

# Office of Licensing Rule Noncompliance Process: Prevention, Correction, and Revision (06/26/2024)



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## DHHS Vision

**The Department of Health and Human Services will advocate for, support, and serve all individuals and communities in Utah. We will ensure all Utahns have fair and equitable opportunities to live safe and healthy lives. We will achieve this through effective policy and a seamless system of services and programs.**

## DLBC Result Statement

Vulnerable populations served by DLBC providers are protected and treated with dignity.

## OL Vision

Quality health and safety services for people in Utah!

This section provides information about the process the Office of Licensing (OL) uses to help prevent and correct rule noncompliance issues. It also explains the way OL will conduct provider's requests for agency reviews. This section lists the OL authority to enforce rules and impose sanctions, describes the OL preventive and enforcement process including the use of penalties for noncompliance, and explains the venues for OL agency reviews.

## Rationale/Explanation

The OL has the responsibility to regulate human service, health care, and child care providers. Requirements and enforcement must be clear, strong, and dependable because they are critical to ensure protection of vulnerable populations. Penalties should be a part of the state's regulations to give strength to licensing rules. Research shows that states with the most effective regulation have a greater number of higher quality programs. NAEYC. (1998). Licensing and Public Regulation of Early Childhood Programs. Washington, DC. NARA (2011). Strong Licensing.

The National Association for Regulatory Administration (NARA) advises that licensing agencies maintain research-based assessment methods where risks are prioritized; inspections and technical assistance are focused accordingly; and corrective actions are systematically applied to build consistent compliance. NARA. Recommended Best Practices for Human Care Regulatory Agencies. Lexington, KY. (2009).

One of the most important characteristics of strong statutes and regulations is the authority given to agencies to have a basis to use a full continuum of enforcement options, with agency discretion to secure compliance using a range of positive and adverse interventions, from instruction to injunction. NARA (2011). Strong Licensing.

OL staff are accountable to:

- Support new and current providers during the initial licensing and renewal process

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- Offer technical assistance and training to providers
- Ensure that all covered individuals involved with these programs are deemed eligible through the Division of Licensing and Background Checks (DLBC) screenings
- Conduct health and safety inspections
- Investigate complaints that allege rule noncompliance and unlicensed services
- Provide the public with accurate information about these providers' compliance history

## Authority

### **Title 26B Utah Health and Human Services Code, Chapter 2 Licensing and Certifications**

#### **Part 1 Human Services Programs and Facilities**

#### **Part 2 Health Care Facility Licensing and Inspection**

#### **Part 3 Child Care Licensing**

This Code allows OL to write and enforce administrative rules, to deny, place conditions on, suspend, or revoke a license or certificate, to restrict or prohibit new admissions, and to issue Civil Money Penalties (CMP) as necessary to ensure compliance with the rules.

When the office finds evidence of a noncompliance with statute or rule, the office can do any of the following:

- provide written notification of each noncompliance requiring the licensee to correct each noncompliance with a dated request for remediation, if applicable;
- provide written notification of each noncompliance and request a licensee to submit a corrective action plan in response to a written notification of a noncompliance or pattern of similar noncompliance over time; or
- issue a penalty if the office determines that a noncompliance is serious enough to merit a penalty without first issuing a request for a corrective action plan.

The office may consider the chronicity, severity, and pervasiveness of noncompliance when determining one of the following actions:

- notification of a noncompliance;
- request for a corrective action plan;
- issue a formal penalty; or
- a combination of any of the above.

A repeated noncompliance of rule or statute or failure to comply with a condition of a notice of agency action may elevate the penalty level assessed.

## 1. Prevention Strategies

OL takes several preventive steps to encourage compliance with licensing rules before more restrictive processes are needed. OL offers:

- Administrative rules and rule interpretation manuals
- Technical assistance before licensing
- New provider training

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- Verbal technical assistance before, during, and after inspections
- Training on the licensing process and rules for those involved with the program
- A website with up-to-date resources and announcements
- Access to OL trainers, licensors, management, and support staff
- Support and updates from community partners
- Information about any licensing changes
- Health and safety inspections and complaint investigations

## **Rule Interpretation Manual**

These manuals are made for owners, providers, caregivers, parents, the public, and licensing staff to ensure statewide consistency in the understanding and enforcement of OL rules and requirements. They provide a general overview of licensing rules and requirements and give additional information to broaden knowledge about the intent and meaning of specific rules and requirements.

