



COMMISSIONER  
Jon Weizenbaum

Date: September 2, 2016

To: Assisted Living Facilities (ALFs)

Subject: Provider Letter No. 16-34 — Initial License for a Type A or Type B ALF for an Applicant in Good Standing

House Bill 1769 (84<sup>th</sup> Texas Legislature, Regular Session, 2015) directed the Texas Department of Aging and Disability Services (DADS) to develop rules to allow an ALF provider that meets certain “good standing” criteria to obtain an initial license for a Type A or Type B facility prior to an on-site health inspection. Starting September 1, 2016, an applicant who wants to apply for an initial license under the good standing process may submit form 3720G with the applicable documentation for DADS review and approval. An applicant, who does not want to apply for an initial license using the good standing application process, may follow the regular application process by completing form 3720.

Per Texas Administrative Code, Title 40, Part 1, Chapter 92, §92.21, if an applicant makes a request for a license using the good standing application process, DADS determines whether the applicant is in good standing by reviewing the documentation listed in subsection (d) of the rule. An applicant must meet several tiers of requirements in new §92.21 as follows:

1. An applicant is in good standing to obtain a license if for at least six consecutive years before applying for the license:
  - (a) an applicant has been:
    - (1) the license holder for a Type A or Type B facility; or
    - (2) a controlling person of the license holder of a Type A or Type B facility; or
  - (b) a controlling person of the applicant has been:
    - (1) the license holder of a Type A or Type B facility; or
    - (2) a controlling person of the license holder of a Type A or Type B facility.
2. Neither the licensed facility operated by the applicant nor the controlling person has been cited for a licensing rule violation<sup>1</sup> that:
  - (a) resulted in actual harm to the resident, which is defined as a negative outcome that comprises the resident’s physical, mental or emotional well-being; or,
  - (b) posed an immediate threat of harm causing or likely to cause serious injury, impairment, or death to a resident.
3. Neither the licensed facility operated by the applicant nor the controlling person has had a sanction imposed by DADS against the facility, during the six years before the date an application for licensure, that resulted in:
  - a) a civil penalty;
  - b) an administrative penalty;
  - c) an injunction;

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<sup>1</sup> This requirement applies to a violation that a facility did not challenge; was affirmed; or, is pending a final determination.

- d) a denial, suspension or revocation of a license; or
- e) an emergency closure.

4. An applicant who chooses to use the good standing license application process must submit to DADS:

- a) the applicant's policies and procedures;
- b) evidence that the applicant has conducted criminal history checks of employees and applicants for employment required in 40 TAC §92.123; and
- c) documentation that the applicant's employees have the credentials described in 40 TAC §92.41(a).

DADS will verify that the facility meets the requirements of Subchapter D of 40 TAC Chapter 92 relating to Facility Construction. The ALF must meet the requirements of a Life Safety Code (LSC) inspection within 120 days after the date DADS conducts the initial LSC inspection. If the ALF meets the requirement of the LSC inspection, the applicant has no negative history of compliance in Texas, and DADS approves the applicant's submission of policies and procedures, evidence of criminal history checks and employee credentials, DADS issues an initial license.

An ALF that is issued an initial license must add an addendum to the facility's disclosure statement as notice to a resident or a prospective resident. At a minimum, the addendum must state that the ALF has not met the requirements of an on-site health inspection for a license and that DADS will conduct an on-site health inspection for licensure within 90 days after the date the license is issued. The addendum must remain in the disclosure statement until the ALF has met the requirements of the on-site health inspection.

A copy of the adopted rules filed in the Texas Register is attached for your information. DADS will notify providers when the rules will become effective.

In addition, DADS is amending the rules found in 40 TAC §92.64 which updates references to include the new 40 TAC §92.21 relating to Initial License for a Type A or Type B Facility for an Applicant in Good Standing. DADS is also amending the rules found in 40 TAC §92.551 which adds an administrative penalty if a facility does not include an addendum to the disclosure statement informing residents and prospective residents that the facility has not met the requirements of an on-site health inspection.

If you have questions about this provider letter or the licensure requirements, please contact a policy specialist with the Policy, Rules and Curriculum Development section at (512) 438-3161.

