



INTERIM COMMISSIONER  
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August 17, 2012

To: Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Condition (ICFs/IID)

Subject: **Provider Letter 12-23** — Frequently Asked Questions  
(Replaces Provider Letter 11-22)

The Texas Department of Aging and Disability Services (DADS) gathered frequently asked questions (FAQs) from providers and other stakeholders in an effort to share the questions and answers with all surveyors and providers. The FAQs addressed in this letter include statutory and regulatory references.

DADS has updated the letter to reflect changes regarding medication administration resulting from the addition of Subchapter D-1 (§§161.091 – 161.096) to Chapter 161 of the Texas Human Resources Code (as established by Senate Bill 1857, 82<sup>nd</sup> Texas Legislature, Regular Session, 2011).

Surveyors and providers are encouraged to review the FAQs; reference designated websites; and maintains the most current state and federal rules, provider letters (PLs) and Survey and Certification Clarification (SCC) memorandums.

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

## Topics

- Active Treatment
- Behavior Management Programs (BMPs)
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- Criminal History Checks
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- Employee Misconduct Registry (EMR)
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- Infection Control
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- Life Safety Code (LSC)
- Medication Administration
- Physicians Services
- Reportable Incidents and Complaints
- Surveys and the Survey Process

***Active Treatment***

**Q: How can ICFs/IID meet active treatment for older individuals?**

**A:** Active treatment must be individualized to meet the needs of each individual, regardless of age. The standards allow for age-appropriate activities. Active treatment is not only the acquisition of skills for independence and self-determination, but it is also the prevention of deceleration or regression of skills. In addition, ICFs/IID are responsible for performing comprehensive functional assessments of each individuals' strengths and needs and must take into consideration each individuals' age and the implications for active treatment at each stage of life.

**Q: Do we have to conduct informal training when opportunities arise or do we just have to implement an individual's formal training objectives?**

**A:** Each individual must receive a continuous active treatment program. This includes aggressive, consistent implementation of a program of specialized and generic training that is directed towards the acquisition of the behaviors necessary for the individual to function with as much self-determination and independence as possible. Active treatment must be consistently implemented in all relevant settings both formally and informally as the need arises or opportunities present themselves.

***BMPs***

**Q: Do BMPs require approval by the specially constituted committee before implementation?**

**A:** A BMP does not require specially constituted committee approval unless the BMP includes restrictive techniques such as restraint, psychotropic medication, limiting community access, etc. The role of the specially constituted committee is to review and approve BMPs, or other programs that incorporate restrictive techniques involving risks to individual protection and rights prior to program implementation. The committee also periodically monitors restrictive programs to determine if the restriction of rights or risk to protections remains justified.

**Q: Can individuals receiving psychoactive medications for inappropriate behaviors have a coping training objective designed to reduce inappropriate behaviors instead of a formal BMP?**

**A:** Drugs used for control of inappropriate behavior may be used only as an integral part of an individual's individual program plan (IPP) that is directed specifically toward the reduction of and eventual elimination of the behaviors for which the drugs are employed. However, individuals who receive psychoactive drugs for behaviors associated with a diagnosed mental disorder require an active treatment program designed to reduce, ameliorate, compensate or eliminate the psychiatric symptoms. For an individual with a diagnosed mental disorder, a program to reduce his or her psychiatric symptoms is more appropriate than a program to reduce his or her inappropriate behaviors. However, the requirement for a program to reduce psychiatric symptoms does not prevent a facility from also developing a BMP.

### ***Individual Rights***

**Q: Can an ICF/IID or guardian prohibit a relationship between two consenting adults?**

**A:** Adult ICF/IID individuals who have not been adjudicated incompetent by a court are assumed to be competent and share the rights that all adult citizens of the United States have, including the right to file complaints, and the right to due process. In addition, each ICF/IID is required to:

- ensure that individuals are informed of their rights and the rules of the ICF/IID
- ensure that individuals are informed of their medical conditions;
- allow and encourage individuals to exercise their rights as individuals of the ICF/IID and citizens of the United States
- ensure that individuals are not subject to physical, verbal, sexual, or psychological abuse or punishment
- provide individuals with the opportunity for personal privacy
- provide individuals with the opportunity to communicate, associate and meet privately with individuals of their choice
- provide individuals the opportunity to participate in social, religious and community group activities
- permit a husband and wife who both reside in the ICF/IID to share a room.

Adult individuals do not have the right to engage in sexual relationships with minors.

### ***Criminal History Checks***

**Q: I conduct searches and review the criminal history reports of all job applicants. How can I determine whether an offense on a criminal history report prohibits employment?**

**A:** Chapter 250, Texas Health and Safety Code, is the state statute that requires certain long-term care facilities and agencies to conduct criminal history checks on job applicants and employees. Section 250.006 of the statute outlines the offenses, a conviction for which, prohibit employment.

Determining whether an offense prohibits employment essentially involves matching convictions on the criminal history report with the offenses and the conditions listed in Section 250.006.

Not infrequently, Texas Department of Public Safety (DPS) criminal history reports may not contain court disposition information that shows whether an individual was convicted of a particular offense. If you retrieve a DPS criminal history report that appears to have incomplete information, you should call the DPS Crime Records Service Error Resolution Unit at (512) 424-7252 and request their assistance in obtaining the information that is not in the criminal history report. [Ref: [PL 06-48](#)]

**Q: How can facilities maintain accurate and current criminal background checks for all facility employees, especially for those who have been employed for many years?**

**A:** Providers can subscribe to either the DPS public database website or the DPS facility secure database website. An online search through either of these websites provides an "instant" criminal history report.

Detailed information about the requirements for criminal history checks, subscribing to a DPS user account, and inquiries to the Employee Misconduct Registry (EMR) and Nurse Aide Registry (NAR) are located in DADS Regulatory Services Policy PLs at <http://www.dads.state.tx.us/providers/communications/letters.cfm>. [Ref: [PL 06-48](#)]

***Discharge Plans and Summaries***

**Q: Is an ICF/IID required to develop a discharge plan and a discharge summary when it discharges an individual?**

**A:** An ICF/IID must develop a final summary of the individual's developmental, behavioral, social, health and nutritional status. There is no requirement that an ICF/IID develop both a discharge plan and a discharge summary. The final summary accurately describes the individual, including his/her strengths, needs, required services, social relationships and preferences. An ICF/IID can meet the final summary requirement by including this information in either a pre-discharge plan or a post-discharge summary.

## **EMR**

### **Q: Are EMR checks required for all employees?**

**A:** Facilities must search the EMR for **all** unlicensed employees before making an offer to hire if the employee will encounter an individual/individual/consumer. This includes “on call” and part-time employees. Beginning September 1, 2010, facilities will be required to conduct an annual search of the EMR and NAR to determine if the employee is designated in either registry as unemployable. [Ref: [PL 06-48](#) and [11-07](#)]

### **Q: When do facilities report employee incidents to the EMR and when do they report them to the incident hotline?**

**A:** Facilities do not report incidents to the EMR; rather, they report incidents to the DADS Consumer Rights and Services section ((800)-458-9858) in accordance with DADS requirements. Current information is located at <http://www.dads.state.tx.us/providers/NF/credentialing/emr/index.html>.

