



Date: April 18, 2017

To: Assisted Living Facilities (ALFs)

Subject: Provider Letter No. 17-14 – Initial License and Alzheimer’s Certification of a Type B ALF for an Applicant in Good Standing

On April 16, 2017, the Texas Department of Aging and Disability Services (DADS) added new rules and amended existing rules to Texas Administrative Code (TAC), Title 40, Part 1, Chapter 92, Licensing Standards for Assisted Living Facilities. These changes include:

- A new 40 TAC §92.22 allows an applicant to request from DADS an initial Type B license and Alzheimer’s certification for a facility or distinct unit before DADS conducts an on-site health inspection if the applicant meets certain good standing criteria.
- An amended 40 TAC §92.51 which clarifies the process for a Type B facility to obtain Alzheimer’s certification, and includes a requirement that DADS must observe the provision of care to at least one resident admitted to the Alzheimer’s facility or unit as part of the on-site health inspection.
- An amended 40 TAC §92.551 allows DADS to impose an administrative penalty for a failure to disclose that a facility or unit that has been certified under 40 TAC §92.22 has not received an initial on-site health inspection.

Background

House Bill 1769 (84th Texas Legislature, Regular Session, 2015) directed DADS to develop rules that allow an ALF provider who meets certain “good standing” criteria to obtain an initial license prior to an on-site health inspection. The bill did not address issuance of the separate Alzheimer’s certification required for Type B Alzheimer’s facilities. In response, DADS initiated rulemaking to align the Alzheimer’s certification process with the initial licensure for applicants in “good standing.”

Process

If an applicant makes a request for a Type B license and Alzheimer's certification using the good standing process, DADS determines whether the applicant is in good standing by reviewing the documentation listed in subsection 40 TAC §92.21(d). An applicant must also meet requirements in new 40 TAC §92.22 (relating to Alzheimer's Certification of a Type B Facility for an Initial License Applicant in Good Standing) as follows to be considered in good standing for purposes of Alzheimer's certification:

- The applicant or controlling person of the applicant must have held in Texas a license for an Alzheimer's certified facility or a facility that has an Alzheimer's certified unit for at least six consecutive years.
- Each licensed facility operated by the applicant or controlling person of the applicant must not have had a violation of a licensing rule that resulted in actual harm or posed an immediate threat of harm to a resident. This includes violations that were affirmed, not challenged by the facility, or are still pending a final determination.
- During the six years preceding the request for certification, each licensed facility operated by the applicant or controlling person of the applicant must not have had any sanctions imposed by DADS that resulted in a civil penalty; an administrative penalty; an injunction; an emergency closure; or a denial, suspension or revocation of licensure.
- Each licensed facility operated by the applicant or controlling person must not have had more than two of the violations listed in 40 TAC §92.125(a) (relating to Resident's Bill of Rights and Provider Bill of Rights) during the six year period preceding the request for certification.

An applicant who chooses to apply for an initial license and certificate under the good standing process must submit to DADS:

- application Forms 3720G and 3721G;
- the facility's policies and procedures referenced in 40 TAC §92.21(d) and in 40 TAC §92.53 including: documentation that shows compliance with hiring, staffing, training standards and employee credentials;
- applicable information as required by 40 TAC §92.123, and;
- applicable license fees listed in 40 TAC §92.4(a) and 40 TAC §92.4(c).

As with the standard application process, DADS will verify that the facility meets the requirements of 40 TAC Chapter 92 Subchapter D relating to Facility Construction and 40 TAC §92.53(i) relating to the physical plant for certified Alzheimer's facilities or units. The ALF must meet the requirements of a Life Safety Code (LSC) inspection within 120 days after the date DADS conducts the initial LSC inspection.

An ALF that is issued an initial license and Alzheimer's certificate must add an addendum to its Assisted Living Disclosure Statements as required by 40 TAC §92.53(d) and 40 TAC §92.41(e)(3). The addendum(s) is to notify residents or prospective residents that the facility or unit has not met the requirements of an on-site health inspection and that DADS will conduct an on-site health inspection within 90 days after the issuance date of the license and certificate. The addendum must remain with the disclosure statement until the facility has met the requirements of the on-site health inspection.

Within 90 days of certification, DADS will conduct an on-site health inspection to verify compliance with 40 TAC §92.53(a)-(h) by observing the care provided to at least one resident admitted to the Alzheimer's certified facility or unit.

An applicant who does not wish to apply for an initial license and certification using the good standing application process may follow the traditional application process.

If you have questions about this provider letter or the licensure requirements, please contact a 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