



COMMISSIONER
Jon Weizenbaum

August 31, 2015

To: Medicaid-certified Nursing Facilities (NFs)

Subject: **Provider Letter 15-19** — Bond/Letter of Credit Requirement for Applicants
Granted Medicaid Bed Waivers

Effective August 31, 2015, Texas Administrative Code (TAC), Title 40, Part 1, Chapter 19, Subchapter X, §[19.2322](#), Medicaid Bed Allocation Requirements, requires applicants granted Medicaid bed waivers to provide DADS with a \$500,000:

- performance bond,
- surety bond, or
- irrevocable letter of credit.

The bond or letter of credit is to ensure that the Medicaid beds granted to the applicant under a waiver are certified within the required time period, including any granted extensions. DADS will revoke a waiver if the applicant does not provide the performance bond, surety bond or irrevocable letter of credit within 90 days after DADS approves the waiver application.

This new requirement implements Texas Human Resources Code, Title 2, Subtitle C, Chapter 32, Subchapter B, §32.0213(d), which was added during the 83rd Texas Legislature, Regular Session, 2013. The requirement applies to applicants granted Medicaid beds under:

- a high occupancy waiver,
- a community-needs waiver,
- an economically disadvantaged waiver,
- a rural county waiver, or
- a small house waiver.

If an applicant chooses to provide DADS with an irrevocable letter of credit, the letter must be issued by a banking institution or similar financial institution.

If an applicant chooses to provide DADS with a performance or surety bond, the bond must:

- be executed by a corporate entity per Texas Insurance Code (TIC), Title 12, Chapter 3503, Subchapter A, Certain Required or Permitted Obligations;
- be in a form approved by DADS; and
- clearly and prominently display on the face of the bond:
 - the name, mailing address, physical address and telephone number of the surety company or financial institution to which any notice of claim should be sent; or
 - the Texas Department of Insurance (TDI) toll-free telephone number maintained per TIC, Title 5, Subtitle B, Chapter 521, Subchapter B, Department Toll-free Number for Information and Complaints, with a statement that the address of the surety company may be obtained from TDI by calling the toll-free number.

An applicant must notify DADS at least 60 days in advance if the applicant:

- changes the lending institution or surety bond company administering the performance bond, surety bond or irrevocable letter of credit; or
- does not intend to renew its performance bond, surety bond or irrevocable letter of credit on the annual renewal date.

An applicant may substitute one form of performance bond, surety bond or irrevocable letter of credit for another during the course of development and construction. However, the performance bond, surety bond or irrevocable letter of credit must remain in effect until the facility is certified to participate in the Medicaid program or until the performance bond, surety bond or irrevocable letter of credit is paid to DADS after the issuer receives notice from DADS.

A performance bond, surety bond or irrevocable letter of credit is immediately due and must be paid to DADS upon the issuer's receipt of notice from DADS that:

- the applicant did not comply with 40 TAC §19.2322(i)(4)(G), which may include an extension granted under 40 TAC §19.2322(i)(6);
- DADS has revoked the applicant's waiver;
- the applicant did not notify DADS of its intent not to renew the performance bond, surety bond or irrevocable letter of credit at least 60 days before its automatic annual renewal date; or
- the applicant did not notify DADS of a change in the lending institution or surety bond company administering the performance bond, surety bond or irrevocable letter of credit.

Other changes to 40 TAC §19.2322 include:

- moving an existing paragraph, which allows a facility with Medicaid beds allocated under an Alzheimer's waiver to apply for general Medicaid beds, to the Alzheimer's waiver subsection;
- adding a paragraph in the small house waiver subsection to allow a facility to apply for general Medicaid beds;
- describing how DADS determines if a multiple facility owner meets level of acceptable care requirements; and
- clarifying when DADS decertifies and de-allocates Medicaid beds allocated through a criminal justice waiver, Alzheimer's waiver, teaching NF waiver, state veterans home waiver or small house waiver.

These changes are also effective August 31, 2015.

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If you have any questions about this letter, please contact a NF policy specialist in the Policy, Rules and Curriculum Development unit at (512) 438-3161.

Sincerely,

[signature on file]

Mary T. Henderson
Assistant Commissioner, Regulatory Services

MTH:cg