**Section 390.165 Criteria for Adverse Licensure Actions**

a) Adverse licensure actions are determinations to deny the issuance of an initial license, to deny the issuance of a renewal of a license, to impose a ban on admissions to a facility, or to revoke the current license of a facility.

b) A determination by the Director or the Director's designee to take adverse licensure action against a facility will be based on a finding that one or more of the following criteria are met:

1) A substantial failure to comply with the Act or this Part. For purposes of this provision, substantial failure is a failure to meet the requirements of this Part that is other than a variance from strict and literal performance and that results only in unimportant omissions or defects given the particular circumstances involved. *A substantial failure by the facility shall include, but not be limited to, the following*:

A) *Termination of Medicare or Medicaid certification by the Centers for Medicare and Medicaid Services; or*

B) *A failure by the facility to pay any fine assessed under this Act after the Department has sent to the facility and licensee at least 2 notices of assessment that include a schedule of payments as determined by the Department, taking into account extenuating circumstances and financial hardships of the facility*. (Section 3-119(a)(1) of the Act)

2) *Conviction of the licensee, or of the person designated to manage or supervise the facility, of a felony, or of 2 or more misdemeanors involving moral turpitude, during the previous 5 years as shown by* *a certified copy of the record of the court of conviction*. (Section 3-119(a)(2) of the Act)

3) The moral character of the licensee, administrator, manager, or supervisor of the facility is not reputable. Evidence to be considered will include verifiable statements by residents of a facility, law enforcement officials, or other persons with knowledge of the individual's character. In addition, the definition afforded to the terms "reputable," "unreputable," and "irreputable" by the circuit courts of the State of Illinois shall apply when appropriate to the given situation. For purposes of this Section, a manager or supervisor of the facility is an individual with responsibility for the overall management, direction, coordination, or supervision of the facility or the facility staff.

4) *Personnel* *is insufficient in number or unqualified by training or experience to properly care for the number and type of residents* *served by the facility*. Requirements in this Part concerning personnel, including Sections 390.810, 390.820, 390.830, 390.1030, 390.1040 and 390.1050, will be considered in making this determination. (Section 3-119(a)(3) of the Act)

5) *Financial or other resources are* *insufficient to conduct and operate the facility in accordance with* the Act and this Part. Financial information and changes in financial information provided by the facility under Section 390.120(e) and under Section 3-208 of the Act will be considered in making this determination. (Section 3-119(a)(4) of the Act)

6) *The facility is not under the direct supervision of a full-time administrator* as required by Section 390.500. (Section 3-119(a)(5) of the Act)

7) The facility has violated the rights of residents of the facility by any of the following actions:

A) A pervasive pattern of cruelty or indifference to residents has occurred in the facility.

B) The facility has appropriated the property of a resident or has converted a resident's property for the facility's use without the written consent of the resident or the resident's legal guardian.

C) The facility has secured property, or a bequest of property, from a resident by undue influence.

8) The facility knowingly submitted false information either on the licensure or renewal application forms or during the course of an inspection or survey of the facility.

9) The facility has refused to allow an inspection or survey of the facility by agents of the Department.

10) *The facility has committed 2 Type "AA" violations within a 2-year period.* (Section 3-119(a)(6) of the Act)

11) *The facility has committed a Type "AA" violation while the facility is listed as a "distressed facility".* (Section 3-119(a)(7) of the Act)

c) The Director or the Director's designee will consider all available evidence at the time of the determination, including the history of the facility and the applicant in complying with the Act and this Part, notices of violations that have been issued to the facility and the applicant, findings of surveys and inspections, and any other evidence provided by the facility, residents, law enforcement officials and other interested individuals.

(Source: Amended at 46 Ill. Reg. 8192, effective May 6, 2022)