

MEMORANDUM

SUBJECT: Community Care Policy Clarification CCAD 02007, DAHS 02001

TO: Regional Administrators
Regional Directors
Long Term Care Services

FROM: Becky Beechinor
Assistant Deputy Commissioner
Long Term Care Services
State Office W-511

DATE: April 16, 2002

The following questions relate to issues raised by Region 11 regarding a Day Activity and Health Services (DAHS) facility's ability to meet the needs of clients. Please note that, in reference to this discussion, an Adult Day Care (ADC) facility is a facility licensed by Long Term Care – Regulatory (LTC-R). A reference to a DAHS facility refers to a licensed facility that contracts with the Texas Department of Human Services (DHS). All DAHS facilities must be licensed as an ADC, and therefore, must comply with ADC licensing rules. Any reference to "licensing rules" refers to the licensing requirements for all ADC facilities, contracted and private. The DAHS rules and the DAHS Provider Manual apply only to DAHS facilities. The Texas Administrative Code (TAC) for both licensed (ADC) and contracted (DAHS) facilities can be found in 40 TAC Chapter 98.

Policy Question 1:

What is meant in Section 5140 of the DAHS Provider Manual, by the following statement?

"If, after completing the health assessment, the facility determines the facility cannot meet the needs of the client, the facility may request a joint staffing via Form 2067 to the caseworker to determine why the facility cannot meet the needs of the client."

Is the staffing to determine or to explain why the facility cannot meet the needs of the client? If the staffing is to determine why the facility cannot meet the needs of the client, then who makes this determination? What is used to make a decision that the facility can or cannot meet the client's needs?

Policy Clarification 1:

The facility may, but is not required, to request a staffing if they determine they cannot meet the client's needs. Licensing rules in 40 TAC §98.62(b)(5), Staffing Ratio, state:

"The facility must ensure that clients whose needs cannot be met by the facility are not accepted or retained."

The facility may refuse to serve a client if they determine they are unable to meet a client's needs, or are unable to continue to meet a client's needs. The required notice a DAHS facility must give clients prior to discharging them is in the licensing rules.

All options for meeting the client's needs in the DAHS facility must be explored prior to the facility refusing to accept or refusing to continue to serve a client. The DAHS facility may request a staffing prior to making the final decision to refuse a client if they are unsure whether they have enough documentation or whether all avenues have been explored. LTC-R staff should be present at the staffing to clarify any licensing issues.

Once the facility determines they cannot meet the client's needs, the caseworker should have the client choose another DAHS facility and make a new referral.

Policy Question 2:

If the facility states that they cannot meet the needs of the client, should the worker accept the facility's statement and refer to another facility?

Policy Clarification 2:

Yes. A DAHS facility stating they cannot meet the needs of a client must submit documentation supporting their position to the region. The documentation submitted must consist of the following:

- Description of the client situation in general and as it relates to the particular issue the provider has raised.
- Details of the circumstances causing the facility's inability to meet the client's needs.

- How these circumstances have occurred or will occur if the client attends the DAHS facility, or continues to attend the DAHS facility.
- How the licensing standard the contractor alleges would be violated and how providing services would violate the standard, if a specific standard can be identified.
- A copy of the citation should be included, if the contractor actually has been cited for a violation.

Each region must have procedures and policies set up to review this documentation. Regional review procedures are not to approve or deny the refusal, but to ensure the facility has provided appropriate documentation supporting the refusal.

Policy Question 3:

What are some instances when facilities can claim that they cannot meet the needs of a client?

Policy Clarification 3:

There are too many instances to give examples without leaving many examples out. Each situation is unique to the client and the facility, and there are other factors too numerous to list. It is the responsibility of the facility to detail exactly why the facility is unable to meet the client's needs, to provide documentation of both the reasons they are unable to do so, and how this has occurred or could occur.

Policy Question 4:

If the worker disagrees with the facility and insists on the facility providing the service, does DHS become liable for the facility's compliance with 40 TAC §98.62(b)(5)?

Policy Clarification 4:

The worker may disagree, but he/she cannot require the facility to provide the service. Therefore, DHS Long Term Care Services (LTCS) has no liability.

Policy Question 5:

If the worker disagrees with the facility's refusal to serve the client, does the contract provide for DHS to require that the facility serve the client?

Policy Clarification 5:

The worker may disagree with the facility's decision, but they cannot require the facility to serve the client. LTCS contracts do not require a DAHS facility to take an action that may place the facility in violation of licensing rules.

An electronic version of this policy clarification, as well as past Community Care Policy Clarifications, can be accessed at
<http://www.dhs.state.tx.us/programs/communitycare/policyletters/index.html>

Please contact Sarah Hambrick at (512) 438-2578 if you have any questions.

Signature on file

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