



COMMISSIONER
Adelaide Horn

July 1, 2009

To: Assisted Living Facilities (ALFs) and
Home and Community Support Services Agencies (HCSSAs)

Subject: **Provider Letter 09-14** – Resident Choice of Health Professionals

This letter is a reminder to both ALFs and HCSSAs of a resident's right to choose and contract with his or her own health care professionals. ALFs must specify, in the facility resident admission agreement, any requirements the facility imposes on non-facility staff entering the facility and delivering services to residents. However, Texas Health and Safety Code (H&S Code) §247.067(c) prohibits ALFs from interfering with a resident's right to contract with a health care provider of his or her choice. In addition, Texas Administrative Code (TAC) Title 40, Part 1, Chapter 92, §92.5(b) states that "a resident may contract with a home and community support services agency licensed under Chapter 142 or with an independent health professional to have health services delivered at the facility."

The Texas Attorney General emphasized the right of a resident to contract with the health care provider of his or her choice in Attorney General Opinion GA-0403 (2006), stating: "An assisted living facility proprietor who restricts a resident's right to contract with a personal care services provider for health care services or who bars health care professionals with whom residents have contracted violates [H&S Code] chapter 247's requirements. The Department [of Aging and Disability Services] may suspend or revoke an assisted living facility license for violation of chapter 247."

Both ALFs and HCSSAs must coordinate the health care provided to ALF residents. Per the Licensing Standards for Assisted Living Facilities, at 40 TAC §92.41(e)(1)(A), an ALF is responsible for all care provided to residents at the facility. Per 40 TAC §92.41(e)(3), outside resources (or non-facility health providers) are required to provide facilities with a copy of their resident care plans and documentation of services provided. In addition, the Licensing Standards for Home and Community Support Services Agencies, at 40 TAC §97.288, require HCSSAs to have written policies to ensure effective coordination of care with all service providers involved in the care of a client, including ALFs. The licensing standards at 40 TAC §97.282 require HCSSAs to protect a client's right to participate in the planning of his or her care and choose health care service providers.

Consistent with the Attorney General's opinion regarding the Department of Aging and Disability Services' (DADS) regulatory authority, DADS will seek enforcement action against a licensee for restriction of a resident's right to choose a health care professional, or a HCSSA license for the agency's failure to protect and promote a client's rights to be free from coercion and to participate in planning and choice for his or her own care.

Provider Letter 09-14
July 1, 2009
Page 2

Violations of state licensing standards for an ALF may result in assessment of administrative penalties as noted in 40 TAC §92.551. The amount of the penalty is determined by the Administrative Penalty Schedule in 40 TAC §92.551(d), in amounts ranging from \$100.00-\$1,000.00.

Violations of the state licensing standards for a HCSSA may result in assessment of administrative penalties at a severity level A or severity level B, as noted in 40 TAC §97.602, in amounts ranging from \$100.00 - \$1,000.00 per violation.

The following are direct links to the Licensing Standards for Assisted Living Facilities and H&S Code Chapter 247 and the Licensing Standards for Home and Community Support Services Agencies and its corresponding statute at H&S Code Chapter 142. Also included is the link to Attorney General Opinion GA-0403 (2006).

Licensing Standards:

<http://www.dads.state.tx.us/handbooks/lf-alf> and <http://www.dads.state.tx.us/handbooks/lshcssa/>

Texas Health and Safety Code Chapter 247:

<http://tlo2.tlc.state.tx.us/statutes/docs/HS/content/pdf/hs.004.00.000247.00.pdf>

Texas Health and Safety Code Chapter 142:

<http://www.statutes.legis.state.tx.us/SOTWDocs/HS/htm/HS.142.htm>

Attorney General's Opinion GA-0403:

<http://www.oag.state.tx.us/opinions/opinions/50abbott/op/2006/htm/ga0403.htm>

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,

[signature on file]

Veronda L. Durden
Assistant Commissioner
Regulatory Services

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