Sincerely,

*[signature on file]*

Mary T. Henderson  
Assistant Commissioner  
Regulatory Services

MTH:cg

Attachment: 15R09 Preamble

August 10, 2016/15R09

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

TITLE 40 SOCIAL SERVICES AND ASSISTANCE  
PART 1 DEPARTMENT OF AGING AND DISABILITY SERVICES  
CHAPTER 92 LICENSING STANDARDS FOR ASSISTED LIVING FACILITIES  
SUBCHAPTER B APPLICATION PROCEDURES  
RULE §92.21

Final Action  
201601670 TRD docket number of proposed action

04-22-16 Publication date of proposed action

X New  
Adopted with changes

Effective Date: 20 days after filing

The new section is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS, and Texas Health and Safety Code §247.025 which provides that the HHSC executive commissioner shall adopt rules necessary for licensing assisted living facilities.

**§92.21. Initial License for a Type A or Type B Facility for an Applicant in Good Standing.**

(a) An applicant may request that DADS issue, before conducting an on-site health inspection, an initial license for a Type A or Type B facility. The applicant must request the license by submitting a form prescribed by and made available from DADS.

(b) If an applicant makes a request in accordance with subsection (a) of this section, DADS determines the applicant is in good standing, and the applicant complies with subsection (d) of this section, the applicant is not required to admit a resident to the facility or have the on-site health inspection described in §92.14(f) of this subchapter (relating to Initial License Application Process and Requirements) before DADS issues an initial license.

(c) For purposes of this section, an applicant is in good standing if:

(1) one of the following conditions is met:

(A) the applicant has operated or been a controlling person of a licensed Type A or Type B facility in Texas for at least six consecutive years; or

(B) the applicant has not held a license for a Type A or Type B facility, but a controlling person of the applicant has operated or been a controlling person of a licensed Type A or Type B facility in Texas for at least six consecutive years; and

(2) each licensed facility operated by the applicant or the controlling person described in paragraph (1)(A) or (B) of this subsection:

(A) has not had a violation of a licensing rule:

(i) that:

(I) resulted in actual harm to a resident, which is defined as a negative outcome that compromises the resident's physical, mental or emotional well-being; or

(II) posed an immediate threat of harm causing or likely to cause serious injury, impairment, or death to a resident; and

(ii) that:

(I) the facility did not challenge;

(II) was affirmed; or

(III) is pending a final determination; and

(B) has not had a sanction imposed by DADS against the facility during the six years before the date an application is submitted that resulted in:

(i) a civil penalty;

(ii) an administrative penalty;

(iii) an injunction;

(iv) the denial, suspension, or revocation of a license; or

(v) an emergency closure.

(d) An applicant that makes a request in accordance with subsection (a) of this section must:

(1) submit to DADS:

(A) the applicant's policies and procedures;

(B) evidence that the applicant has complied with §92.123 of this chapter (relating to Investigation of Facility Employees); and

(C) documentation that the applicant's employees have the credentials described in §92.41(a) of this chapter (relating to Standards for Type A and Type B Assisted Living Facilities); and

(2) comply with §92.14(d) of this subchapter and §92.11(c)(1)(A) - (C) of this subchapter (relating to Criteria for Licensing).

(e) DADS issues an initial license to an applicant that makes a request in accordance with subsection (a) of this section if DADS determines that an applicant:

(1) is in good standing;

(2) has submitted information in accordance with subsection (d)(1) of this section that complies with this chapter; and

(3) is in compliance with the requirements of Subchapter D of this chapter (relating to Facility Construction), including meeting the requirements of a Life Safety Code (LSC) inspection within 120 days after the date DADS conducts the initial LSC inspection.

(f) DADS conducts an on-site health inspection within 90 days after the date DADS issues a license in accordance with subsection (e) of this section. The on-site health inspection includes DADS observation of the facility's provision of care to at least one resident.

(g) Until a facility that is issued an initial license under this section meets the requirements of the on-site health inspection described in subsection (f) of this section, the facility must attach a written addendum to the disclosure statement required by §92.41(d)(1) of this chapter as notice to a resident or a prospective resident that the facility has not met the requirements of the on-site health inspection. At a minimum, the addendum must state that:

(1) the facility has not met the requirements of an initial on-site health inspection for a license; and

(2) DADS will conduct an on-site health inspection for licensure within 90 days after the date the license is issued.

