



Long-Term Care Regulation Provider Letter

Number: PL 2022-24 (Replaces Provider Letter 2013-18)
Title: Amelioration of Administrative Penalties
Provider Types: Assisted Living Facility (ALF), Intermediate Care Facility for Individuals with an Intellectual Disability or Related Conditions (ICF/IID), and Nursing Facility (NF)
Date Issued: September 19, 2022

1.0 Subject and Purpose

This provider letter (PL) provides guidelines to assisted living facilities (ALFs), intermediate care facilities for individuals with an intellectual disability or related conditions (ICF/IIDs), and nursing facilities (NFs) about the amelioration of administrative penalties assessed for state licensure violations.

This letter replaces PL 13-18, updates Texas Administrative Code (TAC) rule references, adds more examples of allowable spending items in Section 2.12, and includes a link to the new 3708 NF, ALF and ICF/IID Amelioration Request form. In addition, in Section 2.9, this letter clarifies that once an immediate threat (IT) state licensure violation is removed or lowered to a non-IT level, the violation may be eligible for amelioration.¹

2.0 Policy Details & Provider Responsibilities

2.1 What is amelioration?

¹ The specific ALF, ICF/IID, and NF state amelioration statutes and rules use the phrase "immediate jeopardy to health and safety." Other sections of the ALF, ICF/IID, and NF state statutes and rules use the phrase "immediate threat to the health and safety." The state statutes use and define the phrases to have essentially the same meaning. Because "immediate jeopardy" is the term used for noncompliance with federal requirements of participation, this letter uses the term "immediate threat" for distinction and clarity.

Amelioration allows a licensee to use funds for the benefit of a facility, instead of paying administrative penalties for state licensure violations. Amelioration is an alternate form of payment and not an appeal. Amelioration does not remove violations or assessed penalties from a licensee's history.

2.2 What is the legal authority for allowing amelioration?

Instead of demanding payment of an administrative penalty, the HHSC commissioner may allow a licensee to use, under the supervision of HHSC, any portion of the penalty to ameliorate the violation or improve services, other than administrative services, in the facility affected by the violation.²

2.3 Does an amelioration plan have to specifically address the violations for which the administrative penalty was imposed?

No, an amelioration plan may address any area that a facility wishes to improve within the limitations described in this document. However, HHSC will not approve an amelioration plan that is essentially a plan of correction for the violations cited. An amelioration plan must propose changes that would result in conditions that exceed minimum licensure requirements.

2.4 What does HHSC look for in an amelioration plan?

HHSC expects an amelioration plan to target the improvement of the quality of care and quality of life of residents. Improvements are expected to exceed minimum levels of regulatory compliance, with results based on measurable outcomes. At a minimum:

1. The plan must propose changes to the management or operation of the facility that will improve services to residents or the quality of care and identify the specific minimum licensure requirements that the plan exceeds.
2. The plan must establish a timeline, such as a Gantt chart, for implementing the proposed changes that includes the date the plan will be completed. The timeline must be realistic. A licensee should consider activities that involve coordination with outside entities such as contractors or service providers when proposing a timeline; such activities may take longer than anticipated.

² Texas Health and Safety Code [§242.071](#) and Title 26 TAC [§554.2115](#) for NFs; Texas Health and Safety Code [§252.071](#) and 26 TAC [§551.241](#) for ICF/IIDs; and Texas Health and Safety Code [§247.0457](#) and 26 TAC [§553.751\(j\)](#) for ALFs.

3. The plan must establish clear goals to be achieved through the proposed changes and identify how the goals exceed minimum licensure requirements.
4. The plan must identify specific actions necessary to implement the proposed changes. If, for example, a plan includes the purchase of equipment, specific product information must be provided. HHSC requires documentation that an item planned for purchase exists and is available at the cost stated in the amelioration plan. The plan must provide a realistic budget for implementing the proposal with proof of equipment or labor costs. The plan must be realistic. A plan that has a cost for goods or services that is significantly higher than market cost gives the appearance of improper padding. A plan that has a cost for goods or services that is significantly below market cost is not acceptable.
5. The plan must identify, through measurable outcomes, how and to what extent the proposed changes will improve the services or quality of care for residents.

2.5 Can a licensee start its plan before violations are cited?

No, HHSC does not approve an amelioration plan that includes changes that a licensee has made to its management or operations before the violations were cited.