Facilities must report incidents of abuse, neglect, and exploitation (A/N/E) believed to have been caused by a facility employee. Facilities must report the information immediately to the Texas Department of Family and Protective Services (DFPS) at (800) 252-5400 or through the DFPS secure website at [www.txabusehotline.org](http://www.txabusehotline.org) and DADS at (800) 458-9858. [Ref: [PL 09-02](#) and [10-24](#)]

### **Q: When a facility refers an employee to the EMR, why does DFPS then conduct an A/N/E investigation and refer the same employee?**

**A:** Facilities do not refer employees to the EMR. Only DFPS can refer a facility employee to the EMR. DFPS will investigate A/N/E and refer confirmed perpetrators to the EMR following due process.

### **Q: Do all reports about employees automatically generate an investigation from DADS?**

**A:** No. The facility must ensure that all allegations of mistreatment, neglect or abuse, as well as injuries of unknown source, are reported immediately to the administrator or to other officials in accordance with State law through established procedures. The facility must also have evidence that all alleged violations are thoroughly investigated and must prevent further potential abuse while the investigation is in progress. The facility is to provide evidence to DADS Consumer Rights and Services, in the form of a written report of the investigation, that the facility thoroughly investigated all alleged violations and prevented further abuse while investigating. DADS Consumer Rights and Services conducts an administrative review of the provider's written investigation report to determine whether further investigation by DADS is required to ensure compliance with state or local laws. [Ref: [PL 09-02](#) and [10-24](#)]

**Q: How do surveyors/investigators determine when they will make a referral to a professional licensing board or registry?**

**A:** Licensed professionals, medication aides, nurse aides, etc., must conform to the standards of practice/conduct mandated by their professions. An investigation of a facility may result in the recommendation to refer an individual to his/her respective board or registry for abuse, neglect, and/or a violation of standards of practice. The investigator reviews the standards that apply to the individual who he or she is considering to refer based on a violation of the standards of practice.

**Q: How long after an employee has been referred can a facility expect to find the person on the EMR?**

**A:** Individuals employed in a DADS-regulated facility are offered an informal reconsideration (in the region) and a subsequent formal hearing (by the Texas Health and Human Services Commission). If the individual does not respond or challenge the referral, then his or her name is placed on the EMR immediately at the end of the required time frames. If the individual does request a formal hearing, the actual hearings process may take an undetermined amount of time. The individual's name is placed on the EMR after the finding is upheld at the hearing and/or all due process procedures are exhausted.

**Q: Once an individual is placed on the EMR, how long does he or she remain there? Can someone remain on the registry for a lifetime?**

**A:** DADS may remove an employee's name from the EMR if after receiving a written request from the person, DFPS determines that the employee does not meet the requirements for listing in the EMR based on additional information gathered by DADS or notification received from DFPS or another referring entity; or an entry of reportable conduct in the EMR was based on an entry in the NAR and the entry in the NAR is subsequently removed.

**Q: Can DADS change the rules to allow probation for an individual who commits acts of misconduct while working in a DADS-regulated facility?**

**A:** No. The law does not allow this and only the Texas Legislature can change the law.

### ***Facility Operations***

**Q: Must facilities include specific low-concentrated sweets food items in daily and weekly menus?**

**A:** Facilities must provide therapeutic diets, such as no concentrated sweets, as ordered by an individual's physician. A qualified dietician must calculate therapeutic diets that a layperson cannot customarily prepare. The menus must follow the orders of the individual's physician and to the extent medically possible and be approved by a licensed dietitian. *Unless otherwise specified by medical needs, the diet must be prepared at least in accordance with the latest edition of the recommended dietary allowances of the Food and Nutrition Board of the National Academy of Sciences.*

**Q: Does a facility need to have a secured area (either in the room or in the facility) for valuables?**

**A:** Each individual has the right to retain and use personal property in his or her immediate living quarters and. The facility should take actions necessary to uphold this right, which may include having an individual locked area (cabinet, closet, drawer, footlocker, etc.) for individuals to store personal property.

**Q: Is there anything in place to deal with emergency placement? What do you consider as emergency placement?**

**A:** Facilities must provide individuals placed in the facility due to an emergency with the same services that the facility provides any other facility individual. This applies to admission records, disclosure statements, comprehensive assessments, etc. An emergency placement of an individual into a facility would be necessary when there is threat to the health and safety of that individual at his or her current residence.

## **General**

### **Q: I would like to start a facility to provide services. However, I am unsure where to begin.**

**A:** The “Resources for DADS service providers” web page at <http://www.dads.state.tx.us/providers/index.cfm> is a valuable starting place to assist you in learning more about the various programs that DADS oversees. Click on the name of the program you would like to learn more about and that link will take you to that specific program’s web page. More information about DADS programs is available at [http://www.dads.state.tx.us/providers/community\\_options.pdf](http://www.dads.state.tx.us/providers/community_options.pdf).

Since the programs offered by DADS have different policies, procedures, and requirements, the process of becoming a DADS provider would depend on which one of the DADS programs you choose.

### **Q: How do I become a provider in ICF/IID program?**

**A:** As indicated on the ICF/IID “Resources for DADS service providers” web page at <http://www.dads.state.tx.us/providers/ICFMR/index.cfm>, there is currently “no additional funding for new ICF/IID facilities and there has not been for several years. If funding should become available, notice will be posted in the *Texas Register*.”

Although the ICF/IID program is not expanding at this time, becoming part of the Consolidated Waiver Program (CWP) is an option. The CWP encompasses the following DADS programs:

- Community Living Assistance and Support Services (CLASS)
- Deaf-Blind with Multiple Disabilities (DBMD)
- Home and Community-based Services (HCS)

For more information regarding these programs, visit the DADS CWP web page at <http://www.dads.state.tx.us/providers/CWP/index.cfm>.

### **Q: Who pays for expenses related to taking individuals on trips and outings (i.e., staff’s movie tickets, gasoline, staff salaries, etc.)?**

**A:** The facility must pay for expenses related to taking individuals on trips and outings *that are part of the program provider’s recreational program or an activity included in the individual’s IPP*, as well as incidental expenses such as the gas used to take an individual to work.

### **Q: Why does DADS give some facilities licenses after DADS closes them, especially when operated by the same owners?**

**A:** DADS conducts an analysis of all applicants for licensure. In each case, DADS determines if the applicant was the operator of a previously closed facility. DADS considers the circumstances related to the closure and determines if it will grant or deny the license based on the evaluations.

**Q: Can you please provide a list of DADS contact names and telephone numbers for providers to use when questions arise regarding regulations?**

**A:** Providers should call their regional program manager or regional director for inquiries about their program. If that person is unable to provide the requested information, the person will research the inquiry with the appropriate current resources and respond with the most accurate information available. For a contact number of the local DADS Regulatory Services office, go to <http://www.dads.state.tx.us> or you may call (800) 458-9858 to be directed to the appropriate source for information. You may also contact the DADS Regulatory Services PRC unit at (512) 438-3161 for policy questions.

