

# ASSISTED LIVING PENALTIES

## Penalties

Ban on Admissions

Deny, suspend, refuse to renew, or revoke license

Administrative Penalty of not more than \$500 per day (no maximum total)

## Civil Money Penalties:

**Opportunity to Correct:** The facility will be given an opportunity to correct any deficiency before imposition of penalties unless the deficiency involves actual harm, abuse, or neglect. If the deficiency is not corrected after two revisits, the facility will be referred to OSDH Legal Division with a recommendation to impose the CMP at a level of \$30 per day beginning on the exit date and continuing until the deficiency is corrected.

**No Opportunity to Correct:** The facility will not be given an opportunity to correct deficiencies prior to the imposition of CMP whenever deficiencies involve abuse, neglect, actual harm or serious harm. This will be indicated on the surveyor cover sheet accompanying each survey. **The facility will be given an opportunity to correct deficiencies prior to the imposition of any CMP unless surveyors indicate that there is abuse, neglect or serious harm.**

## Penalty Amounts:

**\$30 per day:** imposed with "opportunity to correct" when there is no abuse, neglect, actual harm or serious harm.

**\$100 per day:** Imposed immediately when there is abuse, neglect, or actual harm to LESS THAN 10 % of RESIDENTS.

**\$200 per day:** imposed immediately when there is abuse, neglect, or actual harm to 10 to 60% OF RESIDENTS.

**\$300 per day:** Imposed immediately when there is abuse, neglect or actual harm to MORE THAN 60% OF RESIDENTS.

**\$500 per day:** Imposed immediately when there is IMMEDIATE JEOPARDY, SERIOUS HARM or DEATH.

**NOTE: Maximum "per day" penalty for Assisted Living is \$500 per day.**

When a CMP is warranted, either as an immediate imposition or an "opportunity to correct" that is to be imposed after revisits, the case must be referred to the OSDH Legal Division for imposition of penalties.

**Assisted Living Penalties Calculation**

Facility Name: \_\_\_\_\_  
 City: \_\_\_\_\_

License #: \_\_\_\_\_  
 Event ID(s): \_\_\_\_\_

Survey Date: \_\_\_\_\_  
 Final Correction Date: \_\_\_\_\_  
 Total # days out of compliance: \_\_\_\_\_

Days	1st Revisit Date	2nd Revisit Date	3rd Revisit Date	4th Revisit Date
0	_____	_____	_____	_____
0	_____	_____	_____	_____
0	_____	_____	_____	_____
0	_____	_____	_____	_____

**Non-compliance that is not abuse, neglect or harm:**

Start: \_\_\_\_\_ End: \_\_\_\_\_ Include? Y=1 / N=0

Total Days = 1 x 30 /day = \_\_\_\_\_ \$ \_\_\_\_\_ Penalty

**Harm, Abuse and Neglect Penalty (NOTC)**  
 Immediate/Serious Harm or Death

Abuse, Harm or Neglect; less than 10% of residents	Start: _____	End: _____	=	500 /day	\$ _____
Abuse, Harm or Neglect; less than 10% of residents	Start: _____	End: _____	=	100 /day	\$ _____
Abuse, Harm or Neglect; 10% - 60% of residents	Start: _____	End: _____	=	100 /day	\$ _____
Abuse, Harm or Neglect; 10% - 60% of residents	Start: _____	End: _____	=	200 /day	\$ _____
Abuse, Harm or Neglect; 10% - 60% of residents	Start: _____	End: _____	=	200 /day	\$ _____
Abuse, Harm or Neglect; more than 60% of residents	Start: _____	End: _____	=	300 /day	\$ _____
Total Harm, Abuse or Neglect Penalty					\$ _____

**Level of Care Penalty (NOTC)**

# of residents * # of days in violation * fine	Days	# Residents	Per Day Fine <= \$500/day	Total
Total Level of Care Penalty		0	100 \$ /day	\$ _____

**TOTAL CMP: \$ \_\_\_\_\_**

**NOTE: FACILITY IS NOT IN COMPLIANCE:**

Reviewer initials: \_\_\_\_\_

Date: \_\_\_\_\_

63 O.S. 1-890.6.C. Any person who has been determined by the Commissioner to have violated any provision of the Continuum of Care and Assisted Living Act or any rule promulgated hereunder shall be liable for an administrative penalty of not more than five Hundred Dollars (\$500.00) for each day that such violation occurs.