TITLE 40 SOCIAL SERVICES AND ASSISTANCE  
PART 1 DEPARTMENT OF AGING AND DISABILITY SERVICES  
CHAPTER 92 LICENSING STANDARDS FOR ASSISTED LIVING FACILITIES  
SUBCHAPTER D FACILITY CONSTRUCTION  
RULE §92.64

Final Action

201601671 TRD docket number of proposed action

04-22-16 Publication date of proposed action

X Amendment

Adopted without changes

Effective Date: 20 days after filing

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS, and Texas Health and Safety Code §247.025 which provides that the HHSC executive commissioner shall adopt rules necessary for licensing assisted living facilities.

**§92.64. Plans, Approvals, and Construction Procedures.**

At the option of the applicant, DADS reviews plans for new buildings, additions, conversion of buildings not licensed by DADS, or remodeling of existing licensed facilities. DADS informs the applicant of the results of the review within 30 days after receipt of the plans. If the plans comply with DADS architectural requirements, DADS may not subsequently change the architectural requirement applicable to the project unless the change is required by federal law or the applicant fails to complete the project within a reasonable time.

(1) Submittal of plans.

(A) For review of plans, before construction is begun, the applicant must submit one copy of contract documents including working drawings and specifications in sufficient detail to interpret compliance with these standards and assure proper construction by the general contractor or builder. Documents must be prepared according to accepted architectural practice and must include general construction, special conditions, and schedules.

(B) Final copies of plans must have a title block showing name of facility, person, or organization preparing the sheet, sheet numbers, facility address, and drawing date. Sheets and sections covering structural, electrical, mechanical, and sanitary engineering final plans, designs, and specifications must bear the seal of a registered professional engineer licensed by the Texas

Board of Professional Engineers. Contract documents for additions, remodeling, and construction of an entirely new facility must be prepared by an architect licensed by the Texas Board of Architectural Examiners. Drawings must bear the seal of the architect.

(C) A final plan for a major addition to a facility must include a basic layout to scale of the entire building onto which the addition connects. North direction must be shown. Usually the entire basic layout can be drawn to scale of 1/16 inch per foot or 1/32 inch per foot for very large buildings.

(D) Plans and specifications for conversions or remodeling must be complete for all parts and features involved. DADS review is limited to the plans and specifications for conversions or remodeling as submitted.

(E) The sponsor is responsible for employing qualified personnel to prepare the contract documents for construction. If the contract documents have errors or omissions to the extent that compliance with architectural and DADS licensing standards cannot be reasonably assured or determined by DADS, DADS may request a revised set of documents for review.

(F) The review of plans and specifications by DADS is based on general utility, the minimum licensing standards, and conformance of the Life Safety Code, and is not to be construed as all-inclusive approval of the structural, electrical, or mechanical components, nor does it include a review of building plans for compliance with the Texas Accessibility Standards as administered and enforced by the Texas Department of Licensing and Regulation.

(G) Fees for plan review will be required in accordance with §92.4 of this chapter (relating to License Fees).

(2) Contract documents.

(A) Site plan documents must include grade contours; streets with names; North arrow; fire hydrants, fire lanes, utilities, public or private; fences; and unusual site conditions, including ditches, low water levels, other buildings on-site, and indications of buildings five feet or less beyond site property lines.

(B) Foundation plan documents must include general foundation design and details.

(C) Floor plan documents must include room names, numbers, and usages; numbered doors including swing; windows; legend or clarification of wall types; dimensions; fixed equipment; plumbing fixtures; kitchen basic layout; and identification of all smoke barrier walls from outside wall to outside wall or fire walls.

(D) For both new construction and additions or remodeling to existing buildings, an overall plan of the entire building must be drawn or reduced to fit on an 8 1/2 inch by 11 inch sheet.

(E) Schedules must include door materials, widths, and types; window materials, sizes,

and types; room finishes; and special hardware.

(F) Elevations and roof plan must include exterior elevations, including material note indications and any roof top equipment; roof slopes, drains, gas piping, and interior elevations where needed for special conditions.