**Q: Does DADS provide training for individuals, family members and the public?**

**A:** DADS Educational Services provides joint-training sessions for providers and surveyors. However, anyone who has an interest in individual care is welcome to attend. Joint training regarding the top 10 deficiencies in ICFs/IID is periodically offered for surveyors and providers. For a schedule of training, check the "Resources for DADS Service Providers, Joint Training Opportunities" website at <http://www.dads.state.tx.us/providers/training/jointtraining.cfm>.

Computer-based training on a variety of topics is also available on the DADS website at <http://www.dads.state.tx.us/business/CBT/index.html>.

You may also want to view the DADS Regulatory Services Annual Reports, which include the top ten complaints and deficiencies, at <http://www.dads.state.tx.us/providers/reports/sb190/index.html>.

**Q: Would DADS provide more joint-training opportunities for surveyors and providers?**

**A:** Legislation requires DADS Regulatory Services to provide joint-training on at least one of the top ten deficient practices in Texas for ICFs/IID. Educational Services offers approximately 12 training sessions per month throughout the state. You can view training opportunities for all provider types at <http://www.dads.state.tx.us/providers/training/jointtraining.cfm>.

**Q: When will DADS allow surveyors to teach/train facility staff during a survey like they once did?**

**A:** CMS permits surveyors "to provide reference information regarding best practices to help facilities develop additional sources and networking tools for program enhancement." However, CMS does not allow DADS surveyors to act as facility consultants and, therefore, surveyors cannot provide technical assistance or advice. After informing the facility of a deficient practice, a surveyor cannot prescribe how to correct it. CMS guidance is as follows:

"Frequently, the explanation will embody the action needed to correct the problem. In situations where there may be several possible causes, it is not the surveyor's responsibility to delve into the facility's policies and procedures to determine the root cause of the deficiency."

Legislation mandated improved communications between Regulatory Services and ALF, ICF/IID and NF providers. In response to this mandate, DADS created the position of facility/surveyor liaison. The nurse liaison position is a state-funded position for these programs. DADS can use the position on a limited basis, at the discretion of the regional director, in other types of facilities regulated by DADS.

The nurse liaison position does not include fact-finding or discussing evidence during the survey process. The nurse liaison can enhance communication between providers and survey teams, but will not discuss evidence in potential deficiencies. The nurse liaison may provide the facility with current information on best practice issues from the website.

**Q: Where can stakeholders find a list of websites that provide information on training materials?**

A: Educational Services provides monthly training sessions around the state for providers and surveyors. Information is located on the DADS website at <http://www.dads.state.tx.us/providers/training/index.cfm>.

The DADS main website has related links at <http://www.dads.state.tx.us/index.cfm>.

Facilities also may contact their respective provider organizations for information and lists of training opportunities.

**Q: Would DADS provide a list of sources needed to start and to function within the regulations for facilities? We need a list of required forms.**

A: All of the regulatory requirements are available to providers on the DADS website at [www.dads.state.tx.us](http://www.dads.state.tx.us). Click on the "Doing Business with DADS" picture and then click the "Resources for Providers" tab. Each program type web page has a link for forms. Providers may contact Consumer Rights and Services with specific questions at (800) 458-9858 or (800) 252-5400. Address nursing questions to the Texas Board of Nursing (BON) at [webmaster@bon.state.tx.us](mailto:webmaster@bon.state.tx.us).

**Q: How can I obtain a paper copy of the interpretive guidance for surveyors, federal regulations or the CMS State Operations Manual (SOM)?**

A: DADS does not provide paper copies of these federal documents, but facilities can download them from the CMS website at <http://www.cms.hhs.gov/>. Obtain the CMS SOM by clicking on "Internet-Only Manuals" at <http://www.cms.hhs.gov/manuals/>. You may also purchase them by calling the Open Records unit at (512) 438-2633.

**Q: How can I obtain a paper copy of the state licensing handbooks?**

A: DADS does not provide paper copies of these licensing handbooks, but facilities can download them from the handbooks section at [http://www.dads.state.tx.us/news\\_info/publications/handbooks/index.html#handbooks](http://www.dads.state.tx.us/news_info/publications/handbooks/index.html#handbooks).

**Q: Does DADS have a mechanism to encourage/facilitate regular, ongoing dialogue with providers?**

**A:** Regional DADS Regulatory Services staff will schedule meetings to provide a forum for information sharing, identification of issues, training and team building. You may also contact the DADS Contracting section at (512) 438-2080 or the DADS Regulatory Services PRC unit at (512) 438-3161 for information about the next meeting. In addition, you may subscribe to receive electronic notifications of the dates and times for the meetings and other notices at [www.dads.state.tx.us](http://www.dads.state.tx.us).

**Q: Does DADS have a legislative spokesperson that represents the different entities providing services?**

**A:** The DADS commissioner is the spokesperson for all legislative reform issues involving the agency. DADS does not represent entities providing services. Providers have their own organizations/lobbyists to participate in the legislative process.

**Q: Sometimes we have trouble using the DADS website. Whom should we contact for concerns?**

**A:** Because some websites "interact" with web surfers, and this interaction relies on the technology of more recent web browser versions, we would suggest using the highest available versions of Internet Explorer and/or Netscape, along with Adobe Acrobat Reader, for the DADS website. Submit feedback about DADS website concerns/problems to [webmaster@DADS.state.tx.us](mailto:webmaster@DADS.state.tx.us).

**Q: How does DADS communicate regulatory changes to providers?**

**A:** The *Federal Register* and the *Texas Register* publish regulatory changes before they become effective. Any member of the public may comment on the proposed changes before they become final. Also, DADS notifies providers of regulatory changes through provider letters at <http://www.dads.state.tx.us/providers/communications/letters.cfm>. DADS contracts with a company called [GovDelivery, Inc.](#), to provide e-mail updates. When you sign up for e-mail updates, you are giving your information to both DADS and to GovDelivery. When DADS has your information, it is subject to the [DADS privacy policy](#). When GovDelivery has your information, it is subject to their [privacy policy](#).

***Infection Control***

**Q: What degree of infection control is required in ICFs/IID?**

**A:** Each ICF/IID must have written policies and procedures for infection control, which include implementation of universal precautions as recommended by the Centers for Disease Control and Prevention. Community use items must be cleansed when soiled, prior to use by other individuals. Meals must be prepared and served in a manner to prevent cross-contamination.

***IDTs***

**Q: Can the IDT make treatment decisions reserved for the surrogate decision maker (SDM) or Surrogate Consent Committee, if no SDM can be located and no surrogate consent committee is available to be convened?**

**A:** An IDT may not provide consent for the individual. Consent must be given by the legally appropriate party, and an IDT is not a legally authorized representative.

However, the IDT may make treatment decisions on behalf of the surrogate consent committee if such decisions pose no significant risk to an individual based on the judgment of the prescribing physician and other health care professionals. These decisions include minor medical and dental treatment, such as the need to have an individual's teeth cleaned, that do not require consent to be signed.

