



Date: March 27, 2017

To: Nursing Facility Providers

Subject: Provider Letter 17-07 – The Executive Commissioner’s License Revocation and Stay of License Revocation

The Texas Department of Aging and Disability Services (DADS) has new rules (§19.2107 and §19.2113) in 40 Texas Administrative Code (TAC) Chapter 19 that:

- require the Executive Commissioner (EC) of the Health and Human Services Commission subject to certain exceptions, to revoke a nursing facility’s license if the facility commits three violations within a 24 month period that constitute an immediate threat to health and safety and are related to abuse or neglect of a resident as described below; and
- establish the criteria the EC uses to grant or deny a request from a nursing facility to stay a license revocation imposed in accordance with the new rule.

DADS also amended rules in 40 TAC Chapter 19 (§19.910 and §19.911) to:

- allow quality of care monitors to visit a facility that has a history of resident care deficiencies identified as medium risk through DADS early warning system or that requests a visit; and
- state that a rapid response team visits a facility identified as high risk through DADS early warning system or that has committed three violations that constitute an immediate threat to health and safety relating to abuse or neglect of a resident as described below.

The new rules and amendments implement Texas Health and Safety Code (HSC) §242.061, as amended by Senate Bill 304 of the 84<sup>th</sup> Legislature, 2015.

Each of the three violations forming the basis for revocation under §19.2107 must be reported in connection with a separate on-site survey, investigation or inspection visit having a different entrance and exit date than the other visits. In addition, the EC may not revoke a license if:

- the violation and immediate threat to health and safety determination are not included on the written list of violations left with the facility at the time of the exit conference for the on-site visit;

- the violation is not included on the final written statement of violations sent to the facility within 10 working days after the exit conference; or
- during the informal dispute resolution (IDR) process, HHSC determines that one of the three violations should be removed from the license holder's record or reduced in severity so it is no longer cited as an immediate threat to health and safety related to abuse or neglect of a resident.

If you received a violation on or after September 1, 2016 that was related to abuse or neglect and cited at the immediate threat level, you also received a letter at the time of the exit conference that serves as your notice that the survey team identified a violation related to abuse or neglect that constituted an immediate threat to health and safety of a resident. If you receive violations that meet this criteria, during three separate on-site visits within a 24 month period, the EC is required to propose license revocation. *(Note: immediately after the third violation is cited a rapid response team visit will occur to closely monitor your facility until license revocation is proposed.)*

For each of the three violations related to abuse and neglect that constitutes an immediate threat to health and safety of a resident, you are given an opportunity to request informal dispute resolution (IDR) in accordance with 1 TAC §393.1 to dispute the violation.

DADS will notify you in writing if the EC proposes license revocation. You may request that the EC stay the license revocation in accordance with new §19.2113. If you do not request a stay or the EC denies your request, you may request an administrative hearing to appeal the revocation.

If you choose to request a stay of license revocation, the new rule at §19.2113 requires that the request:

- be in writing;
- be submitted to DADS within 10 working days after you receive the notification of the proposed license revocation;
- explains how you meet the criteria for granting a stay of revocation described below;
- describes any potential negative impact to residents that may occur if the request for stay is denied;
- includes supporting documentation; and
- be signed by an authorized representative of the facility.

The EC grants a request to stay a license revocation if the EC determines that all of the following criteria have been met:

- the stay would not jeopardize the health and safety of residents or place them at risk of abuse or neglect, based on:
  - no more than one of the violations was widespread in scope;
  - other than the three violations, the facility's regulatory record for five years before the date of the stay request does not reflect a history of substandard quality of care;
  - if you have licenses for other facilities, your overall performance does not reflect a history of substandard quality of care violations related to abuse or neglect; and
  - there are no other factors that will jeopardize the health and safety of residents or place them at risk for abuse or neglect.
- the request you submitted demonstrates:
  - why the three violations are not indicative of the overall quality of care provided at your facility;
  - granting the stay will not jeopardize the health and safety of the residents or place the residents at risk of abuse or neglect;
  - granting the stay is likely to result in future compliance with licensure requirements;
  - you have conducted a system-wide analysis of the facility that identifies all underlying problems that contributed or led to the three violations;
  - you have developed a plan to address those problems and initiated action to implement the plan.
- the rapid response team reports that the facility has cooperated with the team and has demonstrated improvement in quality of care; and
- you enter into a stay agreement that is acceptable to the EC and describes all of the requirements necessary for the stay to be lifted and the license revocation rescinded.

Under a stay agreement the license holder:

- must complete actions to address the underlying causes that resulted in the violations in accordance with a schedule that is approved by the EC;
- may not receive a violation that constitutes an immediate threat to health and safety or that results in actual harm to a resident for a period of time determined by the EC, but for at least 12 months after the effective date of the agreement; and
- must waive the right to request a hearing if the stay is lifted and the revocation is imposed.

If you successfully complete all the requirements of the stay agreement, the stay is lifted and the revocation is rescinded.

If you do not successfully complete all the requirements of the stay agreement, the stay is lifted and the revocation is imposed.

[You can access the new and amended rules online.](#)

If you have questions regarding this letter, you may contact a NF policy specialist with the Policy, Rules and Curriculum Development section at (512) 438-3161.

Sincerely,

*[signature on file]*

Mary T. Henderson  
Associate Commissioner  
Regulatory Services

MTH:cg