(G) Details must include wall sections as needed, especially for special conditions; cabinet and built-in work; cross sections through buildings as needed and miscellaneous details and enlargements as needed.

(H) Building structure documents must include structural framing layout and details primarily for column, beam, joist, and structural building; roof framing layout if the layout cannot be adequately shown on a cross section; and cross sections in quantity and detail to show sufficient structural design and structural details as necessary to assure adequate structural design and calculated design loads.

(I) Electrical documents must include electrical layout, including lights, convenience outlets, equipment outlets, switches, and other electrical outlets and devices; service, circuiting, distribution, and panel diagrams; exit light system including exit signs and emergency egress lighting; emergency electrical provisions including generators and panels; staff communication system; fire alarm and similar systems including control panel, devices, and alarms; and sizes and details sufficient to assure safe and properly operating systems.

(J) Plumbing documents must include plumbing layout with pipe sizes and details sufficient to assure safe and properly operating systems, water systems, sanitary systems, gas systems, and other systems normally considered under the scope of plumbing, fixtures, and provisions for combustion air supply.

(K) Heating, ventilating and air-conditioning systems (HVAC) documents must include sufficient details of HVAC systems and components to assure a safe and properly operating installation including, but not limited to, heating, ventilating, and air-conditioning layout, ducts, protection of duct inlets and outlets, combustion air, piping, exhausts, and duct smoke and/or fire dampers; and equipment types, sizes, and locations.

(L) Sprinkler system documents must include plans and details of NFPA designed systems; plans and details of partial systems provided only for hazardous areas; and electrical devices interconnected to the alarm system.

(M) Specifications must include information about installation techniques; quality standards and manufacturers; references to applicable codes and other standards used for design; design criteria; special equipment; hardware; finishes; and any other information DADS may need to interpret drawings and notes.

(N) Other layout, plans, or details as may be necessary for a clear understanding of the design and scope of the project, including plans covering private water or sewer systems, must be reviewed by local health or wastewater authority having jurisdiction where the facility is

located.

(3) Construction phase.

(A) DADS must be notified in writing prior to construction start.

(B) All construction not done to comply with the completed plans and specifications as submitted for review and as modified in accordance with review requirements will require additional drawings if the change is significant.

(4) Initial survey of completed construction.

(A) Upon completion of construction, including grounds and basic equipment and furnishings, a final construction inspection or initial survey of the facility must be performed by DADS prior to the facility admitting residents, unless DADS issues a provisional license. An initial architectural inspection will be scheduled after DADS receives a notarized licensure application, required fee, fire marshal approval, and a letter from an architect or engineer stating that to the best of the architect's or engineer's knowledge that the facility meets the architectural requirements for a license.

(B) After DADS surveys the completed construction and finds it acceptable, DADS forwards the information to the Licensing and Credentialing Unit as part of the applicant's license application. In the case of additions or remodeling of existing facilities, the applicant may be required to submit a revision or modification to an existing license. All buildings, including basic furnishings and operational needs, grades, drives, and parking must be 100 percent complete at the time of the initial visit for occupancy approval and licensing. A facility may admit no more than three residents after it receives initial approval from DADS but before a license is issued, except if DADS issues one of the following licenses the facility may admit more than three residents:

(i) a provisional license in accordance with §92.20 of this chapter (relating to Provisional License); or

(ii) an initial license in accordance with §92.21 of this chapter (relating to Initial License for a Type A or Type B Facility for an Applicant in Good Standing).

(C) An applicant must make the following documents available to a DADS surveyor at the time of the survey of the completed building:

(i) written approval of local authorities as required by subparagraph (A) of this paragraph;

(ii) record drawings of the fire detection and alarm system as installed, signed by an Alarm Planning Superintendent licensed by the State Fire Marshal's office or bearing the seal of a licensed professional engineer, including a sequence of operation, the owner's manuals, and the manufacturer's published instructions covering all system equipment;

(iii) a signed copy of the State Fire Marshal's Office Fire Alarm Installation Certificate;

(iv) for software-based fire alarm systems, a record copy of the site-specific software, excluding the system executive software or external programmer software in a non-volatile, non-erasable, non-rewritable memory;

