

**Texas Council on Long-Term  
Care Facility Surveys and  
Informal Dispute Resolution**

**Chair  
Lisa Hayes**

December 9, 2016

The Honorable Greg Abbott  
Governor  
State Capitol, Room 2S.1  
Austin, Texas 78701

Dear Governor Abbott:

In accordance with Senate Bill 914, 84<sup>th</sup> Legislature, Regular Session, 2015, the Long-Term Care Facility Survey and Informal Dispute Resolution Council hereby respectfully submits the following report for your review and consideration.

The council – comprised of agency staff, long-term care providers, and a community advocate – reviewed survey and informal dispute resolution processes in Texas long-term care facilities to identify opportunities for better collaboration and improved outcomes for residents. The report includes recommendations regarding best practices and protocols to make survey, inspection, and informal dispute resolution processes more efficient and less burdensome on long-term care facilities.

The members of the council appreciate your consideration of the council's recommendations.

Regards,

Lisa Hayes

Cc: Dan Patrick, Lieutenant Governor of Texas  
Joe Straus, Speaker of the Texas House of Representatives  
Charles Schwertner, Chair of the Senate Committee on Health and Human Services  
Richard Pena Raymond, Chair of the House Committee on Human Services  
Charles Smith, Executive Commissioner Health and Human Services Commission

Attachment



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Care Facility Surveys and  
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**As Required by  
Senate Bill 914  
84<sup>rd</sup> Legislature, Regular Session, 2015**

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**December 2016**

## Table of Contents

Council Members.....	4
Council Chair.....	4
Owners or Regional Vice Presidents of Operation of Long-term Care Facilities.....	4
Long-term Care Facility Administrators.....	4
Regional Quality Assurance Nurses .....	4
Directors of Nursing .....	5
DADS Program Managers from Different DADS Regions.....	5
DADS Surveyor Investigator IV Level.....	5
Members of an Enforcement Team from Different DADS Regions .....	5
DADS Surveyors from different DADS Regions .....	6
HHSC IDR Team Leader.....	6
HHSC IDR Reviewer.....	6
Executive Summary .....	7
Background.....	9
Facility and Occupancy Counts by Program Type .....	10
Facility and Occupancy Counts in FY 2011 and FY 2015 .....	10
Bill Requirements and Report Development Process .....	12
Recommendations.....	12
Recommendations for Legislative Action: .....	12
Recommendations to State Agencies.....	21
Recommendations to DADS / HHSC Survey Operations .....	21
Recommendations to HHSC .....	22
Recommendation to Providers .....	22
Conclusion .....	22
Appendix A – Detailed Career Ladder and Salary Restructuring Points Provided by Council and Subcommittee Members .....	23
Appendix B - Public Comment Submissions.....	25
Appendix C – Maximum Time Frames for Onsite Investigations .....	26
Appendix D – Subcommittee Participants .....	27

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## **Executive Summary**

Senate Bill 914 (S.B. 914), 84<sup>th</sup> Legislature, Regular Session, 2015, established the Long-Term Care Facility Survey and Informal Dispute Resolution Council (the council) to study current practices and develop recommendations that will result in a more consistent and efficient survey and informal dispute resolution (IDR) process for nursing facilities (NFs), assisted living facilities (ALFs), and intermediate care facilities for individuals with an intellectual disability or related condition (ICFs/IID). The executive commissioner of the Texas Health and Human Services Commission (HHSC) appointed regulatory staff, IDR staff, and long-term care providers to the council, as well as a resident advocate (a long-term care ombudsman) to serve as chair. A key council objective is to submit a report no later than January 1, 2017, outlining the council's findings and recommendations to the executive commissioner, the governor, the lieutenant governor, the speaker of the House of Representatives, and the chairs of the appropriate legislative committees.

The council met five times and established seven subcommittees to further develop the individual recommendations for legislative action. The subcommittees also met via conference call as needed to discuss preliminary recommendations. Public comment was accepted at the outset of each scheduled meeting, and written comment was accepted on an ongoing basis.

The council requested information and speaker presentations from the Department of Aging and Disability Services (DADS), the Department of Family and Protective Services (DFPS), and HHSC as part of its information-gathering and discovery phase. The council asked agency representatives numerous questions verbally and in writing. A scan call was also held with the Centers for Medicare and Medicaid Services (CMS), where council members had the opportunity to ask questions. The council used this information to form preliminary recommendations within the scope of SB 914.

Strengthening resources for DADS Regulatory Services was a general theme throughout the deliberations on the recommendations, which are listed in brief below and more fully explained in the body of this report.

### **Recommendations for Legislative Action**

- A. Change the state statute on Priority 1 (P1) intakes to comport with CMS federal requirements to initiate investigation within two working days. (Note: The current state requirement is 24 hours.)
- B. Amend the statute that requires DADS to send all P1 intake reports to law enforcement and instead send only substantiated reports and those where a criminal incident might have occurred. Additionally, existing timeframes should be amended to require that these reports be sent to law enforcement within two working days of identifying a substantiated case or a case that may have a criminal element. (Note: The current timeframe for sharing intake reports is 24 hours.)