Not all rule interpretation manuals for every facility type are completed at this time. However, they are under construction and will be available and published as they are finished.

The manuals are divided by rule categories into sections, with each section containing four main types of information:

- Rule – The actual rule text is printed in a black bold font.
- Rationale / Explanation – This explains the reason for a specific rule or section of rules, it frequently describes best practice but not rule assessment.
- Compliance Guidelines – This provides guidance in achieving and maintaining compliance with a specific rule.
- Risk Level - This describes the level of risk or harm that occurred or is likely to occur due to a rule violation.
- Corrective Action for 1st Instance – This describes the first corrective action that OL will take if the rule is out of compliance.

Here is example from the Child Care Licensing Rule Interpretation Manual:

### **(1) The provider shall ensure that a blanket or other item is not placed over sleeping equipment in a way that prevents the caregiver from seeing the sleeping child.**

#### **Rationale/Explanation**

Infants should be directly observed by sight and sound at all times, including when they are going to sleep, are sleeping, or are in the process of waking up. Also, children who are thought to be sleeping could be awake and in need of attention. CFOC 4th ed. Standard 3.1.4.1 101 p.p.; Standard 2.2.0.1 p.p. 68.

#### **Compliance Guidelines**

- A provider may use an enclosed porta-crib as long as the porta-crib window and top remain open so that the child can be visually checked.
- If a blanket or other item is draped over sleeping equipment and a child in the equipment cannot be seen without moving the item, the child in the equipment is not being supervised.

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- It is not a rule violation if a child over 12 months old covers themselves in a blanket.

### **Risk Level**

High

### **Corrective Action for 1st Instance**

Citation and CMP Warning

As our knowledge of what is best for clients grows and as OL engages in continuous improvement, these manuals will be periodically updated. The manuals will be published on our division website at [dlbc.utah.gov](http://dlbc.utah.gov).

## **OL Inspections and Investigations**

For simplicity, we will use the term “inspections” when referring to inspections, surveys, or complaint investigations.

OL conducts regular inspections of human services programs, child care facilities, and health care facilities to determine if providers are in compliance with the state’s licensing, federal certification, and other contracted agencies’ requirements. This is critical in ensuring that regulations are enforced. Fair and constructive inspection processes are implemented with the objective of increasing compliance with rules, and most importantly, to help prevent harm to vulnerable populations.

During these inspections, licensing staff may find instances of noncompliance with rules. When a facility is found to be out of compliance, OL is legally responsible for taking corrective action so that deficiencies are resolved quickly before they become serious. This is usually handled by the provider agreeing to make necessary corrections within a specified amount of time. Some noncompliant issues may be corrected on-site during the inspection while others may take longer to correct. Serious noncompliant issues that may place the clients at immediate risk must be corrected before the licenser leaves the site.

Inspection Types:

### Pre-License/certification Inspections

This inspection is conducted before a new state license or certificate is issued. At the Pre-License Inspection, an applicant for a license must demonstrate that they are in compliance with all licensing rules and requirements.

### Announced Inspections

An Announced Inspection is conducted before the expiration of the facility’s license to ensure that all rules are in compliance. This inspection is scheduled with the provider and usually takes place 30 to 90 days before the license expiration date. The time to conduct an Announced Inspection varies depending on the size of the facility and the number of staff and enrolled clients. The inspection process will proceed more quickly and smoothly if:

- The provider is not scheduled for other duties during the inspection, such as transporting clients, preparing meals, staff meetings, etc.
- Rooms and areas are readily accessible to OL staff.

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- Staff and clients are accessible for possible interviews.
- Required paperwork is completed, organized, and available for review.