(v) documentation of materials used in the building which have a specific limited fire or flame spread rating, including special wall finishes or floor coverings, flame retardant curtains, including cubicle curtains, and rated ceilings;

(vi) a signed letter from the installer of carpeting verifying that the carpeting is named in the laboratory test document;

(vii) record drawings of the fire sprinkler system as installed, signed by a Responsible Managing Employee licensed by the State Fire Marshal's Office, or bearing the seal of a licensed professional engineer, including the hydraulic calculations, fire alarm configuration, aboveground and underground Contractor's Material and Test Certificate;

(viii) all literature and instructions provided by the sprinkler system manufacturer describing the proper operation and maintenance of all equipment and devices in accordance with NFPA 25;

(ix) service contracts for maintenance and testing of alarm systems, sprinkler systems, and other systems;

(x) a copy of a gas test results of the facility's gas lines from the meter;

(xi) a written statement from an architect or engineer stating that, from periodic onsite observation visits, the facility as constructed is, to the best of architect or engineer's knowledge and belief, in substantial compliance with the architect or engineer's contract documents, the Life Safety Code, DADS licensure standards, and local codes; and

(xii) the contract documents described in paragraph (2) of this section.

(5) Non-approval of new construction.

(A) If, during the initial on-site survey of completed construction, the surveyor finds certain basic requirements not met, DADS may recommend that the facility not be licensed and approved for occupancy. The items that may trigger non-approval include:

(i) substantial changes made during construction that were not submitted to DADS for review and which may require revised "as-built" drawings to cover the changes, including architectural, structural, mechanical, and electrical items specified in paragraph (3)(B) of this section;

(ii) construction that does not meet minimum Life Safety Code or DADS licensure standards, including corridors that are less than required width, ceilings installed at less than the minimum seven-foot six-inch height, resident bedroom dimensions less than required, and other features which would disrupt or otherwise adversely affect the residents and staff if corrected after occupancy;

(iii) lack of written approval by local authorities;

(iv) fire protection systems, including fire alarm systems, emergency power and lighting, and sprinkler systems, not completely installed or not functioning properly;

(v) required exits not all usable according to NFPA 101 requirements;

(vi) telephones that are not installed or not properly working;

(vii) sufficient basic furnishings, essential appliances, and equipment that are not installed or not functioning; and

(viii) any other basic operational or safety feature which would preclude safe and normal occupancy by residents on that day.

(B) If the surveyor encounters only minor deficiencies, licensure may be recommended based on an approved written plan of correction from the facility's administrator.

(C) A facility must submit two copies of reduced size floor plans on an 8 1/2 inch by 11 inch sheet to DADS for DADS records and the facility's use for evacuation plans and fire alarm zone identification. The plan must contain basic legible information including scale, room usage names, actual bedroom numbers, doors, windows, and any other pertinent information.

TITLE 40 SOCIAL SERVICES AND ASSISTANCE  
PART 1 DEPARTMENT OF AGING AND DISABILITY SERVICES  
CHAPTER 92 LICENSING STANDARDS FOR ASSISTED LIVING FACILITIES  
SUBCHAPTER H ENFORCEMENT  
DIVISION 9 ADMINISTRATIVE PENALTIES  
RULE §92.551

Final Action

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X Amendment

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Effective Date: 20 days after filing

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS, and Texas Health and Safety Code §247.025 which provides that the HHSC executive commissioner shall adopt rules necessary for licensing assisted living facilities.

### **§92.551 Administrative Penalties**

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

(1) violates:

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

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

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

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

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

(B) in an attachment to the application; or

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

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

(A) a book, record, or file that a facility must maintain; or

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

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

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

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

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

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

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

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

(3) the history of previous violations;

(4) deterrence of future violations;

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

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

(7) any other matter that justice may require.

