



COMMISSIONER
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To: Nursing Facilities (NFs)

Subject: **Provider Letter 11-23** — Frequently Asked Questions (**Replaces the NF section of S&CC 04-07**)

DADS gathered frequently asked questions (FAQs) from providers and other stakeholders in an effort to share the questions and answers with all surveyors and providers.

Surveyors and providers are encouraged to review the FAQs; reference designated websites; and maintain the most current state and federal rules, provider letters and survey and certification clarification memorandums.

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

Topics

- Criminal History Checks
- Employee Misconduct Registry (EMR)
- Facility Operations and Staffing
- General
- Licensing and Regulations
- Medications and Consent
- Quality Assurance
- Reportable Incidents and Complaints
- Surveyor Training
- Surveys and the Survey Process

Criminal History Checks

Q: I conduct searches and review the criminal history reports of all job applicants. How can I determine whether an offense on a criminal history report prohibits employment?

A: Chapter 250, Texas Health and Safety Code (HSC), is the state statute that requires certain long-term care facilities and agencies to conduct criminal history checks on job applicants and employees. Section 250.006 of the statute outlines the offenses, a conviction for which, prohibit employment.

Determining whether an offense prohibits employment essentially involves matching convictions on the criminal history report with the offenses and the conditions listed in Section 250.006.

Not infrequently, Texas Department of Public Safety (DPS) criminal history reports may not contain court disposition information that shows whether an individual was actually prosecuted and convicted of a particular offense. If you retrieve a DPS criminal history report that appears to have incomplete information, you should call the DPS Crime Records Service Error Resolution Unit at 512-424-7252 and request their assistance in obtaining the information that is not in the criminal history report.

Q: How can facilities maintain accurate and current criminal background checks for all facility employees, especially for those who have been employed for many years?

A: Providers can subscribe to either the DPS Crime Record Service public database website or the DPS Crime Record Service secure database website. An online search through either of these websites provides an "instant," up-to-date criminal history report.

More information about the requirements for criminal history checks, subscribing to a DPS user account, and inquiries to the Employee Misconduct Registry (EMR) and Nurse Aide Registry (NAR) can be found in DADS Regulatory Services Provider Letter 06-48, which is available at <http://www.dads.state.tx.us/providers/communications/2006/letters/PL2006-48.pdf>.

Employee Misconduct Registry

Q: Are EMR checks required for all employees?

A: Before hiring an unlicensed employee (including “on call” and part-time employees), facilities must search the EMR and NAR to determine if the person is listed as unemployable on either registry. Effective 9/1/10, facilities are required to conduct a search of the EMR and NAR annually to determine if the unlicensed employee is designated in either registry as unemployable.

Q: When do facilities report employee incidents of abuse, neglect and exploitation (A/N/E) to the EMR and when do they report them to the incident hotline?

A: Facilities do not report incidents of A/N/E to the EMR; rather, they must report incidents of A/N/E, believed to have been caused by a facility employee, to the DADS Consumer Rights and Services section at 1-800-458-9858. DADS surveyors investigate alleged incidents of A/N/E and refer confirmed perpetrators to the EMR. Detailed information on the EMR is located at <http://www.dads.state.tx.us/providers/NF/credentialing/emr/index.html>.

Q: Do all reports about employees automatically generate an investigation?

A: No. Licensing standards require a facility to notify DADS of alleged violations involving mistreatment, neglect or abuse, including exploitation and misappropriation of resident property. The facility is to provide evidence to DADS Consumer Rights and Services, in the form of a written report of the investigation, that the facility thoroughly investigated all alleged violations and prevented further abuse while investigating. DADS Consumer Rights and Services may triage self-reported incidents as not needing an on-site investigation until the provider investigation and administrative review of the provider's written investigation report is complete. If so, DADS Consumer Rights and Services conducts an administrative review of the provider's written investigation report to determine whether further investigation by DADS is required to ensure compliance with state or local laws.

Q: Once an individual is placed on the EMR, how long does he or she remain there? Can someone remain on the registry for a lifetime?

A: An individual's name remains on the registry permanently unless removed as provided for in the EMR rule at 40 TAC §93.9. This rule allows for removal based on additional information gathered by DADS or upon notification by the Department of Family and Protective Services (DFPS) or another referring entity if there is a determination that the individual does not meet the requirements for listing in the EMR or that the entry was based on an entry in the NAR that has been subsequently removed.

Q: Can DADS change the rules to allow probation for an employee who commits reportable conduct while working in a DADS-regulated facility?

A: No. DADS cannot change the rules because the EMR statute does not provide for probation. Only the Texas Legislature can change the law.

Facility Operations and Staffing

Q: Are NFs required to share their emergency preparedness plans with local emergency management authorities?

