and safety of patients.

(e) HHSC may conduct an unannounced, on-site investigation of a facility at any reasonable time, including when treatment services are provided, to inspect, investigate, or evaluate:

(1) a facility’s compliance with any applicable statute or rule;

(2) a facility’s plan of correction;

(3) a facility’s compliance with an order of the commissioner or the commissioner’s designee;

(4) a facility’s compliance with a court order granting injunctive relief; or

(5) for other purposes relating to regulation of the facility.

(f) An applicant or licensee, by applying for or holding a license, consents to entry and investigation of any of its facilities by HHSC.

(g) A facility shall cooperate with any HHSC investigation and shall permit HHSC to examine the facility’s grounds, buildings, books, records, and other documents and information maintained by, or on behalf of, the facility.

(h) A facility shall permit HHSC access to interview members of the governing body, personnel, and patients. Members of the governing body and personnel shall provide a written statement upon request from HHSC.

(i) A facility shall permit HHSC to inspect and copy any requested information. If it is necessary for HHSC to remove documents or other records from the facility, HHSC provides a written description of the information being removed and when it is expected to be returned. HHSC makes a reasonable effort, consistent with the circumstances, to return any records removed in a timely manner.

(j) Upon entry, HHSC holds an entrance conference with the facility’s designated representative to explain the nature, scope, and estimated duration of the investigation.

(k) Once an investigation is complete, HHSC reviews the evidence from the investigation to evaluate whether there is a preponderance of evidence supporting the allegations contained in the complaint.

§133.103. Notice.

(a) A facility is deemed to have received any Texas Health and Human Services Commission (HHSC) correspondence on the date of receipt, or three business days after mailing, whichever is earlier.

(b) When deficiencies are found:

(1) HHSC provides the facility with a written Statement of Deficiencies (SOD) within 10 business days of the exit conference via U.S. mail or email.

(2) Within 10 calendar days of the facility’s receipt of the SOD, the facility shall return a written Plan of Correction (POC) to HHSC that addresses each cited deficiency, including timeframes for corrections, together with any additional evidence of compliance.

(A) HHSC determines if a POC and proposed timeframes are acceptable, and, if accepted, notifies the facility in writing.

(B) If the POC is not accepted by HHSC, HHSC notifies the facility in writing no later than 10 business days after notification and requests a modified POC and any additional evidence.

(C) The facility shall correct the identified deficiencies and submit evidence to HHSC verifying implementation of corrective action within the timeframes set forth in the POC, or as otherwise specified by HHSC.

(3) Regardless of the facility’s compliance with this subsection or HHSC’s acceptance of a facility’s POC, HHSC may, at any time, propose to take enforcement action as appropriate under this chapter.

§133.104 Professional Conduct.

In addition to any enforcement action under this chapter, the Texas Health and Human Services Commission reports, in writing, to the appropriate licensing board any issue or complaint relating to the conduct of a licensed professional, intern, or applicant for professional licensure.

§133.105 Complaint Against an HHSC Representative

(a) A hospital may register a complaint against a Texas Health and Human Services Commission (HHSC) representative who conducts an inspection or investigation in accordance with this subchapter.

(b) A complaint against an HHSC representative shall be registered with the HHSC Health Facility Compliance Manager.

TITLE 25 HEALTH SERVICES

PART 1 DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 133 HOSPITAL LICENSING

SUBCHAPTER G ENFORCEMENT

§133.121. Enforcement Action.

Enforcement is a process by which a sanction is proposed, and if warranted, imposed on an applicant or licensee regulated by the Texas Health and Human Services Commission (HHSC) for failure to comply with statutes, rules, and orders applicable to them.

(1) Denial, suspension or revocation of a license or imposition of an administrative penalty. The HHSC has jurisdiction to enforce violations of the Act or the rules adopted under this chapter. HHSC may deny, suspend, or revoke a license or impose an administrative penalty for, but not limited to the following reasons :

(A) failure to comply with any provision of Health and Safety Code (HSC), Chapters 241 or 311;

(B) failure to comply with any provision of this chapter or any other applicable laws ;

(C) the facility, or any of its employees, commits an act which causes actual harm or risk of harm to the health or safety of a patient;

(D) the facility or any of its employees materially alters any license issued by HHSC;

(E) failure to comply with minimum standards for licensure;

(F) failure to provide an adequate licensure application or renewal information;

(G) failure to comply with an order of the commissioner or another enforcement procedure under HSC, Chapters 241 or 311;

(H) a history of failure to comply with the applicable rules relating to patient environment, health, safety, and rights;

(I) the facility, or any of its employees,has aided, committed,abetted or permitted the commission of an illegal act;

(J) the facility, or any of its employees, commits fraud, misrepresentation, or concealment of a material fact on any documents required to be submitted to HHSC or required to be maintained by the facility pursuant to HSC Chapter 241 and the provisions of this chapter;

(K) failure to timely pay an assessed administrative penalty as required by HHSC;

(L) failure to submit an acceptable plan of correction for cited deficiencies within the timeframe required by HHSC;

(M) failure to timely implement plans of corrections to deficiencies cited by HHSC within the dates designated in the plan of correction;

(N) failure to comply with applicable requirements within a designated probation period; or

(O) if the facility is participating under Title XVIII, and the Centers for Medicare and Medicaid Services terminates the hospital’s Medicare provider agreement.

(2) Denial of a license. HHSC has jurisdiction to enforce violations of the HSC, Chapters 241 and 311 and this chapter. HHSC may deny a license if the applicant:

(A) fails to provide timely and sufficient information required by HHSC that is directly related to the application;

(B) has had the following actions taken against the applicant within the two-year period preceding the application:

(i) decertification or cancellation of its contract under the Medicare or Medicaid program in any state;

(ii) federal Medicare or state Medicaid sanctions or penalties;

(iii) unsatisfied federal or state tax liens;

(iv) unsatisfied final judgments;

(v) eviction involving any property or space used as a hospital in any state;

(vi) unresolved state Medicaid or federal Medicare audit exceptions;

(vii) denial, suspension, or revocation of a hospital license, a private psychiatric hospital license, or a license for any health care facility in any state; or

(viii) a court injunction prohibiting ownership or operation of a facility.

(3) Emergency suspension. Following notice and opportunity for hearing, the commissioner of the Texas Health and Human Services Commission or a person designated by the commissioner may issue an emergency order in relation to the operation of a hospital licensed under this chapter if the commissioner or the commissioner's designee determines that the hospital is violating this chapter, a rule adopted pursuant to this chapter, a special license provision, injunctive relief, an order of the commissioner or the commissioner's designee, or another enforcement procedure permitted under this chapter and the provision, rule, license provision, injunctive relief, order, or enforcement procedure relates to the health or safety of the hospital's patients.

(A) HHSC shall send written notice of the hearing and shall include within the notice the time and place of the hearing. The hearing must be held within 10 days after the date of the hospital's receipt of the notice.

(B) The hearing shall be held in accordance with HHSC’s informal hearing rules.

(C) The order shall be effective on delivery to the hospital or at a later date specified in the order.

(4) Probation. In lieu of denying or revoking the license, HHSC may place the facility on probation for a period of not less than 30 days, if the facility is found in repeated noncompliance with these rules or HSC, Chapter 241, and the facility's noncompliance does not endanger the health and safety of the public.

(5) Administrative penalty. HHSC has jurisdiction to impose an administrative penalty against a facility licensed or regulated under this chapter for violations of the HSC, Chapters 241 and 311 and this chapter. The imposition of an administrative penalty shall be in accordance with the provisions of the HSC, §241.059 and §241.060.

(6) Licensure of persons or entities with criminal backgrounds. HHSC may deny a person or entity a license or suspend or revoke an existing license on the grounds that the person or entity has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of the ownership or operation of a facility. HHSC shall apply the requirements of the Occupations Code, Chapter 53.

(A) HHSC is entitled to obtain criminal history information maintained by the Texas Department of Public Safety (Government Code, §411.122), the Federal Bureau of Investigation (Government Code, §411.087) or any other law enforcement agency to investigate the eligibility of an applicant for an initial or renewal license and to investigate the continued eligibility of a licensee.

(B) In determining whether a criminal conviction directly relates, HHSC shall consider the provisions of Occupations Code, §53.022 and §53.023.

(C) The following felonies and misdemeanors directly relate because these criminal offenses indicate an inability or a tendency for the person to be unable to own or operate a facility:

(i) a misdemeanor violation of HSC, Chapter 241;

(ii) a misdemeanor or felony involving moral turpitude;

(iii) a misdemeanor or felony relating to deceptive business practices;

(iv) a misdemeanor or felony of practicing any health-related profession without a required license;

(v) a misdemeanor or felony under any federal or state law relating to drugs, dangerous drugs, or controlled substances;

(vi) a misdemeanor or felony under the Texas Penal Code (TPC), Title 5, involving a patient or a client of any health care facility, a home and community support services agency or a health care professional; or

(vii) a misdemeanor or felony under the TPC:

(I) Title 4--offenses of attempting or conspiring to commit any of the offenses in this clause;

(II) Title 5--offenses against the person;

(III) Title 7--offenses against property;

(IV) Title 8--offenses against public administration;

(V) Title 9--offenses against public order and decency;

(VI) Title 10--offenses against public health, safety and morals; or

(VII) Title 11--offenses involving organized crime.

(7) Offenses listed in paragraph (6)(C) of this subsection are not exclusive in that HHSC may consider similar criminal convictions from other state, federal, foreign or military jurisdictions that demonstrate the inability of the person or entity to own or operate a facility.

(8) A license shall be revoked on the licensee's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

(9) Notice. If HHSC proposes to deny, suspend or revoke a license, or impose an administrative penalty, HHSC shall send a notice of the proposed action by certified mail, return receipt requested, at the address shown in the current records of HHSC or HHSC may personally deliver the notice. The notice to deny, suspend, or revoke a license, or impose an administrative penalty, shall state the alleged facts or conduct to warrant the proposed action, provide an opportunity to demonstrate or achieve compliance, and shall state that the applicant or license holder has an opportunity for a hearing before imposition of the action.