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

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

Figure: 40 TAC §92.551(d)

ADMINISTRATIVE PENALTY SCHEDULE	SMALL FACILITY (4-16 beds)		LARGE FACILITY (17+ beds)	
	Business entity owns one facility	Business entity owns multiple facilities	Business entity owns one facility	Business entity owns multiple facilities
§92.3. Types of Assisted Living Facilities	\$300	\$450	\$500	\$650
§92.4. License Fees	\$300	\$400	\$500	\$600
§92.11. Criteria for Licensing	\$300	\$450	\$500	\$650
§92.16. Change of Ownership	\$300	\$400	\$500	\$600
§92.18. Increase in Capacity	\$300	\$400	\$500	\$600
§92.21. Initial License for a Type A or Type B Facility for an Applicant in Good Standing				
(g) health inspection disclosure	\$500	\$600	\$700	\$800
§92.41. Standards for Type A and Type B Assisted Living Facilities				
(a) employees	\$350	\$550	\$750	\$950
(b) social services	\$200	\$300	\$400	\$500
(c) resident assessment	\$400	\$550	\$600	\$750
(d) resident policies	\$250	\$350	\$450	\$550
(e) admission policies	\$300	\$400	\$500	\$600
(f) inappropriate placement in Type A or Type B facilities	\$700	\$800	\$900	\$1,000
(g) advance directives	\$500	\$500	\$500	\$500
(h) resident records	\$200	\$300	\$400	\$500
(i) personnel records	\$200	\$300	\$400	\$500
(j) medications	\$400	\$500	\$600	\$700
(k) accident, injury, or acute illness	\$400	\$500	\$600	\$700

ADMINISTRATIVE PENALTY SCHEDULE	SMALL FACILITY (4-16 beds)		LARGE FACILITY (17+ beds)	
	Business entity owns one facility	Business entity owns multiple facilities	Business entity owns one facility	Business entity owns multiple facilities
(l) resident finances	\$200	\$300	\$400	\$500
(m) food and nutrition services	\$400	\$550	\$700	\$850
(n) infection control	\$400	\$550	\$700	\$850
(o) access to residents	\$150	\$200	\$250	\$300
(p) restraints	\$700	\$800	\$900	\$1,000
(q) accreditation status	\$700	\$800	\$900	\$1,000
§92.51. Licensure of Facilities for Persons with Alzheimer's Disease	\$200	\$300	\$400	\$500
§92.53. Standards for Certified Alzheimer's Assisted Living Facilities	\$400	\$500	\$600	\$700
§92.54. Advertisements, Solicitations, and Promotional Material	\$250	\$350	\$450	\$550
§92.61. Facility Construction-Introduction and Application	\$300	\$400	\$500	\$600
§92.62. General Requirements	\$350	\$450	\$550	\$650
§92.81. Inspections and Surveys	\$300	\$400	\$500	\$600
§92.82. Determinations and Actions Pursuant to Inspections	\$200	\$300	\$400	\$500
§92.102. Abuse, Neglect, Exploitation Reportable to DADS by Facilities	\$700	\$800	\$900	\$1,000
§92.123. Investigation of Facility Employees	\$450	\$550	\$650	\$750
§92.125. Resident's Bill of Rights and Provider Bill of Rights				
(a) resident's bill of rights	--	--	--	--
(1) post and provide copy of bill	\$100	\$150	\$200	\$250
(2) right to exercise civil rights	\$150	\$200	\$250	\$300

ADMINISTRATIVE PENALTY SCHEDULE	SMALL FACILITY (4-16 beds)		LARGE FACILITY (17+ beds)	
	Business entity owns one facility	Business entity owns multiple facilities	Business entity owns one facility	Business entity owns multiple facilities
(3) each resident has the right to:	--	--	--	--
(A) be free from physical, mental abuse, corporal punishment, physical, chemical restraints for discipline/convenience	\$700	\$800	\$900	\$1,000
(B) participate in activities	\$150	\$200	\$250	\$300
(C) religion of choice	\$150	\$200	\$250	\$300
(D) if MR, participate in behavior modification with guardian consent	\$150	\$200	\$250	\$300
(E)(i)-(iii) be treated with respect, consideration, dignity	\$200	\$250	\$300	\$350
(F) safe, decent living environment	\$100	\$150	\$200	\$250
(G) communicate in native language	\$100	\$150	\$200	\$250
(H) complain about care, treatment	\$200	\$250	\$300	\$350
(I) receive and send mail	\$100	\$150	\$200	\$250
(J) unrestricted communication	\$150	\$200	\$250	\$300
(K) make community contacts	\$100	\$150	\$200	\$250
(L) manage financial affairs	\$100	\$150	\$200	\$250
(M)(i)-(ii) access resident records	\$100	\$150	\$200	\$250
(N) choose physician and be informed about treatment and care	\$100	\$150	\$200	\$250
(O) help develop individual service plan	\$100	\$150	\$200	\$250
(P)(i)-(ii) opportunity to refuse medical treatment or services	\$100	\$150	\$200	\$250

