



Investing for tomorrow, delivering today.

Assisted Living: Regulatory Update 2022

Presenters:

Alana Curlee, Licensed Only Manager

Maurella Sooh, District Operations Bureau Chief



Natural Disasters and Response

- 899,453 acres across the state with 31 fires > 100 acres.
- Biggest fire in NM history (344k acres) result of prescribed burn.
- Approx. 300 residents between (2) Nursing Homes and (1) Assisted Living facility evacuated and transferred between 10 Nursing Homes
- Flooding across burn scar in one community:
 - Contaminated water shed < 30 days of water
 - (3) fatalities

Licensed-Only Providers

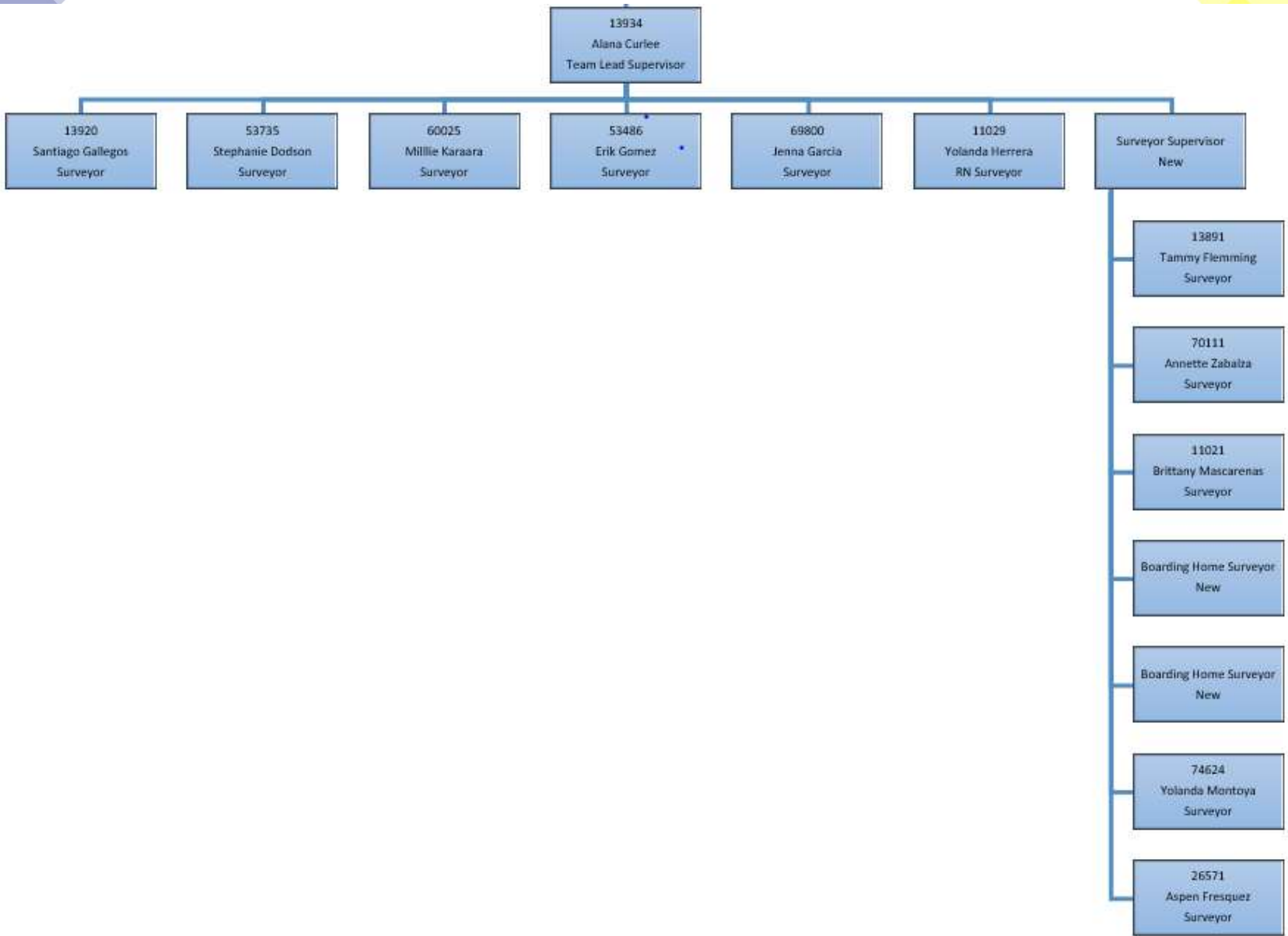
-
- Assisted Living Facilities (238)
 - Adult Day Care Centers (27)
 - Unlicensed Assisted Living Facilities (?)
 - Board and Care Homes (3)
(Estimate 80 unlicensed Boarding Homes)
 - Crisis Treatment Centers (2)
 - 21 facilities received new Licenses (New, Change of Address, or CHOW)
 - 12 Assisted Living Facilities Closed