(10) Acceptance. Within 20 days after receipt of the notice, the applicant or licensee may notify HHSC, in writing, of acceptance of HHSC’s determination or request a hearing.

(11) Hearing request.

(A) A request for a hearing by the applicant or licensee shall be in writing and submitted to HHSC within 20 calendar days of receipt of the notice. Receipt of the notice is presumed to occur on the third day after the date the notice is mailed by HHSC to the last address known of the applicant or licensee.

(B) A hearing shall be conducted pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, and §§1.21, 1.23, 1.25, and 1.27 of this title (relating to Formal Hearing Procedures).

(12) No response to notice. If the applicant or licensee fails to timely respond to the notice or does not request a hearing in writing within 30 days after the date of the notice, the case shall be set for a hearing.

(13) Notification of HHSC’s final decision. HHSC shall send the licensee or applicant a copy of HHSC’s decision for denial, suspension or revocation of license or imposition of an administrative penalty by certified mail, which shall include the findings of fact and conclusions of law on which HHSC based its decision.

(14) Decision to suspend or revoke. When HHSC’s decision to suspend or revoke a license is final, the licensee must immediately cease operation, unless a stay of such action is issued by the district court.

(15) Return of original license. Upon suspension, revocation or non-renewal of the license, the original license shall be returned to HHSC within 30 days of HHSC’s notification.

(16) Reapplication following denial or revocation.

(A) After HHSC’s decision to deny or revoke, or the voluntary surrender of a license by a facility while enforcement action is pending, a facility may petition HHSC, in writing, for a license.

(B) HHSC may allow a reapplication for licensure if there is proof that the reasons for the original action no longer exist.

(C) HHSC may deny reapplication for licensure if HHSC determines that:

(i) the reasons for the original action continues;

(ii) the petitioner has failed to offer sufficient proof that conditions have changed; or

(iii) the petitioner has demonstrated a repeated history of failure to provide patients a safe environment or has violated patient rights.

(D) If HHSC allows a reapplication for licensure, the petitioner shall be required to meet the requirements as described in §133.22 of this chapter (relating to Application and Issuance of Initial License).

(17) Expiration of a license during suspension. A facility whose license expires during a suspension period may not reapply for license renewal until the end of the suspension period.

(18) Surrender of a license. In the event that enforcement, as defined in this subsection, is pending or reasonably imminent, the surrender of a facility license shall not deprive HHSC of jurisdiction in regard to enforcement against the facility.

TITLE 25 HEALTH SERVICES

PART 1 DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 135 AMBULATORY SURGICAL CENTERS

SUBCHAPTER A OPERATING REQUIREMENTS FOR AMBULATORY SURGICAL CENTERS

§135.22. Renewal of License.

(a) HHSC shall send written notice of expiration of a license to an ambulatory surgical center (ASC) at least 60 days before the expiration date. If the applicant has not received notice, it is the duty of the ASC to notify HHSC and request a renewal application.

(b) HHSC shall issue a renewal license to an ASC that meets the minimum standards for a license set forth in these sections.

(1) The ASC shall submit the following to HHSC no later than 30 days prior to the expiration date of the license:

(A) a completed renewal application form;

(B) a nonrefundable license fee; and

(C) if the ASC is accredited by the Joint Commission, the Accreditation Association for Ambulatory Health Care, or the American Association for Accreditation of Ambulatory Surgery Facilities, documented evidence of current accreditation status.

(2) Renewal licenses shall be valid for two years.

(c) If the applicant fails to timely submit an application and fee in accordance with subsection (b) of this section, HHSC shall notify the applicant that the ASC shall cease providing ambulatory surgical services. If the ASC can provide HHSC with sufficient evidence that the submission was completed in a timely manner and all dates were adhered to, the cease to perform shall be dismissed. If the ASC cannot provide sufficient evidence, the ASC shall thereafter return the license to HHSC within 30 days of HHSC’s notification by certified mail. If the applicant wishes to provide ambulatory surgical services after the expiration date of the license, the applicant shall reapply for a license under §135.20 of this title (relating to Initial Application and Issuance of License).

§135.31. Inspections.

(a) The Health and Human Services Commission (HHSC) may conduct an unannounced, on-site inspection of a facility at any reasonable time, including when treatment services are provided, to inspect, investigate, or evaluate:

(1) compliance with any applicable statute or rule;

(2) a facility’s plan of correction;

(3) an order of the commissioner or the commissioner’s designee;

(4) a court order granting injunctive relief; or

(5) for other purposes relating to regulation of the facility.

(b) An applicant or licensee, by applying for or holding a license, consents to entry and inspection of any of its facilities by HHSC.

(c) HHSC inspections to evaluate a facility’s compliance may include:

(1) Initial, change of ownership, or relocation inspections for the issuance of a new license;

(2) Inspections related to changes in status, such as new construction or changes in services, designs, or bed numbers;

(3) Routine inspections, which may be conducted without notice and at HHSC’s discretion, or prior to renewal;

(4) Follow-up on-site inspections, conducted to evaluate implementation of a plan of correction for previously cited deficiencies;

(5) Inspections to determine if an unlicensed facility is offering or providing, or purporting to offer or provide, treatment; and

(6) Entry in conjunction with any other federal, state, or local agency’s entry.

(d) A facility shall cooperate with any HHSC inspection and shall permit HHSC to examine the facility’s grounds, buildings, books, records, and other documents and information maintained by or on behalf of the facility.

(e) A facility shall permit HHSC access to interview members of the governing body, personnel, and patients. Members of the governing body and personnel shall provide a written statement upon request from HHSC.

(f) A facility shall permit HHSC to inspect and copy any requested information. If it is necessary for HHSC to remove documents or other records from the facility, HHSC provides a written description of the information being removed and when it is expected to be returned. HHSC makes a reasonable effort, consistent with the circumstances, to return any records removed in a timely manner.

(g) Upon entry, HHSC holds an entrance conference with the facility’s designated representative to explain the nature, scope, and estimated duration of the inspection.

(h) During the inspection, the HHSC representative gives the facility an opportunity to submit information and evidence relevant to matters of compliance being evaluated.

(i) When an inspection is complete, HHSC holds an exit conference with the facility representative to inform the facility representative of any preliminary findings of the inspection. The facility may provide any final documentation regarding compliance during the exit conference.

§135.32. Complaint Investigations.

(a) A facility shall provide each client and applicable consenter at the time of admission with a written statement identifying the Texas Health and Human Services Commission (HHSC) as the agency responsible for investigating complaints against the facility.

(1) The statement shall inform persons that they may direct a complaint to HHSC Complaint and Incident Intake (CII) and include current CII contact information, as specified by HHSC.

(2) The facility shall prominently and conspicuously post this information in patient common areas and in visitor’s areas and waiting rooms so that it is readily visible to patients, employees, and visitors. The information shall be in English and in a second language appropriate to the demographic makeup of the community served.

(b) HHSC evaluates all complaints. A complaint must be submitted using HHSC’s current CII contact information for that purpose, as described in subsection (a) of this section.

(c) HHSC documents, evaluates, and prioritizes complaints based on the seriousness of the alleged violation and the level of risk to patients, personnel, and the public.

(1) Allegations determined to be within HHSC’s regulatory jurisdiction relating to health care facilities may be investigated under this chapter.

(2) Complaints outside HHSC’s jurisdiction may be referred to an appropriate agency, as applicable.

(d) Investigations to evaluate a facility’s compliance shall be conducted following a complaint of abuse, neglect, or exploitation; or a complaint related to the health and safety of patients.

(e) HHSC may conduct an unannounced, on-site investigation of a facility at any reasonable time, including when treatment services are provided, to inspect, investigate, or evaluate:

(1) a facility’s compliance with any applicable statute or rule;

(2) a facility’s plan of correction;

(3) a facility’s compliance with an order of the commissioner or the commissioner’s designee;

(4) a facility’s compliance with a court order granting injunctive relief; or

(5) for other purposes relating to regulation of the facility.

(f) An applicant or licensee, by applying for or holding a license, consents to entry and investigation of any of its facilities by HHSC.

(g) A facility shall cooperate with any HHSC investigation and shall permit HHSC to examine the facility’s grounds, buildings, books, records, and other documents and information maintained by, or on behalf of, the facility.

(h) A facility shall permit HHSC access to interview members of the governing body, personnel, and patients. Members of the governing body and personnel shall provide a written statement upon request from HHSC.

(i) A facility shall permit HHSC to inspect and copy any requested information. If it is necessary for HHSC to remove documents or other records from the facility, HHSC provides a written description of the information being removed and when it is expected to be returned. HHSC makes a reasonable effort, consistent with the circumstances, to return any records removed in a timely manner.

(j) Upon entry, HHSC holds an entrance conference with the facility’s designated representative to explain the nature, scope, and estimated duration of the investigation.

(k) Once an investigation is complete, HHSC reviews the evidence from the investigation to evaluate whether there is a preponderance of evidence supporting the allegations contained in the complaint.

§135.33. Notice.

(a) A facility is deemed to have received any Texas Health and Human Services (HHSC) correspondence on the date of receipt, or three business days after mailing, whichever is earlier.

(b) When deficiencies are found:

(1) HHSC provides the facility with a written Statement of Deficiencies (SOD) within 10 business days of the exit conference via U.S. mail or email.

(2) Within 10 calendar days of the facility’s receipt of the SOD, the facility shall return a written Plan of Correction (POC) to HHSC that addresses each cited deficiency, including timeframes for corrections, together with any additional evidence of compliance.

(A) HHSC determines if a POC and proposed timeframes are acceptable, and, if accepted, notifies the facility in writing.

(B) If the POC is not accepted by HHSC, HHSC notifies the facility in writing no later than 10 business days after notification and requests a modified POC and any additional evidence.

(C) The facility shall correct the identified deficiencies and submit evidence to HHSC verifying implementation of corrective action within the timeframes set forth in the POC, or as otherwise specified by HHSC.