## LSC

### **Q: How many individuals must reside in an ICF/IID for an initial certification survey to be conducted?**

**A:** An ICF/IID must be uninhabited for the initial LSC survey. After the LSC inspection has approved the building for occupancy, the Licensing and Credentialing section of DADS state office will be notified that the ICF/IID has passed initial inspection. The number of individuals required to be admitted depends on the Evacuation Difficulty Score (E-Score) rating of the facility. Evacuation ratings include:

- **Impractical rating:** one individual must be admitted before the health inspection can take place
- **Slow rating:** two individuals must be admitted before the health inspection can take place
- **Prompt rating:** all six individuals must be admitted before the health inspection can take place

Because the initial health survey requires that active treatment be implemented for all of the individuals of the ICF/IID, the ICF/IID must have had adequate time to perform a comprehensive functional assessment on each individual and establish and implement IPPs for each individual before the initial health inspection. ICFs/IID must pass both the LSC and the health surveys in order to receive certification.

### **Q: What are the evacuation drill requirements for a new admission?**

**A:** If an ICF/IID does not have a sprinkler system, a newly admitted individual must have an E-Score calculated within 10 days of admission. This E-Score is based on four evacuation drills — two are to be conducted during the daytime and two at night (one after the first 30 minutes of sleep and one within the first three hours of sleep).

### **Q: What are the evacuation drill criteria for ICFs/IID with sprinkler systems?**

**A:** ICFs/IID must have one evacuation drill per shift, per quarter, per year. ICFs/IID must totally evacuate individuals once a year on each shift. For ICFs/IID with an impractical rating, new employees must participate in an evacuation drill as soon as possible after beginning employment on their assigned shift. For ICFs/IID with a slow or prompt rating, new employees must participate in an evacuation drill within 10 days of employment on their assigned shift.

### **Q: If an individual is transferred from one ICF/IID to another within the same company, what are the evacuation drill requirements?**

**A:** The evacuation drill requirement is the same as for any newly admitted individual. Individuals leaving one facility, which has a unique vendor number, to live in another facility, with another vendor number, are considered discharges, not transfers.

**Q: When evaluating quarterly and annual evacuation drill requirements, would 3:00 PM be considered a morning or afternoon drill?**

**A:** The ICF/IID must hold evacuation drills at least quarterly for each shift and actually evacuate individuals during at least one drill each year on each shift. The facility determines how its shifts are organized.

**Q: Whom can providers call when they have LSC questions?**

**A:** Providers should attempt to call the LSC program manager in their region to get information. If unable to contact the regional program manager, they can call the state office, which has access to LSC personnel throughout the state. Providers may call the DADS Architectural Program at (512) 438-2371 for LSC questions.

### **Medication Administration**

**Q: Who may administer medications to an individual receiving services in the ICF/IID program?**

**A:** *For an ICF/IID that has a capacity of 13 or fewer beds:*

An unlicensed person may provide administration of medication to an individual without the requirement that a registered nurse (RN) delegate or oversee each administration of the medication **if the following conditions are met.**

- Each individual who has medications administered by an unlicensed person is assessed by an RN to identify the individual's needs and abilities regarding the individual's medication.
- The administration of medication is performed in a manner that ensures the greatest degree of independence as possible (including the use of adaptive equipment).
- The medication administered by an unlicensed person is an oral medication, a topical medication or a metered dose inhaler.
- The medication is administered for a stable or predictable condition.
- An RN has personally assessed the individual:
  - (a) before the unlicensed person administers medications and in response to significant changes in the individual's health status, and
  - (b) the RN determines that the individual's health status permits the administration of medication by an unlicensed person.
- The unlicensed person has been:
  - (a) trained by an RN or licensed vocational nurse (LVN) under the direction of an RN regarding proper administration of medication, or
  - (b) determined to be competent by an RN or LVN under the direction of an RN regarding proper administration of medication, including through a demonstration of proper technique by the unlicensed person.
- The facility has policies to ensure that the determination of whether an unlicensed person may provide administration of medication to an individual may be made only by an RN.

The administration of medication by routes other than an oral medication, a topical medication or a metered dose inhaler is subject to the Texas Board of Nursing (BON) rules regarding the delegation of nursing tasks.

**If the conditions outlined above are not met,** the RN must decide whether to delegate the administration of medication to unlicensed staff. If the RN decides not to delegate the administration of medication, then the nurse or another licensed medical professional must administer the medication (i.e., supervise the self-administration of medication (SAM) training program). [Ref: Human Resources Code §§161.091 – 161.096; PL [12-12](#)]

*For an ICF/IID that has a capacity of 14 or more beds:*

Human Resources Code §§161.091 – 161.096 does not apply to an ICF/IID that has a capacity of 14 or more beds. Therefore, medication administration (i.e., supervision of SAM training) must occur through RN delegation. If the RN decides not to delegate the administration of medication, then the nurse or another licensed medical professional must administer the medication (i.e., supervise the SAM training program).

Refer to PL [12-04](#) for more information on the supervision of a SAM training program.

**Q: What are the requirements for using pill reminder boxes?**

**A:** 42 CFR §483.460(k) (W367) states that the facility must have an organized system for drug administration that identifies each drug up to the point of administration. The system must assure that:

- all drugs are administered according to the physician's orders (42 CFR §483.460(k)(1) (W368)); and
- all drugs, including those that are self-administered, are administered without error (42 CFR §483.460(k)(2) (W369)).

An RN may determine whether it is safe and appropriate to delegate the administration of medication from pill reminder containers. If an RN decides to delegate the administration of oral unit dose medications from the individual's daily pill reminder container, the RN must:

- Ensure that the medications are placed in the individual's daily reminder pill container, from properly dispensed prescription bottle(s), by the RN or a person mutually agreed upon by the RN and the individual (or the client responsible adult (CRA)) who has demonstrated the ability to complete the task properly; instruct the individual (or the CRA) and the unlicensed person involved in such delegation activity about each medication placed in a pill reminder container. In the ICF/IID program, the CRA is the individual, the individual's legally authorized representative (if applicable) and the IDT. The RN must point out the distinguishing characteristics of each medication and the proper time, dose, route and adverse effects that may be associated with each medication.
- Tell the individual (and CRA, if applicable) and the unlicensed person(s) to contact the RN before a medication is administered if there are questions concerning the medication or changes in the individual's status related to the medication being given. An example is when the medications appear to be rearranged or a medication is missing.
- Make supervisory visits if there are changes in the individual's status related to the medication being given and determine the frequency of supervisory visits in consultation with the individual (or the CRA) to ensure that safe and effective services are being provided.
- Ensure the individual (or individual's CRA) acknowledges in writing that the administration of medication(s) under this section will be delegated to an unlicensed person. [Ref: PL [12-12](#); 22 TAC [§225.11\(a\)\(1\)-\(5\)](#)]

### ***Physicians Services***

**Q: Who can transcribe medication dosages to the Medication Administration Record (MAR)?**

**A:** An ICF/IID can designate any employee to copy physician's orders to an MAR; however, the ICF/IID must have a medication administration system in place to ensure that individuals are receiving medications in accordance with the physician's orders.

**Q: Can a nurse practitioner or physician's assistant perform an individual's annual physical examination?**

**A:** The physician delegation rules address the physician's use of a nurse practitioner or physician's assistant. The standing physician delegation orders allow the performance of physical examinations and recording of physical findings if the physician is supervising the services provided by a nurse practitioner or physician's assistant. [Ref: [PL 08-18](#)]

**Q: Are individuals free to find their own physician and, if so, does the ICF/IID have to have a contract with that physician?**

**A:** Federal regulations require that, if services are not provided directly, the ICF/IID must have a written agreement with an outside program, resource or service to furnish the necessary service, including emergency and other health care. Individuals may use their own physician, but there must be a written agreement between the ICF/IID and the physician to provide services.

