



COMMISSIONER  
Adelaide Horn

April 25, 2008

To: Nursing Facilities

Subject: **Provider Letter #08-10** – Family Council Provisions in Senate Bill (SB) 131, 80<sup>th</sup> Legislature, Regular Session, 2007 (**Replaces PL 08-03**)

Effective: January 18, 2008 – Update on Rule Promulgation

The Texas Aging and Disability Services Council approved proposed rules for implementation of the provisions of SB 131 related to family councils on December 12, 2007. The rules were published in the January 18, 2008 edition of the Texas Register. A link to the proposed rules is available at <http://www.dads.state.tx.us/rules/rules.html>. The 30-day comment period on the proposed rules closed on February 17, 2008.

The Department of Aging and Disability Services (DADS) solicited input from stakeholders related to the implementation of SB 131. In response to stakeholder concerns, DADS compiled the attached list of questions and answers regarding implementation of SB 131.

If you need additional information or have specific questions, please contact a nursing facility policy specialist at 512-438-3161.

Sincerely,

*[signature on file]*

Veronda L. Durden  
Assistant Commissioner  
Regulatory Services

VLD:ca

Attachment

## **Senate Bill (SB) 131 – Implementation Questions and Answers**

Resident councils and family councils have been recognized in nursing home regulations since the passage of the nursing home reform provisions in the Omnibus Budget Reconciliation Act of 1987. The federal long-term care requirement at 42 Code of Federal Regulations §483.15(c) establishes the right of residents and families to organize and participate as a group in the facility.

The language of the federal requirement was adopted in the early 1990s as part of what are now the Department of Aging and Disability Services (DADS) Nursing Facility Requirements for Licensure and Medicaid Certification (NFRL/MC), commonly referred to as the state regulations. The specific rule language regarding resident and family councils is included in the quality of life subchapter of the rules at 40 Texas Administrative Code (TAC) §19.701(3).

The 80<sup>th</sup> Texas Legislature enacted SB 131, which amended Health and Safety Code Chapter 242. It added provisions that affirm the right of families of nursing home residents to organize in the facility, carry out various activities in the facility in a way that provides the family council with opportunities to make recommendations, and make the council's views known to the facility administration. The provisions of SB 131 that are specific to the interactions of nursing facilities and family councils become effective September 1, 2008.

The implementation of SB 131 by DADS has prompted a number of questions about the provisions in the bill. Here are some of the most commonly asked questions with answers, prepared by DADS staff, that attempt to address the issues raised in the questions.

### **1. Are family councils now required in every nursing home?**

**Answer:** No. SB 131 creates protections for family councils to form and exist. It does not require a family council in every nursing home.

### **2. If facility staff cannot attend a council meeting unless invited, can a resident attend without an invitation?**

**Answer:** Neither the new statutory language nor the current rules specifically address the issue of residents attending a family council meeting. Health and Safety Code Section 242.904(b) allows for a facility staff person or a "visitor" to attend at the council's invitation. A council could conceivably invite residents to attend as "visitors." Family councils function with a large degree of autonomy. A council, at its discretion, might hold open meetings, or the council might choose to hold closed meetings. Residents also always have the right to have their interests represented through a resident council. Resident councils are provided for through statute and rule, in language very similar to the statute and rule language that applies to family councils.

### **3. If a group of family members and friends meet but do not call themselves a family council, do the family council rules apply to the group?**

**Answer:** Yes. The NFRL/MC define a family council as a group of family members, friends, or legal guardians of residents who organize and meet privately or openly. Any family group meeting in an organized manner regardless of name, is viewed as a family council.

**4. Does the law require documentation that family members received information upon admission about their right to form or join a family council?**

**Answer:** Statutory changes do not require the facility to keep written documentation showing that, upon admission of a resident, the family received written notification of the right to form a family council; however, nursing facilities do typically ask residents or responsible parties to sign acknowledgement documents or statements for each critical piece of information that is provided at admission.

**5. What constitutes "membership" in a family council?**

**Answer:** Neither the statutory changes nor the current rules define "membership." Well-organized family councils may have charters, bylaws, and organizational structures that will define and describe their membership.

**6. Must the facility administrator serve as the designated staff person to the family council?**

**Answer:** No. Health and Safety Code Section 242.903(d)(4) simply calls for the facility to "provide a designated staff person to act as a liaison." There are several staff positions that might make a good choice for this role. If a family council exists, the facility should seek input about a preferred designated staff person from the family council leadership or membership. A staff person who is well liked, respected, a strong communicator, and views family councils as an effective resource for the facility will be a good match for this role.

**7. The new rule says a facility must post family council information on a bulletin board. If the information is easily available, can the facility provide the information in a place other than a bulletin board?**

**Answer:** Health and Safety Code Section 242.903(d)(3) says the facility must "provide a family council with adequate space on a prominent bulletin board to post notices and information." Since most nursing homes have one or more large bulletin boards located in prominent areas of the facility, a facility shall designate space for family council use on one or more of their bulletin boards.