A: Yes, emergency preparedness and response plans must be coordinated with the local emergency management coordinator.

Q: How does the continuing education requirement for activity directors [40 TAC §19.702(c)] apply to an individual who is a qualified activity director but who has not worked as a nursing home activity director for some years and, therefore, has not obtained continuing education credits for those years?

A: The continuing education requirement at 40 TAC §19.702(c) applies to nursing home activity directors while they are continuously employed at a nursing home as an activity director. If an individual who is a qualified activity director becomes employed as an activity director at a nursing home following a period of time when they were not employed as a nursing home activity director, the individual does not have to “make up” continuing education for years when he or she was not employed as a nursing home activity director. Beginning with their new start date, the individual must obtain eight hours of continuing education credit within the next twelve months.

Q: How can we avoid being penalized when we cannot find an RN to work for us?

A: The conditions that a NF must meet in order to request a waiver of certain RN staffing requirements are outlined in the federal and state regulations related to nurse staffing. A NF that believes it meets the conditions for a waiver can make a formal request to DADS for approval of a waiver. DADS reviews requests for RN waivers and has final authority for granting waivers in Medicaid-only and licensed-only nursing facilities. The Centers for Medicare and Medicaid Services (CMS) has final authority for approving waivers in Medicare-participating nursing facilities.

Q: What is the requirement for posting information on nurse staffing?

A: NFs are required to post daily, for each shift, the number of licensed and unlicensed nursing staff directly responsible for resident care. This information must be displayed in a prominent location in a clear and readable format.

Q: What is the procedure for obtaining spend-down Medicaid beds?

A: Spend-down Medicaid beds are granted in accordance with the Medicaid bed allocation rule at 40 TAC §19.2322(f)(6). (View the Texas Administrative Code at [http://info.sos.state.tx.us/pls/pub/readtac\\$ext.viewtac.](http://info.sos.state.tx.us/pls/pub/readtac$ext.viewtac.))

In order to obtain a spend-down Medicaid bed, a facility must complete a “Temporary Medicaid Spend-Down Bed Request Form” and submit it to DADS per the instructions on the form. For additional information about spend-down Medicaid beds or to obtain a Temporary Medicaid Spend-Down Bed Request Form, call the DADS Regulatory Services Facility Certification unit at 512-438-2630.

Q: Can NF residents have cigarettes?

A: Facilities must adopt and enforce a smoking policy in accordance with 40 TAC §19.326(k) that complies with federal, state and National Fire Protection Association (NFPA) requirements. Nursing facility smoking policies must provide for the residents' safety. Facilities may elect to have a smoking policy that allows for individuals who are determined to be "safe smokers" to retain cigarettes or other smoking paraphernalia in their possession.

Q: What are the specific requirements for children in NFs?

A: On July 30, 2006, DADS published S&CC 07-06 – Requirements for Children in NFs, which is available at:
<http://www.dads.state.tx.us/providers/communications/2007/scc/SCC2007-06.pdf>. This S&CC gives a thorough explanation of the TAC requirements with which a NF must comply if it chooses to care for children.

Q: Must facilities include specific low-concentrated sweets food items in daily and weekly menus?

A: Facilities must provide low-concentrated sweets food items as part of a therapeutic diet when ordered by a resident's physician.

General

Q: What is the purpose of the Ombudsman Program?

A: The Texas Ombudsman Program advocates for quality of life and quality of care for residents in Assisted Living Facilities (ALFs) and NFs. More information about the Ombudsman Program is available at http://www.dads.state.tx.us/news_info/ombudsman/index.html or by phone at 1-800-252-2412.

Q: Whom can providers call when they have LSC questions?

A: Providers can call the LSC program manager in their regional office or the DADS Architectural Program in state office at 512-438-2371.

Q: Can you please provide a list of DADS contact names and telephone numbers for providers to use when questions arise regarding regulations?

A: Providers should call their regional program manager or regional director for inquiries about the program. If the regional program manager or regional director is unable to provide the requested information, they will research the inquiry with the appropriate current resources and respond with the most accurate information available. For information on how to contact DADS nursing home program staff, go to <http://www.dads.state.tx.us/providers/NF/contacts.html> or you may call 1-800-458-9858 to be directed to the appropriate source for information.

Q: Does DADS provide training for clients, family members and the public?

A: Educational Services provides joint-training sessions for providers and surveyors. However, anyone who has an interest in resident care is welcome to attend. For a schedule of training, check the “Resources for DADS Service Providers, Joint Training Opportunities” website at <http://www.dads.state.tx.us/providers/training/jointtraining.cfm>.

Computer-based training on a variety of topics is also available on the DADS website at <http://www.dads.state.tx.us/business/CBT/index.html>.