(3) Regardless of the facility’s compliance with this subsection or HHSC’s acceptance of a facility’s POC, HHSC may, at any time, propose to take enforcement action as appropriate under this chapter.

§135.34. Professional Conduct.

In addition to any enforcement action under this chapter, the Texas Health and Human Services Commission reports, in writing, to the appropriate licensing board any issue or complaint relating to the conduct of a licensed professional, intern, or applicant for professional licensure.

§135.35. Enforcement.

(a) Enforcement is a process by which a sanction is proposed, and if warranted, imposed on an applicant or licensee regulated by the Texas Health and Human Services Commission (HHSC) for failure to comply with statutes, rules, and orders applicable to them.

(b) Reasons for enforcement action.

(1) Denial, suspension or revocation of a license. In accordance with Health and Safety Code (HSC) §243.011, HHSC has jurisdiction to enforce violations of the Acts or the rules adopted under this chapter. HHSC may deny, suspend, or revoke a license or impose an administrative penalty for the following reasons:

(A) failure to comply with any provision of HSC Chapter 243;

(B) failure to comply with any provision of this chapter or any other applicable laws;

(C) the facility, or any of its employees, commits an act which causes actual harm or risk of harm to the health or safety of a patient;

(D) the facility, or any of its employees, materially alters any license issued by HHSC;

(E) failure to comply with minimum standards for licensure;

(F) failure to provide an adequate licensure application or renewal information;

(G) failure to comply with an order of the commissioner or another enforcement procedure under HSC Chapter 243;

(H) a history of failure to comply with the applicable rules relating to patient environment, health, safety, and rights;

(I) the facility, or any of its employees, has aided, committed, abetted, or permitted the commission of an illegal act;

(J) the facility, or any of its employees, commits fraud, misrepresentation, or concealment of a material fact on any documents required to be submitted to HHSC or required to be maintained by the facility pursuant to HSC Chapter 577 and the provisions of this chapter;

(K) failure to timely pay an assessed administrative penalty as required by HHSC;

(L) failure to submit an acceptable plan of correction for cited deficiencies within the timeframe required by HHSC;

(M) failure to timely implement plans of corrections to deficiencies cited by HHSC within the dates designated in the plan of correction;

(N) failure to comply with applicable requirements within a designated probation period; or

(O) if the facility is participating under Title XVIII, and the Centers for Medicare and Medicare Services terminates the ASC's Medicare provider agreement.

(2) HHSC may suspend or revoke an existing valid license or disqualify a person from receiving a license because of a person's conviction of a felony or misdemeanor, if the crime directly relates to the duties and responsibilities of the ownership or operation of an ambulatory surgical center.

(A) In determining whether a criminal conviction directly relates, HHSC shall consider the provisions of Occupations Code, Chapter 53.

(B) The following felonies and misdemeanors directly relate because these criminal offenses indicate an ability or a tendency for the person to be unable to own or operate an ambulatory surgical center:

(i) a misdemeanor violation of the statute;

(ii) a misdemeanor or felony involving moral turpitude;

(iii) a conviction relating to deceptive business practices;

(iv) a misdemeanor of practicing any health-related profession without a required license;

(v) a conviction under any federal or state law relating to drugs, dangerous drugs, or controlled substances;

(vi) an offense under the Penal Code, Title 5, involving a patient or a client of any health care facility, a home and community support services agency, or a health care professional;

(vii) a misdemeanor or felony offense under various titles of the Penal Code, as follows:

(I) Title 4 concerning offenses of attempting or conspiring to commit any of the offenses in this subsection;

(II) Title 5 concerning offenses against the person;

(III) Title 7 concerning offenses against property;

(IV) Title 9 concerning offenses against public order and decency; or

(V) Title 10 concerning offenses against public health, safety, and morals; and

(viii) other misdemeanors and felonies which indicate an inability or tendency for the person to be unable to own or operate an ambulatory surgical center.

(C) Upon a licensee's felony conviction, felony probation revocation, revocation of parole, or revocation of mandatory supervision, the license shall be revoked.

(3) If HHSC proposes to deny, suspend, or revoke a license, HHSC shall give the applicant written notification of the reasons for the proposed action and offer the applicant an opportunity for a hearing. The applicant may request a hearing within 20 days after the date the applicant receives notice. The request shall be in writing and submitted to HHSC as instructed in the notice of violation letter. A hearing shall be conducted pursuant to the Government Code, Chapter 2001, Administrative Procedure Act, and §§1.21, 1.23, 1.25, and 1.27 of this title (relating to Formal Hearing Procedures). If a hearing is not requested in writing within 20 days after receiving notice of the proposed action, the applicant is deemed to have waived the opportunity for a hearing and the proposed action shall be taken.

(4) If HHSC finds that a violation of the standards or licensing requirements prescribed by the Act creates an immediate threat to the health and safety of patients of an ASC, HHSC may petition the district court for a temporary restraining order to restrain continuing violations.

(5) The provisions of Occupations Code, Chapter 53, Consequences of Criminal Conviction, apply to an ASC.

(6) If a person violates the licensing requirements or the standards prescribed by the Act, HHSC may petition the district court for an injunction to prohibit the person from continuing the violation or to restrain or prevent the establishment or operation of an ASC without a license issued under the Act.

(c) Emergency suspension of a license. HHSC may issue an emergency order to suspend a license issued under this chapter, if HHSC has reasonable cause to believe that the conduct of a license holder creates an immediate danger to the public health and safety.

(1) An emergency suspension is effective immediately without a hearing on notice to the license holder.

(2) On written request of the license holder, HHSC shall conduct a hearing not earlier than the 10th day or later than the 30th day after the date the hearing request is received to determine if the emergency suspension is to be continued, modified, or rescinded. The hearing and any appeal are governed by HHSC's rules for a contested case hearing and Government Code, Chapter 2001.

(d) Probation. In lieu of denying, suspending or revoking the license under subsection (a) of this section, HHSC may place the ASC on probation for a period of not less than thirty days, if the ASC is found in repeated non-compliance and the ASC's noncompliance does not endanger the health and safety of the public.

(1) HHSC shall provide notice of the probation to the ASC not later than the 10th day before the date the probation begins. The notice shall include the items of noncompliance that resulted in placing the ASC on probation and shall designate the period of the probation.

(2) During the probationary period, the ASC shall correct the items of noncompliance and provide a written report to HHSC that describes the corrective actions taken.

(3) HHSC may verify the corrective actions through an on-site inspection.

(e) Administrative penalty. HHSC may impose an administrative penalty on a person licensed under this chapter who violates the Act, this chapter, or order adopted under this chapter.

(1) A penalty collected under this section shall be deposited in the state treasury in the general revenue fund.

(2) A proceeding to impose the penalty is considered to be a contested case under Government Code, Chapter 2001.

(3) The amount of the penalty may not exceed $1,000 for each violation, and each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The total amount of the penalty assessed for a violation continuing or occurring on separate days under this paragraph may not exceed $5,000.

(4) In determining the amount of an administrative penalty assessed under this section, HHSC shall consider:

(A) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(B) the threat to health or safety caused by the violation;

(C) the history of previous violations;

(D) the amount necessary to deter a future violation;

(E) whether the violator demonstrated good faith, including when applicable whether the violator made good faith efforts to correct the violation; and

(F) any other matter that justice may require.

(5) If HHSC initially determines that a violation occurred, HHSC shall give written notice of the report by certified mail to the person alleged to have committed the violation following the survey exit date. The notice shall include:

(A) a brief summary of the alleged violation;

(B) a statement of the amount of the recommended penalty; and

(C) a statement of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(6) Within 20 days after the date the person receives the notice under paragraph (5) of this subsection, the person in writing may:

(A) accept the determination and recommended penalty of HHSC; or

(B) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(7) If the person accepts the determination and recommended penalty or if the person fails to respond to the notice, the commissioner or the commissioner's designee by order shall approve the determination and impose the recommended penalty.

(8) If the person requests a hearing, the commissioner shall refer the matter to the State Office of Administrative Hearings (SOAH). The hearing shall be conducted in accordance with Government Code, Chapter 2001, and all applicable SOAH and department rules.

(9) Based on the proposal for the decision made by the administrative law judge under paragraph (8) of this subsection, the commissioner by order may find that a violation occurred and impose a penalty or may find that a violation did not occur. The commissioner or the commissioner's designee shall give notice of the commissioner's order under paragraph (7) of this subsection to the person alleged to have committed the violation in accordance with Government Code, Chapter 2001. The notice shall include:

(A) a statement of the right of the person to judicial review of the order;

(B) separate statements of the findings of fact and conclusions of law; and

(C) the amount of any penalty assessed.

(10) Within 30 days after the date an order of the commissioner under paragraph (7) of this subsection that imposes an administrative penalty becomes final, the person shall:

(A) pay the penalty; or

(B) appeal the penalty by filing a petition for judicial review of the commissioner's order contesting the occurrence of the violation, the amount of the penalty, or both.

(11) Within the 30-day period prescribed by paragraph (10) of this subsection, a person who files a petition for judicial review may:

(A) stay enforcement of the penalty by:

(i) paying the penalty to the court for placement in an escrow account; or

(ii) giving the court a supersedeas bond that is approved by the court for the amount of the penalty, and that is effective until all judicial review of the commissioner's order is final; or

(B) request the court to stay enforcement of the penalty by:

(i) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(ii) sending a copy of the affidavit to the commissioner by certified mail.

(C) If the commissioner receives a copy of an affidavit under subparagraph (B) of this paragraph, the commissioner may file with the court, within five days after the date the copy is received, a contest to the affidavit. In accordance with Health and Safety Code, §243.016(c), the court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

(12) If the person does not pay the penalty and the enforcement of the penalty is not stayed, HHSC may refer the matter to the attorney general for collection of the penalty. As provided by the Health and Safety Code, §243.016(d), the attorney general may sue to collect the penalty.

(13) A decision by the court is governed by Health and Safety Code, §243.016(e) and (f), and provides the following.

(A) If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

(B) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

(14) The remittance of penalty and interest is governed by Health and Safety Code, §243.016(g) and provides the following.