### Unannounced Inspections

Depending on the facility type, each facility will normally receive at least one Unannounced Inspection. Some other facility types may be required to receive more than one Unannounced Inspection per year. This inspection is not scheduled with the provider and takes place sometime during the licensing year. Its purpose is for OL to ensure that a provider is in compliance with licensing rules at all times a client is in care, even when an inspection is unexpected. The Unannounced Inspection may take less time to conduct because all paperwork may not always be assessed.

### Follow-up Inspections

OL staff conduct a Follow-up Inspection to verify that any rule violations found in previous inspections are corrected, maintained, and to ensure that there are no new, serious noncompliant issues. Follow-up Inspections are always unannounced.

### Additional Follow-up Inspections

OL staff will conduct Additional Follow-up Inspections if after the first Follow-Up inspection any noncompliance previously found is not achieved or maintained, and as a consequence, additional time for a follow-up inspection has to be scheduled. OL will charge **a fee** (as set by the Utah State Legislature) for each Additional Follow-up Inspection.

### Complaint Investigations

In addition to the previously mentioned regular inspections, reports that allege rule noncompliance are investigated by our complaint investigators. The type and scope of each investigation vary based on the information received in the complaint. Complaint Investigations can be announced or unannounced. Depending on the information received or witnessed, Complaint Follow-up Inspections may be conducted.

### Monitoring Inspections

This inspection is unannounced and conducted to check for specific compliance issues in facilities that are under a conditional license or certificate. The frequency of these inspections depends on the conditions set by OL when the facility's license is placed on a conditional status.

### Focus Inspections

This type of inspection is conducted when there is a specific issue, unrelated to a complaint, that needs to be addressed outside of the regular Announced and Unannounced Inspections. Such issues may include incident reports that require an investigation, additional inspections to facilities as required by legislation, and additional inspections as required by contracts.

## **Licensors and Investigators**

To make sure inspections and investigations are conducted equitably, effectively, efficiently, and in accordance with local and federal requirements, our staff go through extensive training.

First, OL strives to hire individuals with experience in the type of care they will be assigned to inspect, survey, or investigate and with degrees in any related fields.

Second, depending on the facility type and the area of work they will be assigned to, the individual's professional and educational level, and previous knowledge and expertise, new staff go through about 480 hours of initial targeted training. Training may include, but is not limited to:

- Administration of medication
- Prevention and response to emergencies due to food and allergic reactions
- Building and physical premises safety, including identification of and protection from hazards, bodies of water, and vehicular traffic
- Abusive trauma and child maltreatment
- Emergency preparedness and response planning for emergencies resulting from a natural disaster, or a man-caused event (such as violence at a care facility)
- First aid and cardiopulmonary resuscitation
- Recognition and reporting of child abuse and neglect
- Substance Abuse
- Interviewing Techniques
- Caseload management
- NARA (National Association for Regulatory Administration) licensing training
- Handling difficult conversations and effective communication
- Child Development and conflictive behavior
- Time management
- Cultural and linguistic diversity awareness
- Equity
- Teamwork, professionalism, and work ethics
- Applicable rule and statute
- Inspection and investigation process

Third, OL staff receive at least 50 hours of ongoing annual training. This training may include all previously stated topics in addition to our office specific and HR related topics.

Licensors and investigators are organized in specialized teams and according to provider settings: human services programs, residential and commercial child care and child care exempt facilities, health facilities, certification, acute non long term health, license exempt, and complaint investigations. Their caseloads vary depending on their individual teams and other assignments.

### **Inspection Process**

To verify compliance with the rules and depending on the inspection and facility type, OL staff may conduct inspections and investigations, individually or as a team. During inspections, OL staff may:

- Ask for a government issued photo ID to confirm all covered individuals have passed our division background check.
- Open and observe the contents of any container, drawer, cupboard, room, or area, etc. that is accessible to clients.

