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AND MEDICAID CERTIFICATION****SUBCHAPTER U****INSPECTIONS, SURVEYS, AND VISITS****RULE §19.2002****Procedural Requirements--Licensure Inspections and
Surveys**

(a) The Texas Department of Human Services (DHS) inspection and survey personnel will perform inspections and surveys, follow-up visits, complaint investigations, investigations of abuse or neglect, and other contact visits from time to time as they deem appropriate or as required for carrying out the responsibilities of licensing.

(b) An inspection may be conducted by an individual qualified surveyor or by a team, of which at least one member is a qualified surveyor.

(c) To determine standard compliance which cannot be verified during regular working hours, night or weekend inspections may be conducted to cover specific segments of operation and will be completed with the least possible interference to staff and residents.

(d) Generally, all inspections, surveys, complaint investigations and other visits, whether routine or non-routine, made for the purpose of determining the appropriateness of resident care and day-to-day operations of a facility will be unannounced; any exceptions must be justified. Releasing advance information of an unannounced inspection is a third degree felony, as provided in §242.045 of the Health and Safety Code.

(e) Certain visits may be announced, including, but not limited to, consultation visits to determine how a physical plant may be expanded or upgraded and visits to determine the progress of physical plant construction or repairs, equipment installation or repairs, or systems installation or repairs or conditions when certain emergencies arise, such as fire, windstorm, or malfunctioning or nonfunctioning of electrical or mechanical systems.

(f) Persons authorized to receive advance information on unannounced inspections include:

- (1) citizen advocates invited to attend inspections, as described in subsection (g) of this section;
- (2) representatives of the Texas Department of Aging serving as ombudsmen or authorized to attend or participate in inspections;
- (3) representatives of the United States Department of Health and Human Services whose programs relate to the Medicare/Medicaid Long Term Care Program; and
- (4) representatives of the Texas Department of Human Services whose programs relate to the Medicare/Medicaid long term care program.

(g) DHS will conduct at least two unannounced inspections during each licensing period of each institution

licensed under Health and Safety Code, Chapter 242, except as provided for in this subsection.

(1) In order to ensure continuous compliance, a sufficient number of inspections will be conducted between the hours of 5:00 p.m. and 8:00 a.m. in randomly selected institutions. This cursory after-hours inspection will be conducted to verify staffing, assurance of emergency egress, resident care, medication security, food service or nourishments, sanitation, and other items as deemed appropriate. To the greatest extent feasible, any disruption of the residents will be minimal.

(2) For at least two unannounced inspections each licensing period, DHS will invite to the inspections at least one person as a citizen advocate from the American Association of Retired Persons, the Texas Senior Citizen Association, the Texas Retired Federal Employees, the Texas Department on Aging Certified Long Term Care Ombudsman, or any other statewide organization for the elderly. DHS will provide to these organizations basic licensing information and requirements for the organizations' dissemination to their members whom they engage to attend the inspections. Advocates participating in the inspections must follow all protocols of DHS. Advocates will provide their own transportation. The schedule of inspections in this category will be arranged confidentially in advance with the organizations. Participation by the advocates is not a condition precedent to conducting the inspection.

(h) The facility must make all of its books, records, and other documents maintained by or on behalf of a facility accessible to DHS upon request.

(1) During an inspection, survey, or investigation, DHS is authorized to photocopy documents, photograph residents, and use any other available recordation devices to preserve all relevant evidence of conditions that DHS reasonably believes threaten the health and safety of a resident.

(2) Examples of records and documents which may be requested and photocopied or otherwise reproduced are resident medical records, including nursing notes, pharmacy records medication records, and physician's orders.

(3) When the facility is requested to furnish the copies, the facility may charge DHS at the rate not to exceed the rate charged by DHS for copies. The procedure of copying will be the responsibility of the administrator or his designee. If copying requires the records be removed from the facility, a representative of the facility will be expected to accompany the records and assure their order and preservation.

(4) DHS will protect the copies for privacy and confidentiality in accordance with recognized standards of medical records practice, applicable state laws, and department policy.

(i) DHS will provide for a special team to conduct validation surveys or verify findings of previous licensure surveys.

(1) At DHS's discretion, based on record review, random sample, or any other determination, DHS may assign a team to conduct a validation survey. DHS may use the information to verify previous determinations or identify training needs to assure consistency in deficiencies cited and in punitive actions recommended throughout the state.

(2) Facilities will be required to correct any additional deficiencies cited by the validation team but will not be subject to any new or additional punitive action.

Source Note: The provisions of this §19.2002 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective March 1, 1998, 23 TexReg 1314.