- C. Increase retention of surveyors/investigators through a career ladder and salary restructuring.
- D. Form a technology workgroup to develop and implement strategies to streamline surveyor access to provider electronic health records (EHRs) to shorten the survey process.
- E. Allocate resources to redesign Regulatory Services' website so information can be easily accessed by providers, residents, advocates and survey staff.
- F. Align completion of IDR actions across provider types to 30 days.
- G. Evaluate adding resources to DADS/HHSC survey operations.
- H. Statutorily mandate that surveys occur at least once every 12 months for providers in the ALF program.

### **Recommendations to State Agencies**

- A. Ensure consistent communication and "exit" protocols throughout the survey process as well as early identification of potential issues.
- B. DADS should provide surveyors with a copy of the facility self-report investigation at the outset of their visit.
- C. Publish data related to the provider feedback tool to enhance transparency and consistency.
- D. Establish a DADS Regulatory workgroup to review and evaluate survey violations/Tag writing for consistency/guidance in citing deficiencies. The findings of the workgroup should then be made clear to DADS staff through regional communications and training.
- E. Develop a process where DADS/HHSC can send follow-up letters to physicians after an initial finding of Substandard Quality of Care (SQC) is overturned in the IDR process. (Note: DADS is currently required by federal statute to send letters to residents' physicians after SQC is found in a facility. The timing requirement for these letters is in federal rule.)
- F. Establish a HHSC/provider/resident workgroup to meet regularly to address regulatory standards, consistency, and stakeholder concerns. The makeup of this workgroup would be similar to the makeup of the SB 914 council and should meet at least quarterly.
- G. Move Complaint/Intake (Consumer Rights Services) and Training (Education Services) under the DADS Regulatory Services division. (Note: These changes are proposed in accordance with HHS Transformation, as directed by Senate Bill 200, 84<sup>th</sup> Legislature, Regular Session, 2015.)

### **Recommendation to Providers**

Implement an effective training program regarding timely submission of documentation related to self-reported incidents to Consumer Rights and Services (CRS). This will prevent a surveyor/investigator from being pulled away from another survey or investigation to conduct an investigation simply because a provider neglected to submit its investigation report to CRS.



## **Background**

According to the U.S. Census Bureau, in 2010 there were 3.8 million people in Texas age 60 and older; they made up approximately 15 percent of the total Texas population of 25 million. This group is one of the fastest-growing populations in Texas, and is expected to more than triple between 2010 and 2050. By 2050, this group is expected to grow to 12 million. (Data source: US Census 2010 and Texas State Data Center, University of Texas at San Antonio)

By 2050, Texans age 60 and older will comprise 22 percent of the total Texas population. As the older adult population increases, Texas will need more health and human services and community engagement activities (Texas State Plan on Aging 2015-2017).

Most older Texans live in one of the 25 metropolitan areas in Texas. The 77 metro area counties contain 83 percent of the population age 60 and older. The remaining 17 percent of the older adult population lives in 177 rural counties. Sixty-eight rural counties have a population density of less than seven people per square mile; less than 1 percent of Texans age 60 and older live in these less densely populated counties. (Source: Texas State Plan on Aging 2015-2017)

Thirty-five percent of Texans age 60 and older (1.3 million) have one or more disabilities. Certain population groups are more likely to experience disability than others:

- Disability is more common among women than among men age 75 and older. This may reflect the fact that many more women than men live to be this age.
- Among people age 65 and older with incomes below the poverty level, 54 percent have a disability, compared to 39 percent of those with incomes above the poverty level.

In Texas, the growth of the aging population and increased longevity will mean a marked increase in the number of people age 85 and older. In 2010, the population age 85 and older was 305,000; by 2050, it is expected to increase to 1.6 million, an increase of greater than 500 percent. This segment of the population will increase from 1.2 percent to 2.8 percent of the total population. Rates of disability and serious chronic illness tend to increase with age. This rapid increase in the number of the oldest people is expected to increase the need for long-term services and supports. (Source: Texas State Plan on Aging 2015-2017)

### ***Growth of Long-term Services and Supports for an Aging Population***

Along with the aging population, the state has seen a steady need for NF and ALF beds, and ICF/IID-type residential settings. The average number of individuals receiving Medicaid-funded NF services per month in FY 2012 was 57,002, and in FY 2013 that number was 56,232 (Source: DADS state fiscal year 2014 Operating Budget – Claims Management System Payment Data – DADS Program Areas / State Plan on Aging 2015-2017). The average number receiving NF co-payments per month for Medicare skilled NFs in FY 2012 was 6,162, and in FY 2013 it was 5,221 (Source: Claims Management System payment data).

Medicaid nursing home beds in Texas are highly regulated, and DADS controls their allocation. The number of bed allocations has not increased significantly, as occupancy rates have not exceeded capacity. That said, NF occupancy has steadily increased from 87,533 in 2011 to 93,588 in 2015. (See table below). This modest increase is due in part to HHSC's expansion of community supports so that elderly and disabled individuals can remain in the community as long as possible.

ALFs are the fastest growing segment of long-term care in Texas. The number of facilities from 2011 to 2015 grew faster than any other provider type. Among the long-term providers regulated by DADS, ALF occupancy rates increased the most from 2011 to 2015. In 2011, Texas had 33,182 ALF residents; in 2015, it had 40,845. (See table below)

The state also has had a slow decline in the number of ICFs/IID. Both federal and state initiatives, such as Money Follows the Person (MFP) funding, have led to a reduction of individuals residing in large private and state-operated ICFs/IID in Texas (Source: Legislative Budget Board Staff report to 82<sup>nd</sup> Legislature, January 2011). As advocates continued to encourage these individuals to reside in smaller homes, the Legislature in the early 1990s put a moratorium on new ICFs/IID and implemented three-person group homes under the Home and Community Services (HCS) waiver program. In the mid-90's, the Legislature allowed HCS programs to serve four individuals in part due to an impending 27 percent rate reduction per individual per day. In 2011, 9,833 individuals lived in ICFs/IID; in 2015, that number had declined to 8,401.