Licensed Only Team

Alana Curlee, LO Survey Manager

Alana Curlee has a Master's Degree in Gerontology and has 25 plus years in the field of aging. She has been the Manager of the Licensed Only survey team with the Department of Health for the last 7.5 years and prior to that served as an Ombudsman Regional Coordinator for 9.5 years with the State Department of Aging and Long-Term Services.



Assisted Living Survey Stats

17 Initials
3 Initials with Complaints
12 Full onsite with complaints
50 Complaints Surveys
69 Revisits (54 onsite revisits and 23 surveys were recited)

Conducted 139 total surveys
Cited 512 Deficiencies
Completed 121 Complaint investigations

Average onsite survey time:
Initials: 25 hours
Complaint Surveys: 40 hours
Full Onsite with Complaints: 67 hours

Top 10 Deficiencies

1. Individual Service Plans (ISPs)

- Within 10-days of Admission/every 6 months/change of condition/Reviewed by Nurse
- Address all resident needs
- Goal/outcomes
- Inviting residents/family/legal representatives to participate in the development of the ISP.
- New ISP created with change of ownership.

2. Residents Rights

- COVID/Infection Control
- Abuse/Neglect/Exploitation

3. Custodial Drug Permit

- Medications not available/Assisting residents in obtaining medications
- Ordering new medications and refills timely
- Medication/Narcotic storage and reconciliation
- Discontinued, expired, and overstock medications
- Oxygen storage/Signage

4. Reporting of Incidents

- Not reporting within 24 hours/next business day if Holiday/Weekend.
- Not conducting internal investigations and submitting Follow-up reports

5. Staff Qualifications

- EAR/CCHSP applications, fingerprints, clearances not being completed/received as required.
- New clearances required when there is a change in ownership.
- Companies with multiple facilities
- Documentation needed-applications/fingerprints/summary reports/clearance letters/and additional documentation.

6. Medications

- Certificates of Completion from a state approved training course for staff who assist with the self-administration of medications.
- Non-Licensed staff administering medications
- Conducting invasive procedures/Administering medication/feeding residents via G-tube.
- Medication Administrator records-all required documentation.
- Physician orders for all medications listed on the MAR.

7. Resident Evaluations

- Initial evaluations not completed within 15-days prior to admission.
- Evaluations not reviewed by Nurse/updated if needed every 6 months or when a change of condition occurs.
- Inviting residents/family/legal representatives to participate in the development of the evaluation .
- New Evaluation created with change of ownership.

8. Housekeeping

- Cleanliness
- Storing/securing of cleaning supplies.

9. Admission/Discharge

- Admitting residents beyond the level of care the facility can provide.
- No exception meetings
- Refund upon Death
- New Admission/Discharge Agreement created with change of ownership.

10. Nutrition

- General cleanliness
- Meals be served timely
- Maintaining hot/cold temperatures when food served.
- Available snacks
- Food storage/refrigerator and freezer temperatures/monitoring and documentation
- Staff training

11. Staff Training

- 16-hrs of Supervised training prior to providing unsupervised care.
- 12 hours of orientation and annual training
- Medication Assistance training and Certificates from state approved training course.
- Annual Hospice and Alzheimer's/Dementia care training.

State Enforcement

7.8.2.13 GROUND FOR REVOCATION, SUSPENSION OR DENIAL OF INITIAL OR RENEWAL OF LICENSE, OR THE IMPOSITION OF SANCTIONS OR CIVIL MONETARY PENALTIES:

A. When the licensing authority determines that an application for the renewal of a license will be denied or that a license will be revoked, the licensing authority shall provide written notification to the facility, the residents and the surrogate decision makers for the residents.

B. After notice to the facility and an opportunity for a hearing, the department may deny an initial or renewal application, revoke or suspend the license of a facility or may impose an intermediate sanction and a civil monetary penalty as provided in accordance with the Public Health Act, Section 24-1-5.2 NMSA 1978.

