

**§90.236(m) Administrative Penalties**  
**Per Diem Penalties for Facilities Serving Persons with Mental Retardation and/or Related Conditions**

Description of Conditions and Elements of Conditions	Size of Facility	First Offense (1) With Correction	First Offense (1) Without Correction	Second Offense (2) With Correction	Second Offense (2) Without Correction	Third Offense (3) With Correction	Third Offense (3) Without Correction
<p>A. Failure to maintain requirements in accordance with the National Fire Protection Association Life Safety Code. Assessment of administrative penalties in these areas are determined by Life Safety Code surveyors.</p> <p><u>Severity and scope:</u> A violation of numbers 1, 2, 3 and 4 compromises the fire safety design of the facility. Number 5 has different penalties for isolated incidents as opposed to a pattern of problems. An isolated instance would be 1 fire extinguisher unavailable at a required location. A pattern would be multiple extinguishers not in place or repeated incidents of a missing fire extinguisher.</p>							
1. Required fire sprinkler system is not functioning, or system water supply is turned off.	60 or more beds	\$0	\$500	\$0	\$3,500	\$0	\$5,000
2. Required fire sprinkler system is not functioning in total or in the majority of components.	60 or more beds	\$0	\$500	\$0	\$3,500	\$0	\$5,000
3. The generator will not start automatically within the required time period or will not transfer and carry load; or emergency battery system	60 or more beds	\$0	\$500	\$0	\$3,500	\$0	\$5,000

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		(1) With Correction	(1) Without Correction	(2) With Correction	(2) Without Correction	(3) With Correction	(3) Without Correction	
does not illuminate or maintain required illumination for the required time.								
4. Doors in required smoke barrier walls, or in required fire walls, will not close as required.	60 or more beds	\$0	\$500		\$0	\$3,500	\$0	\$5,000
5. Portable fire extinguishers are not available at required locations.	60 or more beds	\$0	Isolated \$350	Pattern \$500	\$0	\$3,500	\$0	\$5,000
A. Failure to maintain requirements in accordance with the National Fire Protection Association Life Safety Code. Assessment of administrative penalties in these areas are determined by Life Safety Code surveyors.  <u>Severity and scope:</u> A violation of numbers 1, 2, 3 and 4 compromises the fire safety design of the facility. Number 5 has different penalties for isolated incidents as opposed to a pattern of problems. An isolated incident would be one fire extinguisher unavailable at a required location. A pattern would be multiple extinguishers being out of place.								
6. Required fire sprinkler system is not functioning, or system water supply is turned off.	59 beds or less	\$0	\$100		\$0	\$750	\$0	\$1,000

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		(1) With Correction	(1) Without Correction	(2) With Correction	(2) Without Correction	(3) With Correction	(3) Without Correction		
7. Required fire sprinkler system is not functioning in total or in the majority of components.	59 beds or less	\$0	\$100		\$0	\$750		\$0	\$1,000
8. The generator will not start automatically within the required time period or will not transfer and carry load; or emergency battery system does not illuminate or maintain required illumination for the required time.	16 beds or less	NA	NA		NA	NA		NA	NA
	17-59 beds	\$0	\$100		\$0	\$750		\$0	\$1,000
9. Doors in required smoke barrier walls, or in required fire walls, will not close as required.	59 beds or less	\$0	\$100		\$0	\$750		\$0	\$1,000
10. Portable fire extinguishers are not available at required locations.	59 beds or less	\$0	Isolated \$100	Pattern \$200	\$0	\$750		\$0	\$1,000

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			Isolated	Pattern				
			<p>B. Failure to provide tube feeding/syringe feedings in accordance with physician's orders and/or established feeding administration procedures.</p> <p>These areas are requirements of Licensing Standards for ICFMR/RC Facilities, §90.42(e)(6). Assessment of administrative penalties in these areas must result from licensure deficiencies as reflected on Licensing Inspection report, Form 3724. Additionally, for an administrative penalty to be assessed for violation of B.2, licensure violation (federal standard W368) must be cited on the Health Care Financing Administration Form 2567, Statement of Deficiencies, resulting from a citation for noncompliance with licensure rules based on this standard.</p> <p><u>Scope and severity:</u> There are different penalties for isolated incidents as opposed to patterns of problems. An isolated incident affects one individual one time. Multiple incidents that affect one or more individuals constitute a pattern of problems.</p>					