**8. How can a facility meet the requirement of a semiannual mailing? Aren't there confidentiality concerns about providing family addresses to other family members?**

**Answer:** Health and Safety Code Section 242.903(d)(1) requires a facility to "include notice of a family council in a mailing that occurs at least semiannually." One way to meet this requirement is to mail to one family member per resident. If a council exists, the mailing should include specific information about the regular meeting time and location. Coordination with members of the existing council is essential to making this mailing an effective activity. If mailing general information about family councils, facilities may consider sending a survey to gather feedback and insight into times or dates when interested family members would most likely attend. The statutory language "include notice...in a mailing" also suggests that facilities could meet this mailing requirement by including family council information as an "insert" in the monthly billing statements sent out by the facility or in a facility newsletter that is mailed out to family members.

Mailing to one family member who acts as the responsible party or point of contact in case of emergency should be sufficient if the materials are also placed in a prominent place in the facility. Additional copies of these materials left in a central location such as the front

entrance room, a bulletin board, or next to the posted survey will serve to inform additional family members or friends of residents who wish to learn about the family council.

The new statutory language requires the facility to be responsible for the mailing, thus there is no need for the facility to provide addresses of all family members to the council. The council can collect personal information directly from family members as it wishes and as family members are willing to provide.

**9. The semiannual mailing rule refers to an existing family council. If a council does not exist, does the rule apply?**

**Answer:** No. The rule states that a facility must include information about the existence of the family council in a mailing that occurs at least semiannually. If no family council exists, then a semiannual mailing is not required. However, at admission the facility must provide the resident and family information about the option to form a family council.

**10. A family council member can authorize another family member to visit a resident. Is this a violation of the resident's right to privacy or a Health Insurance Portability and Accountability Act (HIPAA) violation?**

**Answer:** This is not a violation of HIPAA. Facilities must respect a resident's right to receive and refuse visitors, regardless of a family council member's request for authorized visitation. If the resident consents to visitation, then the resident's privacy is maintained. If a resident is unable to consent, then the legally authorized representative may consent on behalf of the resident.

**11. Are there any circumstances when a facility can terminate a family council?**

**Answer:** No. If intractable problems develop between the facility administration and the family council, the long-term care ombudsmen can be a resource.

**12. Do surveyors now have to notify the family council that an annual inspection has begun?**

**Answer:** No, SB 131 does not require surveyors to provide specific notice to the family council when they conduct a survey. At the beginning of all surveys, DADS surveyors post signs that advise that a survey is in progress on the outside of all exterior doors of the facility. These signs serve as notification to the public at large that DADS is conducting a survey of the facility.

**13. What is the "final statement of violations" following an annual inspection?**

**Answer:** Within 10 working days following the annual inspection, DADS provides a final statement of deficiencies to the facility. The new statutory language at Health and Safety Code Section 242.0445(b-1) requires the facility to, in turn, provide, within five working days of receipt from DADS, a copy of the deficiencies statement to a representative of the family council. This "final statement of violations" will not include the facility's plan of correction, and the statement may include citations that could be altered by informal dispute resolution decisions or appeals.

**14. What does five "working days" mean?**

**Answer:** A working day is defined by rule as any 24-hour period, Monday through Friday, excluding state and federal holidays.

**15. If a facility has an existing family council and another wants to form, would these rules apply to both groups?**

**Answer:** Neither SB 131 nor the federal long term care requirements address the possibility of having more than one family council per facility. In the unlikely event of there being more than one council, the rules (both federal and state) would apply to all councils.

**16. Are elected officers, an agenda, or other structures required of a family council?**

**Answer:** SB 131 and the federal long term care requirements affirm the right of families to create a group or a council in an autonomous fashion. The statute and rules do not prescribe a specific organizational structure for family councils. A number of non-profit national and state-based nursing home advocacy organizations have developed "how to" manuals for starting, organizing and maintaining family councils. The Long Term Care Ombudsman Program also has information and resources on family councils.

**17. What if the family council always wants staff at the meeting? How can this be demonstrated to surveyors?**

**Answer:** This question seems to assume that surveyors will see a problem in how a council functions if it appears that a staff person is present all the time at all meetings. The new statutory language at Health and Safety Code Section 242.904(b) [and the current rule language at 40 TAC 19.701(3)(D)] says that staff may attend council meetings at the council's invitation. Surveyors will assume, unless advised otherwise, that a family council is aware of its right to meet in private or to have staff attend meetings by invitation only.

**18. If the family council files a grievance orally, or in writing, and the facility addresses the concern through the facility's quality assurance committee, do family council rules apply?**

**Answer:** Yes. 40 TAC 19.701(d)(1) requires the facility to listen to and consider the views and act upon the grievances and recommendations of a family council. Utilizing the quality assurance committee does not exempt the facility from meeting all requirements and responding to all grievances. If a facility refers a family council-raised issue to its Quality Assurance Committee, the facility is expected to report back to the council regarding the action taken by the committee.