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- (a) DADS determines if a facility meets the licensing rules, including both physical plant and facility operation requirements.
- (b) Violations of regulations will be listed on forms designed for the purpose of the inspection or will be listed in letter form when administrative penalties are being proposed.
- (c) At the conclusion of an inspection, survey, or investigation, the violations will be discussed in an exit conference with the facility's management. A written list of the violations will be left with the facility at the time of the exit conference; any additional violation that may be determined during review of field notes or preparation of the official final list will be communicated to the facility in writing within 10 working days after the exit conference. DADS gives the facility an additional exit conference regarding the additional violations.
- (d) Not later than the fifth working day after the date a facility receives the final statement of violations under this section, the facility must provide a copy of the statement to a representative of the facility's family council.
- (e) Within 10 working days after receipt of the final statement of violations, the facility must submit an acceptable plan of correction to the regional director, except plans of correction under §19.2112(i) of this chapter (relating to Administrative Penalties). An acceptable plan of correction must address the following areas:
- (1) how corrective action will be accomplished for those residents affected by the violations;
 - (2) how the facility will identify other residents with the potential to be affected by the same violations;
 - (3) what measures will be put into place or systemic changes made to ensure the violations will not recur;
 - (4) how the facility will monitor its corrective actions to ensure that the violations are being corrected and will not recur; and
 - (5) when corrective action will be completed.
- (f) A clear and concise summary in nontechnical language of each licensure inspection or complaint investigation will be provided by DADS at the time the report of contact or similar document is provided.

Source Note: The provisions of this §19.2004 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective March 1, 1998, 23 TexReg 1314; amended to be effective January 1, 2000, 24 TexReg 11781; amended to be effective August 1, 2000, 25 TexReg 6779; amended to be effective

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SOCIAL SERVICES AND ASSISTANCE

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DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 19NURSING FACILITY REQUIREMENTS FOR LICENSURE
AND MEDICAID CERTIFICATION**SUBCHAPTER U**

INSPECTIONS, SURVEYS, AND VISITS

RULE §19.2006**Reporting Incidents and Complaints**

(a) Each incident or complaint report must reflect the reporting person's belief that a resident has been or will be abused or neglected and must contain the following information:

(1) the address or phone number of the person making the report so that the Texas Department of Human Services (DHS) can contact the person for any additional information, except for an anonymous report;

(2) the name and address of the resident;

(3) the name and address of the person responsible for the care of the resident, if available;

(4) information required by DHS guidelines, when the report is an incident; and

(5) any other relevant information. Relevant information includes the reporter's or complainant's basis or cause for reporting and his or her belief that a resident's physical or mental health or welfare has been or may be adversely affected by abuse or neglect caused by another person or persons, and any other information DHS considers relevant for the report.

(b) Should a report not include the information in paragraph (a) of this subsection, the report may be considered a complaint or an incident report not meeting the reporting criteria and may be investigated using other procedures. In receiving an oral report, the Texas Department of Human Services (DHS) will take all reasonable steps to elicit from the reporter all the information in paragraph (a) of this subsection.

(c) Anonymous complaints of abuse or neglect will be treated in the same manner as acknowledged reports unless the anonymous report accuses a specific individual of abuse or neglect, which report need not be investigated.

Source Note: The provisions of this §19.2006 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective August 1, 2000, 25 TexReg 6779

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(a) In accordance with the memorandum of understanding between the Texas Department of Human Services (DHS) and the Texas Department of Protective and Regulatory Services (TDPRS) (relating to Memorandum of Understanding Concerning Protective Services for the Elderly), DHS will receive and investigate reports of abuse, neglect, and exploitation of elderly and disabled persons or other residents living in facilities licensed under this chapter. In investigating allegations of abuse and neglect of children residing in facilities, the definitions of "abuse," "neglect," and "person responsible for a child's care, custody, or welfare" are those found in §261.001 of the Texas Family Code.

(b) DHS will investigate complaints of abuse, neglect, or exploitation when the act occurs in the facility, when such licensed facility is responsible for the supervision of the resident at the time the act occurs, or when the alleged perpetrator is affiliated with the facility. Complaints of abuse, neglect, or exploitation not meeting this criteria will be referred to the Texas Department of Protective and Regulatory Services.

(c) The primary purpose of an investigation is the protection of the resident. If, before the completion of an investigation, DHS determines that the immediate removal of the resident is necessary to protect the resident from further abuse or neglect, DHS will petition a court to allow the immediate removal of the resident from the facility.

(d) Investigations under this section are conducted in accordance with Health and Safety Code, §242.126.

(e) Investigations of reports do not preclude actions under the provisions of Subchapter V of this chapter (relating to Enforcement).

(f) If the initial phase of an incident or complaint investigation concludes that no abuse or neglect adversely affecting the physical or mental health or welfare of a resident has occurred, no further investigation will be undertaken.

(g) The individual reporting the alleged abuse or neglect or other complaint, the resident, the resident's family, any person designated by the resident to receive information concerning the resident, and the facility will be notified of the results of DHS's investigation of a reported case of abuse or neglect or other complaint.

Source Note: The provisions of this §19.2008 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective June 1, 1997, 22 TexReg 3816; amended to be effective March 1, 1998, 23 TexReg 1314; amended to be effective October 15, 1998, 23 TexReg 10496; amended to be effective July 1, 2001, 26 TexReg 3824; amended to be effective September 1, 2003, 28 TexReg 6939

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RULE §19.2009

Hearings on Complaints of Resident Neglect and Abuse, and Misappropriation of Resident Property in Medicaid-Certified Facilities

Hearings required by 42 Code of Federal Regulations §488.335 will be conducted in person or by telephone for the purpose of determining whether sufficient grounds exist for a referral of an individual to the appropriate licensure authority and the facility administrator. The hearings referenced in this section are not applicable to information provided by the Texas Department of Human Services pursuant to 42 CFR §488.325(h) (referrals for substandard quality of care).

