



COMMISSIONER
Jon Weizenbaum

September 14, 2015

To: Licensed Day Activity Health Services (DAHS) Facilities

Subject: Provider Letter No. 15-24 – License Capacity

This provider letter clarifies license capacity versus occupancy load for DAHS facilities. License capacity for a DAHS facility (the maximum number of clients served in the DAHS facility at any time during the day) is based on the Department of Aging and Disability Services (DADS) minimum standards for licensure at Texas Administrative Code Title 40, Part 1, Chapter 98, [§98.42](#) and [§98.43](#).

The maximum occupancy load for a building (meaning the total number of people who may occupy a workplace, or a portion of a workplace, at any one time) is determined by local fire or building authorities for maximum building safety in the event of a fire. Occupancy load includes clients, staff and visitors. The fire marshal's occupancy load capacity and DADS license capacity are based on different calculations. DADS license capacity will almost always be less than the local fire marshal's occupancy total. In the event that DADS license capacity calculation is not less than the local fire marshal's capacity total, the DADS license capacity will be reduced to correspond to the lower determination made by the fire marshal. While the license capacity and occupancy load are based on different calculations, the DAHS licensed capacity must not exceed the number of occupants approved by the local fire or building authorities. DADS licensed capacity will always be less than the local fire marshal's occupancy total. The DAHS facility may not exceed licensed capacity listed on its license at any time during the day.

The licensing rule at §98.42(c)(2)(G) calculates license capacity at 40 square feet per client and excludes from the calculation any "kitchen/food service area, rest rooms, bath areas, office, corridors, stairways, storage areas and outdoor space." **Beginning October 1, 2015, DADS will verify square footage at each DAHS during the facility's next licensing, capacity increase or change of ownership inspection.** A license holder must comply with Subchapter C, Facility Construction Procedures prescribed in the Adult Day Care and Day Activity Health Services Requirements in order to obtain or renew a DAHS license. The licensed capacity will be reduced if DADS determines that the capacity listed on the facility license is greater than what is allowed by the licensing standards.

[Read the Adult Day Care and Day Activity and Health Services licensing requirements online.](#)

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If you have questions about the standards for a DAHS facility building, you may contact an architect in the Architectural Unit at (512) 438-2371.

Sincerely,

[signature on file]

Mary T. Henderson
Assistant Commissioner
Regulatory Services
MTH:cg