(A) If the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person within 30 days after the date that the judgment of the court becomes final.

(B) The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(C) The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

(15) The release of supersedeas bond is governed by Health and Safety Code, §243.016(h), and provides the following.

(A) If the person gave a supersedeas bond and the court does not uphold the penalty, the court shall order, when the court's judgment becomes final, the release of the bond.

(B) If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

The existing rules in Texas Administrative Code [Title 25, Chapter 139, Abortion Facility Reporting and Licensing, Subchapter C, Enforcement](https://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=25&pt=1&ch=139&sch=C&rl=Y) are being repealed entirely. The new rules for Abortion Facility Reporting and Licensing, Enforcement will be located in the same location of Texas Administrative Code. This draft includes the new rules for Chapter 139, Subchapter C.

TITLE 25 HEALTH SERVICES

PART 1 DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 139 ABORTION FACILITY REPORTING AND LICENSING

SUBCHAPTER C ENFORCEMENT

§139.31. Inspections.

(a) The Texas Health and Human Services Commission (HHSC) may conduct an unannounced, on-site inspection of a facility at any reasonable time, including when treatment services are provided, to inspect, investigate, or evaluate:

(1) compliance with any applicable statute or rule;

(2) a facility’s plan of correction;

(3) an order of the commissioner or the commissioner’s designee;

(4) a court order granting injunctive relief; or

(5) for other purposes relating to regulation of the facility.

(b) An applicant or licensee, by applying for or holding a license, consents to entry and inspection of any of its facilities by HHSC.

(c) HHSC inspections to evaluate a facility’s compliance may include:

(1) Initial, change of ownership, or relocation inspections for the issuance of a new license;

(2) Inspections related to changes in status, such as new construction or changes in services, designs, or bed numbers;

(3) Routine inspections, which may be conducted without notice and at HHSC’s discretion, or prior to renewal;

(4) Follow-up on-site inspections, conducted to evaluate implementation of a plan of correction for previously cited deficiencies;

(5) Inspections to determine if an unlicensed facility is offering or providing, or purporting to offer or provide, treatment; and

(6) Entry in conjunction with any other federal, state, or local agency’s entry.

(d) A facility shall cooperate with any HHSC inspection and shall permit HHSC to examine the facility’s grounds, buildings, books, records, and other documents and information maintained by or on behalf of the facility.

(e) A facility shall permit HHSC access to interview members of the governing body, personnel, and patients. Members of the governing body and personnel shall provide a written statement upon request from HHSC.

(f) A facility shall permit HHSC to inspect and copy any requested information. If it is necessary for HHSC to remove documents or other records from the facility, HHSC provides a written description of the information being removed and when it is expected to be returned. HHSC makes a reasonable effort, consistent with the circumstances, to return any records removed in a timely manner.

(g) Upon entry, HHSC holds an entrance conference with the facility’s designated representative to explain the nature, scope, and estimated duration of the inspection.

(h) During the inspection, the HHSC representative gives the facility an opportunity to submit information and evidence relevant to matters of compliance being evaluated.

(i) When an inspection is complete, HHSC holds an exit conference with the facility representative to inform the facility representative of any preliminary findings of the inspection. The facility may provide any final documentation regarding compliance during the exit conference.

§139.32. Complaint Investigations.

(a) A facility shall provide each client and applicable consenter at the time of admission with a written statement identifying the Texas Health and Human Services Commission (HHSC) as the agency responsible for investigating complaints against the facility.

(1) The statement shall inform persons that they may direct a complaint to HHSC Complaint and Incident Intake (CII) and include current CII contact information, as specified by HHSC.

(2) The facility shall prominently and conspicuously post this information in patient common areas and in visitor’s areas and waiting rooms so that it is readily visible to patients, employees, and visitors. The information shall be in English and in a second language appropriate to the demographic makeup of the community served.

(b) HHSC evaluates all complaints. A complaint must be submitted using HHSC’s current CII contact information for that purpose, as described in subsection (a) of this section.

(c) HHSC documents, evaluates, and prioritizes complaints based on the seriousness of the alleged violation and the level of risk to patients, personnel, and the public.

(1) Allegations determined to be within HHSC’s regulatory jurisdiction relating to health care facilities may be investigated under this chapter.

(2) Complaints outside HHSC’s jurisdiction may be referred to an appropriate agency, as applicable.

(d) Investigations to evaluate a facility’s compliance shall be conducted following a complaint of abuse, neglect, or exploitation; or a complaint related to the health and safety of patients.

(e) HHSC may conduct an unannounced, on-site investigation of a facility at any reasonable time, including when treatment services are provided, to inspect, investigate, or evaluate:

(1) a facility’s compliance with any applicable statute or rule;

(2) a facility’s plan of correction;

(3) a facility’s compliance with an order of the commissioner or the commissioner’s designee;

(4) a facility’s compliance with a court order granting injunctive relief; or

(5) for other purposes relating to regulation of the facility.

(f) An applicant or licensee, by applying for or holding a license, consents to entry and investigation of any of its facilities by HHSC.

(g) A facility shall cooperate with any HHSC investigation and shall permit HHSC to examine the facility’s grounds, buildings, books, records, and other documents and information maintained by, or on behalf of, the facility.

(h) A facility shall permit HHSC access to interview members of the governing body, personnel, and patients. Members of the governing body and personnel shall provide a written statement upon request from HHSC.

(i) A facility shall permit HHSC to inspect and copy any requested information. If it is necessary for HHSC to remove documents or other records from the facility, HHSC provides a written description of the information being removed and when it is expected to be returned. HHSC makes a reasonable effort, consistent with the circumstances, to return any records removed in a timely manner.

(j) Upon entry, HHSC holds an entrance conference with the facility’s designated representative to explain the nature, scope, and estimated duration of the investigation.

(k) Once an investigation is complete, HHSC reviews the evidence from the investigation to evaluate whether there is a preponderance of evidence supporting the allegations contained in the complaint.

§139.33. Notice.

(a) A facility is deemed to have received any Texas Health and Human Services Commission (HHSC) correspondence on the date of receipt, or three business days after mailing, whichever is earlier.

(b) When deficiencies are found:

(1) HHSC provides the facility with a written Statement of Deficiencies (SOD) within 10 business days of the exit conference via U.S. mail or email.

(2) Within 10 calendar days of the facility’s receipt of the SOD, the facility shall return a written Plan of Correction (POC) to HHSC that addresses each cited deficiency, including timeframes for corrections, together with any additional evidence of compliance.

(A) HHSC determines if a POC and proposed timeframes are acceptable, and, if accepted, notifies the facility in writing.

(B) If the POC is not accepted by HHSC, HHSC notifies the facility in writing no later than 10 business days after notification and request a modified POC and any additional evidence.

(C) The facility shall correct the identified deficiencies and submit evidence to HHSC verifying implementation of corrective action within the timeframes set forth in the POC, or as otherwise specified by HHSC.

(3) Regardless of the facility’s compliance with this subsection or HHSC’s acceptance of a facility’s POC, HHSC may, at any time, propose to take enforcement action as appropriate under this chapter.

§139.34. Professional Conduct.

In addition to any enforcement action under this chapter, the Texas Health and Human Services Commission reports, in writing, to the appropriate licensing board any issue or complaint relating to the conduct of a licensed professional, intern, or applicant for professional licensure.

§139.35. License Denial, Suspension, Probation, or Revocation.

(a) Enforcement is a process by which a sanction is proposed, and if warranted, imposed on an applicant or licensee regulated by the Texas Health and Human Services Commission (HHSC) for failure to comply with statutes, rules, and orders applicable to them.

(b) Denial, suspension or revocation of a license. HHSC has jurisdiction to enforce violations of the Acts or the rules adopted under this chapter. HHSC may deny, suspend, or revoke a license or impose an administrative penalty for the following reasons:

(1) failure to comply with any provision of Health and Safety Code (HSC) Chapters 245 and 171;

(2) failure to comply with any provision of this chapter (Texas Administrative Code Title 25, Chapter 139) or any other applicable laws;

(3) the facility, or any of its employees, commits an act which causes actual harm or risk of harm to the health or safety of a patient;

(4) the facility, or any of its employees, materially alters any license issued by HHSC;

(5) failure to comply with minimum standards for licensure;

(6) failure to provide an adequate licensure application or renewal information;

(7) failure to comply with an order of the commissioner or another enforcement procedure under HSC Chapters 245 and 171;

(8) a history of failure to comply with the applicable rules relating to patient environment, health, safety, and rights;

(9) the facility, or any of its employees, has aided, committed, abetted, or permitted the commission of an illegal act;

(10) the facility, or any of its employees, commits fraud, misrepresentation, or concealment of a material fact on any documents required to be submitted to HHSC or required to be maintained by the facility pursuant to HSC Chapters 245 and 171 and the provisions of this chapter;

(11) failure to timely pay an assessed administrative penalty as required by HHSC;

(12) failure to submit an acceptable plan of correction for cited deficiencies within the timeframe required by HHSC;

(13) failure to timely implement plans of corrections to deficiencies cited by HHSC within the dates designated in the plan of correction;

(14) failure to comply with applicable requirements within a designated probation period;

(15) the facility discloses an action described in §139.23(c)(2)(C)(xi) and (xii) of this title (relating to Application Procedures and Issuance of Licenses); or

(16) the facility knowingly employs as the facility administrator or chief financial officer an individual who was convicted of a felony or misdemeanor listed in subsection (c) of this section;

(c) HHSC may deny a person a license or suspend or revoke an existing license on the grounds that the person has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of the ownership or operation of a facility.

(1) In determining whether a criminal conviction directly relates to the duties and responsibilities of the ownership or operation of a licensed abortion facility, and in determining the fitness of a person who has been convicted of a crime to perform such duties and responsibilities, HHSC shall consider the provisions of Occupations Code, Chapter 53.

(2) HHSC is entitled to obtain criminal history information maintained by the Texas Department of Public Safety (Government Code, §411.122), the Federal Bureau of Investigation (Government Code, §411.087), or any other law enforcement agency to investigate the eligibility of an applicant for an initial or renewal license and to investigate the continued eligibility of a licensee.

