Virginia Department of Health

Nursing Home Administrative Sanctions Guidance Document

Purpose and Authority

This guidance document summarizes how the State Health Commissioner ("The Commissioner") of the Virginia Department of Health (VDH), through the Office of Licensure and Certification (OLC), may consider imposing administrative sanctions for nursing facilities under 12VAC5-371-90 and Va. Code §§ 32.1-27, 27.1, and 135. This guidance document does not create new requirements or mandatory enforcement levels. Decisions regarding sanctions will always be fact specific. This guidance document does not limit VDH's or the Commissioner's authority to take any action authorized by law.

Scope

This guidance document applies to VDH's review of whether an administrative sanction may be appropriate when a nursing facility violates applicable regulations, standards or statutes, when abuse or neglect occurs, when a facility fails to demonstrate or maintain compliance, or when resident health or safety may be jeopardized.

Plans of correction are not administrative sanctions. The facility must prepare, submit for review (when required), and implement a plan of correction to correct cited deficiencies. This document does not address the content, approval, or implementation of facility plans of correction under other applicable regulatory provisions.

Regulatory Basis

Under 12VAC5-371-90, VDH may proceed directly to administrative sanctions when the quality of care or quality of life has been severely compromised. The Commissioner may impose administrative sanctions or take appropriate action for violation of standards or statutes or for abuse or neglect of persons in care. Authorized sanctions include:

1. Restricting or prohibiting new admissions to any nursing facility;
2. Petitioning the court to impose a civil penalty or to appoint a receiver, or both; and
3. Revoking or suspending the license of a nursing facility.

The regulation also identifies reasons that may be considered for administrative sanctions or civil penalties, including failure to demonstrate or maintain compliance with applicable standards or the Code of Virginia, permitting or assisting an illegal act in the nursing facility, and significant deviation from the program or services for which a license was issued without prior written approval from OLC or failure to correct such deviations within a specified time.

Violations that, in the judgment of VDH, jeopardize the health and safety of residents, are sufficient cause for immediate imposition of sanctions under 12VAC5-371-90. A licensee will receive notice of the Commissioner's intent to impose sanctions. Pursuant to Va. Code § 32.1-135, any appeal of a notice of

imposition of administrative sanctions must be received in writing within 15 days of the date of receipt of the notice.

Administrative Sanction Levels

The following levels organize the sanctions authorized under 12VAC5-371-90. They support consistent internal review but are not mandatory sequential steps.

Level 1 - Restriction of New Admissions: The Commissioner may restrict new admissions by placing conditions or limitations on the facility's ability to admit additional residents.
Level 2 - Prohibition of New Admissions: The Commissioner may prohibit all new admissions to the facility.
Level 3 - Licensure Action: The Commissioner may suspend or revoke the nursing facility's license.

In certain situations, the Commissioner may petition the court to impose a civil penalty, appoint a receiver, or both. The Commissioner may impose the appropriate level of sanction supported by the factual circumstances when quality of care or quality of life has been severely compromised or resident health or safety is jeopardized.

Sanctions Review Triggers

The following triggers are intended to guide internal VDH review of whether an administrative sanction should be considered under 12VAC5-371-90. These triggers do not create automatic sanctions, require sequential use of the levels of sanctions, or limit the Commissioner's authority to take action. The decision to pursue sanctions shall be based on any relevant factors, including the facility's compliance history, the nature and severity of the violations, the actual or potential impact on and risk to residents, the facility's response to identified noncompliance, and any failure to achieve timely and sustained correction.

For purposes of this guidance, a citation means a cited deficiency, violation, or finding documented through an inspection, complaint investigation or revisit.

Sanctions Review Trigger	When OLC Should Review	Sanction Levels That May Be Considered
Repeated citation of the same requirement	The same or substantially similar regulatory requirement is cited on two consecutive inspections, complaint investigations, or revisits. Review should consider severity, scope, resident impact, corrective response, and whether the recurrence demonstrates failure to maintain compliance.	**Level 1 may be considered** when the repeated citation reflects an ongoing compliance concern and admissions could interfere with correction or increase resident risk.