C. Grounds for implementing these penalties may be based on the following:

- (1) failure to comply with any provision of this rule;
- (2) failure to allow a survey by authorized representatives of the licensing authority;
- (3) the hiring or retaining of any staff or permitting any private duty attendant or volunteer to work with residents that has a disqualifying conviction under the requirements of the Caregiver's Criminal History Screening Program, 7.1.9 NMAC;
- (4) the misrepresentation or falsification of any information on the application forms or other documents provided to the licensing authority;
- (5) repeat violations of this rule;
- (6) failure to maintain or provide services as required by this rule;
- (7) exceeding licensed capacity;
- (8) failure to provide an acceptable plan of correction within the time period established by the licensing authority;
- (9) failure to correct deficiencies within the time period established by the licensing authority;
- (10) failure to comply with the incident reporting requirements pursuant to Incident Reporting, Intake Processing and Training Requirements, 7.1.13 NMAC; and
- (11) failure to pay civil monetary penalties pursuant to Health Facility Sanctions and Civil Monetary Penalties, 7.1.8 NMAC.

Health Facility Sanctions NMAC 7.1.8

7.1.8.8 TYPES OF INTERMEDIATE SANCTIONS AND CIVIL MONETARY PENALTIES THAT MAY BE IMPOSED ON ANY LICENSED HEALTH CARE FACILITY:

A. **A directed plan of correction:** The licensing authority may direct a licensee to correct violations in a time specified, detailed plan.

B. **Facility monitors:** The licensing authority may select a facility monitor for a specified period of time to closely observe a health facility's compliance efforts. The facility monitor shall have authority to review all applicable facility records, policies, procedures and financial records; and the authority to interview facility staff and residents. The facility monitor may also provide consultation to the facility management and staff in the correction of violations. The health facility must pay all reasonable costs of a facility monitor.

C. **Temporary management:** The licensing authority may appoint temporary management with expertise in the field of health services to oversee the operation of the health facility. The management appointed will ensure that the health and safety of the facility's patients, residents, or clients is protected. The health facility must pay all reasonable costs of temporary management.

D. **Restricted admissions or provision of services:** The licensing authority may restrict the health facility from providing designated services and from accepting any new patients, residents, or clients until deficiencies are corrected.

E. **Reduction of licensed capacity:** The licensing authority may reduce the licensed capacity of a health facility.

F. **Civil monetary penalty:** The licensing authority may impose on any health facility a civil monetary penalty. The amount of the civil monetary penalty is based upon the total of (1) the initial base penalty, (2) a daily penalty which is calculated based on the uncorrected deficiencies which exist for each day following the notice to the facility, and (3) any penalty doubling for repeat deficiencies. Civil monetary penalties shall not exceed a total of five thousand dollars (\$5,000) per day.

(1) Limitation: A civil monetary penalty is not intended to force the closure of a licensed facility in lieu of license revocation.

(2) Burden of proof; limitation: Any facility seeking to show that the imposition of a civil monetary penalty will result in the forced closure of the facility must prove the same by clear and convincing evidence.

[12/3/90; 5/28/99; Recompiled 10/31/01]



Investing for tomorrow, delivering today.

1190 S. St. Francis Drive • Santa Fe, NM 87505 • Phone: 505-827-2613 • Fax: 505-827-2530 • nmhealth.org

Health Facility Civil Monetary Penalties NMAC 7.1.8

"CLASS A DEFICIENCY" means:

- (1) any abuse or neglect of a patient, resident, or client by a facility employee or for which the facility is responsible **which results in death, or serious physical or psychological harm**; or
- (2) any exploitation of a patient, resident, or client by a facility employee or for which the facility is responsible in which the value of the property exceeds fifteen hundred dollars (\$1,500); or
- (3) a violation or group of violations of applicable regulations, which results in death, serious physical harm, or serious psychological harm to a patient, resident, or client.

"CLASS B DEFICIENCY" means:

- (1) **any abuse or neglect of a patient, resident, or client** by a facility employee or for which the facility is responsible; or
- (2) any exploitation of a patient, resident, or client by a facility employee or for which the facility is responsible in which the value of the property exceeds one hundred dollars (\$100.00), but is less than fifteen hundred dollars (\$1,500); or
- (3) a violation or group of violations of applicable regulations which present a potential risk of injury or harm to any patient, resident or client.

"CLASS C DEFICIENCY" means:

- (1) a violation or a group of violations of applicable regulations as cited by surveyors from the licensing authority which **have the potential to cause injury or harm to any patient, resident or client if the violation is not corrected**; or
- (2) any exploitation of a patient, resident, or client by a facility employee in which the value of the property was less than one hundred dollars (\$100.00).