### ***Reportable Incidents and Complaints***

**Q: Can you improve the automated menu on the hotline for facility self-reported incidents?**

**A:** DADS has designed the hotline to be user friendly while attempting to gather all required information. The opening menu lists incidents. The incident menu has questions that may not apply to all types of providers, but the caller may skip those questions by pressing the pound ("#") key. Copies of the hotline script are available by calling the hotline at (800) 458-9858, Monday through Friday, 8:00 AM to 5:00 PM. In addition, Educational Services offers training to providers on incident reporting. DADS provides course information at <http://www.dads.state.tx.us/providers/training/jointtraining.cfm>. [Ref: [PL 07-01](#)]

**Q: Is there an alternate fax number I can use to fax my A/N/E investigation report? I have been dialing 877-438-5827, but I cannot get through.**

**A:** (512) 438-2722 and (512) 438-2724 are the two alternate fax numbers that facilities can use if the primary fax number is busy.

**Q: What incidents do facilities report to DFPS and DADS?**

**A:** Both licensed and non-licensed ICFs/IID must report allegations of A/N/E to DFPS. Non-licensed ICFs/IID must report incidents to DADS in accordance with the Memorandum of Understanding (MOU) Between Texas Department of Mental Health and Mental Retardation (TDMHMR), Texas Department of Human Services (TDHS), and Texas Department of Protective and Regulatory Services (TDPRS). Licensed ICFs/IID must report incidents to DADS in accordance with 40 TAC §90.213. [Ref: [MOU Between TDMHMR, TDHS and TDPRS; PL 10-24](#)]

**Q: Do all self-reported incidents of A/N/E automatically result in a DADS investigation?**

**A:** The statute requires that DFPS investigate reports of A/N/E of an elderly or disabled individual. DADS may "conduct an on-site survey... as it considers necessary to ensure compliance with the statute or the rules adopted under the statute." DADS reportable incidents do not automatically result in an investigation. Either complaint intake staff professionally reviews each reportable incident or DADS surveyors will go to the facility and conduct investigations.

**Q: When a facility calls in a reportable incident, how do they know if an on-site review or a desk/professional review will be done?**

**A:** DADS does not inform the facility whether DADS will investigate a self-reported incident on-site or review it administratively. Providing such information could be tantamount to releasing advance information of an unannounced inspection.

**Q: Why does DADS write deficiencies/violations when facilities self-report an incident of A/N/E, even when they have already terminated the perpetrator?**

**A:** Protection of the individual is of paramount importance. Although the facility terminated the perpetrator, there may still be a breakdown in the facility's overall system of individual protection and ensuring that rights are not violated. Termination of an employee may not correct the practice that caused the A/N/E. The surveyor determines whether a facility practice may have led to the occurrence of A/N/E and cites the deficiency/violation based on failed systems and deficient practices/violations.

**Q: Why do self-reported incident investigations sometimes last two or more days?**

**A:** Surveyors are required to complete a thorough investigation regardless of how long it takes. The investigation process requires the completion of required tasks as well as interviews with specific people relevant to the investigation.

**Q: Why does DADS take anonymous complaints? Can DADS require all complainants to reveal their identity?**

**A:** DADS may not require a complainant to reveal his or her identity. DADS does not discriminate based on the source of an allegation. DADS must investigate all allegations of violations of state standards or federal requirements, regardless of the source.

**Q: Can DADS identify the complainant during an investigation?**

**A:** No. DADS requires that surveyors protect and preserve the confidentiality of complainants.

**Q: What determines if a complaint is immediate verses lower priority?**

**A:** DADS bases the priority of a complaint or incident on the immediacy of the threat to the health and safety of the individuals alleged in the allegations.

**Q: Why does DADS take "frivolous" complaints from ex-employees? How do you handle complaints from a disgruntled employee? Would such a complaint warrant an investigation? Is it okay to warn the DADS regional office that a disgruntled ex-employee might complain?**

**A:** DADS will investigate a complaint alleging violations of the statute or rules, regardless of the source. DADS will not investigate a complaint containing allegations that are not a violation of the statute or rules, but may refer the complaint to law enforcement agencies or other agencies, as appropriate.

**Q: Does DADS stress to complainants that "frivolous" complaints can be prosecuted?**

**A:** No. DADS is committed to providing fair, ethical and respectful customer service to everyone on a nondiscriminatory basis, as well as to ensuring the health, safety and well-being of each individual served by long-term care facilities.

**Q: Is it possible to devise a system in which repeat, unsubstantiated complaints by the same person are no longer re-investigated or DADS addresses them differently?**

**A:** DADS must ensure the health, safety and well-being of each individual served in each program type. DADS Regulatory Services is required to investigate all allegations of violations of state law or rules or federal regulations, regardless of the source of the complaint.

**Q: Why do surveyors conduct multiple investigations regarding similar complaints?**

**A:** DADS must investigate all complaints with allegations that a facility has violated regulations and/or state standards. CMS and DADS require DADS Regulatory Services to investigate all certification and licensure complaints of A/N/E. Complaint investigations must be unannounced and may have specific deadlines to meet regional timeframes for entry to the facility.

**Q: Could DADS devise a system in which it handles non-emergency complaints in a group to minimize the disruption to facilities and individuals?**

**A:** The regions attempt to consolidate complaints to maximize resources and minimize the disruption of individual care. However, the CMS SOM mandates that DADS follow specific timeframes when investigating complaints based on the nature/severity of the allegations. DADS may perform investigations sooner, but must meet certain dates based on priority.

**Q: Why can surveyors not let us know more about the complaint they are investigating?**

**A:** CMS and DADS Regulatory Services' protocol to protect the identity of the complainant is to inform the facility only of the complaint's general nature. CMS and DADS direct surveyors not to provide information that may cause them to lose opportunities for pertinent observations, interviews and record reviews required for a thorough investigation.

**Q: Is there an extension process for DFPS investigations of A/N/E if DFPS cannot complete an investigation within the 14-day timeframe?**

**A:** Yes. DFPS can grant an extension for good cause for one to 14 calendar days depending on the needs of the investigation.

### ***Surveys and the Survey Process***

**Q: Can surveyors cite the Governing Body and Management Condition of Participation (CoP) if an ICF/IID fails to correct one or two deficiencies?**

**A:** CoP deficiencies (other than the Governing Body CoP) or repeat, pervasive patterns of deficiencies at the Standard level may be an indication that the governing body is not providing sufficient operating direction over the ICF/IID. When a pattern of serious or repeated deficiencies is identified during the survey, the surveyor will interview the administrator or review the minutes of governing body meetings, if available, to determine whether or not the governing body has identified and addressed the problem.

