



Senate Committee on Veteran Affairs and Military Installations

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Presentation Overview

This presentation will focus on :

- Nursing Facilities
- DADS Role in Relation to Other Entities
- Nursing Facility Rating Systems

Nursing Facilities

Nursing Facilities

- **Nursing Facilities (NF)** provide nursing care for individuals of any age whose medical condition requires the skills of a licensed nurse on a regular basis.
- The seven Veterans nursing facilities are like other Texas nursing facilities in that they must be licensed and certified according to the same standards as all 1,195 nursing facilities in the state.

Nursing Facilities

Examples of typical veterans nursing facility residents:

- An 67-year-old Veteran enrolled in both Medicare and Medicaid, who experiences dementia and has memory impairments. She needs assistance with basic activities of daily living, such as dressing and grooming, and bathing. She is also diabetic and needs multiple insulin injections daily.
- A 48-year old Veteran enrolled in Medicare recuperating and receiving rehabilitation after a stroke. He will most likely return to his home or to a lesser level of care in the community. Currently, he needs assistance with dressing and grooming, bathing, toileting, getting into and out of bed, and eating.

NF - Regulatory Process

- The state regulates nursing facilities to ensure the health and safety of those residing there.
- The regulatory process includes several major components:
 - **Licensure/Certification and Survey**
 - **Enforcement**
- NFs must meet the requirements set forth in Chapter 250 of the Health and Safety Code relating to criminal history checks and the Texas Administrative Code's Nursing Facility Requirements for Licensure and Certification.
 - **Licensure** is the *state* process
 - **Certification** is the *federal* process and allows participation in Medicaid /Medicare– the state certifies that NFs have met federal requirements

NF – Regulatory Process

The state licensure and federal certification and survey process includes:

- **Annual surveys** of nursing facilities to ensure they are in compliance with state licensure and federal certification regulations for both Medicare and Medicaid
 - The annual survey is an on-site, intensive review to ensure the health and safety of the residents
- **Complaint investigations** include self-reported incidents from facilities and complaints from residents, family members, friends and others.
 - **Incident** – When a *facility* reports an abnormal event, including accidents or injury to staff or residents. An occurrence in which a resident may have been subject to abuse, neglect, or exploitation must also be reported to DADS
 - **Complaint** – Any *non-facility* allegation received by DADS; such allegations include, but are not limited to, abuse, neglect, exploitation, or a violation of state or federal standards

NF – Regulatory Process

- DADS conducts on-site investigations for complaints received.
- DADS does not notify facilities before conducting surveys or investigations.
 - Informing a NF of an upcoming survey or investigation is a third degree state felony. Additionally, the federal government may impose a civil monetary penalty not to exceed \$2,000
- Surveyors initiate investigation of complaints and incidents in facilities within 24 hours, 14 days, 30 days or 45 days, depending on the priority assigned by the intake program specialist who receives the complaint or incident report.
 - The priority is based on the immediacy and seriousness of the allegation
 - Texas standards are more stringent than federal standards

NF – Regulatory Process

PRIORITY ONE – on or before 24 hours

- **Priority 1 Complaint Definition** – A provider allegedly created or allowed a present and ongoing situation in which the provider’s noncompliance with licensure or certification requirements failed to protect consumers/residents from abuse, neglect, or mistreatment, or death or is likely to cause, serious injury, harm, impairment, or death to a consumer or resident.
- **Priority 1 Example** – Physician orders were not properly transcribed, thus a resident was not given steroid and diabetic medication for an entire week. The medication errors were not discovered until the resident was hospitalized. Other medication errors involving other residents is suspected.

PRIORITY TWO – on or before 14 days

- **Priority 2 Complaint Definition** – Residents are not in imminent danger; however, a provider’s alleged noncompliance with licensure or certification requirements may have or has a high potential to cause harm that impacts a consumer's/resident's mental, physical, or psychosocial status.
- **Priority 2 Example** – A family reports their mother has fallen several times because there is not enough staff to answer their mother’s call light in a timely manner. This last fall she had to go to the hospital for sutures.

NF – Regulatory Process

PRIORITY THREE – on or before 30 days

- **Priority 3 Complaint Definition** – The provider’s alleged noncompliance with licensure or certification requirements has caused or may cause harm that is of limited consequence and does not significantly impair residents’ mental, physical, or psychosocial status.
- **Priority 3 Example** – A resident's daughter complained that the physician had ordered Pepto-Bismol as needed for indigestion, but the facility was using a store-brand milk of magnesia for digestive issues. The resident has always taken the pink Pepto-Bismol, and so she tends to refuse the white milk of magnesia when offered.