(3) The following felonies and misdemeanors directly relate to the duties and responsibilities of the ownership or operation of a licensed abortion facility because these criminal offenses demonstrate impaired ability to own or operate a facility:

(A) a misdemeanor violation of Health and Safety Code, Chapter 171 or Chapter 245;

(B) a misdemeanor or felony involving moral turpitude;

(C) a misdemeanor or felony relating to deceptive business practices;

(D) a misdemeanor or felony of practicing any health-related profession without a required license;

(E) a misdemeanor or felony under any federal or state law relating to drugs, dangerous drugs, or controlled substances;

(F) a misdemeanor or felony under the Penal Code, Title 5, involving a patient or client of any health care facility, a home and community support services agency, or a health care professional; or

(G) a misdemeanor or felony under the Penal Code:

(i) Title 4--offenses of attempting or conspiring to commit any of the offenses in this clause;

(ii) Title 5--offenses against the person;

(iii) Title 7--offenses against property;

(iv) Title 8--offenses against public administration;

(v) Title 9--offenses against public order and decency;

(vi) Title 10--offenses against public health, safety or morals; or

(vii) Title 11--offenses involving organized crime.

(4) Offenses listed in paragraph (3) of this subsection are not exclusive in that HHSC may consider similar criminal convictions from other state, federal, foreign or military jurisdictions which indicate an impaired ability or tendency for the person to be unable to own or operate a facility.

(5) A license holder's license shall be revoked on the license holder's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

(d) All proceedings for the denial, suspension, probation, or revocation of a license under this section shall be conducted at the State Office of Administrative Hearings, and in accordance with Health and Safety Code, Chapter 245; Government Code, Chapter 2001; and the Formal Hearing Procedures of the Department of State Health Services, §§1.21, 1.23, 1.25, and 1.27 of this title.

(e) A person who has had a facility license revoked under this section may not apply for a license under this chapter for one year following the date of revocation.

(f) After an on-site inspection in which deficiencies were cited by the surveyor, a facility may surrender its license before expiration or allow its license to expire in lieu of HHSC proceeding with enforcement action. HHSC may accept such submission or reject it and proceed with an enforcement action. The facility, its owner(s), and its affiliates may not reapply for a license for six months from the date of the surrender or expiration.

(g) If HHSC suspends a license, the suspension shall remain in effect until HHSC determines that the reason for suspension no longer exists. An HHSC representative shall conduct an inspection of the facility prior to making a determination.

(1) During the time of suspension, the suspended license holder shall return the original license certificate to HHSC.

(2) If a suspension overlaps a renewal date, the suspended license holder shall comply with the renewal procedures in this chapter; however, HHSC may not renew the license until HHSC determines that the reason for suspension no longer exists.

(3) If suspension is for more than one year, the suspended license holder may apply to HHSC for cancellation of the suspension only after one year following the initial date of the suspension.

(h) If HHSC revokes or does not renew a license, a person may reapply for a license (subject to subsection (d) of this section), by complying with the requirements and procedures in this chapter at the time of reapplication. HHSC may refuse to issue a license, if the reason for revocation or non-renewal continues to exist, and may consider the enforcement history of the applicant, administrator, or clinical director in making such a determination.

(i) Upon revocation or non-renewal, a license holder shall return the original license certificate to HHSC.

(j) Upon a licensee's felony conviction, felony probation revocation, revocation of parole, or revocation of mandatory supervision, the license shall be revoked.

(k) If HHSC finds that a licensed abortion facility is in repeated noncompliance with Health and Safety Code, Chapter 171 or Chapter 245, or rules adopted under this chapter, but the noncompliance does not in any way involve the health and safety of the public or an individual, HHSC may place the facility on probation rather than suspending or revoking the facility's license.

(l) HHSC may suspend or revoke the license of a licensed abortion facility that does not correct items that were in noncompliance or that does not comply with Health and Safety Code, Chapter 171 or Chapter 245, or rules adopted under this chapter within the applicable probation period.

(m) HHSC may suspend or revoke a license to be effective immediately when a situation(s) is identified that poses immediate jeopardy to the health and safety of person(s) at the facility.

(1) HHSC shall immediately give the licensee adequate notice of the action taken, the legal grounds for the action, and the procedure governing appeal of the action.

(2) HHSC shall set a hearing date not later than the 14th day after the effective date of the suspension or revocation.

(3) HHSC shall also notify the facility in writing of the emergency action, the legal grounds for the action, the effective date of the emergency action, the procedure governing appeal of the action, and the date set for the hearing. This notice shall be sent by certified mail, return receipt requested, or by personal delivery. The hearing shall be conducted at the State Office of Administrative Hearings, and pursuant to the Health and Safety Code, Chapter 245; Government Code, Chapter 2001; and HHSC's formal hearing procedures set out in §§1.21, 1.23, 1.25, and 1.27 of this title.

(n) If a person violates the licensing requirements of the Act or rules adopted under the Act, HHSC may petition the district court for a temporary restraining order to restrain the person from continuing the violation or operating without a license.

(o) If a person operates a facility without a license as required by this chapter and the Act, the person is liable for a civil penalty of not less than $1,000 nor more than $2,500 for each day of violation.

(p) If a facility has had enforcement action taken by HHSC against it, the facility, its owner(s), or its affiliate(s) may not apply for a facility license for one year following the effective date of the enforcement action. For purposes of this subsection only, the term "enforcement action" means license revocation, suspension, emergency suspension, or denial or injunctive action, but does not include administrative penalties or civil penalties. If HHSC prevails in one enforcement action (e.g., injunctive action) against the facility but also proceeds with another enforcement action (e.g., revocation) based on some or all of the same violations, but HHSC does not prevail in the second enforcement action (e.g., the facility prevails), the prohibition in this paragraph does not apply.

(q) If HHSC revokes or does not renew a license and the one-year period described in subsection (p) of this section has passed, a person may reapply for a license by complying with the requirements and procedures in this chapter at the time of reapplication. HHSC may refuse to issue a license, if the reason for revocation or non-renewal continues to exist.

(r) Upon revocation or non-renewal, a license holder shall return the license to HHSC within 30 days of HHSC’s notification.

§139.36. Administrative Penalties, Injunction, Criminal Penalties, and Civil Penalties.

(a) Administrative penalties.

(1) The Texas Health and Human Services Commission (HHSC) may assess an administrative penalty against a person who violates the Act or this chapter.

(2) The penalty may not exceed $1,000 for each violation. Each day of a continuing violation constitutes a separate violation.

(3) In determining the amount of an administrative penalty assessed under this section, HHSC shall consider:

(A) the seriousness of the violation;

(B) the history of previous violations;

(C) the amount necessary to deter future violations;

(D) efforts made to correct the violation; and

(E) any other matters that justice may require.

(4) All proceedings for the assessment of an administrative penalty under this section shall be conducted at the State Office of Administrative Hearings, and pursuant to the Health and Safety Code, Chapter 245; the Government Code, Chapter 2001; and HHSC's formal hearing procedures set out in §§1.21, 1.23, 1.25, and 1.27 of this title.

(5) HHSC may assess costs against facilities in administrative proceedings in accordance with Health and Safety Code, Chapter 245.

(b) Injunction, criminal penalties, and civil penalties. In addition to administrative penalties, the Health and Safety Code, Chapter 245, provides for injunctive relief and civil penalties for violations of that chapter and violations of these rules and also provides for criminal penalties for certain violations described therein.

TITLE 26 HEALTH AND HUMAN SERVICES

PART 1 HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 506 SPECIAL CARE FACILITIES

SUBCHAPTER E INSPECTIONS AND INVESTIGATIONS

§506.61. Inspections.

(a) The Texas Health and Human Services Commission (HHSC) may conduct an unannounced, on-site inspection of a facility at any reasonable time, including when treatment services are provided, to inspect, investigate, or evaluate:

(1) compliance with any applicable statute or rule;

(2) a facility’s plan of correction;

(3) an order of the commissioner or the commissioner’s designee;

(4) a court order granting injunctive relief; or

(5) for other purposes relating to regulation of the facility.

(b) An applicant or licensee, by applying for or holding a license, consents to entry and inspection of any of its facilities by HHSC.

(c) HHSC inspections to evaluate a facility’s compliance may include:

(1) Initial, change of ownership, or relocation inspections for the issuance of a new license;

(2) Inspections related to changes in status, such as new construction or changes in services, designs, or bed numbers;

(3) Routine inspections, which may be conducted without notice and at HHSC’s discretion, or prior to renewal;

(4) Follow-up on-site inspections, conducted to evaluate implementation of a plan of correction for previously cited deficiencies;

(5) Inspections to determine if an unlicensed facility is offering or providing, or purporting to offer or provide, treatment; and

(6) Entry in conjunction with any other federal, state, or local agency’s entry.

(d) A facility shall cooperate with any HHSC inspection and shall permit HHSC to examine the facility’s grounds, buildings, books, records, and other documents and information maintained by or on behalf of the facility.

(e) A facility shall permit HHSC access to interview members of the governing body, personnel, and patients. Members of the governing body and personnel shall provide a written statement upon request from HHSC.

(f) A facility shall permit HHSC to inspect and copy any requested information. If it is necessary for HHSC to remove documents or other records from the facility, HHSC provides a written description of the information being removed and when it is expected to be returned. HHSC makes a reasonable effort, consistent with the circumstances, to return any records removed in a timely manner.

(g) Upon entry, HHSC holds an entrance conference with the facility’s designated representative to explain the nature, scope, and estimated duration of the inspection.

(h) During the inspection, the HHSC representative gives the facility an opportunity to submit information and evidence relevant to matters of compliance being evaluated.

(i) When an inspection is complete, HHSC holds an exit conference with the facility representative to inform the facility representative of any preliminary findings of the inspection. The facility may provide any final documentation regarding compliance during the exit conference.

§506.62. Complaint Investigations.