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			Isolated	Pattern				
1. Tube feeding is not administered by licensed personnel.	59 beds or less	\$0	\$100	\$200	\$0	\$750	\$0	\$1,000
	60 beds or more	\$0	\$200	\$300	\$0	\$3,500	\$0	\$5,000
2. The quality and/or quantity of the formula administered is not as ordered by the physician	59 beds or less	\$0	\$100	\$200	\$0	\$750	\$0	\$1,000
	60 beds or more	\$0	\$400	\$500	\$0	\$3,500	\$0	\$5,000
3. Improper technique is used in feeding.	59 beds or less	\$0	\$100	\$200	\$0	\$750	\$0	\$1,000
	60 beds or more	\$0	\$400	\$500	\$0	\$3,500	\$0	\$5,000

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<p><u>C. Compliance Principle</u>            42 CFR §483.410 Governing Body.            The Condition of Participation of Governing Body is met when the other Conditions of Participation are also met.  <u>Scope and severity:</u> This condition not being met is always the result of a pattern of problems.            The Condition of Participation is not met when:</p>	59 beds or less	\$0	\$100	\$0	\$750	\$0	\$1,000
	60 or more beds	\$0	\$500	\$0	\$3,500	\$0	\$5,000
	59 beds or less	\$0	\$100	\$0	\$750	\$0	\$1,000
	60 or more beds	\$0	\$500	\$0	\$3,500	\$0	\$5,000
One or more of the other seven Conditions of Participation are not met and the governing body had failed to take action that identifies and resolves systematic problems of a serious and recurrent nature; or							
The facility has been denied any license or approval required by federal, state, or local law by the authority having jurisdiction for that law.							

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			Isolated	Pattern				
			<p><u>D. Compliance Principle</u>            42 CFR §483.420 Client Protections.            The Condition of Participation of Client Protections is met when individuals are free from abuse and neglect; individuals are free from unnecessary drugs and restraints; and individual freedoms are promoted (e.g., individuals have choice and opportunities in their money management, community involvement, interpersonal relationships, daily routines, etc.).</p> <p><u>Scope and severity:</u> There are different penalties for isolated incidents as opposed to patterns of problems. An isolated incident affects one individual one time. Multiple incidents that affect one or more individuals constitute a pattern of problems.</p> <p>The Condition of Participation is not met when:</p>	59 beds or less				
<p>Individuals have been abused, neglected or otherwise mistreated and the facility has not taken steps to protect individuals and prevent reoccurrence; or</p>	60 beds or more	\$0	\$500	\$750	\$0	\$3,500	\$0	\$5,000

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			Isolated	Pattern				
Individuals are subjected to the use of drugs or restraints without justification; or								
Individual freedoms are denied or restricted without justification (e.g., systematic lack of privacy, of freedom of access to the community or to other individuals, in use of personal possessions and money, etc.).								

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<p><u>E. Compliance Principle</u>            42 CFR §483.430 Facility Staffing.            The Condition of Participation of Facility Staffing is met when: the Condition of Participation of Active Treatment is met (i.e., there are sufficient numbers of competent, trained staff to provide active treatment); and the Condition of Participation of Client Protections is met (i.e., there are sufficient numbers of competent, trained staff to protect individual's health and safety).</p> <p><u>Scope and severity</u> This condition being unmet is always the result of a pattern of problems.            The Condition of Participation is not met when:</p>	59 beds or less	\$0	\$200	\$0	\$750	\$0	\$1,000
	60 beds or more	\$0	\$200	\$0	\$3,500	\$0	\$5,000
<p>The Condition of Participation of Active Treatment is not met and the lack of active treatment has resulted from insufficient numbers of staff or lack of trained, knowledgeable staff to design and carry out the individual's programs;            or</p>							

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The Condition of Participation of Client Protections has first been determined to be not met and the lack of client protection has resulted from insufficient numbers of competent, trained staff to protect the health and safety of individuals.							

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<p><u>F. Compliance Principle</u></p> <p>42 CFR §483.440 Active Treatment Services. The Condition of Participation of Active Treatment Services are met when individuals have increased skill and independence in functional life areas (i.e., communication, socialization, toileting, bathing, household tasks, use of community, etc.), and in the presence of degenerating conditions, individual's functioning is maintained to the maximum extent possible; and Individuals receive continuous, competent training, supervision and support which promotes skills and independence; and Individuals need continuous, competent training supervision and support in order to function on a daily basis.</p> <p><u>Scope and severity:</u> Not meeting the condition of participation of active treatment is always a pattern of problems and not an isolated incident.</p> <p>The Condition of Participation is not met when:</p>	59 beds or less	\$0	\$200	\$0	\$750	\$0	\$1,000
	60 beds or more	\$0	\$200	\$0	\$3,500	\$0	\$5,000

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Individual's functional abilities have decreased or have not improved and the facility has failed to identify barriers and implement a plan to maximize or overcome barriers; or							
Individuals are not involved in activities which address their individualized priority needs; or							
Individuals do not have opportunities to practice new or existing skills and to make choices in their daily routines; or							
Individuals are able to function independently without continuous training, supervision and support by the staff.							