**Q: Are we still required to conduct qualified intellectual disability professional (QIDP) reviews on a quarterly basis?**

**A:** Each ICF/IID determines the frequency interval for conducting IPP reviews. The current federal requirements, which were implemented on October 03, 1988, require QIDPs to review and revise individuals' programs when individuals have completed objectives, show regression on objectives, are not making progress on objectives or the IDT is considering new objectives. The ICF/IID's review system must be sufficiently responsive to ensure that the IPP is revised whenever the above conditions occur. However, there is no requirement for a stand-alone "QIDP review." ICFs/IID may choose to document that a QIDP has reviewed individuals' training objective data sheets on the data sheets themselves.

**Q: Is the QIDP responsible to obtain written informed consent for programs that involve risks to individual protection and rights?**

**A:** It is the role of the specially constituted committee to ensure that these programs are conducted only with the written informed consent of the individual, parents (if the individual is a minor) or legal guardian.

**Q: Do surveyors conduct "kitchen inspections" only during full surveys?**

**A:** Although the certification survey is divided into three stages (fundamental, extended and full), state licensing inspections are not conducted in stages and are always completed in full. There is no partial licensure inspection. According to 40 TAC §9.212, non-licensed ICFs/IID must comply with 40 TAC Chapter 90, Subchapters C, D and F. Subchapter D includes kitchen regulations. 40 TAC §9.212 is a contract rule and is known as a State Standard for Participation. Only large facilities (17 or more beds) are inspected to determine compliance with kitchens (main/dietary), food storage areas (main/kitchen) and food services areas.

**Q: Do surveyors have to wait until an ICF/IID's representative arrives for the entrance conference before they can begin to conduct observations or perform other survey tasks?**

**A:** The survey process does not require surveyors to wait to begin survey tasks until the ICF/IID's representative arrives for the entrance conference. If staff are at the ICF/IID, surveyors can begin to make observations and perform other survey tasks.

**Q: Are there any tools or guidelines available to assist surveyors in review of evidence and decision making regarding if there is “sufficient evidence” to cite a deficiency or a violation?**

**A:** The interpretive guidelines contain two types of guidance designed to assist surveyors in analyzing their findings and making consistent compliance decisions: Facility Practice Statements and Condition Level Compliance Principles.

The purpose of facility practice statements is to clarify the information that is relevant to specific requirements and to increase the survey focus on outcomes for individuals. Facility practice statements are provided for those requirements that experience has shown are difficult to interpret.

The purpose of the compliance principles is to assist in consistent decision-making about facility compliance at the CoP level. The primary focus of those decisions is placed on the outcomes to the individuals and their actual experiences of daily life. At each CoP, the guidelines contain compliance principles that identify those outcomes that must be present in order for the Condition to be found “met,” and those outcomes that indicate the Condition is “not met.”

Surveyors analyze their findings relative to each requirement reviewed during the survey for the degree of severity, frequency of occurrence and impact on delivery of active treatment or quality of life. The threshold at which the frequency of occurrences amounts to a deficiency varies. One occurrence directly related to a life-threatening or fatal outcome can be cited as a deficiency. On the other hand, a few sporadic occurrences may have so slight an impact on delivery of active treatment or quality of life that they do not warrant a deficiency citation.

Surveyors also analyze their evidence to determine if a problem is isolated, a pattern, or pervasive (widespread). For example, one sample individual who missed his dental examination from a sample of 50 individuals is not nearly as significant as one sample individual missing a dental examination from a sample of three individuals.

Surveyors examine their evidence in light of the seriousness of the applicable citation (e.g., an hour long observation of staff not implementing infection control techniques may be adequate to cite W455, but an hour long observation of staff not implementing active treatment would probably be inadequate to cite W196, which automatically puts out the CoP of active treatment). However, ultimately, the determination of whether evidence is sufficient to cite a deficiency or violation is a professional decision made by the surveyor.

**Q: Why do surveys and other regulatory visits have to be unannounced?**

**A:** State and federal rules and regulations direct the performance of unannounced surveys.

**Q: Only one surveyor visited my facility. Does not a survey team survey a facility?**

**A:** The program manager makes assignments based on the needs of the regulatory unit, the size of the facility, and the surveyor's abilities. One surveyor or a team of surveyors may conduct a survey. All surveyors must attend training before performing a survey or inspection by themselves. For ICFs/IID, one member of the survey team must be a specialized staff person who has expertise in developmental disabilities.

**Q: How can DADS address sending out non-clinical surveyors to address clinical issues?**

**A:** All surveyors are trained to investigate facilities related to their applicable standards. Specialty surveyors are available for consultation.

**Q: When a surveyor comes to a facility, the staff that needs to be available has to rearrange meetings, in-service trainings, etc. If there is one day a week that does not work well, may a provider recommend DADS not come on that day for a routine survey?**

**A:** Surveys are required to be unannounced. DADS cannot change required time frames for visits to facilities. DADS must meet these time frames to comply with internal policies and procedures. For ICFs/IID, facility staff must be available at the facility within 45 minutes of telephone contact by survey staff.

**Q: Will we see consistently the same survey team members? Is it possible to have the same surveyor for each visit?**

**A:** DADS assigns surveyors based on the type of survey to be performed and the surveyor's specialty/expertise. DADS has no plans to assign a specific surveyor to a specific provider. Surveyors conduct surveys according to established survey protocols to comply with the licensure rules and CMS guidelines. The protocols are designed to provide consistency in the survey process regardless of which surveyor conducts the survey. The use of multiple surveyors will allow for multiple, objective observations.

**Q: How do you ensure that new surveyors are familiar with the regulations?**

**A:** All qualified surveyors are experienced professionals. Each program has required training courses that a surveyor must complete before conducting surveys.

**Q: How do you determine if the survey process is consistent among different surveyors and regions?**

**A:** The regulations state the federal (certification) survey process as well as surveyor qualifications and training requirements. Surveyors throughout the state receive the same training. Oversight surveys observe the survey process in all regions of the state for thorough, accurate and consistent survey process. Our goal for surveys and surveyors statewide is to be as consistent as possible while allowing for the individual circumstances of each provider. DADS Regulatory Services Quality Management Section and the CMS Regional Office have conducted extensive federal and state oversight and coaching surveys throughout the state for the last several years. Feedback from the oversight teams has strengthened our training program and improved the consistency of the survey process.

**Q: How will a surveyor conduct a survey on a facility that has computerized medical records?**

**A:** Automation does not hinder the survey process. Facilities must make all requested documents available to surveyors and have adequate terminals. Facilities are responsible for providing surveyors with the data for each individual. [Ref: S&CC [09-53](#)]

**Q: How does a negative finding during the survey process become a deficient practice?**

**A:** A negative finding is a deficiency/violation when the negative finding constitutes a violation of federal regulations or state rules. The survey team reviews the survey findings and determines the facility's compliance with the requirements.

**Q: If providers remove restraints to evaluate for possible restraint reduction and the individual falls, will the surveyor issue a citation?**

**A:** Providers must assess each individual's level of supervision during the restraint-reduction process. Some individuals will need a much higher level of supervision, and the facility is responsible for meeting the individual's needs. The facility must document the assessment and monitoring and develop a plan of care. Surveyors determine facility compliance based on the evidence that they gathered during the survey (observations, interviews and record reviews) and their analysis of their evidence.