(a) A facility shall provide each client and applicable consenter at the time of admission with a written statement identifying the Texas Health and Human Services Commission (HHSC) as the agency responsible for investigating complaints against the facility.

(1) The statement shall inform persons that they may direct a complaint to HHSC Complaint and Incident Intake (CII) and include current CII contact information, as specified by HHSC.

(2) The facility shall prominently and conspicuously post this information in patient common areas and in visitor’s areas and waiting rooms so that it is readily visible to patients, employees, and visitors. The information shall be in English and in a second language appropriate to the demographic makeup of the community served.

(b) HHSC evaluates all complaints. A complaint must be submitted using HHSC’s current CII contact information for that purpose, as described in subsection (a) of this section.

(c) HHSC documents, evaluates, and prioritizes complaints based on the seriousness of the alleged violation and the level of risk to patients, personnel, and the public.

(1) Allegations determined to be within HHSC’s regulatory jurisdiction relating to health care facilities may be investigated under this chapter.

(2) Complaints outside HHSC’s jurisdiction may be referred to an appropriate agency, as applicable.

(d) Investigations to evaluate a facility’s compliance shall be conducted following a complaint of abuse, neglect, or exploitation; or a complaint related to the health and safety of patients.

(e) HHSC may conduct an unannounced, on-site investigation of a facility at any reasonable time, including when treatment services are provided, to inspect, investigate, or evaluate:

(1) a facility’s compliance with any applicable statute or rule;

(2) a facility’s plan of correction;

(3) a facility’s compliance with an order of the commissioner or the commissioner’s designee;

(4) a facility’s compliance with a court order granting injunctive relief; or

(5) for other purposes relating to regulation of the facility.

(f) An applicant or licensee, by applying for or holding a license, consents to entry and investigation of any of its facilities by HHSC.

(g) A facility shall cooperate with any HHSC investigation and shall permit HHSC to examine the facility’s grounds, buildings, books, records, and other documents and information maintained by, or on behalf of, the facility.

(h) A facility shall permit HHSC access to interview members of the governing body, personnel, and patients. Members of the governing body and personnel shall provide a written statement upon request from HHSC.

(i) A facility shall permit HHSC to inspect and copy any requested information. If it is necessary for HHSC to remove documents or other records from the facility, HHSC provides a written description of the information being removed and when it is expected to be returned. HHSC makes a reasonable effort, consistent with the circumstances, to return any records removed in a timely manner.

(j) Upon entry, HHSC holds an entrance conference with the facility’s designated representative to explain the nature, scope, and estimated duration of the investigation.

(k) Once an investigation is complete, HHSC reviews the evidence from the investigation to evaluate whether there is a preponderance of evidence supporting the allegations contained in the complaint.

§506.63. Notice.

(a) A facility is deemed to have received any HHSC correspondence on the date of receipt, or three business days after mailing, whichever is earlier.

(b) When deficiencies are found:

(1) HHSC provides the facility with a written Statement of Deficiencies (SOD) within 10 business days of the exit conference via U.S. mail or e-mail.

(2) Within 10 calendar days of the facility’s receipt of the SOD, the facility shall return a written Plan of Correction (POC) to HHSC that addresses each cited deficiency, including timeframes for corrections, together with any additional evidence of compliance.

(A) HHSC determines if a POC and proposed timeframes are acceptable, and, if accepted, notifies the facility in writing.

(B) If the POC is not accepted by HHSC, HHSC notifies the facility, in writing, no later than 10 business days after notification and requests a modified POC and any additional evidence.

(C) The facility shall correct the identified deficiencies and submit evidence to HHSC verifying implementation of corrective action within the timeframes set forth in the POC, or as otherwise specified by HHSC.

(3) Regardless of the facility’s compliance with this subsection or HHSC’s acceptance of a facility’s POC, HHSC may, at any time, propose to take enforcement action as appropriate under this chapter.

§506.64 Professional Conduct.

In addition to any enforcement action under this chapter, the Texas Health and Human Services Commission reports, in writing, to the appropriate licensing board any issue or complaint relating to the conduct of a licensed professional, intern, or applicant for professional licensure.

§506.65. Complaint Against an HHSC Representative.

(a) A facility may register a complaint against a Texas Health and Human Services Commission (HHSC) representative who conducts an inspection or investigation in accordance with this subchapter.

(b) A complaint against an HHSC representative shall be registered with the HHSC Health Facility Compliance Manager.

TITLE 26 HEALTH AND HUMAN SERVICES

PART 1 HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 506 SPECIAL CARE FACILITIES

SUBCHAPTER F ENFORCEMENT

§506.71. License Denial, Suspension, Revocation and Probation.

(a) Enforcement is a process by which a sanction is proposed, and if warranted, imposed on an applicant or licensee regulated by HHSC for failure to comply with statutes, rules, and orders applicable to them.

(b) Denial, suspension or revocation of a license. HHSC has jurisdiction to enforce violations of the Acts or the rules adopted under this chapter. HHSC may deny, suspend, or revoke a license or impose an administrative penalty for the following reasons:

(1) failure to comply with any provision of Health and Safety Code (HSC) Chapter 248;

(2) failure to comply with any provision of this chapter (Texas Administrative Code Title 26, Chapter 506) or any other applicable laws;

(3) the facility, or any of its employees, commits an act which causes actual harm or risk of harm to the health or safety of a patient;

(4) the facility, or any of its employees, materially alters any license issued by HHSC;

(5) failure to comply with minimum standards for licensure;

(6) failure to provide an adequate licensure application or renewal information;

(7) failure to comply with an order of the commissioner or another enforcement procedure under HSC Chapter 248;

(8) a history of failure to comply with the applicable rules relating to patient environment, health, safety, and rights;

(9) the facility, or any of its employees, has aided, committed, abetted, or permitted the commission of an illegal act;

(10) the facility, or any of its employees, commits fraud, misrepresentation, or concealment of a material fact on any documents required to be submitted to HHSC or required to be maintained by the facility pursuant to HSC Chapter 248 and the provisions of this chapter;

(11) failure to timely pay an assessed administrative penalty as required by HHSC;

(12) failure to submit an acceptable plan of correction for cited deficiencies within the timeframe required by HHSC;

(13) failure to timely implement plans of corrections to deficiencies cited by HHSC within the dates designated in the plan of correction; or

(14) failure to comply with applicable requirements within a designated probation period.

(c) HHSC may suspend or revoke an existing valid license, or disqualify a person from receiving a license because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of the ownership or operation of a facility.

(1) In determining whether a criminal conviction directly relates, HHSC shall consider:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for requiring a license to engage in the occupation;

(C) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.

(2) In addition to the factors that may be considered under paragraph (1) of this subsection, HHSC, in determining the present fitness of a person who has been convicted of a crime, shall consider the provisions of Texas Occupations Code, §53.022 and §53.023 (relating to Ineligibility for License).

(3) The following felonies and misdemeanors directly relate because these criminal offenses indicate an ability or a tendency for the person to be unable to own or operate a facility:

(A) a violation of the Act;

(B) an offense involving moral turpitude;

(C) an offense relating to deceptive business practice;

(D) an offense of practicing any health-related profession without a required license;

(E) an offense under any federal or state law relating to drugs, dangerous drugs, or controlled substances;

(F) an offense under Title 5 of the Texas Penal Code involving a patient or client of a health care facility or agency; or

(G) an offense under various titles of the Texas Penal Code:

(i) Title 5 concerning offenses against the person;

(ii) Title 7 concerning offenses against property;

(iii) Title 9 concerning offenses against public order and decency;

(iv) Title 10 concerning offenses against public health, safety, and morals; or

(v) Title 4 concerning offenses of attempting or conspiring to commit any of the offenses in this subsection; or

(H) other misdemeanors or felonies which indicate an inability or tendency for the person to be unable to own or operate a facility if action by HHSC will promote the intent of the Act, this chapter or Texas Occupations Code, §53.022 and §53.023.

(d) Upon a licensee's felony conviction, felony probation revocation, revocation of parole, or revocation of mandatory supervision, his license shall be revoked.

(e) If HHSC proposes to deny, suspend, or revoke a license, the director shall notify the applicant or the facility by mail of the reasons for the proposed action and offer the applicant or facility an opportunity for a hearing. The applicant or facility must request a hearing within 20 calendar days of receipt of the notice. The request must be in writing and submitted to HHSC. A hearing shall be conducted pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, and HHSC’s formal hearing procedures in Texas Administrative Code (TAC) Title 25, Chapter 1 (relating to Miscellaneous Provisions). If the applicant or facility does not request a hearing, in writing, within 20 calendar days of receipt of the notice or does not appear at a scheduled hearing, the applicant or facility is deemed to have waived the opportunity for a hearing and the proposed action shall be taken. Receipt of the notice is presumed to occur on the third-calendar day after the notice is mailed to the last address known to HHSC unless another date is reflected on a United States Postal Service return receipt.

(f) HHSC may suspend or revoke a license to be effective immediately when HHSC has reasonable cause to believe the health and safety of persons are threatened. HHSC shall notify the facility of the emergency action by mail or personal delivery of the notice. If requested by the license holder, HHSC shall conduct a hearing, which shall be not earlier than ten calendar days from the effective date of the suspension or revocation. The effective date of the emergency action shall be stated in the notice. The hearing shall be conducted pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, and HHSC’s formal hearing procedures in 25 TAC, Chapter 1 (relating to Miscellaneous Provisions) .

(g) If a person violates a requirement of the Act or this chapter, HHSC may petition the district court to restrain the person from continuing the violation.

(h) In lieu of denying,suspending, or revoking the license, HHSC may place the facility on probation for a period of not less than 30 days if the facility is found in repeated non-compliance and the facility's noncompliance does not endanger the health and safety of the public.

§506.73. Administrative Penalties.

(a) Imposition of penalty. The Texas Health and Human Services Commission (HHSC) may impose an administrative penalty on a person licensed under this chapter who violates the Act, this chapter, or order adopted under this chapter.

(b) Deposit of penalty. A penalty collected under this section shall be deposited in the state treasury in the general revenue fund.