- Ask clarifying questions.
- Review records – the facility's general paperwork, each covered individual's records, and the records kept for each client in care.
  - Request copies of documents.
- Observe processes.
- Observe and interview clients in care and their legal guardians and program staff.
- Contact and interview legal guardians, current and former staff, and witnesses.
- Take pictures of items in order to better explain a situation to their manager and/or to be used as documentation of a possible noncompliance.
- Ask for written statements.
- Record audio statements.
- Bring additional OL staff to help with the inspection, depending on the size of the facility or as instructed by their supervisor.
- Conduct follow-up visits.
- Use witness statements, complaint allegations, or other agency substantiation as evidence.

OL staff use standardized checklists to ensure consistency for each inspection. These checklists are published on the OL website. Once inspections receive managerial approval, checklists used during those inspections are posted on our website to show all items observed during the inspection. Normally, OL staff have three business days to complete their report after the inspection is complete, then managers have three more business days to review and approve. These inspection checklists are part of the full monitoring and inspection report found on our website. We display three years of each provider's compliance history on our website.

If there are any inaccuracies on any of our reports or inspection results, providers have the opportunity to contact us and request that correction. They can also use their 10-day right to ask for an agency review and submit a written agency review request through their licensing portal to facilitate any needed corrections.

If anyone is interested in a provider's compliance history beyond the three years displayed on our website or does not have access to the internet, they can contact any of our staff and get that information on the phone as a file review. The information shared will be anything that OL will normally make readily accessible to the public. A complete facility history and other public information not displayed on our website can also be requested using a GRAMA request.

At the end of or after each inspection or investigation (if this completes the investigation for complaints), the OL staff will:

- Inform the provider of the results of the inspection.
  - Explain any rule noncompliant issues to the provider.
  - Give the provider an opportunity to discuss each item and provide feedback.
  - Decide, with the provider, on a correction date for each rule found out of compliance.
- However, if a deficiency poses a serious risk to the clients, a date of correction may not be negotiated, but will be set by OL staff.

- Ask the provider to sign the electronic checklist as acknowledgment that the inspection was conducted and concluded. The provider's signature does not indicate their agreement with the results of the inspection, survey, or investigation.
- Except for a complaint investigation, email the checklist to the provider before leaving the facility.
- After management approval, send an inspection report to the provider explaining any rules found out of compliance, each rule's level of risk or harm, OL's corrective action, and a due date for each rule found out of compliance to be corrected.
- Depending on the facility type and the risk level of the rules found out of compliance, conduct an unannounced follow-up inspection to verify that all deficiencies have remained or have been corrected, and that there are no new serious noncompliance.

The provider will have an opportunity to give feedback to OL using our OL website feedback link about each inspection and about OL staff who conducted the inspection.

### **Risk Assessment**

Risk assessment is a method of identifying the possibility and severity of harm that may result when a rule is out of compliance. Harm is physical, emotional, or psychological injury to a client. Any noncompliance with rules poses a level of risk or harm to the clients. However, some instances of noncompliance present significantly more risk.

The OL risk assessment has identified the following four levels of risk or harm that may result from a rule being out of compliance. Each level is based on actual or potential harm and the severity of the harm.

- **Low risk or harm** – Noncompliance would not result in harm to a client, but compliance with this rule is used to verify compliance with other rules which, if noncompliant, could result in harm to a client.
- **Moderate risk or harm** – Harm that does not require intervention from a medical or mental health care provider has already occurred, or is likely to occur. Noncompliance could (or did) cause minor physical, emotional, or psychological harm to a client, and would (or did) not require intervention from a medical or mental health care provider. One instance of noncompliance would not cause harm, but repeated cumulative instances of noncompliance would cause harm.

Moderate harm: harm that would not require treatment from a medical or mental health care professional.

For example, rule noncompliance that could (or did) result in:

- a scrape, bruise, or bump
- poor nutrition for a short period of time
- spreading a cold or head lice

- **High risk or harm** – Harm that requires intervention from a medical or mental health care provider has already occurred, or is likely to occur. Noncompliance could (or did) cause significant physical, emotional, or psychological harm to a client which would (or did) require intervention from a medical or mental health care provider to address the harm. Harm is likely to occur.