Source Note: The provisions of this §19.2009 adopted to be effective July 31, 1995, 20 TexReg 5258; amended to be effective August 1, 1998, 23 TexReg 7388.

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(a) Confidentiality. All reports, records, and working papers used or developed by the Texas Department of Human Services (DHS) in an investigation are confidential and may be released to the public only as provided below.

(1) Completed written investigation reports are open to the public, provided the report is de-identified. The process of de-identification means removing all names and other personally identifiable data, including any information from witnesses and others furnished to DHS as part of the investigation.

(2) If DHS receives written authorization from a facility resident or the resident's legal representative regarding an investigation of abuse or neglect involving that resident, DHS will release the completed investigation report without removing the resident's name. The authorization must:

- (A) be signed and dated within six months of the request or state a length of time the authorization is valid;
- (B) detail the information to be released;
- (C) identify to whom the information can be released; and
- (D) release DHS from all liability for complying with the authorization.

(b) Immunity. A person who reports suspected instances of abuse or neglect will, in the absence of bad faith or malicious conduct, be immune from civil or criminal liability which might have otherwise resulted from making the report. Immunity will extend to participation in any judicial proceeding resulting from the report.

(c) Privileged communications. In a proceeding regarding a report or investigation conducted under this subchapter, evidence will not be excluded on a claim of privileged communication except in the case of a communication between an attorney and a client.

(d) Central registry. DHS will maintain a central registry of reported cases of abuse and neglect at the central office in Austin.

Source Note: The provisions of this §19.2010 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective June 1, 1997, 22 TexReg 3816.

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(a) Procedures for inspection of public records will be in accordance with the Texas Government Code, Chapter 552, and as further described in this section.

(b) Long-Term Care-Regulatory, Texas Department of Human Services (DHS), is responsible for the maintenance and release of records on licensed facilities, and other related records.

(c) The application for inspection of public records is subject to the following criteria:

(1) the application must be made to Long-Term Care-Regulatory, Texas Department of Human Services, 701 West 51st Street, Austin, Texas 78751 or P.O. Box 149030, Austin, Texas 78714-9030;

(2) the requestor must identify himself;

(3) the requestor must give reasonable prior notice of the time for inspection and/or copying of records;

(4) the requestor must specify the records requested;

(5) on written applications, if DHS unable to ascertain the records being requested, DHS may return the written application to the requestor for clarification; and

(6) DHS will provide the requested records as soon as possible; however, if the records are in active use, or in storage, or time is needed for proper de-identification or preparation of the records for inspection, DHS will so advise the requestor and set an hour and date within a reasonable time when the records will be available.

(d) Original records may be inspected or copied, but in no instance will original records be removed from DHS offices.

(e) Records maintained by Long-Term Care-Regulatory are open to the public, with the following exceptions:

(1) incomplete reports, audits, evaluations, and investigations made of, for, or by DHS are confidential;

(2) all reports, records, and working papers used or developed by DHS in an investigation of reports of abuse and neglect are confidential, and may be released to the public as provided in §19.2010(a) of this title (relating to General Provisions);

(3) all names and related personal, medical, or other identifying information about a resident are confidential;

(4) information about any identifiable person that is defamatory or an invasion of privacy is confidential;

- (5) information identifying complainants or informants is confidential;
- (6) itineraries of surveys and inspections are confidential;
- (7) other information that is excepted from release by the Government Code, Chapter 552, is not available to the public; and
- (8) to implement this subsection, DHS may not alter or de-identify original records. Instead, DHS will make available for public review or release only a properly de-identified copy of the original record.
- (f) Long-Term Care-Regulatory will charge for copies of records upon request.
- (1) If the requestor wants to inspect records, the requestor will specify the records to be inspected. DHS will make no charge for this service, unless the director of Long-Term Care-Regulatory determines a charge is appropriate based on the nature of the request.
- (2) If the requestor wants copies of a record, the requestor will specify in writing the records to be copied on an appropriate DHS form, and DHS will complete the form by specifying the charge for the records, which the requestor must pay in advance. Checks and other instruments of payment must be made payable to the Texas Department of Human Services.
- (3) Any expenses for standard-size copies incurred in the reproduction, preparation, or retrieval of records must be borne by the requestor on a cost basis in accordance with costs established by the State Purchasing and Texas Building and Procurement Commission or DHS for office machine copies.
- (4) For documents that are mailed, DHS will charge for the postage at the time it charges for the production. All applicable sales taxes will be added to the cost of copying records.
- (5) When a request involves more than one long-term care facility, each facility will be considered a separate request.

Source Note: The provisions of this §19.2011 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective June 1, 1997, 22 TexReg 3816; amended to be effective May 1, 2002, 27 TexReg 3207

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