(c) Contested case. A proceeding to impose the penalty is considered to be a contested case under Government Code, Chapter 2001.

(d) Amount of penalty.

(1) The amount of the penalty may not exceed $1,000 for each violation, except for violations of §506.31(b)(6) of this chapter (relating to General Functions) , which are limited to $500. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The total amount of the penalty assessed for a violation continuing or occurring on separate days under this paragraph may not exceed $5,000.

(2) In determining the amount of an administrative penalty assessed under this section, HHSC shall consider:

(A) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(B) the threat to health or safety caused by the violation;

(C) the history of previous violations;

(D) the amount necessary to deter a future violation;

(E) whether the violator demonstrated good faith, including when applicable whether the violator made good faith efforts to correct the violation; and

(F) any other matter that justice may require.

(e) Report and notice of violation and penalty.

(1) If HHSC initially determines that a violation occurred, HHSC will give written notice of the report by mail to the person alleged to have committed the violation.

(2) The notice must include:

(A) a brief summary of the alleged violation;

(B) a statement of the amount of the recommended penalty based on the factors listed in subsection (d)(2) of this section; and

(C) a statement of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(f) Penalty to be paid or hearing requested.

(1) Within 20 days after the date the person receives the notice sent under subsection (e) of this section, the person in writing may:

(A) accept the determination and recommended penalty of HHSC; or

(B) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(2) If the person accepts the determination and recommended penalty or if the person fails to respond to the notice, the commissioner of public health (commissioner) or the commissioner's designee by order shall approve the determination and impose the recommended penalty.

(g) Hearing.

(1) If the person requests a hearing, the commissioner or the commissioner's designee shall refer the matter to the State Office of Administrative Hearings (SOAH).

(2) As mandated by Health and Safety Code, §248.105(a), the SOAH shall promptly set a hearing date and give written notice of the time and place of the hearing to the person.

(A) An administrative law judge of the SOAH shall conduct the hearing.

(B) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the commissioner a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty.

(h) Decision by commissioner.

(1) Based on the findings of fact, conclusions of law, and proposal for a decision made by the administrative law judge under subsection (g)(2) of this section, the commissioner or the commissioner's designee by order may find that a violation has occurred and may impose a penalty or may find that no violation has occurred.

(2) The commissioner or the commissioner's designee shall give notice of the commissioner's order under paragraph (1) of this subsection to the person alleged to have committed the violation in accordance with Government Code, Chapter 2001. The notice must include:

(A) a statement of the right of the person to judicial review of the order;

(B) separate statements of the findings of fact and conclusions of law; and

(C) the amount of any penalty assessed.

(i) Options following decision. Within 30 days after the date the order of the commissioner under subsection (h) of this section that imposes an administrative penalty becomes final, the person shall:

(1) pay the penalty; or

(2) appeal the penalty by filing a petition for judicial review of the commissioner's order contesting the occurrence of the violation, the amount of the penalty, or both.

(j) Stay of enforcement of penalty.

(1) Within the 30-day period prescribed by subsection (i) of this section, a person who files a petition for judicial review in accordance with subsection (i)(2) of this section may:

(A) stay enforcement of the penalty by:

(i) paying the penalty to the court for placement in an escrow account; or

(ii) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the commissioner's order is final; or

(B) request the court to stay enforcement of the penalty by:

(i) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(ii) sending a copy of the affidavit to the commissioner by mail.

(2) If the commissioner receives a copy of an affidavit under paragraph (1)(B) of this subsection, the commissioner may file with the court, within five days after the date the copy is received, a contest to the affidavit. In accordance with Health and Safety Code (HSC), §248.108(b), the court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

(k) Collection of penalty.

(1) If the person does not pay the penalty and the enforcement of the penalty is not stayed, HHSC may refer the matter to the attorney general for collection of the penalty.

(2) As provided by HSC, §248.109(b), the attorney general may sue to collect the penalty.

(l) Decision by court. A decision by the court is governed by HSC, §248.110, and provides the following.

(1) If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

(2) If the court does not sustain the finding that a violation occurred, the court shall order that no penalty is owed.

(m) Remittance of penalty and interest and release of supersedeas bond. The remittance of penalty and interest is governed by HSC, §248.111, and provides the following.

(1) If the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person within 30 days after the date that the judgment of the court becomes final.

(2) The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(3) The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

(n) Release of bond. The release of supersedeas bond is governed by HSC, §248.112, and provides the following.

(1) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond.

(2) If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

The existing rules in Texas Administrative Code [Title 26, Chapter 510, Private Psychiatric Hospitals and Crisis Stabilization Units, Subchapter E, Enforcement](https://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=26&pt=1&ch=510&sch=E&rl=Y) are being repealed entirely. The new rules for Private Psychiatric Hospitals and Crisis Stabilization Units, Enforcement will be located in the same location of Texas Administrative Code. This draft includes the new rules for Chapter 510, Subchapter E.

TITLE 26 HEALTH AND HUMAN SERVICES

PART 1 HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 510 PRIVATE PSYCHIATRIC HOSPITALS AND CRISIS STABILIZATION UNITS

SUBCHAPTER E ENFORCEMENT

§510.81. Inspections.

(a) The Texas Health and Human Services Commission (HHSC) may conduct an unannounced, on-site inspection of a facility at any reasonable time, including when treatment services are provided, to inspect, investigate, or evaluate:

(1) compliance with any applicable statute or rule;

(2) a facility’s plan of correction;

(3) an order of the commissioner or the commissioner’s designee;

(4) a court order granting injunctive relief; or

(5) for other purposes relating to regulation of the facility.

(b) An applicant or licensee, by applying for or holding a license, consents to entry and inspection of any of its facilities by HHSC.

(c) HHSC inspections to evaluate a facility’s compliance may include:

(1) Initial, change of ownership, or relocation inspections for the issuance of a new license;

(2) Inspections related to changes in status, such as new construction or changes in services, designs, or bed numbers;

(3) Routine inspections, which may be conducted without notice and at HHSC’s discretion, or prior to renewal;

(4) Follow-up on-site inspections, conducted to evaluate implementation of a plan of correction for previously cited deficiencies;

(5) Inspections to determine if an unlicensed facility is offering or providing, or purporting to offer or provide, treatment; and

(6) Entry in conjunction with any other federal, state, or local agency’s entry.

(d) A facility shall cooperate with any HHSC inspection and shall permit HHSC to examine the facility’s grounds, buildings, books, records, and other documents and information maintained by or on behalf of the facility.

(e) A facility shall permit HHSC access to interview members of the governing body, personnel, and patients. Members of the governing body and personnel shall provide a written statement upon request from HHSC.

(f) A facility shall permit HHSC to inspect and copy any requested information. If it is necessary for HHSC to remove documents or other records from the facility, HHSC will provide a written description of the information being removed and when it is expected to be returned. HHSC makes a reasonable effort, consistent with the circumstances, to return any records removed in a timely manner.

(g) Upon entry, HHSC holds an entrance conference with the facility’s designated representative to explain the nature, scope, and estimated duration of the inspection.

(h) During the inspection, the HHSC representative gives the facility an opportunity to submit information and evidence relevant to matters of compliance being evaluated.

(i) When an inspection is complete, HHSC holds an exit conference with the facility representative to inform the facility representative of any preliminary findings of the inspection. The facility may provide any final documentation regarding compliance during the exit conference.

§510.82. Complaint Investigations.

(a) A facility shall provide each client and applicable consenter at the time of admission with a written statement identifying the Texas Health and Human Services Commission (HHSC) as the agency responsible for investigating complaints against the facility.

(1) The statement shall inform persons that they may direct a complaint to HHSC Complaint and Incident Intake (CII) and include current CII contact information, as specified by HHSC.

(2) The facility shall prominently and conspicuously post this information in patient common areas and in visitor’s areas and waiting rooms so that it is readily visible to patients, employees, and visitors. The information shall be in English and in a second language appropriate to the demographic makeup of the community served.

(b) HHSC evaluates all complaints. A complaint must be submitted using HHSC’s current CII contact information for that purpose, as described in subsection (a) of this section.

(c) HHSC documents, evaluates, and prioritizes complaints based on the seriousness of the alleged violation and the level of risk to patients, personnel, and the public.

(1) Allegations determined to be within HHSC’s regulatory jurisdiction relating to health care facilities may be investigated under this chapter.

(2) Complaints outside HHSC’s jurisdiction may be referred to an appropriate agency, as applicable.

(d) Investigations to evaluate a facility’s compliance shall be conducted following a complaint of abuse, neglect, or exploitation; or a complaint related to the health and safety of patients.

(e) HHSC may conduct an unannounced, on-site investigation of a facility at any reasonable time, including when treatment services are provided, to inspect, investigate, or evaluate:

(1) a facility’s compliance with any applicable statute or rule;

(2) a facility’s plan of correction;

(3) a facility’s compliance with an order of the commissioner or the commissioner’s designee;

(4) a facility’s compliance with a court order granting injunctive relief; or

(5) for other purposes relating to regulation of the facility.

(f) An applicant or licensee, by applying for or holding a license, consents to entry and investigation of any of its facilities by HHSC.

(g) A facility shall cooperate with any HHSC investigation and shall permit HHSC to examine the facility’s grounds, buildings, books, records, and other documents and information maintained by, or on behalf of, the facility.

(h) A facility shall permit HHSC access to interview members of the governing body, personnel, and patients. Members of the governing body and personnel shall provide a written statement upon request from HHSC.

(i) A facility shall permit HHSC to inspect and copy any requested information. If it is necessary for HHSC to remove documents or other records from the facility, HHSC provides a written description of the information being removed and when it is expected to be returned. HHSC makes a reasonable effort, consistent with the circumstances, to return any records removed in a timely manner.

(j) Upon entry, HHSC holds an entrance conference with the facility’s designated representative to explain the nature, scope, and estimated duration of the investigation.

(k) Once an investigation is complete, HHSC reviews the evidence from the investigation to evaluates whether there is a preponderance of evidence supporting the allegations contained in the complaint.

§510.83. Notice.

