



COMMISSIONER
Chris Traylor

January 17, 2012

To: Assisted Living Facilities (ALFs)
Subject: **Provider Letter 12-09** – Inappropriately Placed Residents

Senate Bill 93, 76th Legislature, Regular Session, 1999, added Texas Health and Safety Code (HSC) Section 247.066, Appropriate Placement Determination, allowing a resident to remain in an assisted living facility if the health and safety of this resident and other residents is not in jeopardy and the resident can receive adequate care at the facility according to the facility license or if the resident arranges for additional care to be obtained from other providers.

Senate Bill 527, 77th Legislature, Regular Session, 2001, amended HSC Section 247.066 and required a legacy Department of Human Services (now the Department of Aging and Disability Services (DADS)) inspector to identify a resident who is inappropriately placed at a facility and prescribed a process by which the facility could request that the resident remain.

House Bill 2109, 82nd Legislature, Regular Session, 2011, made changes to HSC Chapter 247 that address the process for an ALF to retain and not move a resident who may be inappropriately placed to allow the resident to age in place. The provider now has the opportunity to be proactive and identify an inappropriately placed resident instead of waiting for a DADS surveyor to make this determination. The DADS-prescribed forms now reflect this update. The rest of the process is the same.

An inappropriately placed resident is a resident who was appropriate when admitted to the ALF, but whose condition has changed. **All residents must be appropriate for the ALF licensure type when admitted to the facility.** After admission, if the resident's condition changes, the resident may no longer be appropriate for the facility's license. An ALF is not required to keep a resident who is no longer appropriate for the facility's license. DADS proposes rule amendments to require facilities to include information about the facility's policies and procedures for aging in place in their disclosure statement.

If an ALF or a DADS surveyor determines a resident is inappropriately placed, an ALF may request that the resident remain at the facility by submitting certain required documents appropriate to the resident's evacuation capabilities.

If a resident who is inappropriately placed **meets** the evacuation criteria and both the resident and the ALF want the resident to want to remain and age in place in the facility then the following procedures must be followed:

- The ALF completes and signs DADS Form 1124 (Facility Request) if they want the resident to remain at the facility. In this case, the resident meets the evacuation criteria, so the facility completes the section titled, "Complete this section when the resident meets the evacuation requirements."

- The ALF obtains a written statement from the resident that the resident wants to remain in the facility. If the resident lacks capacity to give a statement, a family member or guardian of the resident may complete the written statement requesting that the resident remain in the facility. DADS Form 1125 (Resident's Request to Remain in Facility) must be completed and signed.
- The ALF obtains a written assessment from a physician that the resident is appropriately placed. DADS Form 1126 (Physician's Assessment) must be completed and signed by the physician.
- All required documents must be submitted to the DADS regional office not later than the 10th working day after the ALF determines a resident is inappropriately placed or the 10th working day after the ALF receives the Statement of Licensing Violations and Plan of Correction (DADS Form 3724) and the Report of Contact (DADS Form 3614-A).

DADS will review the documentation. However, as long as the ALF submitted the required documentation within the required timeframe, the resident may remain in the ALF. The Regulatory Services regional office will send a letter to the ALF verifying that all required documentation was received in a timely manner.

If a resident **does not meet** the evacuation criteria, but both the resident and the ALF want the resident to remain and age in place at the facility then the ALF must submit all required forms previously listed in addition to the following documents:

- A completed and signed DADS Form 1127 (Fire Marshal/State Fire Marshal Notification). The fire marshal or state fire marshal is the public official who is responsible for the management of fire and life safety related codes and standards, and for fire prevention and investigation services for local, county or state jurisdictions. This form notifies the fire marshal or state fire marshal that there has been a determination that a specific resident is inappropriately placed and the resident no longer meets all requirements for evacuation. Although the fire marshal or state fire marshal may make comments, the form is only for notification purposes and does not require that the fire marshal or state fire marshal approve or disapprove the resident to remain in the facility. This form is signed by whichever marshal is the fire authority having jurisdiction. This is the marshal that inspects and signs the facility's license application. It may be the local fire marshal or, in certain areas, the state fire marshal.
- A completed and signed DADS Form 1129 (Fire Suppression Authority Notification). The fire suppression authority is the paid or volunteer fire-fighting organization or tactical unit that is responsible for fire suppression operations and related duties once a fire incident occurs within its jurisdiction. This is the fire-fighting organization that would respond to an actual fire at the facility. This form notifies the fire suppression authority that there has been a determination that the specific resident is inappropriately placed and the resident no longer meets all requirements for evacuation. Although the fire suppression authority may make comments, the form is only for notification purposes and does not require that the fire suppression authority approve or disapprove the resident to remain in the facility. The fire suppression authority signs this form.