**Q: Why do surveyors only seek negative feedback in family interviews?**

**A:** Surveyors are looking for information during the interview process, both positive and negative. The purpose of family interviews is to obtain information regarding the individual's prior and current preferences. This information helps surveyors determine whether the facility is individualizing individual services, care and activities. Surveyors use this information to verify observations and/or record reviews as well as to investigate family member concerns.

**Q: Are surveyors required to interview staff to ascertain if a document or policy is missing before citing deficiencies?**

**A:** Before a surveyor can write a deficiency based on his or her belief that a required document does not exist, he or she should discuss this position with facility staff to determine if additional documentation or other information exists. The absence of a required policy or an inadequate required policy gives weight to a deficient practice. For example, if facility staff are unaware of the facility disaster policy this could be a staff training issue or a more serious issue of a non-existent policy. Only by asking for the policy will a surveyor be able to make this determination.

**Q: What are the rights of facility staff when surveyors interview them?**

**A:** As part of the survey process, surveyors are required to interview key personnel and any other personnel deemed appropriate to determine how the facility is delivering care and services. The interviewee may request confidentiality. The surveyor will protect such a request; however, if a lawyer subpoenas a surveyor, he or she may be compelled to reveal the staff person's identity. This is the only way that the interviewee's name may be revealed.

**Q: If a surveyor has a question about a physician's order or a medication prescription, should the surveyor not address the question to the appropriate staff?**

**A:** In the course of a survey or an investigation, it is likely that a surveyor will attempt to gather many pieces of information in several ways. Personal interviews with individuals, responsible parties, facility staff and others are important methods of information gathering. Surveyors will corroborate information that only one person holds.

Surveyors interview people believed to have knowledge of the information the surveyor is seeking. There may be a number of questions that require follow-up regarding physicians' orders or medication prescriptions. Surveyors, therefore, would select people to interview based on the particular issue they are examining.

**Q: What risks are surveyors looking for when making an immediate jeopardy (IJ) call? What steps do we take to have the IJ lifted and prevent costly fines? Is there any new education to provider staff regarding IJs?**

**A:** CMS SOM Appendix Q defines IJ as "A situation in which the provider's noncompliance with one or more requirements of participation has caused, or is likely to cause, serious injury, harm, impairment, or death to an individual." IJ is a federal term and only applies to certified facilities.

Surveyors must determine the immediacy of the threat when determining if an IJ situation exists. The facility must immediately initiate a credible allegation (an allegation of how it will get back into compliance) to meet the requirements for licensure and/or certification. There are no plans for state training of providers related to IJ situations.

**Q: If a survey lasts more than one day, must surveyors give a "mini-exit" or summation of concerns at the end of each day?**

**A:** DADS trains surveyors to maintain open, ongoing communication with facility staff regarding where they are in the survey process. The survey team meets daily, but there is no requirement for a daily "mini-exit" with facility staff. Such meetings are held at the survey team's discretion.

**Q: Are surveyors required to hold a pre-exit conference?**

**A:** No. There is no requirement for a "pre-exit" meeting with the facility. During the exit conference, DADS provides facilities with the opportunity to discuss and supply additional information that they believe is pertinent to the negative findings discussed during the course of the survey.

**Q: What can we do when surveyors do not accept additional information prior to exiting?**

**A:** Federal guidance instructs surveyors to accept additional information during the exit conference. Surveyors are to consider the provided information and indicate their willingness to re-evaluate the findings before leaving the facility. DADS recommends the facility contact the regional office program manager to discuss/resolve the issue and provide the additional information related to proposed deficiencies/violations. If the program manager does not act on your concern, you may contact the regional director or the state office at (800) 458-9858 to file a complaint. [Ref: PL [02-42](#)]

**Q: Should surveyors inform a facility of all deficiencies/violations during the exit conference? Can surveyors provide facilities with a list of tags they will cite?**

**A:** Surveyors will fully inform the person in charge of the facility of the preliminary survey findings during an exit conference. Surveyors do not discuss tags at the exit conference. Surveyors document their findings on the Form CMS-2567/DADS Form-3724, which the regional staff reviews. If other deficiencies/violations are found based on a review of the findings, the state requires the surveyor to conduct another face-to-face exit conference with the facility's person in charge. [Ref: S&CC [07-17](#)]

**Q: Can the provider send additional information concerning a negative finding to the regional office?**

**A:** Yes. Federal training states that facilities may present additional information before the surveyors leave the facility. However, if a facility believes it complies with a requirement, it should present information to the survey team while it is on site.

**Q: How does the team decide to write a deficiency after exit when they did not express a concern at the exit conference?**

**A:** Survey teams share their preliminary findings with a facility at the exit conference. After the survey team exits the facility, further review of information gathered during the survey may result in identification of additional deficiencies or violations. When surveyors identify additional deficiencies or violations they conduct another exit conference and provide the facility with an opportunity to present evidence of compliance with the additional planned deficiencies.

**Q: Can surveyors write a citation if it is a paper compliance issue with no negative outcome?**

**A:** If there is a violation of the rules, surveyors will cite a deficiency or violation. Facilities are required to comply with all rules, regardless of the nature of those rules.

**Q: What do we do when surveyors cite unwritten rules? For example, a facility cannot barbecue outside.**

**A:** Surveyors should document findings in accordance with federal and licensing standards. Deficiencies/violations must show the facility's noncompliance with the rule. Facilities have the right to dispute deficiencies/violations cited and may request an informal dispute resolution (IDR).

**Q: Do surveyors have to cite a certain number of deficiencies?**

**A:** There are no deficiency quotas. Surveyors must perform surveys according to state and federal protocols. Surveyor guidance is to cite deficient practices when identified during the course of the survey.

**Q: Why do surveyors write multiple tags, in different areas, when it relates to the same concern?**

**A:** A negative outcome may be the result of violations of more than one rule or regulation. Surveyors must cite negative findings found during a survey.

**Q: Why do surveyors write a deficiency if they do not receive requested records?**

**A:** Certain documents are required for certification/licensure compliance. For example, if an ICF/IID does not submit its evacuation drills, surveyors would cite a deficiency because the facility is required to have these documents.

Records submitted to show compliance with surveyor negative findings may not be adequate to prove compliance with the requirements, i.e., providing documentation dated the day the surveyor informed the facility of a concern. This does not correct the system that failed to meet compliance.

**Q: Why do surveyors not go back to writing only tags on pattern issues instead of isolated instances?**

**A:** Surveyors are required to document violations of state and federal regulations. The threshold at which the frequency of occurrences amounts to a citation varies. One occurrence directly related to a life-threatening or fatal outcome can be cited. On the other hand, a few sporadic occurrences may have so slight an impact on delivery of active treatment, quality of care or quality of life that they do not warrant a citation.

**Q: When should regions send the statement of deficiencies/statement of violations to providers?**

**A:** Regions must send Form CMS-2567, Statement of Deficiencies, and DADS Form 3724, Statement of Violations, to a provider within 10 working days of the exit conference. The provider has 10 calendar days to return their Plan of Correction (PoC) for the Form CMS-2567 and 10 working days to return their PoC for the DADS Form 3724 to DADS. [Ref: [PL 08-29](#)]

**Q: Because the facility has 10 days to submit a Plan of Correction (PoC), when does day one begin?**

**A:** Day one is the date following the day the facility received the Statement of Deficiencies/Statement of Violations.