(a) A facility is deemed to have received any Texas Health and Human Services Commission (HHSC) correspondence on the date of receipt, or three business days after mailing, whichever is earlier.

(b) When deficiencies are found:

(1) HHSC provides the facility with a written Statement of Deficiencies (SOD) within 10 business days of the exit conference via U.S. mail or email.

(2) Within 10 calendar days of the facility’s receipt of the SOD, the facility shall return a written Plan of Correction (POC) to HHSC that addresses each cited deficiency, including timeframes for corrections, together with any additional evidence of compliance.

(A) HHSC determines if a POC and proposed timeframes are acceptable, and, if accepted, notifies the facility in writing.

(B) If the POC is not accepted by HHSC, HHSC notifies the facility in writing no later than 10 business days after notification and requests a modified POC and any additional evidence.

(C) The facility shall correct the identified deficiencies and submit evidence to HHSC verifying implementation of corrective action within the timeframes set forth in the POC, or as otherwise specified by HHSC.

(3) Regardless of the facility’s compliance with this subsection or HHSC’s acceptance of a facility’s POC, HHSC may, at any time, propose to take enforcement action as appropriate under this chapter.

§510.84. Professional Conduct.

In addition to any enforcement action under this chapter, the Texas Health and Human Services Commission reports in writing to the appropriate licensing board any issue or complaint relating to the conduct of a licensed professional, intern, or applicant for professional licensure.

§510.85. Complaint Against an HHSC Representative.

(a) A hospital may register a complaint against a Texas Health and Human Services Commission (HHSC) representative who conducts an inspection or investigation in accordance with this subchapter.

(b) A complaint against an HHSC representative shall be registered with the HHSC Health Facility Compliance Manager.

§510.86. Enforcement.

Enforcement is a process by which a sanction is proposed, and if warranted, imposed on an applicant or licensee regulated by the Texas Health and Human Services Commission (HHSC) for failure to comply with statutes, rules, and orders applicable to them.

(1) Denial, suspension or revocation of a license. HHSC has jurisdiction to enforce violations of the Acts or the rules adopted under this chapter. HHSC may deny, suspend, or revoke a license or impose an administrative penalty for the following reasons:

(A) failure to comply with any provision of Health and Safety Code (HSC) Chapters 577 and 571;

(B) failure to comply with any provision of this chapter or any other applicable laws;

(C) the facility, or any of its employees, commits an act which causes actual harm or risk of harm to the health or safety of a patient;

(D) the facility, or any of its employees, materially alters any license issued by HHSC;

(E) failure to comply with minimum standards for licensure;

(F) failure to provide an adequate licensure application or renewal information;

(G) failure to comply with an order of the commissioner or another enforcement procedure under HSC Chapters 577 and 571;

(H) a history of failure to comply with the applicable rules relating to patient environment, health, safety, and rights;

(I) the facility, or any of its employees, has aided, committed, abetted, or permitted the commission of an illegal act;

(J) the facility, or any of its employees, commits fraud, misrepresentation, or concealment of a material fact on any documents required to be submitted to HHSC or required to be maintained by the facility pursuant to HSC Chapters 577 and 571 and the provisions of this chapter;

(K) failure to timely pay an assessed administrative penalty as required by HHSC;

(L) failure to submit an acceptable plan of correction for cited deficiencies within the timeframe required by HHSC;

(M) failure to timely implement plans of corrections to deficiencies cited by HHSC within the dates designated in the plan of correction; or

(N) failure to comply with applicable requirements within a designated probation period;

(O) if the facility is participating under Title XVIII, and the Centers for Medicare and Medicaid Services terminates the facility’s Medicare provider agreement; or

(P) discloses any of the following actions against or by the applicant, or the licensee, or against or by affiliates, or managers of the applicant or the licensee within the two-year period preceding the application:

(i) operation of a facility that has been decertified or had its contract cancelled under the Medicare or Medicaid program in any state;

(ii) federal Medicare or state Medicaid sanctions or penalties;

(iii) federal or state tax liens;

(iv) unsatisfied final judgments;

(v) eviction involving any property or space used as a hospital in any state;

(vi) unresolved state Medicaid or federal Medicare audit exceptions;

(vii) denial, suspension, or revocation of a hospital license, a private psychiatric hospital license, or a license for any health care facility in any state; or

(viii) a court injunction prohibiting ownership or operation of a facility.

(2) Order for immediate license suspension. HHSC may suspend a license for 10 days pending a hearing if after an investigation HHSC finds that there is an immediate threat to the health or safety of the patients or employees of a licensed facility. HHSC may issue necessary orders for the patients' welfare.

(3) Probation. In lieu of denying, suspending, or revoking the license, HHSC may place the facility on probation for a period of not less than 30 days, if the facility is found in repeated non-compliance and the facility's noncompliance does not endanger the health and safety of the public.

(4) Administrative penalty. HHSC has jurisdiction to impose an administrative penalty against a person licensed or regulated under this chapter for violations of the HSC, Chapters 577 and 571, or this chapter. The imposition of an administrative penalty shall be in accordance with the provisions of the HSC, §571.025 and §577.060.

(5) Licensure of persons with criminal backgrounds. HHSC may deny a person a license or suspend or revoke an existing license on the grounds that the person has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of the ownership or operation of a facility. HHSC shall apply the requirements of the Occupations Code, Chapter 53.

(A) HHSC is entitled to obtain criminal history information maintained by the Texas Department of Public Safety (Government Code, §411.122), the Federal Bureau of Investigation Identification Division (Government Code, §411.087) or any other law enforcement agency to investigate the eligibility of an applicant for an initial or renewal license and to investigate the continued eligibility of a licensee.

(B) In determining whether a criminal conviction directly relates, HHSC shall consider the provisions of Occupations Code, §53.022 and §53.023.

(C) The following felonies and misdemeanors directly relate because these criminal offenses indicate an inability or a tendency for the person to be unable to own or operate a facility:

(i) a misdemeanor violation of HSC, Chapter 571;

(ii) a misdemeanor or felony involving moral turpitude;

(iii) a misdemeanor or felony relating to deceptive business practices;

(iv) a misdemeanor or felony of practicing any health-related profession without a required license;

(v) a misdemeanor or felony under any federal or state law relating to drugs, dangerous drugs, or controlled substances;

(vi) a misdemeanor or felony under the Texas Penal Code (TPC), Title 5, involving a patient or a client of any health care facility, a home and community support services agency or a health care professional; or

(vii) a misdemeanor or felony under the TPC:

(I) Title 4 - offenses of attempting or conspiring to commit any of the offenses in this clause;

(II) Title 5 - offenses against the person;

(III) Title 7 - offenses against property;

(IV) Title 8 - offenses against public administration;

(V) Title 9 - offenses against public order and decency;

(VI) Title 10 - offenses against public health, safety or morals; or

(VII) Title 11 - offenses involving organized crime.

(6) Offenses listed in paragraph (5)(C) of this subsection are not exclusive in that HHSC may consider similar criminal convictions from other state, federal, foreign or military jurisdictions which indicate an inability or tendency for the person to be unable to own or operate a facility.

(7) A license holder's license shall be revoked on the license holder's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

(8) Notice. If HHSC proposes to deny, suspend or revoke a license, HHSC shall send a notice of the proposed action by certified mail, return receipt requested, at the address shown in the current records of HHSC or HHSC may personally deliver the notice. The notice to deny, suspend, or revoke a license shall state the alleged facts or conduct to warrant the proposed action, provide an opportunity to demonstrate or achieve compliance, and shall state that the applicant or license holder has an opportunity for a hearing before taking the action.

(9) Acceptance. Within 20 days after receipt of the notice, the applicant or license holder may notify HHSC, in writing, of acceptance of HHSC's determination.

(10) Hearing request.

(A) A request for a hearing by the applicant or license holder, shall be in writing and submitted to HHSC within 20 calendar days of receipt of the notice. Receipt of the notice is presumed to occur on the third day after the notice is mailed by HHSC to the last address known of the applicant or license holder.

(B) A hearing shall be conducted pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, and §§1.21, 1.23, 1.25, and 1.27 of Title 25, Texas Administrative Code (relating to Formal Hearing Procedures).

(11) No response to notice. If the applicant or license holder fails to timely respond to the notice or does not request a hearing in writing within 30 days after proper notice, the person is deemed to have waived the opportunity for a hearing as outlined in the notice and the proposed action shall be taken by default.

(12) Notification of HHSC’s decision. HHSC shall send the license holder or applicant a copy of HHSC's decision for denial, suspension or revocation of license by certified mail, which shall include the findings and conclusions on which HHSC based its decision.

(13) Admission of new patients upon suspension or revocation. Upon HHSC's determination to suspend or revoke a license, the license holder may not admit new patients until the license is reissued.

(14) Return of original license. Upon suspension, revocation or non-renewal of the license, the original license shall be returned to HHSC within 30 days of HHSC’s notification.

(15) Reapplication following denial or revocation.

(A) One year after HHSC's decision to deny or revoke, or the voluntary surrender of a license by a facility while enforcement action is pending, a facility may petition HHSC, in writing, for a license. Expiration of a license prior to HHSC's decision becoming final shall not affect the one-year waiting period required before a petition can be submitted.

(B) HHSC may allow a reapplication for licensure if there is proof that the reasons for the original action no longer exist.

(C) HHSC may deny reapplication for licensure if HHSC determines that:

(i) the reasons for the original action continues;

(ii) the petitioner has failed to offer sufficient proof; or

(iii) the petitioner has demonstrated a repeated history of failure to provide patients a safe environment or has violated patient rights.

(D) If HHSC allows a reapplication for licensure, the petitioner shall be required to meet the requirements as described in §510.22 of this title (relating to Application and Issuance of Initial License).

(16) Expiration of a license during suspension. A facility whose license expires during a suspension period may not reapply for license renewal until the end of the suspension period.

(17) Surrender of a license. In the event that enforcement, as defined in this subsection, is pending or reasonably imminent, the surrender of a facility license shall not deprive HHSC of jurisdiction in regard to enforcement against the facility.