ADMINISTRATIVE PENALTY SCHEDULE	SMALL FACILITY (4-16 beds)		LARGE FACILITY (17+ beds)	
	Business entity owns one facility	Business entity owns multiple facilities	Business entity owns one facility	Business entity owns multiple facilities
(Q) unaccompanied access to telephone	\$100	\$150	\$200	\$250
(R) privacy	\$100	\$150	\$200	\$250
(S) retain and use personal possessions	\$100	\$150	\$200	\$250
(T) determine personal preference in dress, hair style, personal effects	\$100	\$150	\$200	\$250
(U) retain and use personal property	\$100	\$150	\$200	\$250
(V) refuse to perform services	\$100	\$150	\$200	\$250
(W)(i)-(ii) be informed about Medicare, Medicaid, and covered items/services	\$100	\$150	\$200	\$250
(X)(i)-(v) not be transferred/discharged except under specific conditions	\$300	\$350	\$400	\$450
(Y)(i)-(v) not be transferred/discharged except in an emergency without specific written notice	\$300	\$350	\$400	\$450
(Z) leave facility temporarily or permanently	\$100	\$150	\$200	\$250
(AA) access the Ombudsman program	\$100	\$150	\$200	\$250
(BB) execute an advance directive or designate a guardian for decisions	\$200	\$250	\$300	\$350
§92.127. Required Posting	\$250	\$350	\$450	\$550
§92.129. Authorized Electronic Monitoring (AEM)	\$100	\$150	\$200	\$250
§§92.351-92.374. Emergency License Suspension and Closing Order	\$150	\$250	\$350	\$450

ADMINISTRATIVE PENALTY SCHEDULE	SMALL FACILITY (4-16 beds)		LARGE FACILITY (17+ beds)	
	Business entity owns one facility	Business entity owns multiple facilities	Business entity owns one facility	Business entity owns multiple facilities
§§92.551-92.595. Administrative Penalties	\$400	\$500	\$600	\$700

(e) Administrative penalty assessed against a resident. DADS does not assess an administrative penalty against a resident, unless the resident is also an employee of the facility or a controlling person.

(f) Proposal of administrative penalties.

(1) DADS issues a preliminary report stating the facts on which DADS concludes that a violation has occurred after DADS has:

- (A) examined the possible violation and facts surrounding the possible violation; and
- (B) concluded that a violation has occurred.

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

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

- (A) a brief summary of the violation;
- (B) the amount of the recommended administrative penalty;
- (C) a statement of whether the violation is subject to correction in accordance with subsection (g) of this section and, if the violation is subject to correction, a statement of:
  - (i) the date on which the license holder must file with DADS a plan of correction for approval by DADS; and
  - (ii) the date on which the license holder must complete the plan of correction to avoid assessment of the administrative penalty; and
- (D) a statement that the license holder has a right to an administrative hearing on the occurrence of the violation, the amount of the penalty, or both.

(4) Not later than 20 calendar days after the date on which a license holder receives a written notice of the preliminary report, the license holder may:

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

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

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

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

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

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

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

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

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

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

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

(B) DADS gives written notice of the decision to the license holder; and

(C) the license holder must pay the penalty not later than 30 calendar days after the written notice given in subparagraph (B) of this paragraph.

(g) Opportunity to correct.

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

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

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

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

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

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

(i) a right of the same resident under §92.125 of this chapter (relating to Advance Directives); or

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

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

(3) Maintenance of violation correction.

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

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

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

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

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

(j) Amelioration of a violation.

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

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

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

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

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

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

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

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

(B) identify, through measurable outcomes, the ways in which and the extent to which the proposed changes will improve services to or quality of care of residents;

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

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

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

(6) A license holder's plan for amelioration may include proposed changes to:

(A) improve staff recruitment and retention;

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

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

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

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

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

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

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