### Facility and Occupancy Counts by Program Type

Program	Count	% of all Facilities	Occupancy	% of all Occupants
Adult Day Care	481	11.0%	22,493	13.6%
Assisted Living	1,829	41.8%	40,845	24.7%
ICF/IID	847	19.3%	8,401	5.1%
Nursing	1,223	27.9%	93,588	56.6%
<b>Total</b>	<b>4,380</b>	<b>NA</b>	<b>165,327</b>	<b>NA</b>

Source: DADS Regulatory Services FY 2015 Annual Report. Note: Adult Day Care is now Day Activities and Health Services Facilities (DAHS).

### Facility and Occupancy Counts in FY 2011 and FY 2015

Program	FY 2011 Count	FY 2011 Occupancy	FY 2015 Count	FY 2015 Occupancy
Adult Day Care	497	21,126	481	22,493
Assisted Living	1,664	33,182	1,829	40,845
ICF/IID	861	9,833	847	8,401
Nursing	1,211	87,533	1,223	93,588
<b>Total</b>	<b>4,233</b>	<b>151,674</b>	<b>4,380</b>	<b>165,327</b>

### ***Regulation of Nursing Facilities, Assisted Living Facilities, and ICF/IID Facilities and group homes***

DADS oversees long-term care services and supports that help more than a million older Texans and those with disabilities to lead dignified, independent, and productive lives (Source: DADS Sunset Report 2014). DADS oversees multiple complex programs, facilities, and provider types with multiple funding streams and reporting / accountability requirements. DADS regulates more than 10,000 providers that serve these populations. DADS regulates the following long-term care facilities, agencies, and programs:

- Day activity and health services facilities;
- ALFs;
- Home and community support services agencies, which includes home health agencies and hospices;
- NFs and skilled NFs;
- Publicly and privately operated HCS waiver providers;
- Publicly and privately operated Texas Home Living (TxHmL) waiver providers; and
- Publicly and privately operated ICFs/IID, including those operating as state supported living centers.

In addition, DADS operates 12 SSLCs and the ICF unit at the Rio Grande State Center, which is operated by DSHS. These centers house about 3,200 individuals, which is a significantly lower number than in decades past, and many of them have complex medical and behavioral needs. (Note: the Regulatory Services division of DADS, which regulates and certifies the SSLCs, is purposely separated from the facility operations division.)

DADS Regulatory Services also licenses and surveys all nursing facilities, ALFs, and ICF/IID providers in Texas. DADS also certifies NFs on behalf of CMS for participation in the Medicaid and Medicare programs. In FY 2015, Texas had 1,223 licensed NFs.

### ***Informal Dispute Resolution***

The HHSC IDR unit acts as a neutral third party in cases where facilities want to informally dispute survey findings cited by DADS. The IDR process gives NFs, ALFs, and ICFs/IID the opportunity to informally dispute survey findings cited by DADS.

Senate Bill 304, 84<sup>th</sup> Legislature, Regular Session, 2015, requires HHSC to contract with an appropriate disinterested person who is a non-profit organization to perform IDRs for NFs. Although it was specific only to NF providers, HHSC released a Request for Proposal (RFP) to include all three facility types.

## Bill Requirements and Report Development Process

SB 914 created the Long-term Care Facility Survey and IDR Council to make recommendations regarding the development of more consistent survey and IDR processes for long-term care facilities. The council has 19 members, including DADS Regulatory staff, HHSC IDR staff, and long-term care facility providers and must submit a final report to the Legislature no later than January 1, 2017.

An open application process was developed and posted to the HHSC website to receive applications for external members to the council. The application period closed October 28, 2015. Staff from DADS<sup>1</sup> and HHSC reviewed both the external and internal (state agency) applicants and made recommendations to then-Executive Commissioner, Chris Traylor. The executive commissioner then appointed members to the council, which held its first meeting on January 28, 2016, in Austin, Texas. DADS Regulatory Services provided administrative support to the council.

### **S.B. No. 914 Duties of the Council**

The council shall study and make recommendations regarding a consistent survey and informal dispute resolution process for long-term care facilities. The council shall:

1. Study and make recommendations regarding best practices and protocols to make survey, inspection, and informal dispute resolution processes more efficient and less burdensome on long-term care facilities;
2. Recommend uniform standards for those processes; and
3. Submit a report no later than January 1, 2017, on the council's findings and recommendations to the executive commissioner, the governor, the lieutenant governor, the speaker of the House of Representatives, and the chairs of the appropriate legislative committees.

## Recommendations

The following policy recommendations were approved by the council for consideration by the Legislature and state agencies.