You may also want to view the DADS Regulatory Services reports and statistics webpage at <http://www.dads.state.tx.us/providers/reports/sb190/index.html>.

The Nursing Home Ombudsman Program has information for the families of residents. More information about the ombudsman program is available at http://www.dads.state.tx.us/news_info/ombudsman/index.html.

Facilities are responsible for educating family members related to specific resident care needs and rules that impact the care of residents.

DADS also maintains the Texas Quality Matters website at <http://www.dads.state.tx.us/qualitymatters/index.cfm>, which provides information on best practices related to quality of care and quality of life issues for nursing home residents and their families.

Q: Where can stakeholders find a list of websites that provide information on training materials?

A: DADS Educational Services provides monthly training sessions around the state for providers and surveyors. Full information on training opportunities provided by DADS is available at <http://www.dads.state.tx.us/providers/training/index.cfm>.

Providers should also contact their respective provider organizations for information about training opportunities and training materials.

Q: How can I obtain a paper copy of the interpretive guidance for surveyors, federal regulations or the CMS State Operations Manual (SOM)?

A: DADS does not provide paper copies of these federal documents, but facilities can download them from the CMS website at <http://www.cms.hhs.gov/>. Facilities may obtain the CMS SOM by clicking on “Internet-Only Manuals” at <http://www.cms.hhs.gov/manuals/>.

Q: How can I obtain a paper copy of the state licensing handbooks?

A: DADS does not provide paper copies of these licensing handbooks, but facilities can download them without charge from the handbooks section of the DADS Publications webpage at http://www.dads.state.tx.us/news_info/publications/handbooks/index.html#handbooks.

Q: Does DADS have a mechanism to encourage/facilitate regular, ongoing dialogue with providers?

A: DADS Regulatory Services regional offices hold regularly scheduled meetings or forums for providers to share information and to identify and discuss issues of concern. You may contact your Regulatory Services regional office to learn the dates and times of meetings and forums for providers. If you have a specific issue or concern you would like to discuss, you can contact the surveyor/facility liaison for your region.

Q: Sometimes we have trouble using the DADS website. Who should we contact for concerns?

A: Because some websites "interact" with web browsers, and this interaction relies on the technology of more recent web browser versions, we would suggest using the newest available versions of Internet Explorer or Mozilla Firefox, along with Adobe Reader, for the DADS website. Submit feedback about DADS website concerns/problems to webmaster@DADS.state.tx.us.

Q: How does DADS communicate regulatory changes to providers?

A: Regulatory information (both current and proposed) is readily available through links on the DADS website. From the DADS home page, <http://www.dads.state.tx.us/>, there is a link to subscribe to receive e-mail updates about information DADS is issuing. There is also a link to Rules and Statutes, <http://www.dads.state.tx.us/rules/index.html>, which includes information on rules in progress. DADS Provider Resources webpage for nursing facilities, <http://www.dads.state.tx.us/providers/NF/index.cfm>, has a Communications section with lists and links to a variety of state and federal policy memos, notices and advisories.

Licensing and Regulations

Q: Will DADS offer more training that provides CEUs for NF administrators?

A: Some of the DADS Educational Services joint training classes offer CEUs for NF administrators. Check the training web page at <http://www.dads.state.tx.us/providers/training/index.cfm> for courses that provide CEUs for nursing facility administrators.

Q: Why are automatic referrals of administrators made to their licensing board when substandard quality of care is found in a NF?

A: Federal law requires that NF administrators automatically be referred to their licensing agency when substandard quality of care is determined. The NF administrator will be notified of the opportunity to a hearing before a sanction is imposed.

Q: Does DADS Regulatory Services recognize Geriatric Certification?

A: This certification is not a requirement for staff in NFs and, therefore, is not reviewed during the survey process.

Medications and Consent

Q: What can facilities do when they cannot contact the responsible party regarding the use of psychoactive medications?

A: Consent of the person authorized by law to consent is required for psychoactive medications prescribed after July 1, 2002. The physician or designee prescribing the medication must obtain the consent. If the provider is unable to contact the person authorized to consent in an emergency, the medication may be given and the situation documented. In a non-emergency, surveyors may cite the facility for giving the medication without consent.

Efforts to contact the responsible party must be documented. The need to give the medication without consent must be documented.

Quality Assurance

Q: Are you open to suggestions to improve the Quality Reporting System (QRS)?

A: DADS is open to suggestions concerning QRS report content. Suggestions should be e-mailed to mail@dads.state.tx.us.

Q: What is the role and function of the quality monitor?

A: Quality monitors provide technical assistance to facilities using evidence-based best practices. Best practices are standards for quality or appropriateness of services based on the best available studies, clinical trials and research that show which practices produce the best results. The provision of technical assistance consists of assessment of key aspects of care, identification of opportunities for improvement, and working with facility staff to change certain practices and systems so that individuals have better outcomes. For more information, see the Quality Monitoring Program Resources webpage located on the Texas Quality Matters website at <http://www.texasqualitymatters.org>.