High harm: harm that would require treatment from a medical or mental health care professional.

For example, rule noncompliance that could (or did) result in:

- a broken bone



- a cut requiring stitches
  - emotional/psychological harm requiring short term mental health therapy
  - poor nutrition for a sustained period of time
  - spreading more serious diseases which require medical intervention
- **Extreme risk or harm** – Harm including death or life-threatening injury has already occurred or is likely to occur. Noncompliance could (or did) cause harm to a client that is life-threatening, or could (or did) result in a permanent disability in the client's physical, emotional, or psychological functioning. Harm has occurred.

Extreme harm: death or a long-term disability (physical, emotional, or psychological).

For example, rule noncompliance that could (or did) result in:

- death
- loss of vision, hearing, or a limb
- serious physical, sexual, or emotional abuse requiring long term care from a mental health care provider
- prolonged or high exposure to lead or other harmful chemicals
- spreading diseases which can be fatal or result in long-term disability

## 2. Correction Actions

The OL enforcement of licensing rules can be viewed as a progressive set of steps. Utah statute and rules require that when a provider has a serious rule noncompliance, has frequent noncompliance, and/or fails to correct a deficiency, OL must take corrective action. This is a process of communicating with the provider and taking disciplinary action to ensure the provider comes into compliance with rules.

In determining what action to take, OL considers several factors:

- Whether actual harm has come to clients,
- The risk of harm,
- The scope and severity of each noncompliance, and
- Whether or not it is the first instance of a noncompliance.

OL uses the following corrective actions to ensure compliance with licensing rules.

### Warning

This action warns the provider that a Low Risk rule noncompliance must be corrected within a specified amount of time. This action may also alert the provider that a repeat instance of a rule noncompliance will be a Citation. The Warning is documented by OL, but is not displayed on the provider's online public record.

### Citation and Civil Money Penalty (CMP) Warning

A Citation is issued for serious or repeat rule noncompliance along with a warning that another instance of the rule noncompliance will result in a CMP. A citation is displayed on the provider's online public record because of the serious nature of the rule noncompliance.

A Citation and CMP Warning is not only documented by OL, but is displayed on the provider's online public record because of the serious nature of the rule noncompliance.

- A provider's online public record is available on the DLBC website for 36 months.
- All rule noncompliance substantiated in a complaint investigation, warnings or citations, are made available on the DLBC website for 36 months.
- To check a provider's public record that is older than 36 months, the public may contact OL.

### **Repeat Citation and CMP**

If a cited rule noncompliance reoccurs, a Repeat Citation is issued and a CMP is imposed. This corrective action is made available on the DLBC website for 36 months.

Citations and Repeat Citations are each assigned 10 Citation points. OL uses these points in a system to track a provider's noncompliance with the rules and to alert OL before a facility reaches a critical noncompliant state. This system is maintained in the OL system and is not made available to the public.

### **Plan of Correction**

If a provider accumulates 150 Citation tracking points within a rolling 36-month period, OL may require that the provider follow a Plan of Correction. The Plan of Correction will help move the provider toward compliance while allowing them (in most cases) to continue to provide services and avoid being placed on a conditional license. A Plan of Correction does not change the provider licensing status.

Usually, the provider, the licensor, and the licensor's manager will discuss and develop the Plan of Correction including:

- Rule noncompliance that will need to be corrected;
- Conditions the provider must meet;
- Amount of time that will be allowed for the provider to come in to compliance; and
- Corrective actions that will be taken by OL if the provider fails to comply with the conditions of the Plan of Correction, including placing the provider's license on Conditional status.

The OL will allow the provider to have one Plan of Correction in a 36-month period. This is also to prevent and avoid pervasive noncompliance. If the provider is not in compliance with the Plan of Correction or if because of severe continuing lack of compliance, a Conditional License will be issued.