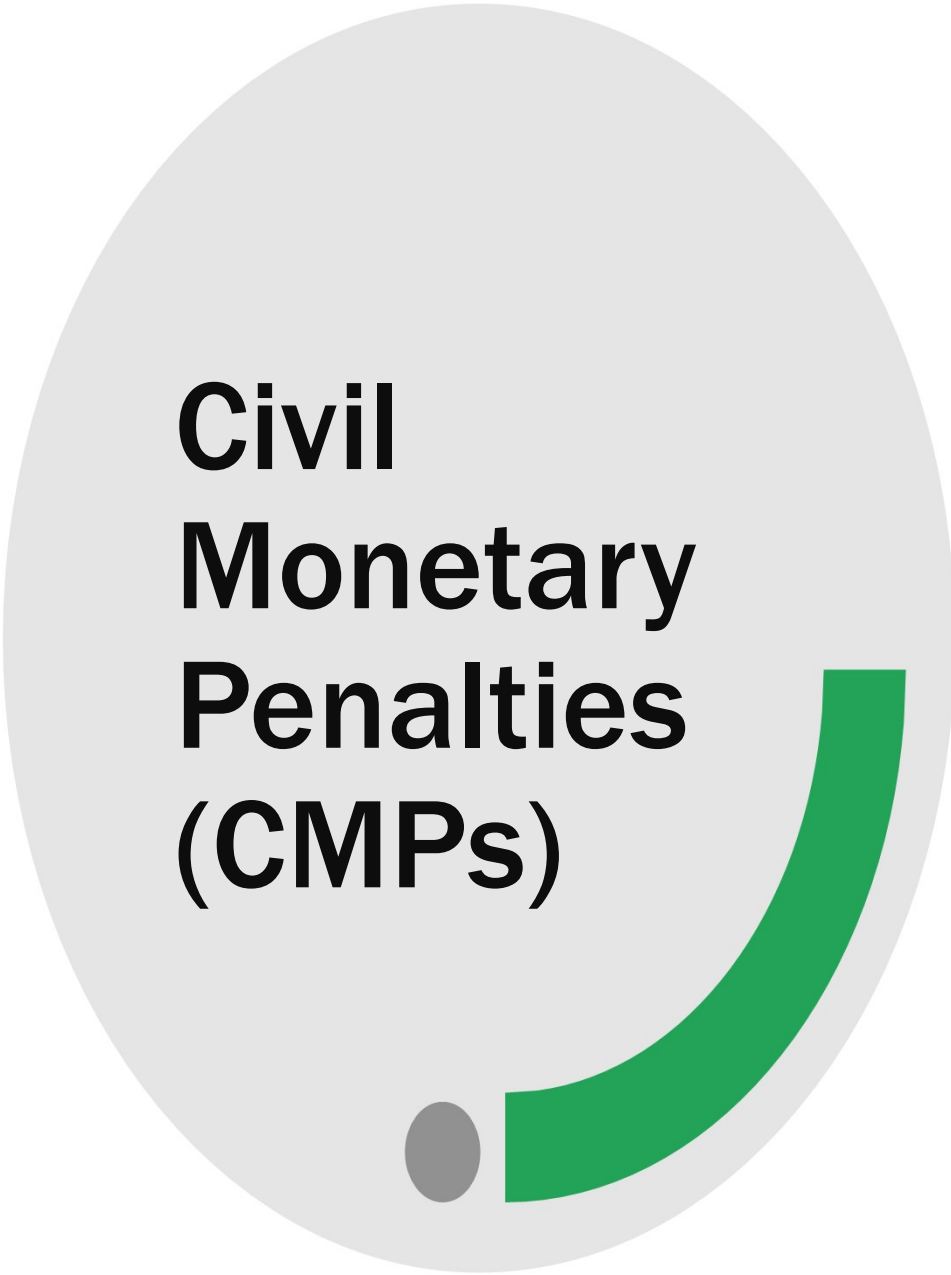
State CMP Amounts

Civil monetary penalty; initial base penalty amount: The licensing authority has the discretion to impose an initial base penalty at any amount within the range for each deficiency level.

- (1) Class A deficiency: not less than \$500 and not greater than \$5,000.
- (2) Class B deficiency: not less than \$300 and not greater than \$3,000.
- (3) Class C deficiency: not less than \$100 and not greater than \$500.