### **Recommendations for Legislative Action:**

- A. Change the state statute on Priority 1 (P1) intakes to comport with CMS federal requirements to initiate investigation within two working days.**

#### *Issue*

Under current state law, DADS is required to initiate a Priority 1 investigation within 24 hours. This has caused challenges with resource allocation and the scheduling of facility

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<sup>1</sup> Portions of DADS were transferred to HHSC effective September 1, 2016. Remaining DADS programs, including Regulatory Services, is scheduled to transfer to HHSC on September 1, 2017.

surveys. These challenges stretch regulatory survey staff extremely thin and may contribute to staff turnover. Additionally, in many instances survey staff must be pulled away from scheduled full surveys to meet the 24-hour investigation requirement. When this occurs the scheduled survey takes longer to complete and is more burdensome to both residents and providers.

*Solution*

Allow DADS to adopt CMS' long held national protocol which allows for initiating a P1 investigation within two working days of receipt of the report of a possible immediate jeopardy (P1) situation

*Background*

CMS State Operations Manual Chapter 5, subsection 5075.9 - Maximum Time Frames Related to the Federal Onsite Investigation of Complaints/Incidents (See Appendix C) allows for initiating a P1 investigation within two working days of receipt of the report of a possible P1 situation. This two working day timeframe represents a nationally established standard that has been determined to be sufficient to protect the health and safety of facility residents. Moving to this structure would allow more efficient resource allocation while still providing sufficient health and safety protection.

- B. Amend the statute that requires DADS to send *all* P1 intake reports to law enforcement and instead send only substantiated reports and those where a criminal incident might have occurred. Additionally, existing timeframes should be amended to require that these reports be sent to law enforcement within 2 working days of identifying a substantiated case or a case that may have a criminal element.**

*Issue*

Health and Safety Code Section [260A.007](#) requires DADS to send all P1 reports to law enforcement, but law enforcement testimony (see below) indicates that only three percent of P1 reports had any criminal element. Sending every P1 report to law enforcement can have an overwhelming effect and may result in missed opportunities for joint investigations.

*Solution*

Require DADS to report only substantiated cases of abuse, neglect, exploitation and those that may have a criminal element to law enforcement. Additionally, change the requirement to allow P1 reports to be sent to law enforcement within two working days of a substantiated case or a case that may have a criminal component. (Note: current timeframe for sharing intake reports is 24 hours.)

### Background

Public comment on September 13, 2016, from Patrick LeBlanc, Lieutenant, Houston Police Department, Crime Analysis/Command Center Division, indicated that DADS reports are screened for information that is criminal in nature and if nothing is noted then they are put aside. Lieutenant LeBlanc indicated that screening these reports takes time, and storage of the information can become cumbersome. In a follow-up email to DADS Regulatory Services, LeBlanc reported that “less than 3% of the reports received from DADS have any possible criminal nexus. The vast majority are regulatory in nature, including staffing issues, medication management, rudeness, etc.”

DADS tracks the number of ALF and NF P1 reports that are sent to law enforcement. This system was implemented on September 20, 2014, (19 days after the start of FY 2015). In FY 2015 (minus 19 days), DADS sent 1,745 P1 reports (1,447 for NFs and 298 for ALFs) to law enforcement, an average of five reports per day. These reports are usually faxed and can range from three pages to more than 30, depending on the allegations. Only 13 of these 1,745 reports, or less than one percent, resulted in a joint investigation (Source: DADS Regulatory Services Data Management and Analysis Unit).

The council also recommends that if the statutory requirement for DADS to initiate P1 investigations is changed to two working days from receipt, it would be more efficient to also extend the reporting requirement to law enforcement to match the extended time frame and would allow supervisors or support staff to notify law enforcement, instead of adding an additional task for the survey / investigator.

## **C. Increase retention of surveyors/investigators through a career ladder and salary restructuring.**

### Issue

Surveyor turnover is high due to low pay, lots of travel, sometimes contentious surveys and investigations, a demanding schedule to complete full surveys while being pulled to initiate investigations within the current 24-hour requirement, and a high volume of documentation.

### Solution

Restructure salaries to be market competitive and create a career ladder for all surveyors.

### Background

A recurring discussion on the council was how to produce quality surveys that reduce survey times and maintain consistency. Providers and regulators alike identified the high rate of turnover among all survey staff, but in particular Registered Nurse (RN)

surveyors. Recruiting and retaining survey staff is a challenge for DADS. At present the agency does not have a career ladder to develop and retain its surveyors. Private providers often recruit RNs by offering higher wages and sign-on bonuses. It is unfortunate when DADS makes a significant investment in time, energy, and money to train staff to become certified by taking the Surveyor Minimum Qualifications Test (SMQT) only to lose them to long-term care providers, other employers, and even other state agencies. It takes six months to one year to train a surveyor to become SMQT-certified, which is required to survey Medicaid and Medicare certified long-term care facilities. It costs DADS roughly \$8,400 to get a surveyor to training (lodging, mileage, and meals). This figure does not include the salary the surveyor is receiving during their training. Factor in the salaries and travel costs to provide this training by the education department (DADS Education Services) and the figure is easily in the tens of thousands of dollars to train a surveyor.

As an example, the minimum starting salary for a long-term care generalist surveyor is \$37,900 annually. The starting salary for an RN surveyor (Nurse III) at DADS is \$52,949 annually, with an average salary for all RN surveyors of \$53,785. Three DADS regions (3, 6, and 7) have higher starting salaries for Nurse III's based on difficulty in staff retention. The average salary for an RN in Texas is \$69,891 (Source: Texas Workforce Commission [2015 Wages](#)). The private long-term care industry has the flexibility to provide sign-on bonuses and move funding from other line items to attract and retain RNs. DADS has limited flexibility to go above the minimum starting salary for any surveyor category. DADS also cannot offer incentive bonuses or pay increases when surveyors attain additional education or training.