Q: Are reports by the nurse liaisons and the quality monitors discoverable?

A: Yes. DADS documents are subject to the Texas Public Information Act and may be disclosed, unless they are expressly confidential under other laws. Confidential redaction is done pursuant to the statute and Open Records Decisions and Letter Rulings from the Texas Office of the Attorney General. Report requests should be in writing. Requests for nurse liaison reports should be addressed to Supervisor, DADS Regulatory Records Management/Open Records Section, Mail Code E-349, P.O. Box 149030, Austin, Texas 78714. Requests for quality monitor reports should be addressed and mailed to DADS Quality Monitoring Program, Mail Code W-510, 701 West 51st Street, Austin, Texas 78751.

Reportable Incidents and Complaints

Q: Is there an alternate fax number I can use to fax my A/N/E investigation report? I have been dialing 877-438-5827, but I cannot get through.

A: 512-438-2722 and 512-438-2724 are the two alternate fax numbers that facilities can use if the primary fax number is busy.

Q: Do all self-reported incidents of A/N/E automatically result in an investigation?

A: Self-reported incidents of A/N/E do not automatically result in an on-site investigation. All reported incidents of A/N/E are reviewed. The incident is either investigated by a DADS desk review or an on-site visit to the facility.

Q: When a facility calls in a reportable incident, how does it know if an on-site review or a desk/professional review will be done? How will the facility know the outcome of a professional review?

A: DADS does not inform the facility if the reported incident will be investigated administratively or on-site. Following professional review of the incident, if it is determined that an on-site visit is not warranted, the case will be closed; otherwise, an on-site investigation will be conducted. DADS does not notify the facility of the professional review outcome.

Q: Why does DADS write deficiencies/violations when facilities self-report an incident of A/N/E, even when they have already terminated the perpetrator?

A: Protection of the resident is of paramount importance. Although the facility terminated the perpetrator, there may still be a breakdown in the facility's overall system of resident protection and ensuring that rights are not violated. Termination of an employee may not correct the practice that caused the resident A/N/E. The surveyor determines whether a facility practice may have led to the occurrence of A/N/E and cites the deficiency/violation based on failed systems and deficient practices/violations.

Q: Why do self-reported incident investigations sometimes last two or more days?

A: Surveyors are required to complete a thorough investigation of allegations of A/N/E regardless of how long it takes. Surveyors must complete required tasks and contact specific people.

Q: Why does DADS take anonymous complaints? Can DADS require all complainants to reveal their identity?

A: DADS may not require a complainant to reveal his or her identity. DADS does not discriminate based on the source of an allegation. DADS must investigate all allegations of violations of state standards or federal requirements, regardless of the source.

Q: Can DADS identify the complainant during an investigation?

A: No. The law and DADS requires that surveyors protect and preserve the confidentiality of complainants.

Q: What determines if a complaint is immediate verses lower priority?

A: DADS bases the priority of a complaint or incident on the immediacy of the alleged threat to the health and safety of the residents.

Q: Does DADS stress to complainants that "frivolous" complaints can be prosecuted?

A: No. DADS is committed to providing fair, ethical and respectful customer service to everyone on a nondiscriminatory basis, as well as to protecting the health, safety and well-being of each individual served by long-term care facilities. DADS must document and review all allegations of A/N/E.

Q: Can DADS devise a system in which it handles non-emergency complaints in a group to minimize the disruption to facilities and residents?

A: The regions attempt to consolidate complaints to maximize resources and minimize the disruption of resident care. However, the CMS SOM mandates that DADS follow specific timeframes when investigating complaints based on the nature/severity of the allegations. DADS may perform investigations sooner, but must meet certain dates based on priority.

Q: Why can surveyors not let us know more about the complaint they are investigating?

A: CMS and DADS Regulatory Services' protocol to protect the identity of the complainant and to allow for a thorough investigation is to inform the facility only of the complaint's general nature. CMS and DADS direct surveyors not to provide information that may cause them to lose opportunities for pertinent observations, interviews and record reviews required for a thorough investigation.

Surveyor Training

Q: Do all surveyors undergo the same training?

A: Yes. All surveyors are required to attend CMS training and pass the Surveyor Minimum Qualifications Test. Surveyors are also required to complete a block of standardized state courses designed and delivered by DADS Educational Services. Surveyors are encouraged to attend the joint training sessions provided by DADS Educational Services.

Surveys and the Survey Process

Q: Why do surveyors still write deficiencies/violations for facility-identified problems for which the facility already has an action plan or has already fixed the problem?