### **Conditional License**

A severe rule noncompliance, chronic noncompliance, a noncompliance of any of the conditions described in a Plan of Correction, or failure to meet the deadlines described in the Plan of Correction may place a provider's license on a conditional status. A Conditional License changes the provider's regular license into a status that requires the provider to meet certain conditions and to be monitored in order to regain their regular license status. In order for the provider to keep their license, they must come into compliance within a specified amount of time. OL staff will conduct monitoring inspections to verify that this occurs.

The provider will receive a Notice of Agency Action – Conditional Status Letter from OL stating the conditions the provider must comply with during the conditional status. That will include the rules being

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monitored, the frequency of the Monitoring Inspections, any charges, how long the conditional status will last, and any other pertinent conditions or instructions. Monitoring inspections can be conducted daily, weekly, semimonthly, or monthly depending on the severity of the rule noncompliance. As set by the Utah State Legislature, a **monitoring inspection fee** is charged for each Monitoring Inspection.

In most cases, a provider will be required to comply and maintain compliance with any conditions placed on their license for at least three consecutive months before they regain their regular licensing status.

### **Other Corrective Actions**

Recurring and/or severe rule noncompliance can lead to other corrective actions such as a Suspension, an Intent to Revoke, and a Revocation.

A Suspension can be used to temporarily stop the provider from enrolling new clients or operating completely while compliance is achieved and maintained. A Suspension can be part of a Plan of Correction or a condition of a Conditional License.

An Intent to Revoke Letter is used to warn the provider that their license will be revoked if the issue(s) described in the letter is not corrected by a specified date.

A Revocation letter is used to inform the provider that their license has been revoked. This letter will also state the reason(s) for the revocation.

A Revocation is enforced when the department determines that the clients' well-being is at risk and the facility must be closed immediately. When this happens, OL staff will arrive at the facility, notify the parents or legal guardian of each enrolled minor of the closure, and remain at the facility until all the clients have been picked up by their parents or persons authorized to do so or transferred to another facility, and the facility is closed for business. A Follow-up Inspection will also be conducted to verify that the provider is not in business after having been closed by the department.

The department may also deny a license if a provider has been previously closed by OL.

### **Corrective Action Grid**

The following chart summarizes rule noncompliance risk levels and the corresponding corrective actions. The first column describes the levels of risk (moving down the column) from Low to Extreme risk. The possible corrective actions are listed horizontally across the top of the chart ranging from least to most stringent.

An OL corrective action is based on the degree of risk or harm and the number of instances a rule noncompliance has occurred. For example, the corrective action for the 1st instance of a Low Risk rule noncompliance would be a Warning. If there was a 2nd instance of that same rule noncompliance, the provider would receive a Citation Warning. For the 1st instance of a rule noncompliance with Extreme risk or harm, a Citation and a CMP would be issued with the possibility of other corrective actions being enforced.

<b>OL RULE NONCOMPLIANCE CORRECTIVE ACTION GRID</b>						
<b>Corrective Action</b>	<b>Warning</b>	<b>Citation Warning</b>	<b>Citation &amp; CMP Warning</b>	<b>Repeat Citation &amp; CMP</b>	<b>Repeat Citation &amp; CMP &amp; Possible: PC, Conditional, Suspension, Intent to Revoke, or Revocation</b>	<b>Citation &amp; CMP &amp; Possible: PC, Conditional, Suspension, Intent to Revoke, or Revocation.</b>
<b>Risk or Harm</b>	On OL Record Only		On Online Public Record			
<b>Low</b>	<b>1st Instance</b>	<b>2nd Instance</b>	<b>3rd Instance</b>	<b>4th Instance</b>	<b>5th Instance</b>	
<b>Moderate</b>	→	<b>1st Instance</b>	<b>2nd Instance</b>	<b>3rd Instance</b>	<b>4th Instance</b>	
<b>High</b>	→		<b>1st Instance</b>	<b>2nd Instance</b>	<b>3rd Instance</b>	
<b>Extreme</b>	→			→	→	<b>1st Instance</b>
CMP = Civil Money Penalty PC = Plan of Correction						

**Rule Noncompliance Corrected During An Inspection**

Except for the rule noncompliance listed below, the corrective action for a first-time rule noncompliance that is corrected during the inspection will be reduced by one level. For example, if a rule noncompliance with High risk is corrected during the inspection, instead of a Citation and CMP Warning being issued, the corrective action will be a Citation Warning.