PRIORITY FOUR – on or before 45 days

- **Priority 4 Complaint Definition** – The provider’s alleged noncompliance with licensure or certification requirements has a low potential for more than minimal harm or that may result in physical, mental, or psychosocial harm that would not directly impact residents’ health and safety and functional status.
- **Priority 4 Example** — A resident calls the complaint hotline reporting that the facility's “residents only” phone is already in use by another resident at the same time she prefers to use it. She feels the phone is not "accessible" as intended.

NF – Regulatory Process

- If surveyors find a state licensure violation or federal deficiency during a visit, survey staff cite the NF for the violation.
- After the visit, the survey team writes a report of their findings which details any failures to comply with state or federal regulations.
 - The facility must make this report available to all residents and visitors upon request
 - Survey staff make a follow-up visit to ensure that the facility has corrected the violation or deficiency and is in compliance with the regulations
- Staff review the findings to determine if an enforcement action is necessary due to either noncompliance with state or federal regulations, or repeat deficiencies.
 - An array of enforcement actions are available, including actions against a facility's license and monetary sanctions such as an administrative penalty (state) or civil penalty (federal). (See Appendix)

NF- Regulatory Process

Informal Dispute Resolution (IDR)

- If a NF provider disagrees with a deficiency cited by a survey team they may request a review of the deficiencies via Informal Dispute Resolution (IDR).
- To comply with federal requirements, each state that CMS contracts with to perform survey activity in nursing facilities is required to offer an IDR to contest any deficiencies cited.
- In Texas, the legislature authorized the Health and Human Services Commission to perform this function.
- HHSC's IDR decisions are final; the only exception would be when the IDR decision is a violation of federal statute or regulation.

DADS Role in Relationship to Other Entities

Other Entities - TVLB

Texas Veterans Land Board

- Veterans NF are regulated the same as all other NFs in Texas
- DADS does not interact with the Texas Veterans Land Board differently from other NF providers.

Other Entities – Law Enforcement

Joint Investigations

- Senate Bill 1074 (78th Regular Session) **requires DADS to notify local law enforcement** agencies about all immediate (Priority 1) allegations of abuse and neglect at NFs so that law enforcement has the opportunity to join DADS employees in conducting investigations.
- **Law enforcement is required to acknowledge the report** of abuse or neglect and begin a joint investigation within 24 hours of receipt of the report.
- The law does not require representatives of each agency to be physically present during all phases of an investigation; nor do they require that each agency participate equally in each activity conducted in the course of an investigation.
- **Law enforcement agencies can exercise discretion** in determining the extent of their involvement in the joint investigations.

Rating Systems

Rating Systems

To assist consumers in deciding which nursing facility to choose, both DADS the and the federal Centers for Medicaid and Medicare Systems (CMS) have rating systems available.

- DADS is responsible for the development and maintenance of the QRS system. The system has been in place since 2001.
- The CMS rating system (Nursing Home Compare) is the federal government's rating system. Consumers can link to the website directly or by using a link on the DADS website.

Rating Systems

Quality Reporting System (QRS) is a web-based resource that provides accessible, and convenient information about all providers of long-term services and supports. For nursing facilities, the four components below make up the overall rating, each contributing 25 percent of the total:

- **Investigation Score:** based on the nature, scope, and severity of the deficiencies cited in the NF by DADS Regulatory Services during the preceding six months.
- **Inspection Score:** based on the nature, scope, and severity of the deficiencies cited on the most recent routine inspection by DADS.
- **PDS (Potential Disadvantage Score):** A facility is considered to have a potential disadvantage for each quality indicator in which it scores in the bottom 10% of all facilities. For example, if the percentage of falls is higher than in 90% of all other nursing facilities in a given month, that facility will receive a potential disadvantage.
- **PAS (Potential Advantage Score):** A facility is considered to have a potential advantage for each quality indicator in which it scores higher than 90% of all other facilities. If the percentage of residents falling is lower than in 90% of all facilities, that facility will receive a potential advantage.

Rating Systems

CMS created the Five-Star Quality Rating System

- The system is designed to help consumers, their families, and caregivers compare nursing facilities more easily and features a quality rating system that gives each nursing facility a rating of between one and five stars.
- Nursing homes with five stars are considered to have much above average quality and nursing homes with one star are considered to have quality much below average.
- According to CMS there are three sources of information used to create the score: Health Inspections, Staffing and Quality Measures.

Appendix

Appendix

Nursing Facility Enforcement Actions

- Appropriate enforcement actions are based on the scope and severity of identified problem areas and may include:
 - Appointment of a trustee
 - Suspension of admissions
 - Temporary management agreement
 - Denial of a license
 - Civil monetary penalties
 - Denial of payment for new admissions, all Medicare and/or Medicaid residents
 - Amelioration of violations (violation of all or part of the administrative penalty to cover cost of correction)
 - Emergency suspension and closing order
 - Termination of provider agreement
 - Revocation of a license