A: DADS is required by statute to document all violations of state and federal regulations. If DADS finds a facility to be in violation of a state or federal regulation while on site, it is required to document that violation. Surveyors collect and evaluate data to determine when a facility is out of compliance with the rules. A deficient practice found during a survey may be cited based on these findings. Although a facility has identified a deficient practice before the survey, if the deficient practice is found during the information gathering process, surveyors may cite the deficiency. At times, surveyors may note past noncompliance and this may be cited due to the nature of the facility's failure to follow the rules.

Q: Do the federal surveyors ever come in after a state survey has been complete?

A: Yes. CMS must complete validation surveys for 5 percent of Texas NFs within two months after the state survey team exits. During the validation survey, the federal survey team may write deficiencies and may take any enforcement action necessary to ensure future compliance with the regulations.

Q: What is a Federal Oversight/Support Survey (FOSS)? Is there advance notice to the survey team that a FOSS will be done? What are the FOSS surveyors looking at?

A: CMS receives the monthly schedule of planned surveys. The FOSS team schedules surveys based on the type of facility, location and other criteria. CMS notifies the state teams in advance that federal surveyors will observe. CMS evaluates the survey team during the survey, from off-site preparation to reconciling concerns. Federal surveyors, as a part of the FOSS, observe state surveyors completing various survey tasks. They also can make their own observations. Following the FOSS survey, the federal surveyors assess surveyor performance to identify educational and training needs of the state.

Q: Can a desk review be done instead of an on-site revisit?

A: Yes. Revisits (follow-up visits) may be conducted by desk review or on-site. The revisit, desk review or on-site, depends on the scope and severity level of the deficiency/violation cited.

Q: Do survey teams hold group meetings with family councils as they do with resident councils? Are family councils mandated for nursing homes?

A: During the survey process, the survey team must hold a group meeting with facility residents. No survey protocol mandates a family group meeting. There is no specific regulation which requires a nursing home to have a family council, but if a family group organizes themselves the facility must accommodate the family organization in accordance with the applicable state and federal requirements.

Q: Can the director of nursing make rounds with the surveyors rather than the charge nurse?

A: Yes, although surveyors are not required to allow a facility staff member to accompany them during a survey. Decisions regarding facility staff accompanying surveyors are based on circumstances at the time of the survey.

Q: Why do surveys and other regulatory visits have to be unannounced?

A: State and federal laws, rules, and regulations require unannounced surveys.

Q: Only one surveyor visited my facility. Doesn't a team survey a facility?

A: Surveys may be conducted by one surveyor or a team of surveyors.

Q: When a surveyor comes to a facility, the staff that need to be available have to rearrange meetings, in-service trainings, etc. If there is one day a week that does not work well, may a provider recommend DADS not come on that day for a routine survey?

A: Surveys are required to be unannounced. DADS cannot change required time frames for visits to facilities. DADS must meet these time frames to comply with internal policies, procedures, and federal and state law.

Q: Will we see consistently the same survey team members? Is it possible to have the same surveyor for each visit?

A: DADS assigns surveyors based on the type of survey to be performed and the surveyor's specialty/expertise. DADS has no plans to assign a specific surveyor to a specific provider. Surveyors conduct surveys according to established survey protocols to comply with the licensure rules and CMS guidelines. The protocols are designed to provide consistency in the survey process regardless of which surveyor conducts the survey. The use of multiple surveyors will allow for multiple, objective observations.

Q: How do you ensure that new surveyors are familiar with the regulations?

A: All qualified surveyors are experienced professionals. NF surveyors must pass the CMS Surveyor Minimum Qualification Test (SMQT) before they can survey alone. Each program has required training courses that a surveyor must complete before conducting surveys.

Q: How do you determine if the survey process is consistent among different surveyors and regions?

A: The regulations state the federal (certification) survey process as well as surveyor qualifications and training requirements. Surveyors throughout the state receive the same training. Oversight surveys observe the survey process in all regions of the state for thorough, accurate and consistent survey process. Our goal for surveys and surveyors statewide is to be as consistent as possible while allowing for the individual circumstances of each provider. DADS Regulatory Services, Survey Operations, Compliance and Oversight Unit and the CMS Regional Office have conducted extensive federal and state oversight and coaching surveys throughout the state for the last several years. Feedback

from the oversight teams has strengthened our training program and improved the consistency of the survey process.

Q: How will a surveyor conduct a survey on a facility that has computerized medical records?

A: Automation does not hinder the survey process. Facilities must make all requested documents available to surveyors and have adequate terminals. Facilities are responsible for providing surveyors with the data for each client.

Q: How does a negative finding during the survey process become a deficient practice?

A: A negative finding is a deficiency/violation when the negative finding constitutes a violation of federal regulations or state rules. The survey team reviews the survey findings and determines the facility's compliance with the requirements.