In addition, the lack of a career ladder for all survey staff lends itself to wage compression where there are pay inequities between newly hired surveyors and surveyors with years of experience.

These factors, along with the demanding travel schedules and extensive documentation requirements these survey positions entail, directly contribute to higher staff turnover. In September 2014, DADS Survey Operations was given special permission to "double-fill" surveyor positions in response to this turnover. This stop-gap measure lowered net surveyor vacancies; however, it did not address the root causes of turnover.

More detailed suggestions on how to restructure surveyor salaries to be market competitive and to create a career ladder for all surveyors can be found in Appendix A.



**D. Form a technology workgroup to develop and implement strategies to streamline surveyor access to provider electronic health records (EHRs) to shorten the survey process.**

Issue

Surveyors need quick, consistent access to providers' electronic health records to promptly and accurately complete surveys and investigations. Providers use different software companies to store their EHRs, which can be web-based or housed on a local network.

Solution

Direct HHSC to form a technology workgroup to develop and implement strategies to streamline surveyor access to provider EHRs and shorten the survey process. This workgroup should include representatives from the long-term care industry, regulatory survey staff, state agency IT staff, and vendors of long-term services and supports (LTSS) software. It would craft and implement recommendations to streamline access to records and improve survey efficiency. The technology workgroup strategies should align with other HHSC initiatives to maximize use of resources and for system wide consistency.

Background

Both providers and regulators on the council pointed to the extensive number of days required to complete a survey and agreed that even the best surveyors and surveys can be delayed by a lack of ready access to EHRs. Surveyors said their survey times could be sharply reduced if access to electronic records and printers at facilities were set up for prompt access. This includes making terminals or laptops available to each surveyor who enters a facility or home.

An additional challenge is that providers use different EHR software platforms, and all are proprietary. Facility staff frequently must grant access to a surveyor on a specific terminal and then coach the surveyor through initial navigation of the EHR. If problems arise, that staffer must be tracked down to provide additional guidance or troubleshooting.

Given these challenges as well as a lack of interoperability between state systems and LTSS software, the council concluded that a technology workgroup should be formed and use the following guidelines as a starting point:

- The state should not have a mandated system for electronic records.
  - Long-term care providers are using various systems that are either homegrown, purchased, or web-based, contracted systems.

- The state could clarify particular fields/types of information that should be included in all systems.
- The state should seek all possible federal funds or other revenue sources to incentivize LTSS providers to use electronic documentation that is web-based, interoperable with state systems, and readily accessible to surveyors.
- Surveyors should have access to electronic documentation in a “read only” format with files that are limited to information relevant to the survey. Surveyors should not be able to edit, enter, or delete information or create documents.
- Laptops and Wi-Fi hotspots (Jetpack) should be made available to all regulatory staff:
  - This would ease the financial burden on providers to purchase additional computers and/or provide computers for regulatory staff.
  - These hotspots would free up provider staff, as surveyors often must ask for assistance multiple times due to internet issues, which delays the survey.
  - Surveyors would have additional internet security while in the field (surveyors must access Cisco internet security), and providers would no longer have to provide ongoing Wi-Fi access throughout the survey process.
- Providers who use web-based access – PointClickCare, American Healthtech (AHT), and Matrix – have voiced support for these recommendations and anticipate few, if any, complications or security concerns. Surveyors would only have access to provider information for three to five days, and only to certain sections of the EHR, such as quality assurance.

**E. Allocate resources to redesign Regulatory Services’ website so information can be easily accessed by providers, residents, advocates and survey staff.**

Issue

Important regulatory information on the DADS Regulatory/HHSC website is not easy to access, search, sort, or find.

Solution

Develop a cost estimate to achieve the website improvements noted by the council.

Background

Council members commented that regulatory information was not easy to navigate, find, search, or sort. An example is that provider and information letters, which convey important regulatory and contractual guidance, are listed by date and can only be sorted by provider type, not topic of interest. Regulatory staff, residents/advocates and providers must do a “word search” on each page that is organized by date. The NF section of the website alone contains more than 22 pages of letters that a user must navigate using a word search to find relevant information. Council members have commented that the issues regarding regulatory information have become significantly worse with the

consolidation of portions of DADS website into HHSC’s website as a result of HHS Transformation.

The following are subcommittee recommendations regarding this website:

- Analyze current websites at other agencies that contain regulatory resources, provider letters, or regulatory links.
- Provide a “user-friendly” website/database where providers, residents, advocates and DADS survey staff can access regulatory information.
  - The website should be accessible to DADS staff, advocates and facility providers.
  - Updated provider letters should be easily obtained.
  - Updated CMS letters or regulatory guidance can be linked to from the website.
  - All outdated material should be archived and/or labeled as such.
  - The website should include a directory for all provider needs.
  - Search features should use words or forms to link the user to a desired location.
- The website will be regularly maintained by HHSC Web Services to ensure regulatory resources are updated.
- A user contact feature should offer phone numbers or email contacts to individuals that can assist the user with website questions.
- Currently, the DADS website has regulations, additional Texas laws, rules, and provider letters in separate locations. Provider letters are also organized by date of issue, and many links to forms or other pages are broken post transition. It would be significantly more helpful for DADS surveyors, facility staff, and residents if this information were organized by topic or regulation and include all other rules or guidance pertaining to that regulation. This would greatly improve consistency and ensure all parties are better informed. This effort will require DADS to commit staff time and funding.

