## 7500 Administrative Penalties

### 7510 Evaluating the Need for Administrative Penalties

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Policy

Administrative penalties are fines that Licensing may impose against an operation or a controlling person.

Licensing must impose corrective action before imposing an administrative penalty unless the penalty is imposed as a result of a violation under Human Resources Code [§42.078(a-2)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.078), as described in [7511](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7000.asp#LPPH_7511) Violations for Which Administrative Penalties May Be Assessed.

Licensing may proceed to adverse action without first imposing administrative penalties in any instance in which Licensing determines the violation is serious enough to warrant such action.

#### 7511 Violations for Which Administrative Penalties May Be Assessed

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Procedure

The inspector imposes fines if the operation or controlling person:

a. violates a term of a permit issued under HRC [Chapter 42](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm), or a rule or order adopted under that chapter;

b. makes a statement about a material fact that the operation or person knows or should know is false:

• on an application for the issuance of a permit or an attachment to the application, or

• in response to a matter under investigation;

c. refuses to allow an inspector to inspect:

• a book, record, or file required to be maintained by the operation, or

• any part of the premises of the operation;

d. purposefully interferes with the work of an inspector or the enforcement of HRC [Chapter 42](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm);

e. fails to pay a penalty assessed under HRC Chapter 42 on or before the date the penalty is due, as determined under HRC [§42.078](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.078);

f. commits repeated deficiencies that present low to medium risk to children; or

g. fails to comply with any evaluation or probation plan after time limits for correction have expired.

The inspector may impose an administrative penalty against an operation before imposing a corrective action any time the operation:

a. fails to timely submit the information required to conduct a background check on two or more occasions;

b. fails to timely submit the information required to conduct a background check before the 30th day after the day the operation is notified that the information is overdue;

c. knowingly allows a person to be present in the operation before receiving the results of the person’s background check;

d. knowingly allows a person to be present in the operation after receiving the results of the person’s background check, if the results contain criminal history or central registry findings that preclude the person from being present in the operation; or

e. violates a condition or restriction placed by Licensing on a person’s presence at the operation as part of a pending or approved risk evaluation.

See:

[5312](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_5300.asp#LPPH_5312) For Whom Name-Based Background Checks Are Required

[5315](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_5300.asp#LPPH_5315) When Background Checks Are Required

[5318](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_5300.asp#LPPH_5318) Allowing Direct Access Before a Background Check Is Complete

Human Resources Code §42.078(a-2)

DFPS Rules, 40 TAC §§[745.615](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=615); [745.625](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=625); [745.626](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=T&app=9&p_dir=N&p_rloc=145729&p_tloc=&p_ploc=1&pg=2&p_tac=&ti=40&pt=19&ch=745&rl=625); 745.8713

Intake note (above): rule 745.8713 not in effect until 3/1, so we can’t link to it yet.

Human Resources Code §42.078(a-2) is new and the link is not available yet.

#### 7513 Decision Guide for Imposing Administrative Penalties

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Policy

Licensing imposes an administrative penalty only when it is appropriate.

Procedure

When deciding whether to impose an administrative penalty, the inspector considers the following:

a. Can the deficiency be easily corrected?

b. Is the deficiency repeated with little or no effort to correct?

c. Can the provider comply with the standard without a waiver or variance?

d. What are the risk variables at the operation?

e. What is the provider’s compliance history?

f. When was the last inspection at the operation?

g. Does an inspection need to be made before making the decision?

h. What is the monitoring frequency?

i. How will the penalty impact the children in care?

j. Is a non-monetary administrative penalty or remedy more appropriate?

DFPS Rules, 40 TAC §§[745.8603](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8603); [745.8609](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8609); [745.8613](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8613); [745.8711](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8711)

Human Resources Code §§[42.075](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.075); [42.078(a)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.078)

#### 7541 Notification of the Administrative Penalty

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Procedure

The supervisor must send a certified letter recommending the imposition of a penalty and the amount of the penalty to:

• the permit holder; or

• the controlling person.

The certified letter must be sent within 14 days after the date that the inspector made the recommendation to impose the penalty. The supervisor must use [Form 2994](http://www.dfps.state.tx.us/Application/Forms/showFile.aspx?NAME=2994.doc) Administrative Penalty Letter to notify the permit holder or the controlling person about the recommendation to impose a penalty.