- A detailed plan explaining how the facility will meet the evacuation needs of the resident who was determined to be inappropriately placed and who no longer meets the evacuation criteria of the facility, as well as the needs of the other residents. The plan should include, for example, the specific staff positions that will be on duty to assist with evacuation and their shift times; specific staff positions that will be on duty and awake at night; and specific staff training that relates to resident evacuation.
- A copy of the ALF floor plan, indicating the specific resident's room.
- A copy of the ALF's emergency evacuation plan.
- Copies of the ALF's fire drills for the last 12-month period.
- A copy of a comprehensive assessment of the resident that has been completed within the last 60 days. The assessment must address the areas required in the **Licensing Standards for Assisted Living Facilities**, 40 Texas Administrative Code [§92.41\(c\)](#).
- A copy of the service plan that addresses all aspects of the resident's care, particularly those areas identified when the resident was determined to be inappropriate. You must address the resident's medical condition(s) and related nursing needs, hospitalizations within the last 60 days, any significant change in condition in the last 60 days, specific staffing needs, and services that are provided by an outside provider.
- Any other information that relates to the required fire safety features of the facility that will ensure the evacuation capability of any resident. This information might include fire safety features provided that exceed the minimum requirements.

All required documents must be submitted to the regional office not later than the 10th business day after the facility determines a resident is inappropriately placed or the 10th business day after the ALF receives the Statement of Licensing Violations and Plan of Correction (DADS Form 3724) and the Report of Contact (DADS Form 3614-A).

The forms and documents must be submitted to the Regulatory Services regional office in your area. DADS reviews the documentation submitted to determine if a waiver of evacuation capability will be granted or denied. DADS notifies the ALF in writing of its determination within 10 working days from the date the request is received in the DADS regional office. DADS will also review the waiver of evacuation during the facility's next licensure inspection.

DADS uses the **Licensing Standards for Assisted Living Facilities** to determine whether to grant or deny a waiver of evacuation capability. Upon notification that DADS has approved a waiver of evacuation capability, you must immediately initiate all provisions of the plan of action you proposed to DADS. If the plan of action is not followed and there are health or safety concerns for the resident, DADS may cite the facility for a violation of the licensing requirements including any immediate threat to the health or safety of a resident(s). The ALF must then discharge the resident. The resident has 30 days from the discharge date to move from the facility.

If a DADS surveyor determines that a resident is inappropriately placed at a facility and the facility agrees with the determination, then the facility must discharge the resident. If the facility fails to

obtain the required written statements or if DADS does not approve the evacuation waiver request based on the written statements submitted, then the facility must discharge the resident. If DADS determines during a future visit that the facility has not discharged the resident or has not submitted appropriate documentation, these findings of disregarding the criteria for obtaining a waiver for inappropriate placement of a resident will be considered intentional and repeated, and DADS may pursue enforcement action against the facility. DADS may:

- assess an administrative penalty if the facility intentionally or repeatedly disregards the inappropriately placed resident waiver process;
- seek an emergency suspension or closing order against the facility if the department determines there is a significant risk to the residents of the facility and an immediate threat to the health and safety of the residents; or
- seek other sanctions against the facility if DADS determines there is a significant risk to a resident of the facility and an immediate threat to the health and safety of a resident.

If you have questions regarding the content of this letter, please contact a policy specialist in the Policy, Rules and Curriculum Development unit at (512) 438-3161.

Sincerely,

Veronda L. Durden
Assistant Commissioner
Regulatory Services

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Attachments:

[Form 1124 – Facility Request](#)

[Form 1125 – Resident’s Request to Remain in Facility](#)

[Form 1126 – Physician’s Assessment](#)

[Form 1127 – Fire Marshal/State Fire Marshal Notification](#)

[Form 1129 – Fire Suppression Authority Notification](#)