Q: If providers remove restraints to evaluate for possible restraint reduction and the resident falls, will the surveyor issue a citation?

A: A citation would be based on whether the resident fall was unavoidable. Providers must assess each resident's level of supervision during the restraint-reduction process. Some residents will need a much higher level of supervision, and the facility is responsible for meeting the resident's needs. The facility must document the assessment and monitoring and develop a plan of care. Surveyors determine facility compliance based on the evidence that they gathered during the survey (observations, interviews and record reviews) and their analysis of their evidence.

Q: Why do surveyors only seek negative feedback in interviews?

A: Surveyors are looking for information during the interview process, regardless of whether the information is positive or negative. The purpose of family interviews is to obtain information regarding the resident's prior and current preferences. This information helps surveyors determine whether the facility is individualizing resident services, care and activities. Surveyors use this information to verify observations and/or record reviews as well as to investigate family member concerns.

Q: Are surveyors required to interview staff to ascertain if a document or policy is missing before citing deficiencies?

A: A surveyor can cite a deficiency based on the evidence that a required requested document was not provided to the survey team. The surveyor will request the document from the facility staff person expected to be able to produce the document. Additional requests may be made to other staff and if the document is not produced, the surveyor may conduct interviews with staff to determine if the document exists. There is no requirement in the survey protocol on the procedure to prove the existence or non-existence of a document. The absence of a required policy or an inadequate required policy gives weight to a deficient practice. For example, if facility staff is unaware of the facility disaster policy, this could be a staff training issue or an issue of a non-existent policy. Only by asking for the policy will a surveyor be able to make this determination.

Q: What are the rights of facility staff when surveyors interview them?

A: As part of the survey process, surveyors are required to interview key personnel and/or any other personnel deemed appropriate to determine how the facility is delivering care and services. The interviewee may request confidentiality. The surveyor will honor such a request to the extent possible; however, if a lawyer subpoenas a surveyor, he or she may be compelled to reveal the staff person's identity. Other laws or circumstances may require release of a staff person's identity. Abuse and neglect investigation interviews are held in private unless the person requests otherwise. Surveyors cannot compel staff to respond to an interview. Staff names are not released under a public open records request.

Q: If a surveyor has a question about a physician's order or a medication prescription, should the surveyor not address the question to the appropriate staff?

A: In the course of a survey or an investigation, it is likely that a surveyor will attempt to gather many pieces of information in several ways. Personal interviews with residents, responsible parties, facility staff and others are important methods of information gathering. Surveyors will attempt to corroborate information that only one person holds.

Surveyors interview people believed to have knowledge of the information the surveyor is seeking. For example, there may be a number of questions that require follow-up regarding physicians' orders or medication prescriptions. Surveyors, therefore, would select people to interview based on the particular issue they are examining.

Q: What risks are surveyors looking for when making an immediate jeopardy (IJ) call? What steps do we take to have the IJ lifted and prevent costly fines? Is there any new education to provider staff regarding IJs?

A: CMS federal regulations and SOM Appendix Q define IJ as "A situation in which the provider's noncompliance with one or more requirements of participation has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident." IJ is a federal term and only applies to certified facilities. Appendix Q provides guidance to surveyors in determining immediate jeopardy.

Surveyors must determine the immediacy of the threat when determining if an IJ situation exists. The facility must immediately initiate a credible plan for the removal of the immediate jeopardy (how it will get back into compliance) to meet the requirements for licensure and/or certification. The plan of removal must be specific to the IJ and detail exactly what the facility will do to remedy the situation. The plan of removal is accepted when the survey team determines that the remedy will remove the immediacy of the threat. The IJ is lifted when the plan of removal has been completely activated. There are no plans for state training of providers related to IJ situations.

Q: If a survey lasts more than one day, must surveyors give a "mini-exit" or summation of concerns at the end of each day?

A: DADS trains surveyors to maintain open, ongoing communication with facility staff regarding where they are in the survey process. The survey team meets daily, but there is no requirement for a daily "mini-exit" with facility staff. Such meetings are courtesies.

Q: Are surveyors required to hold a pre-exit conference?

A: No. There is no requirement for a "pre-exit" meeting with the facility. Such meetings are courtesies. During the exit conference, DADS provides facilities with the opportunity to discuss and supply additional information that they believe is pertinent to the negative findings discussed during the course of the survey.

Q: What can we do when surveyors do not accept additional information prior to exiting?

A: Federal guidance instructs surveyors to accept additional information during the exit conference. Surveyors are to consider the provided information and indicate their willingness to re-evaluate the findings before leaving the facility. If a facility has concerns about the inability to provide additional information or any other *process* related to their survey, DADS recommends the facility contact the regional office program manager to discuss/resolve the issue and provide the additional information related to proposed deficiencies/violations. If the program manager does not act on your concern, you may contact the regional director or the state office at 1-800-458-9858 to file a complaint.