**F. Align completion of IDRs across provider types to 30 days<sup>2</sup>.**

Issue

IDR timeframes are different for NFs, ALFs, and ICFs.

Solution

Align the timeframes for each step of the IDR process including completion of the IDR process to 30 days across all facilities.

Background

To improve consistency across provider types, the subcommittee and council as a whole recommend aligning the timeframes for each step of the IDR process. Because the

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<sup>2</sup> IDR rules at Texas Administrative Code 393.2, Texas Government Code 531.058, and Texas Health and Safety Code 247.051 would need to be amended to shorten the ALF IDR time frame to 30 days from 90 days.

timeframes are codified, state rules and statutes will need to be amended. As a result of [S.B. 304](#) 84<sup>th</sup> Legislature, Regular Session, 2015, and the need to address survey consistency, NFs, ICFs/IID, and ALFs have been included in HHSC's RFP to have an independent third party nonprofit manage their IDR process, although ALFs and ICFs/IID are not specifically listed in SB 304. Currently, the major differences for the three provider types are:

- NFs and ICFs must be completed by the 30<sup>th</sup> day, according to Texas Government Code Section 531.058.
- ALFs must be completed by the 90<sup>th</sup> day, according to Texas Government Code Section 531.058 and Texas Health and Safety Code Section 247.051.

#### **G. Evaluate adding resources to the DADS survey operations unit.**

##### Issue

Lack of sufficient and experienced staff to conduct efficient, consistent, high quality surveys.

##### Solution

Evaluate DADS Regulatory Services staffing patterns and procedures to determine where best to add resources to survey operations.

##### Background

An important goal of the council is to make recommendations to improve survey efficiency, quality, and consistency across regions, and this requires having well-trained, experienced staff to conduct high quality surveys. As noted throughout this report, DADS Regulatory Services has challenges keeping surveyors. In 2015, DADS lost approximately 23 percent of its surveyors. (Source: Office of the CFO – DADS) Most surveyors are lost within the one- to two-year mark. (Source: Office of the CFO – DADS) It takes approximately six months to one year to get a surveyor trained and certified to be able to survey Medicaid and Medicare certified facilities. Consequently, surveyors, unlike most DADS staff, have a one-year probationary period. Another challenge for surveyors is the relatively high workload and tight deadlines for submitting extensive documentation.

The council recommends the following to determine where to add resources to survey operations (Note: development of a career ladder for retaining surveyors is in recommendation C):

- Analyze where the greatest needs are within DADS survey operations:
  - Regions with highest turnover rates
  - Workload for all regions (recertification surveys, intake investigations, ALF licensures, travel distances/time, etc.)

- Review regional procedures to identify inconsistencies with production and quality
- Review utilization of staff throughout regions and provide cross-training within programs to assist with workloads
- Analyze the effectiveness of regions that consistently retain FTEs
- Analyze regions with the lowest turnover rates:
  - Identify trends and best practices in regions that maintain staff or have staff with longevity
- Analyze the total utilization of resources across all regions:
  - Determine the effectiveness of deploying FTEs in regions with low turnover rates to assist regions that are short-staffed
  - Review feasibility of increasing FTEs to be used state wide for “all-purpose needs” (recertification surveys, investigations, ALF licensure surveys, etc.) (Note: The 2018-19 HHSC Legislative Appropriations Request includes an exceptional item request for 36 FTEs for Regulatory Services [31 are surveyors])

**H. Statutorily mandate surveys occur at least once every 12 months for providers in the ALF program. Statutorily align the ALF survey frequency with NFs and ICFs/IID. (Note: NFs and ICFs/IID have a 12-month survey average.)**

Issue

Less frequent state monitoring of the ALF program has the potential to have a negative impact on the quality of life and quality of care of ALF residents.

Solution

Statutorily require that DADS survey each ALF provider at least once every 12 months.

Background

Most facility based programs licensed by DADS have an average survey frequency of 12 months (e.g., CMS mandates 9 to 15 month survey intervals for NFs and 12 to 15 month intervals for ICFs/IID with a 12-month statewide average for both programs). The current minimum survey frequency for ALFs is once every 24 months. Some council members voiced concerns that less frequent state surveys in the ALF program may result in poorer outcomes for residents because critical compliance issues may go unidentified and unaddressed for longer periods of time. Additionally, council members noted that less frequent surveys can result in longer surveys and more challenging plans of correction because they create a scenario in which multiple compliance issues have gone unaddressed for extended periods of time if a complaint is not called into DADS in the interim. The council feels that aligning the ALF survey frequency requirement with the survey frequency requirements for NFs and ICFs would:

- Better protect the health and safety of ALF residents,

- Result in shorter surveys due to better program compliance; and
- Increase consistency and uniformity in the survey process across the facility types.

## **Recommendations to State Agencies**

The following recommendations were not assigned to subcommittees for further analysis and development, but the council agreed upon them during deliberations.