AL Penalty Calculation Master.xls

DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
Room 352-G  
200 Independence Avenue, SW  
Washington, DC 20201  
Office of Communications



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## CMS NEWS

**FOR IMMEDIATE RELEASE**  
May 30, 2012

Contact: CMS Media Relations Group  
(202) 690-6145

### **CMS ANNOUNCES PARTNERSHIP TO IMPROVE DEMENTIA CARE IN NURSING HOMES**

*Government partnering with providers, caregivers, patients to ensure appropriate use of antipsychotic medications*

Today, Centers for Medicare & Medicaid Services (CMS) Acting Administrator Marilyn Tavenner announced the Partnership to Improve Dementia Care, an initiative to ensure appropriate care and use of antipsychotic medications for nursing home patients. This partnership – among federal and state partners, nursing homes and other providers, advocacy groups and caregivers – has set a national goal of reducing use of antipsychotic drugs in nursing home residents by 15 percent by the end of 2012.

Unnecessary antipsychotic drug use is a significant challenge in ensuring appropriate dementia care. CMS data show that in 2010 more than 17 percent of nursing home patients had daily doses exceeding recommended levels.

“We want our loved ones with dementia to receive the best care and the highest quality of life possible,” said Acting Administrator Marilyn Tavenner. “We are partnering with nursing homes, advocates, and others to improve the quality of care these individuals receive in nursing homes. As part of this effort, our partnership has set an ambitious goal of reducing use of antipsychotics in nursing homes by 15 percent by the end of this year.”

CMS and industry and advocacy partners are taking several steps to achieve this goal of improved care:

**Enhanced training:** CMS has developed Hand in Hand, a training series for nursing homes that emphasizes person-centered care, prevention of abuse, and high-quality care for residents. CMS is also providing training focused on behavioral health to state and federal surveyors;

**Increased transparency:** CMS is making data on each nursing home’s antipsychotic drug use available on Nursing Home Compare starting in July of this year, and will update this data;

**Alternatives to antipsychotic medication:** CMS is emphasizing non-pharmacological alternatives for nursing home residents, including potential approaches such as consistent staff

assignments, increased exercise or time outdoors, monitoring and managing acute and chronic pain, and planning individualized activities.

“A CMS nursing home resident report found that almost 40 percent of nursing home patients with signs of dementia were receiving antipsychotic drugs at some point in 2010, even though there was no diagnosis of psychosis,” said CMS Chief Medical Officer and Director of Clinical Standards and Quality Patrick Conway, M.D. “Managing dementia without relying on medication can help improve the quality of life for these residents. The Partnership to Improve Dementia Care will equip residents, caregivers, and providers with the best tools to make the right decision.”

These efforts will help achieve the 15 percent reduction goal by the end of this year. In addition, to address this challenge in the long-term CMS is conducting research to better understand the decision to use or not to use antipsychotic drugs in residents with dementia. A study is underway in 20 to 25 nursing homes, evaluating this decision-making process. Findings will be used to target and implement approaches to improve the overall management of residents with dementia, including reducing the use of antipsychotic drugs in this population.

###

**Resources you may wish to review:**

YouTube: *Nursing Home Initiative on Behavioral Health & Antipsychotic Medication Reduction*  
[http://www.youtube.com/watch?v=U1\\_rpO0bwbM](http://www.youtube.com/watch?v=U1_rpO0bwbM) (48 minute video) **or**

CMS Surveyor Training (Archived webcast)  
<http://surveyortraining.cms.hhs.gov/pubs/Archive.aspx>

Advancing Excellence  
<http://www.nhqualitycampaign.org/>

American Healthcare Association  
<http://www.ahcancal.org/Pages/Default.aspx>

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**Alternatives to antipsychotic medication:** CMS is emphasizing non-pharmacological alternatives for nursing home residents, including potential approaches such as consistent staff



# An Act

ENROLLED HOUSE  
BILL NO. 2566

By: Wright, Sanders, Derby,  
Russ, Kern, Walker,  
Pittman, Cox and Roan of  
the House

and

Ivester, Eason McIntyre,  
Garrison, McAffrey and  
Fields of the Senate

An Act relating to public health and safety; amending 63 O.S. 2011, Section 1-890.3, which relates to the promulgation of rules by the State Board of Health; providing residents with freedom of choice without financial penalty or fee charged by assisted living center; and providing an effective date.

SUBJECT: Continuum of Care and Assisted Living Act rules

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 63 O.S. 2011, Section 1-890.3, is amended to read as follows:

Section 1-890.3 A. The State Board of Health shall promulgate rules necessary to implement the provisions of the Continuum of Care and Assisted Living Act. Such rules shall include, but shall not be limited to:

1. A uniform comprehensive resident screening instrument to measure the needs and capabilities of residents in all settings and to determine appropriate placements of residents;
2. Physical plant requirements meeting construction and life safety codes, with provisions accommodating resident privacy and

independence in assisted living centers and in assisted living components of continuum of care facilities based on the variable capabilities of residents;

3. Staffing levels responsive to the variable needs of residents, with provisions for sharing of staff between components in a continuum of care facility;

4. Standards for measuring quality outcomes for residents;

5. Provisions for individualized services chosen by and designed for each resident;

6. Procedures for inspections and investigations of licensed entities to ensure compliance with the Continuum of Care and Assisted Living Act and rules promulgated by the Board;