Collected \$12k from (6) ALF Providers

- A032/A033: Staff to resident sexual assault and failing to report: Fined \$2400
- A033/A035: Resident developed Stage 3 pressure ulcer and (2) Stage 2 pressure ulcers: physician was never notified. Facility apply creams/salves not ordered by a Physician: Fined \$3,000
- A020/A033: Admitted resident with Trach and was providing Trach Care resulting in numerous hospitalizations for dislocation and infection: Fined \$1,200
- A033/A036: Resident lost 57lbs with no interventions: Fined \$3,000
- A035: Staff administering medication without certificate: Fined \$400
- A032/A033: Resident to resident sexual and mental abuse and failure to report- (1) resident had dementia: Fined \$2,400



Civil Monetary Penalties (CMPs)

**New
Performance
Measure**

10 day turnaround time from survey exit date to when Provider receives the State Form (statement of deficiencies).

FY22: 38% were sent within 10 days

What we are doing to improve

Will be hiring (2) surveyors to primarily focus on Boarding Homes and a new Surveyor Supervisor

Conducting more offsite revisits to more quickly close out the survey enforcement

Ongoing Surveyor trainings (examples: ANE, Investigating Complaints, writing deficiencies etc.)

Rewriting the regulations

What Providers can do

- Be familiar with the regulations (all staff and where to find answers) including NMACs for licensing, BON/BOP and other NMACs referenced in NMAC 7.8.2
- Update Policy and Procedures r/t Infection Control.
- If possible, coincide forms and P&Ps to the regulations
- Update contact info to Licensing Department
- Maintain records onsite
- Self-report to Complaints Department timely (including 5 day follow up) and take the (1) hour Web Ex Reporting Training
- Be prepared for survey (ie Survey Binder)
- Submit POCs timely (10 calendar days): must be on state form and sign/dated
 - Don't send encrypted, send as an email attachment
- Be prepared for revisit, provide requested documentation. This may be in person or requested via email

Suggestions from Surveyors

DOH Surveyors are here to help you succeed in providing for our NM elderly community by ensuring you are following regulations; whenever in doubt - reach out for answers regarding regulations.

Always double check resident files and staff files to ensure it is complete and updated. This may include keeping older physician orders to track when revisions are made

When the Plan of Correction (POC) has been approved, the expectation is that the deficient practices will be corrected by the Completion Date for each citation on the POC.

Suggestions from Surveyors

Understand the difference between
ISP and evaluations.

7.8.2.25/26

Provide requested
documents/records to surveyors in a
timely manner to reduce surveyor
time onsite

6 hours are required for hospice
training. Indicate how long the
training was and retain certificates
of completion for all trainings if
available.

- ✓ Table of Contents
- ✓ Copy of Facility License (original needs to be in a conspicuous Place).
- ✓ Waivers/Variations
- ✓ Licenses/Certificates (nurse, staff who assist residents with self-administration of medications, drivers, physicians, etc.)
- ✓ Custodial Drug Permit
- ✓ All inspection reports (Fire, Sprinkler, furnaces, kitchen, etc)
- ✓ Pet vaccination records

Note: For more information, review the regulations and create your binder based on what is required for your type of facility.

Surveyor Binder (suggestions)



Satisfaction Survey Results

- Was professional and answered any questions we had about the process.
- Seems like the regulations are open to interpretation
- Make the regulations more clear and standardize the process
- * 5 responses

DHI staff:

Professional/courteous	100% Agree/Strongly Agree
Fair/Unbiased	100% Agree/Strongly Agree
Trained/Knowledgeable	75% Agree/Strongly Agree (25% neutral)
Team Leader kept you informed	100% Agree/Strongly Agree





Investing for tomorrow, delivering today.

Contact Information

Alana Curlee-Survey Team Manager
505-803-0569
alana.curlee@state.nm.us

Jake Rodriquez-LSC Program Manager
505-476-9041
jake.rodriquez@state.nm.us

Maurella Sooh-Bureau Chief-DOB
505-476-9039
maurella.soo@state.nm.us

Frank While-LSC Team Supervisor
505-216-8319
frank.white@state.nm.us

Jessica Madlener, Health Services Manager
(Licensing)
505-476-9028
jessica.madlener@state.nm.us

Christopher Burmeister, Division Director
505-476-9074
Christopher.burmeis@state.nm.us

State Ombudsman
1-866-451-2901
www.nmaging.state.nm.us

Complaints Department
800-752-8649, fax 888-576-0012
Email: incident.management@state.nm.us
<https://nmhealth.orh/about/dhi/ane/rahf>



Thank you!