



COMMISSIONER
Jon Weizenbaum

October 17, 2013

To: Home and Community Support Services Agencies (HCSSAs) and Nursing Facilities (NFs)

Subject: **Provider Letter 13-36** – Clarification of the Provision of Dialysis Services to Residents in NFs

The Texas Department of Aging and Disability Services (DADS) is issuing this letter to provide clarification to HCSSAs and NFs that intend to provide dialysis services to residents in NFs.

The Texas Health and Safety Code (H&SC), Chapter 142 governing Home and Community Support Services, §142.003(a)(6) (relating to Exemptions from Licensing Requirements) says “The following persons need not be licensed under this chapter ...nursing home, ... or other institution for individuals who are elderly or who have disabilities that provides home health or personal assistance services only to residents of the home or institution.” Therefore, a NF does not need to be licensed as a HCSSA to provide home health services to its residents.

However, the Texas H&SC, Chapter 251 governing End Stage Renal Disease (ESRD) Facilities, §251.011 (relating to License Required) says “except as provided by Section 251.012 a person may not operate an end stage renal disease facility without a license issued under this Chapter.” In addition, the Texas Administrative Code (TAC) Title 25, Part 1, [Chapter 117](#) (relating to End Stage Renal Disease Facilities), §117.1(a) says “the purpose of this chapter is to implement Health and Safety Code, Chapter 251, which requires an end stage renal disease facility providing routine, repetitive, outpatient dialysis to be licensed by the Department of State Health Services.”

When there are other state laws and regulations that govern services in NFs, such facilities must comply with the more stringent requirement. As a result, a NF cannot provide dialysis services to its residents unless the NF obtains a license from the Texas Department of State Health Services (DSHS) as an ESRD facility.

If the NF does not also intend to be licensed and Medicare-certified as an ESRD facility, the NF may work with a licensed and Medicare-certified ESRD facility to provide dialysis services to its residents. NFs can refer to the Centers for Medicare & Medicaid Services (CMS) Survey and Certification letters [04-24](#) and [04-37](#) for information on how an ESRD facility can obtain approval to provide home dialysis services in NFs. These letters provide information, the requirements for the provision of adequate safeguards, and clarify lines of responsibility and accountability between the ESRD facility and the NF. The approval process is through CMS and not DADS or DSHS.

H&SC Chapter 251, Section 251.012 (relating to Exemptions from Licensing Requirements) says “the following facilities are not required to be licensed under this chapter (1) a home and community support services agency licensed under Chapter 142 with home dialysis designation.” Therefore, if a HCSSA intends to provide dialysis services to residents in NFs, it must have the Licensed Home Health with Home Dialysis designation on its license and must meet the licensing standards specified in:

1. Subchapter C - 40 TAC §97.201- §97.303 (relating to Minimum Standards for All Home and Community Support Services Agencies);
2. Subchapter D - 40 TAC §97.401 (relating to Standards Specific to Licensed Home Health Services) except for §97.401(b)(2)(A) and (B); and
3. Subchapter D - 40 TAC §97.405 (relating to Standards Specific to Agencies Licensed to provide Home Dialysis Services).

If you have specific questions regarding the HCSSA or NF programs, please contact a DADS policy specialist in the Policy, Rules and Curriculum Development unit at (512) 438-3161. If you have specific questions regarding ESRD regulations, please contact DSHS Branch Manager Patrick Waldron at (512) 834-6700, extension 2625.

Sincerely,

[signature on file]

Mary T. Henderson
Assistant Commissioner
Regulatory Services

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