### **Recommendations to DADS / HHSC Survey Operations**

- A. Ensure consistent communication and “exit” protocols throughout the survey process, as well as early identification of potential issues.
  - Include “partnership” language in surveyor training materials to produce a less contentious (regulator vs. industry) survey process that emphasizes residents.
  - Provide daily information regarding likely deficient practices from on-site surveyors to address issues immediately, even if they will be cited for non-compliance when the survey is concluded. Holding these daily “opportunities for conversation” would allow providers to address possible non-compliance immediately rather than waiting three to five days for the survey to conclude.
  
- B. DADS should provide surveyors with a copy of the facility self-report investigation at the outset of their visit.
  - Council members agree that one of the first steps investigators/surveyors often take upon arriving at a facility is to request a copy of the facility self-report investigation. Council members think that having DADS provide a copy of the facility self-report investigation to surveyors prior to beginning their investigation will make investigations more efficient.
  - If the facility self-report investigation is not available to be provided to the investigator, DADS will train investigators on how to obtain it.
  
- C. Publish data related to the Survey Operations provider feedback tool to enhance transparency and consistency.
 

Note: DADS is already working on this initiative and plans to publish this information on a quarterly basis.
  
- D. Establish a DADS Regulatory workgroup to review and evaluate survey violations/TAG writing for consistency/guidance in citing deficiencies. The findings of the workgroup will then be distributed to DADS staff through regional communications and training.
 

Note: As a result of Sunset recommendations to improve survey consistency, DADS has implemented several trainings and webinars to improve consistency in citing / writing deficiencies across regions.

- E. Develop a process where DADS/HHSC can send follow-up letters to physicians after an initial finding of Substandard Quality of Care (SQC) is overturned in the IDR process. Note: DADS is currently required by federal statute to send letters to residents' physicians after SQC is found in a facility. The timing requirement for these letters is in federal rule.

### **Recommendations to HHSC**

- F. Establish HHSC/provider (facility industry)/resident workgroup to meet regularly to address regulatory/provider standards and consistency. The makeup of this workgroup would be similar to the makeup of the SB 914 council and should meet at least quarterly.
- G. Move complaint intake functions (Consumer Rights Services) and Training (Education Services) under the DADS Regulatory Services division. (Note: these changes are proposed in accordance with the HHS Transformation transition plan).

### **Recommendation to Providers**

The following recommendation was not assigned to subcommittees for further analysis and development, but the council agreed to it during deliberations.

Implement an effective training program regarding timely submission of documentation related to self-reported incidents to Consumer Rights and Services (CRS). This will prevent a surveyor/investigator from being pulled away from another survey or investigation to conduct an investigation simply because a provider neglected to submit its investigation report to CRS.

### **Conclusion**

The year long SB 914 council effort afforded long-term care industry providers and their representatives the opportunity to share their thoughts and suggestions regarding the regulatory environment. Long-term care surveyors and IDR staff on the council gained insight into the industry's challenges, as well as a reinforced understanding that they share a common goal with industry providers, that is, positive outcomes for their residents.

The SB 914 council allowed regulatory state staff, industry providers, and IDR staff to share information and gain new insights into the critical roles they all play in providing quality long-term care to a growing aging population and to individuals with disabilities. These robust, constructive discussions led to recommendations that the council is confident will directly improve the quality of care on which these vulnerable Texans depend on.

It is the hope of this Council that our state leadership will take these recommendations, review them fully, and implement them in a manner that will best serve the citizens of the State of Texas.



## **Appendix A – Detailed Career Ladder and Salary Restructuring Points Provided by Council and Subcommittee Members**

The specific recommendations below were provided by council members and subcommittee members for consideration:

- A career ladder should be created to assist with the recruitment and retention of surveyors, particularly nurse surveyors.
- Salaries should be on par with salaries of the average provider in the community. This could be ascertained through the use of cost reports.
- The career ladder/salary increases should be based upon merit, not simply years of service.
- Career ladder levels should be well defined.
- Retention of trained, tenured surveyors/investigators will improve the consistency, efficiency, and effectiveness of surveys.
- Creating a career ladder with financial incentives for years of service and/or exceptional performance for surveyors will reduce the surveyor/investigator attrition rate.
- A career ladder with opportunities for professional development and challenges should increase job satisfaction and serve as a catalyst for retention.
- The financial burden of the state implementation of pay increases associated with the career ladder will be offset by the decreased need for recruiting, training, and mentoring new surveyors/investigators.
- Salary restructuring efforts to promote retention should include approval of exemptions to offer new surveyors salaries at mid-range, bringing existing surveyors to mid-range of salary group, allowing higher balances of comp time/overtime and pay-out options, merit bonuses, and job sharing.
- In addition, the salaries of DADS surveyors/ investigators should be aligned with the DSHS surveyors who perform similar regulatory functions.
- A proposed career ladder for surveyor staff could be based on time in the position and performance. Recommended career ladder:
  - Entry level Surveyor/Investigator: 1st year, probationary time, must pass SMQT (for NF surveyors only), and their evaluation should have an overall score of competent (3 or above.)
  - Level I - 2–5 years of service: this person will be taking on additional survey tasks, volunteers for other activities (i.e., committees, workgroups, trainings, team leads, volunteers to assist other regions, etc.). Their evaluation should have an overall score of commendable. Their salary could be broken down, with small salary increases each year. (1-3% salary increase based on performance and Program Manager (PM)/ Regional Director (RDs) discretion.)
  - Level 2 - 5-10 years of service: this person will often be a team leading and be proficient in survey tasks. They should be seeking additional educational

experiences. (i.e., ventilators, dialysis, pressure sores, ethics, pharmacy services, resident rights, etc.). Their strength and knowledge on the team will be a strong asset. They should have an overall score of commendable on their evaluations. Their salary compensation could be 1-3% salary increase annually, if these expectations are met.