Q: Should surveyors inform a facility of all deficiencies/violations during the exit conference? Can surveyors provide facilities with a list of tags they will cite?

A: Surveyors will fully inform the person in charge of the facility of the preliminary survey findings during an exit conference. Surveyors do not discuss tags at the exit conference. Surveyors document their findings on the Form CMS-2567/DADS Form-3724, which the region reviews. If other deficiencies/violations are found based on a review of the findings, the state requires the surveyor to conduct another face-to-face exit conference with the facility's person in charge.

Q: Does it help to send additional information to the regional office concerning a negative finding?

A: Additional information sent to regional office will be reviewed by survey staff and the regional program manager. It may be beneficial.

Q: How does the team decide to write a deficiency after exit when they did not express a concern at the exit conference?

A: Survey teams share their preliminary findings with a facility at the exit conference. After the survey team exits the facility, further review of information gathered during the survey may result in identification of additional deficiencies or violations. When surveyors identify additional deficiencies or violations they conduct another exit conference and provide the facility with an opportunity to present evidence of compliance with the additional deficiencies.

Q: Can surveyors write a citation if it is a paper compliance issue with no negative outcome?

A: If there is a violation of the rules, surveyors will cite a deficiency or violation. Facilities are required to comply with all rules, regardless of the nature of those rules.

Q: What do we do when surveyors cite unwritten rules?

A: Surveyors should regulate in accordance with federal and licensing standards. Deficiencies/violations must show the facility's noncompliance with the rule. Facilities have the right to dispute deficiencies/violations cited and may request an informal dispute resolution (IDR).

Q: Do surveyors have to cite a certain number of deficiencies?

A: There are no deficiency quotas. Surveyors must perform surveys according to state and federal protocols. Surveyor guidance is to cite deficient practices when identified during the course of the survey.

Q: Why do surveyors write multiple tags, in different areas, when it relates to the same concern?

A: A negative outcome may be the result of violations of more than one rule or regulation. Surveyors must cite negative findings found during a survey.

Q: Why do surveyors write a deficiency if they do not receive requested records?

A: Certain documents are required for certification/licensure compliance. For example, if a NF does not submit its evacuation drills, surveyors would cite a deficiency because the facility is required to have these documents.

Records submitted to show compliance with surveyor negative findings may not be adequate to prove compliance with the requirements, i.e., providing documentation dated the day the surveyor informed the facility of a concern (for example, a document dated on the day the surveyor indicated a concern that states that the facility does monthly fire drills). This document does not provide corroboration that the facility is in compliance with the requirements.

Q: Why do surveyors not go back to writing only tags on pattern issues instead of isolated instances?

A: DADS surveyors are required to document all violations of state and federal regulations. Writing tags based only on a pattern has never been a practice.

Q: When should regions send the statement of deficiencies/statement of violations to providers?

A: Regions must send Form CMS-2567, Statement of Deficiencies, and DADS Form 3724, Statement of Violations, to a provider within 10 working days of the exit conference. The provider has 10 calendar days to return their Plan of Correction (PoC) for the Form CMS-2567 and 10 working days to return their PoC for the DADS Form 3724 to DADS.

Q: Because the facility has 10 days to submit a PoC, when does day one begin?

A: Day one is the date following the day the facility received the Statement of Deficiencies/Statement of Violations.

Q: What should we include in our PoC?

A: Facilities must submit an acceptable PoC to the DADS regional office, within 10 calendar days for federal deficiencies and within 10 working days for licensure violations, after receiving notice that the final exit conference has been completed. An acceptable PoC must address the following:

- how corrective action will be accomplished for those individuals found to be affected by the deficient practice;
- how the facility will identify other individuals with the potential to be affected by the same deficient practice, and how the facility will act to protect individuals in similar situations;
- what measures will be put into place or systemic changes made to ensure that the deficient practice will not recur;
- how the facility will monitor its corrective actions/performance to ensure that the deficient practice is being corrected and will not recur, i.e., what program will be put into place to monitor the continued effectiveness of the systemic change to ensure that solutions are permanent; and
- when corrective action must be accomplished.

Q: What can a facility do if it disagrees with the evidence that a surveyor recorded on the Form CMS-2567 or DADS Form 3724?

A: Providers may refute any citations through the IDR process. Information about IDR is sent to the facility with the Form CMS-2567 or DADS Form 3724.

Q: Does a facility have to submit a PoC when it has submitted a request for an IDR?