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			<p><u>G. Compliance Principle</u>            42 CFR §483.450 Client Behavior and Facility Practices.</p> <p>The Condition of Participation is met when: individual programs and activities regularly include use of positive techniques, teaching strategies and supports; efforts are made to reduce and eliminate use of restrictive techniques with positive results; and staff teach and reinforce appropriate behaviors such as communication skills, social skills, independence and choice-making skills, and leisure skills which serve as functional substitutes for inappropriate behaviors; and restrictive techniques are used only when warranted by the severity of the behavior, and result in desired behavioral outcomes.</p> <p><u>Scope and severity:</u> There are different penalties for isolated incidents as opposed to patterns of problems. An isolated incident affects one individual one time. Multiple incidents that affect one or more individuals constitute a pattern of problems.</p> <p>The Condition of Participation is not met when:</p>	59 beds or less				
60 beds or more	\$0	\$500	\$750	\$0	\$3,500	\$0	\$5,000	

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			Isolated	Pattern				
Restrictive, intrusive techniques are used to manage or control behavior in lieu of positive teaching strategies; or including appropriate and timely follow-up based upon their individualized need for service.								
Individuals are physically or psychologically injured or harmed as a result of the use of restrictive interventions and the facility has failed to adequately monitor the use of the intervention; or								
Restrictive interventions are used when they are not warranted or without first attempting less restrictive more positive measures.								

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			Isolated	Pattern				
			<p><u>H. Compliance Principle</u> 42 CFR §483.460 Health Care Services. The Condition of Participation for Health Care Services is met when individuals receive preventive services and prompt treatment for acute and chronic health conditions; and the individual's health is improved or maintained unless the deterioration is due to a documented clinical condition for which deterioration or lack of improvement is an accepted prognosis.</p> <p><u>Scope and severity:</u> There are different penalties for isolated incidents as opposed to patterns of problems. An isolated incident is one incident for one person. A pattern exists when there is more than one person involved or multiple incidents for a single individual.</p>	59 beds or less				
60 beds or more	\$0	\$500	\$750	\$0	\$3,500	\$0	\$5,000	
Individuals do not receive adequate health care monitoring and services, including appropriate and timely follow-up based upon their individualized need for service.								

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			Isolated	Pattern				
<p><u>I. Compliance Principle</u> 42 CFR §483.470 Physical Environment. The Condition of Participation of Physical Environment is met when the environment promotes the health and safety, independence and learning of the individuals.</p> <p><u>Scope and severity:</u> There are different penalties for isolated incidents as opposed to patterns of problems. An isolated incident affects one individual one time. Multiple incidents that affect one or more individuals constitute a pattern of problems.</p> <p>The Condition of Participation is not met when:</p>	59 beds or less	\$0	\$100	\$200	\$0	\$750	\$0	\$1,000
	60 beds or more	\$0	\$400	\$500	\$0	\$3,500	\$0	\$5,000
Environmental conditions interfere with learning and independence to such an extent that the Condition of Participation for active treatment is not met; or								
Individuals are at risk to health and safety; or								

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			Isolated	Pattern				
Poor infection control practices are observed and there is a high rate of infections or communicable diseases among the individuals residing in the facility.								

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			Isolated	Pattern				
			<p><u>J. Compliance Principle</u> 42 CFR §483.480 Condition of Participation: Dietetic Services. The Condition of Participation of Dietary Services is met when: The individuals maintain body weights and lab levels considered acceptable for their age, height, body type and clinical condition or are receiving services and supports to assist them to do so; and Individuals participate in normalized dining experiences appropriate to their functioning abilities (e.g., using knives, family style meals, going to restaurants, etc.) and are being taught skills to do so.</p> <p><u>Scope and severity:</u> There are different penalties for isolated incidents as opposed to patterns of problems. An isolated incident is an incident that affects one individual. Multiple incidents that affect one or more individuals constitute a pattern of problems.</p>	59 beds or less				
60 beds or more	\$0	\$300	\$400	\$0	\$3,500	\$0	\$5,000	

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			Isolated	Pattern				
The Condition of Participation is not met when:								
Individuals experience excessive weight loss or gain, abnormal lab levels, or deterioration in health as a result of an inadequate diet; or								
Individuals do not receive training and supports which enable them to eat as independently and in as normalized manner as possible.								