**Q: What should we include in our PoC?**

**A:** Facilities must submit an acceptable PoC to the DADS regional office, within 10 calendar days for federal deficiencies and within 10 working days for licensure violations, after receiving notice that the final exit conference has been completed. An acceptable PoC must address the following:

- how corrective action will be accomplished for those individuals found to be affected by the deficient practice;
- how the facility will identify other individuals with the potential to be affected by the same deficient practice, and how the facility will act to protect individuals in similar situations;
- what measures will be put into place or systemic changes made to ensure that the deficient practice will not recur;
- how the facility will monitor its corrective actions/performance to ensure that the deficient practice is being corrected and will not recur, i.e., what program will be put into place to monitor the continued effectiveness of the systemic change to ensure that solutions are permanent; and
- when corrective action must be accomplished.

[Ref: PL [01-50](#)]

**Q: What can a facility do if it disagrees with the evidence that a surveyor recorded on the Form CMS-2567 or DADS Form 3724?**

**A:** The facility may supply additional information to the surveyor during the exit conference. However, the surveyor is not required to reverse his or her findings. Providers may refute any citations through the IDR process.

**Q: Does a facility have to submit a PoC when it has submitted a request for an IDR?**

**A:** Facilities that disagree with the findings of a deficient practice must submit acceptable PoCs as the certification process continues. Failure to do so can result in vendor hold or enforcement action. If the IDR process deletes the deficiency/violation, the facility will receive a revised statement of deficiencies/violations (Form CMS-2567/DADS Form 3724). If the IDR sustains the deficiency/violation, the facility would have already submitted the PoC to meet the required federal and state time frames and the facility would not be at risk of losing its provider agreement, assuming that the PoC was accepted and submitted timely.

**Q: Facilities have to submit a PoC at the same time as a request for an IDR and they have to develop a correction plan for each deficiency cited, which sometimes involves changing operational practices. Then if the IDR results in the removal of a deficiency/violation, the facility has already changed their operational practice, which may not have improved the facility. Can DADS do anything about this?**

**A:** Although a facility may request an IDR/reconsideration of the deficiencies, it is still required to submit an acceptable PoC as mandated by federal and state requirements. The PoC should address how the facility is going to correct the noncompliance with the regulation/standard but does not require the facility change operational practice. The facility must look to see what steps led to the noncompliance and correct those issues before changing operations/policies.

**Q: Why does the DADS Regulatory Services spokesperson comment to the media about deficiencies that occurred and DADS cleared?**

**A:** The DADS Regulatory Services spokesperson usually responds to questions about a specific facility or a facility's compliance history. A deficiency/violation cited on a Form CMS-2567 or DADS Form 3724 is part of the record and is public information. DADS will not erase the deficiency/violation from the facility history just because DADS cleared the facility on the follow-up visit.

**Q: Why is the IDR often delayed until after the time of the follow-up survey?**

**A:** The Texas Health and Human Services Commission (HHSC) has established time frames for completing the IDR. At times, the due date for the follow-up visit will occur before the completion of the IDR because of mandated time frames for completion of the follow-up visit. HHSC completes the IDR process no later than the 30<sup>th</sup> day after receipt of a request from a facility.

**Q: Why is DADS not held to a 30-day deadline for responding to a facility's IDR request?**

**A:** DADS does not perform IDRs. HHSC attempts to meet all time frames for IDRs. The facility has 10 days after receipt of the Form CMS-2567/DADS Form 3724 to request an IDR. HHSC has 30 days to decide the appeal after receiving the IDR request and all required information. The date HHSC receives all required information may not be when the facility makes the request and, therefore, would not be 30 days from the facility's original request.

**Q: Will DADS allow a facility to use a fine toward improving the facility?**

**A:** Amelioration of administrative penalties may be available if certain conditions apply. If a facility would prefer to pursue amelioration rather than paying an administrative penalty, it may propose a plan of amelioration in accordance with the statute and the DADS rules.  
[Ref: [PL 06-38](#)]

**Q: Why does DADS assess administrative penalties when it knows it dilutes funds intended for patient care?**

**A:** The regulations outline criteria for recommending administrative penalties and appropriate penalty amounts. PL #06-38 provides guidance for requesting amelioration of administrative penalties. [Ref: [PL 06-38](#)]

**Q: How can providers correct inaccurate information reported by DADS on the Report of Contact (ROC)?**

**A:** If the ROC is inaccurate, the facility may contact the regional program manager or the regional director to inform them of the error. The region corrects the error and sends a corrected copy to the facility and to the state office.

**Q: What does DADS do about misspelled words, wrong dates and wrong names in survey documents?**

**A:** If survey documents contain erroneous information, the facility should contact the local regional office program manager to discuss concerns.

**Q: Can the same team of surveyors who made the initial survey not make the follow-up visit?**

**A:** According to CMS guidance, DADS should attempt to send the same surveyor(s) on a follow-up visit, but this is not mandated. The regions prefer to send the same team on the revisit to maintain consistency, but this is not always possible due to scheduling conflicts, deadlines and personnel schedules.

**Q: Why does DADS not train surveyors in all areas of the regulations or assign them only to those areas they are familiar?**

**A:** All surveyors receive training in the regulations for the program type that they will be surveying.

**Q: Does DADS train surveyors not to disrupt facilities' daily routines while conducting surveys?**

**A:** DADS instructs surveyors to keep any disruptions of daily routines at a minimum. However, in order to follow the survey protocols, minimal disruption may occur.

**Q: Can we get a history of deficiencies cited by a particular surveyor?**

**A:** No. DADS does not track an individual surveyor's history of cited deficiencies.

**Q: What procedures do providers follow when making a complaint regarding a surveyor?**

**A:** DADS Regulatory Services investigates all complaints against surveyors. Providers are encouraged to notify the surveyor's program manager immediately with any concerns. Providers may also call the regional director and/or the DADS Consumer Rights and Services toll-free complaints line at (800) 458-9858. Facilities can also lodge complaints by e-mail to Gail McCristle, Complaint Intake, state office, at [gail.mccristle@dads.state.tx.us](mailto:gail.mccristle@dads.state.tx.us).  
[Ref: PL [02-42](#)]

**Q: Should DADS allow a surveyor to come back into a facility after a facility successfully gets a deficiency overturned that the surveyor cited?**

**A:** Surveyors are professionals who should objectively assess the situation each time they enter a facility. If the provider feels the surveyor did not perform the survey according to protocols, the provider should contact the surveyor's program manager, the regional director, and/or the state office Complaint Intake unit at (800) 458-9858. [Ref: PL [02-42](#)]

**Q: What qualifications must one fulfill in order to be a surveyor?**

**A:** Minimum requirements include a license (RN, social worker, etc.) or bachelor's degree in a human services field. Certain survey positions (e.g., qualified mental retardation professionals) require one year's experience working with people with mental retardation or developmental disabilities. DADS evaluates each applicant's experience through the interview process. We look for experience in the health care arena, but will also evaluate applicants on their overall job experience. For qualifications for the various surveyor positions, please visit the HHSC website at <https://accesshr.hhsc.state.tx.us/>.