7. Enumeration of resident rights and responsibilities to be observed by each facility and its staff. Such resident rights shall include the freedom of choice regarding any personal attending physicians and all other providers of medical services and supplies without a financial penalty or fee charged by the assisted living center;

8. Provisions for a surety bond or deposit from each applicant in an amount sufficient to guarantee that obligations to residents will be performed, with provisions for reduction or waiver of the surety bond or deposit when the assets of the applicant or its contracts with other persons are sufficient to reasonably ensure the performance of its obligations;

9. Provisions for the development of a consumer guide or similar resource to be posted on the Internet website of the State Department of Health to assist individuals and families in understanding the services provided by assisted living centers and to compare and select a facility; and

10. Provisions for posting results of routine inspections and any complaint investigations of each assisted living center on the Internet website of the Department. Such information shall be regularly updated to include the facility's plan of correction and to indicate when a violation of a licensing regulation was corrected by the facility.

B. The nursing care service of a continuum of care facility shall be subject to the requirements, procedures and remedies set out in the Nursing Home Care Act, including provisions relating to resident rights.

C. The adult day care component of a continuum of care facility shall be subject to requirements and procedures specified under the Adult Day Care Act.

SECTION 2. This act shall become effective November 1, 2012.

Passed the House of Representatives the 1st day of May, 2012.

\_\_\_\_\_  
Presiding Officer of the House of  
Representatives

Passed the Senate the 18th day of April, 2012.

\_\_\_\_\_  
Presiding Officer of the Senate

**OFFICE OF THE GOVERNOR**

Received by the Governor this \_\_\_\_\_  
day of \_\_\_\_\_, 20\_\_\_\_,  
at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

By: \_\_\_\_\_

Approved by the Governor of the State of Oklahoma the \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Governor of the State of Oklahoma

**OFFICE OF THE SECRETARY OF STATE**

Received by the Secretary of State this \_\_\_\_\_  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

By: \_\_\_\_\_

DISTRIBUTED by REPRESENTATIVE DAVID DANK

**House Bill 2582** – by Representative Jeannie McDaniel

Applies to **Nursing Homes, Assisted Living Facilities, and Residential Care Facilities; Hospice and Home Health Agencies**; Intermediate Care and Group Homes for people with Developmental Disabilities; and Home and Community-Based waived services providers; relates to Criminal Background Checks.

- Current name-based background checks only apply to a certain employees and are not national in scope. Evidence exists of long term care employees with criminal and abuse findings crossing state lines to continue working in long term care settings.
- **\$19** for fingerprint background checks of new employees of all providers is **NOT an increase for Nursing Homes, Assisted Living, and Residential Care facilities. \$4 increase (to \$19) for Home Health agencies is due to the fact that they do not now check Sex Offender and Violent Offender registries.**  
Job applicant will pay \$10 (one time only) for fingerprinting.
- Avoids duplicate fingerprinting and the associated costs to employers and citizens when employee changes jobs within the industry.
- Relies on live scan fingerprint vendor to collect digital image fingerprint, for more reliable fingerprints the first time, reducing delays and inconvenience.
- Live scan vendor to serve multiple agencies with fingerprint-based background statutes, through a statewide network, offering 30-minute drive time access, giving greater access to teachers and child-care service workers who can also use the system. Shared contract keeps costs lower.
- Applies to all future applicants for employment who have, on an ongoing basis, direct access to patients, clients, or residents of the provider
- Authorizes collection of fingerprints, submitted to the OSBI & FBI, to conduct a national criminal history records search. Results sent to a Determination Unit in the Department of Health, the agency responsible for licensing most long term care providers. The unit will use advanced web-mail services to notify employers and employees of determinations of employability.
- Authorizes the Department of Health and OSBI to develop and implement a single web portal to consolidate registry checking, allowing facilities to check multi-state, abuse/neglect/and sex offender registries from one website.
- Employer can **VOLUNTARILY** request fingerprint check of current employees for \$65. That is **not a requirement** of the bill.

# Screening and Background Check Process

Employer enters basic applicant info. in system

Registries and prior screening enrollment status checked

If cleared & not previously enrolled, employer enrolls applicant for FP and pays \$19 fee

- Applicant pays \$10 scanning fee at fingerprinting

- OSBI/FBI results sent to OSDH

- OSDH pays OSBI/FBI fingerprinting fee of \$41 & scanning vendor fee of \$15

- OSDH reviews and sends determination to employer/employee

- If cleared employee enrolled in monitoring

- If not cleared, employee ineligible in system (appeal rights)

If employee was cleared & previously enrolled, & employer hires, employer pays \$19 fee and enrolls employee for criminal history monitoring under employer

Short term grant funds and long term Medicaid match funds support program funding