The corrective action will not be reduced for the following rule noncompliance:

- High or Extreme harm to a client
- Inappropriate interactions with clients
- Lack of supervision
- Inappropriate ratio
- An individual who failed to pass a background check is at the facility
- An accessible firearm not used or stored as allowed by law
- Intoxication or impairment of provider or caregiver during business hours
- Use of tobacco or similar product, alcohol or an illegal substance during business hours

**Other Rule Noncompliance Correction Dates**

Except for the rule noncompliance listed below, the licenser will negotiate with the provider correction of rules within reasonable times, but not to exceed 30 days. Verification of correction will be required.

The licenser will require correction of the following rule before leaving the facility:

- High or Extreme harm to a client
- Inappropriate interactions with clients
- Lack of supervision
- An individual who failed to pass a background check is at the facility
- An accessible firearm not used or stored as allowed by law
- Intoxication or impairment of provider or caregiver during business hours
- Use of tobacco or similar product, alcohol, or an illegal substance during business hours

**Civil Money Penalty (CMP)**

A CMP is a fine charged by the department for Repeat Citations, or when the first instance of a rule noncompliance results in or is likely to result in Extreme risk or harm.

<b>CMP Amounts for Repeat Citations</b>	
Low Risk . . . . .	\$100 per area per rule, per resident/client/staff/occupied bed
Low Risk Supervision or Ratio . . . . .	\$100 per resident/client unsupervised or over ratio
Low Risk Background Check . . . . .	\$100 per individual out of compliance
Moderate Risk . . . . .	\$150 per area per rule, per resident/client/staff/occupied bed
Moderate Risk Supervision or Ratio . . . . .	\$150 per client unsupervised or over ratio
Moderate Risk Background Check Repeat Citation . . . . .	\$150 per individual out of compliance
High Risk . . . . .	\$200 per area per rule, per resident/client/staff/occupied bed
High Risk Supervision or Ratio . . . . .	\$200 per resident/client unsupervised or over ratio
High Risk Background Check . . . . .	\$200 per individual out of compliance

Due to Extreme risk or harm, a Citation and CMP will immediately be issued for the first instance of the following rule noncompliance.

<b>Immediate CMP Amounts for Extreme Risk Rule Noncompliance</b>	
• A minor or resident leaves the facility without the provider's awareness . . . . .	\$500 CMP
• A minor or resident is left outside of the facility or in a vehicle without supervision .. .	\$500 CMP
• An individual who failed to pass a background check is at the facility . . . . .	\$500 CMP
• A provider submitted or allowed falsified documents to be submitted to OL . . . . .	\$500 CMP
• An accessible firearm (does not apply to a firearm that is unlocked, but inaccessible) . .	\$500 CMP
• A client suffered serious harm as the result of a rule noncompliance. . . . .	\$1,500 CMP
• The death of a client was the result of a rule noncompliance. . . . .	\$10,000 CMP

If a rule noncompliance resulted in a CMP and there is a repeat instance of the rule noncompliance within a rolling 36- month period, the CMP will be double the amount of the original CMP (and all subsequent CMPs will be issued at the doubled amount) not to exceed \$10,000 per violation.

A CMP must be paid no later than 30 days from the notification date.

### **3. Revision of Actions**

OL recognizes the provider's right to understand, discuss, and dispute any action taken against the provider. If an explanation given by OL staff after the inspection, or the information contained in an action letter seems to be inaccurate or disputable, OL provides a way to review any issue that we refer to as an "Action Review".

There are different levels of Action Reviews. A provider requesting an agency review must start the request at levels one, two, or three:

- Level 1. "Management review." This will be held with the licensor's supervisor.
- Level 2. "OL Review." This can be requested with the Office of Licensing Director when the provider is still not satisfied with the outcome reached at the previous level.
- Level 3. "Division Review." This can be requested with the Division Director when the provider is still not satisfied with the outcome reached at the previous level.
- Level 4. "Agency Review." This can be requested with a representative from the Executive Director's office when the provider is still not satisfied with the outcome reached at the previous level.