2.6 How much of an administrative penalty may a licensee request to have ameliorated?

A licensee may request to have a portion or the full amount of a penalty ameliorated. The amelioration plan must have an identifiable monetary value. If the value of a plan, or the approved portion of a plan if only a portion is approved, meets or exceeds the amount of the administrative penalty, the entire administrative penalty will be considered paid when the plan is complete. HHSC does not consider the amounts over the amount of the administrative penalty to be "credit" toward future administrative penalties. If the value of an amelioration plan is less than the amount of the administrative penalty, the value of the completed amelioration plan will be credited against the administrative penalty and HHSC collects only the remaining balance.

2.7 How does HHSC monitor amelioration plans?

HHSC staff monitor an amelioration plan against the objectives set forth in the plan. Monitoring activities may include periodic written

progress reports from the licensee, telephone contacts, and on-site visits by HHSC staff.

2.8 What happens if an amelioration plan is started but not finished?

If HHSC determines that an amelioration plan has not been completed within the approved timeframe, HHSC subtracts the value of the portion of the plan that was completed from the amount of the administrative penalty. HHSC collects the remaining balance of the penalty.

2.9 Is amelioration offered for all violations?

No. HHSC does not offer amelioration for violations that constitute IT as described in 26 TAC [§551.241\(c\)](#), [§553.751\(j\)\(2\)](#), or [§554.2115\(c\)\(2\)](#). However, once an IT violation is removed or lowered to a non-IT level, that violation may be eligible for amelioration.

Furthermore, HHSC will not offer amelioration for a violation when a NF has a "right to correct" the violation as provided in 26 TAC [§554.2115\(c\)\(1\)](#).

2.10 How often does HHSC offer amelioration to a facility?

HHSC does not offer amelioration more than three times in a two-year period or more than one time in a two-year period for the same or similar violation.

2.11 Can violations be combined in one amelioration plan?

A licensee may request amelioration for more than one violation. For each of those violations, the licensee must submit an amelioration plan. However, HHSC may allow violations to be combined in one amelioration plan to increase the dollar amount ameliorated.

2.12 Are there allowable and non-allowable spending guidelines for amelioration plans?

Yes. Items that HHSC may approve include, but are not limited to:

- the offer or improvement of dental services;
- the implementation of best practices in areas of infection control, resident behavior, psychotropic drug use, bowel and bladder control, dietary improvements, and other resident quality of life areas;

- the improvement of staff recruitment and retention;
- the improvement of activity offerings at the facility, for example, by purchasing interactive devices, creating a new activity room, refurbishing an existing activity room with new professional grade sound equipment and furnishings, etc.;
- the improvement of outside areas used by residents, for example, by creating a new fenced and covered facility courtyard, etc.; or
- the improvement of the interior aesthetics, for example, by renovating the dining area and other areas of the facility frequently used by residents, etc.

HHSC considers the following items to be non-allowable costs for amelioration plans:

- capital improvements not directly related to quality of life;
- kitchen materials (such as pots and pans);
- administrative equipment, functions, or costs;
- existing improvements or services; or
- services paid by Medicaid or Medicare.

2.13 When is a licensee notified of amelioration rights?

HHSC notifies a licensee of its amelioration rights when the licensee is advised that an administrative penalty has been imposed.

2.14 How does a licensee request amelioration?

If a licensee wants to file an amelioration plan, the licensee must file the plan with HHSC within 45 days after receipt of a notice of administrative penalty using [Form 3708, NF, ALF and ICF/IID Amelioration Request](#). A licensee must submit an amelioration plan to the address on the form.

2.15 What if a licensee previously requested an administrative hearing?

If a licensee's plan is approved, the licensee must agree to waive its right to an administrative hearing under [§242.068](#), [§247.0454](#), or [§252.067](#) of the Texas Health and Safety Code. Upon approval of a plan, HHSC requests that any pending request for a hearing submitted under [§242.067\(d\)](#), [§247.0453\(d\)](#), or [§252.066\(b\)](#) of the Texas Health and Safety Code be dismissed. If HHSC determines that an approved amelioration plan was not completed as specified in the plan, the full amount of the imposed penalty becomes due.

3.0 Resources

- NFs: Texas Health and Safety Code [§242.071](#) and Title 26 TAC [§554.2115](#)
- ICF/IIDs: Texas Health and Safety Code [§252.071](#) and 26 TAC [§551.241](#)
- ALFs: Texas Health and Safety Code [§247.0457](#) and 26 TAC [§553.751\(j\)](#)
- [Form 3708, NF, ALF and ICF/IID Amelioration Request](#)

4.0 Contact Information

If you have questions about amelioration proposals or general Facility Enforcement questions, please email

LTCFacilitiesEnforcement@hhs.texas.gov. If you have any questions about this letter, please contact the Policy and Rules Section by email at LTCRPolicy@hhs.texas.gov or call (512) 438-3161.