- Level 3 - 10 years of service and above: this person stands out as a team member, with their experience. This person is knowledgeable and helpful as a team member, should show leadership, some supervisory authority in the field and assist the program manager. This person will assist in training new employees, and mentoring the team. This person will strive to gain additional knowledge in their respective field. Their salary compensation could be 1-3% salary increase annually if these expectations are met.
- Level 4 - Surveyor/Investigator Supervisor (will be a competitively applied for position, but meet Level 3 criteria): ideally 10 years of experience or above, this should be a limited position 3-4 per region. This person will aid the PM and should be able to step in, if the PM is on leave. This employee would be a member of the survey team, be a mentor to new employees (i.e., assist with deficiency writing, cares reports, investigation training. Orientation, etc.). This position would not only build morale in survey staff but would give staff a goal to work towards. This position would help build future management for regulatory and would be beneficial in assisting the PMs in their job duties. Their duties would be determined by the PMs and/or RDs. Their salary compensation would be 1-3% salary increase annually, if these expectations are met.
- A merit bonus could also be a consideration for any levels (1-4) when an employee has risen above and beyond in their job duties. (Note: there are state rules regarding merit bonuses. These rules may have to be amended to accommodate these recommendations.)

## **Appendix B - Public Comment Submissions**

Amanda Fredriksen, State Director of Advocacy, AARP

Patrick LeBlanc, Lieutenant, Houston Police Department, Crime Analysis/Command Center Division

Diana Martinez, Vice President of Public Policy, Texas Assisted Living Association (TALA)

Maxcine Tomlinson, Director of Government Relations, Texas and New Mexico Hospice Organization (TNMHO)

## Appendix C – Maximum Time Frames for Onsite Investigations

CMS State Operations Manual, Chapter 5 Complaint Procedures (Rev. 155, 06-10-16)

### Section 5075.9 - Maximum Time Frames Related to the Federal Onsite Investigation of Complaints/Incidents

<b>Intake Prioritization</b>				
Provider Type	Immediate Jeopardy (IJ)	Non-IJ High	Non-IJ Medium	Non-IJ Low
Nursing homes	<b>SA must initiate an onsite survey within 2 working days of receipt.</b>	SA must initiate an onsite survey within 10 working days of prioritization.	No timeframe specified, but an onsite survey must be scheduled.	SA must investigate during the next onsite survey.
Non-deemed non-long term care providers/suppliers	SA must initiate an onsite survey within 2 working days of receipt.	SA must initiate an onsite survey within 45 calendar days of prioritization	SA must investigate no later than when the next onsite survey occurs	SA must track/trend for potential focus areas during the next onsite survey.
Deemed providers/suppliers	SA must initiate an onsite survey within 2 working days of receipt of RO authorization	SA must initiate an onsite survey within 45 calendar days of receipt of RO authorization.	Complainant is referred to the applicable accrediting organization(s)	Complainant is referred to the \ applicable accrediting organization(s)
EMTALA	SA must complete onsite portion of investigation within 5 working days of receipt of RO authorization.	N/A	N/A	N/A
Death associated with restraint/seclusion-Hospitals	SA must complete onsite portion of investigation within 5 working days of RO authorization.	N/A	N/A	N/A
Fires resulting in serious injury or death	<b>SA must initiate an onsite survey within 2 working days of receipt.</b>	N/A	N/A	N/A

## Appendix D – Subcommittee Participants

1. Review the anonymous complaint process
  - Anne Wilson
  - Lisa Hayes
  - Rhonda Edwards
2. Change the state statute on Priority 1 (P1) intakes to comport with CMS federal requirements and Review / Evaluate statutory requirement of P1 reports to law enforcement
  - Betty Bertrand
  - Anne Wilson
  - Lisa Hayes
3. Evaluate allocation of resources related to QMP and Survey Operations
  - Lisa Hayes
  - Cezar Cervantez
4. Develop a career ladder for surveyors and other field staff including investigators & restructuring salary methodology for survey staff
  - Tammy Dougan
  - Betty Bertrand
  - Doug Svien
  - Lisa Hayes
5. Evaluate state plan for electronic access to records to streamline the survey process
  - Tammy Dougan
  - Doug Svien
  - Jane Steur
  - Rhonda Edwards
6. Dedicate resources for website reorganization/maintenance related to Regulatory Services to access in a “user friendly” environment for easy access to information
  - Lisa Hayes
  - Cezar Cervantez
7. Evaluate the timelines related to the IDR process across provider types for consistency
  - Tina Festi
  - Martha True
  - Joelle Henao
  - Jane Steur
8. Evaluate adding survey operations resources
  - Lisa Hayes
  - Cezar Cervantez

9. Provide additional funding to develop ANE (abuse/neglect/exploitation) training for all provider types
  - Lisa Hayes
  - Cezar Cervantes
  
10. Evaluate impact of extended survey frequency requirement (from one to two years) on Assisted Living Facilities and review the issue of Aging in Place (NOTE: Aging In Place issue is not part of the survey process; shortening survey frequency will require additional resources for DADS and an additional issue to consider in this recommendation).
  - Betty Bertrand
  - Beth McCurdy
  - Lisa Hayes