It is an "Appeal" if a provider chooses to use the legal system to file a hearing request through an Administrative Law Judge or the courts. This may be handled with assistance from lawyers. A provider may choose to file a hearing request without first going through the optional steps outlined above.

Providers are encouraged to ask the OL for clarification about its processes and decisions. Having a clear understanding of the OL's actions will be most beneficial and can help the provider determine if an agency review is necessary.

Providers have 10 working days to request a review of any action taken by the OL. The agency review period begins on the date that the provider receives written official notification of an OL action, such as receipt of an Inspection Report.

To request an agency review, the provider must submit the request in writing using their licensing portal.

Action reviews conducted by the department and OL staff are considered informal discussions and the department will not charge a fee. OL will schedule the time to hear the provider's action review. This agency review session may be conducted by phone, in person at an OL office, or at the provider's facility depending on the availability of all involved parties.

The department may include any licensors involved in the inspection where rule noncompliance are being reviewed, and any other necessary staff.

The provider may request levels one, two, or three to begin the action review process. However, the agency review process can not move down a level once a decision has been made at a higher action review level. The provider may choose to skip the action review step and go straight to an appeal.

Action Review Officer Hierarchy	Level of Action Review
1. OL Team Manager	Management Review
2. Office of Licensing Director	OL Review
3. Division of Licensing & Background Checks Director	Division Review
4. Department Executive Director's Office	Agency Review
<b>Administrative Law Judge</b>	<b>Informal Appeal Hearing</b>
<b>Courts</b>	<b>Informal Appeal Filing</b>

Providers have 10 working days to request an informal action review using their licensing portal for actions taken by OL, including:

- the assessment of a rule noncompliance;
- the time for a corrective action;
- the assessment of a charge or a CMP; or
- the rejection of documentation, policies, or applications.

The action review period begins on the date that the provider receives official notification of an OL action, such as receiving the Inspection Report.

**If the provider receives a Notice of Agency Action (NAA) or a \*Notice of Emergency Agency Action (NEAA) , this action review process will not be available and the provider's option will be an informal appeal hearing or an informal appeal filing.**

An NAA or NEAA may be:

- a conditional license or certificate;
- an amended conditional license or certificate;
- a suspension;
- an intent to revoke; or
- a revocation of the license or certificate.

\*Notice of Emergency Agency Action (NEAA) means a temporary license with conditions that will last up to 30 days. The Department may issue an NEAA to a provider or program that had a serious injury or a

client death occur at their facility. The purpose of the NEAA is to protect the clients while the Department investigates for any licensee rule non-compliance.

For a review of a background check decision, the provider must use the Office of Background Screening review and appeal process.

If a provider retains legal counsel or decides to make a legal appeal with an Administrative Law Judge or through the courts, it will be the responsibility of the provider to pay all costs associated with that appeal.

Providers are welcome to present any documentation, witness statements, and other evidence, or to bring witnesses if they consider it necessary to support their action review.

In some cases, the provider may choose to retain legal advice and to have their attorney be present at an action review session. In this case, the provider must notify OL of their intent to bring their attorney so the department's attorney may also be present. Otherwise, the action review session will be canceled and rescheduled when all parties, including both attorneys, can be present.

During the action review process, rule noncompliance being reviewed will not show on the provider's online public record, and reviewed CMP penalties will not be enforced until the action review is resolved. However, the provider will continue to receive routine inspections, including Follow-up Inspections, for all other rule noncompliance and the provider must maintain compliance with licensing rules while the action review is being resolved.

After the action review process is over, the provider will receive written notification of the action reviews outcome and the facility's file in the OL App (OL's software program) will be updated accordingly. The results of the action review process may be that the rule noncompliance is upheld (not removed from the record) or rescinded (removed from the record). Additionally, the corrective action for the rule noncompliance may be changed as part of the agency review outcome.