



Long-Term Care Regulatory Provider Letter

Number: PL 2023-17
Title: HB 1290 NF Administrative Penalty
Provider Types: Nursing Facilities (NF)
Date Issued: October 05, 2023

1.0 Subject and Purpose

This letter informs NFs of the impact of House Bill (HB) 1290, 88th Legislature, Regular Session, 2023, which makes it illegal for a NF to confiscate or misappropriate certain federal payments to a resident who is a Medicaid recipient. HB 1290 went into effect September 1, 2023 and applies to conduct that occurs on or after the effective date.

2.0 Policy Details & Provider Responsibilities

HB 1290 stipulates that a facility may not confiscate or misappropriate an eligible federal payment made to a resident who is a recipient of Medicaid.

A facility that violates this rule may be subject to an administrative penalty of \$25,000 for each violation. Each day the facility fails to return confiscated or misappropriated money to the resident is considered a separate violation.

“Eligible federal payment” means a payment made to an individual by the federal government that is not designated by law as income or a resource for purposes of an individual’s Medicaid eligibility. Medicaid for the Elderly and People with Disabilities (MEPD) [Handbook Section E-1700](#) provides guidance on things that **are not** designated as income. This includes:

- Social services (such as Assistance provided in cash or in kind (but not received in return for a service the person performs) under any federal, state, or local government program whose purpose is to provide social services, including vocational rehabilitation (for

example, cash from the Department of Veterans Affairs to purchase aid and attendance);

- Sale of a resource;
- Miscellaneous things that are not income: income tax refunds, payments by credit disability insurance, bills paid for the person, receipt of certain noncash items, replacement of income a person has already received, and weatherization assistance;
- Proceeds of a loan;
- Wage-related payments such as an employer paying an employee's share of Social Security or Unemployment Compensation taxes without a reduction in the employee's wages;
- Mandatory payroll deductions; and
- Cafeteria plans such as a written benefit plan offered by an employer where all participants are employees.

"Misappropriate" means the taking, secretion, misapplication, deprivation, transfer, or attempted transfer to any person not entitled to receive any real or personal property or anything of value belonging to or under the legal control of a resident without the effective consent of the resident or other appropriate legal authority.

3.0 Background/History

HB 1290 modified Texas Health and Safety Code Chapter 242, the statute governing NFs and related facilities. While this change does not impact NF rules, NFs should be aware of the new provisions.

4.0 Resources

None

5.0 Contact Information

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.