Sanctions Review Trigger	When OLC Should Review	Sanction Levels That May Be Considered
Three or more citations of the same requirement within 18 months	The facility is cited three or more times for the same or substantially similar regulatory requirement within an 18-month period, indicating that prior corrective efforts have not resulted in sustained compliance.	• **Level 1 may be considered** when the repeated citation reflects an ongoing compliance concern and admissions could interfere with correction or increase resident risk. • **Level 2 may be considered** when the repeated deficiency creates meaningful resident risk or demonstrates that the facility cannot safely accept additional residents. • **Level 3 may be considered** when the pattern is serious and persistent.
Three or more citations within the same regulatory area during a single survey cycle	The facility receives three or more citations within the same general area of care or operations, such as nursing services, medication administration, resident rights, infection prevention, quality of care, staffing, administration, or environmental safety. Review should determine whether the citations collectively demonstrate a broader or systemic failure to maintain compliance.	• **Level 1 may be considered** when the concentration of deficiencies indicates an emerging operational weakness. • **Level 2 may be considered** when accepting additional residents could increase risk or interfere with correction. • **Level 3 may be considered** when the deficiencies are serious, widespread, or demonstrate substantial failure within the regulatory area.
Failure to correct cited deficiencies by revisit	The facility fails to correct one or more deficiencies by the required correction date or remains out of compliance at a revisit. Review should consider the severity of the uncorrected deficiency, the facility's corrective efforts, and whether residents remain at risk.	• **Level 1 may be considered** when limiting admissions would support correction. • **Level 2 may be considered** when the uncorrected deficiency affects resident safety, essential services, staffing capacity, or the facility's ability to provide care. • **Level 3 may be considered** when the failure reflects an inability or unwillingness to achieve compliance.
Repeated failure to correct cited deficiencies	The facility fails to correct deficiencies across more than one revisit involving the same deficiency, related deficiencies, or deficiencies within the same regulatory area.	• **Levels 1 and 2 should generally be considered.** • **Level 3 may be considered** when repeated failed revisits demonstrate persistent noncompliance, ineffective management, or an inability or unwillingness to correct deficiencies; or when continued operation presents serious or continuing resident risk or

Sanctions Review Trigger	When OLC Should Review	Sanction Levels That May Be Considered
		prior sanctions have not resulted in compliance.
Increase in severity or resident impact	The facility's noncompliance increases in seriousness, results in actual harm, affects multiple residents, or reflects deterioration in care, staffing, management, or operations.	• **Levels 1 and 2 may be considered** when additional admissions could expose more residents to risk. • **Level 3 may be considered** when the noncompliance results in actual harm, affects multiple residents, or reflects serious management failure; or when residents cannot be adequately protected while the facility continues to operate under its existing license.
Abuse or neglect of persons in care	Abuse or neglect occurs, is permitted, is not prevented, or is not appropriately addressed by the facility. Review should consider actual or potential harm, the number and vulnerability of residents affected, facility knowledge, reporting, investigation, protective action, and corrective response.	• **Levels 1 and 2 may be considered** when accepting additional residents could expose them to similar risk. • **Level 3** may be considered when the noncompliance results in actual harm, affects multiple residents, reflects a serious failure of facility management, or is so significant that residents may not receive adequate care or protection if the facility continues to operate under its existing license.
Illegal act	The facility permits, aids, or abets the commission of an illegal act within the nursing facility. Review should consider the nature of the conduct, resident impact, involvement or knowledge of leadership, corrective response, and whether the conduct was isolated, repeated, concealed, or systemic.	• **Any sanction level may be considered**, depending on the seriousness of the conduct and the facility's response; or when the conduct is severe, repeated, concealed, attributable to facility leadership, or demonstrates that the facility cannot operate in compliance.
Serious threat to resident health or safety	Violations that jeopardize the health or safety of residents.	• **The Commissioner may proceed directly to the sanction level supported by the circumstances.** • **Any sanction level may be imposed or pursued**
Severe compromise of resident quality of care or quality of life	The facility's noncompliance has severely compromised residents' quality of care or quality of life.	• **Any sanction level may be considered**, based on the nature,

Sanctions Review Trigger	When OLC Should Review	Sanction Levels That May Be Considered
		severity, scope, duration, and immediacy of the risk.
Systemic or persistent failure to maintain compliance	The facility's cumulative compliance history demonstrates recurring, widespread, or patterned noncompliance across surveys, complaint investigations, revisits, or regulatory areas. Prior corrective efforts or sanctions have not resulted in sustained compliance.	• **Level 2 should generally be considered** when continued admissions could compound the facility's compliance failures. • **Level 3 may be considered** when the history demonstrates persistent management or operational failure; or when the facility lacks the capacity or willingness to maintain compliance or presents continuing resident risk.

Use of Citation Counts

Citation counts are intended to serve as internal review triggers and on their own do not automatically mean a sanction will be imposed.

A lower number of citations may still support sanctions especially when the violation is serious, places residents at risk, involves abuse or neglect, reflects an illegal act, or severely compromises quality of care or quality of life. Conversely, meeting a citation-count trigger does not necessarily mean a sanction will be imposed.

Review Considerations

Review considerations may include:

- The specific standard, statute, or regulatory provision at issue;
- The number of citations, whether citations are repeated or related, and whether they involve the same or substantially similar requirements;
- The nature, scope, severity, and duration of the noncompliance;
- Whether resident health, safety, quality of care, or quality of life has been jeopardized or severely compromised;
- Whether the findings involve abuse, neglect, or an illegal act;
- Whether the facility failed to correct cited deficiencies or failed to maintain compliance;
- The facility's compliance history.

Process for Sanctions Review

The following steps may be used to support consistent internal review before a notice of intent to impose sanctions is issued:

1. Review the inspection complaint, investigation, revisit, and compliance history documentation relevant to the facility.
2. Identify whether one or more sanctions review triggers are present.
3. Determine which sanction level or action is supported by the documented facts.
4. If the Commissioner proceeds, issue a notice of intent to impose administrative sanctions.