A: Facilities that disagree with the findings of a deficient practice must submit acceptable PoCs as the certification and licensing process continues. Failure to do so can result in vendor hold or enforcement action. If the IDR process deletes the deficiency/violation, the facility will receive a revised statement of deficiencies/violations (Form CMS-2567/DADS Form 3724). If the IDR sustains the deficiency/violation, the facility would have already submitted the PoC to meet the required federal and state time frames and the facility would not be at risk of losing its provider agreement, assuming that the PoC was accepted and submitted timely.

Q: Facilities have to submit a PoC at the same time as a request for an IDR and they have to develop a correction plan for each deficiency cited, which sometimes involves changing operational practices. Then if the IDR results in the removal of a deficiency/violation, the facility has already changed their operational practice, which may not have improved the facility. Can DADS do anything about this?

A: Although a facility may request an IDR/reconsideration of the deficiencies, it is still required to submit an acceptable PoC as mandated by federal and state requirements. The PoC should address how the facility is going to correct the noncompliance with the regulation/standard. The facility must look to see what steps led to the noncompliance and correct those issues.

Q: Why does the DADS Regulatory Services spokesperson comment to the media about deficiencies that occurred and DADS cleared?

A: The DADS Regulatory Services spokesperson usually responds to questions about a specific facility or a facility's compliance history. A deficiency/violation cited on a Form CMS-2567 or DADS Form 3724 is part of the record and is public information. DADS will not erase the deficiency/violation from the facility history just because DADS cleared the facility on the follow-up visit.

Q: Why is the IDR often delayed until after the time of the follow-up survey?

A: The Texas Health and Human Services Commission (HHSC) has established time frames for completing the IDR. At times, the due date for the follow-up visit will occur before the completion of the IDR because of mandated time frames for completion of the follow-up visit. HHSC completes the IDR process no later than the 30th day after receipt of a request from a facility.

Q: Why is DADS not held to a 30-day deadline for responding to a facility's IDR request?

A: DADS does not perform IDRs. HHSC attempts to meet all time frames for IDRs. The facility has 10 days after receipt of the Form CMS-2567/DADS Form 3724 to request an IDR. HHSC has 30 days to decide the IDR after receiving the IDR request and all required information.

Q: Will DADS allow a facility to use a fine toward improving the facility?

A: Amelioration of administrative penalties may be available if certain conditions apply. If a facility would prefer to pursue amelioration rather than paying an administrative penalty, it may propose a plan of amelioration in accordance with the statute and the DADS rules.

Q: Why does DADS assess administrative penalties when it knows it dilutes funds intended for patient care?

A: The legislature has determined that administrative penalties are an appropriate way to deter violations and to sanction a facility for violating licensing requirements. DADS has no evidence paying an administrative penalty automatically dilutes funds used for resident care. A facility also has the right to correct certain violations to avoid an administrative penalty and DADS, in certain circumstances, can offer the facility the opportunity to use the penalty to ameliorate the violation or to improve services.

Q: How can providers correct inaccurate information reported by DADS on the Report of Contact (ROC)?

A: If a facility believes the ROC is inaccurate, the facility may contact the regional program manager or the regional director to inform them of the error. If the region agrees that there is an error, the region corrects the error and sends a corrected copy to the facility and to the state office.

Q: What does DADS do about misspelled words, wrong dates and wrong names in survey documents?

A: If survey documents contain erroneous information, the facility should contact the local regional office program manager to discuss concerns.

Q: Can the same team of surveyors who made the initial survey not make the follow-up visit?

A: According to CMS guidance, DADS should attempt to send the same surveyor(s) on a follow-up visit, but this is not mandated. The regions prefer to send the same team on the revisit to maintain consistency, but this is not always possible due to scheduling conflicts, deadlines and personnel schedules.

Q: Why does DADS not train surveyors in all areas of the regulations or assign them only to those areas they are familiar?

A: All surveyors receive training on all of the regulations for the program type that they will be surveying. Surveyors are also trained to use the program manager as an expert resource.

Q: Does DADS train surveyors not to disrupt facilities' daily routines while conducting surveys?

A: DADS directs surveyors to keep any disruptions of daily routines at a minimum. However, in order to follow the survey protocols, some disruption may be necessary.

Q: Can we get a history of deficiencies cited by a particular surveyor?

A: No. DADS does not track an individual surveyor's history of cited deficiencies.

Q: What procedures do providers follow when making a complaint regarding a surveyor?

A: DADS Regulatory Services investigates all complaints against surveyors. Providers are encouraged to notify the surveyor's program manager immediately with any concerns. Providers may also call the regional director and/or the DADS Consumer Rights and Services, Complaint Intake unit at 1-800-458-9858.

Q: Should DADS allow a surveyor to come back into a facility after a facility successfully gets a deficiency overturned that the surveyor cited?

A: Surveyors are professionals who objectively assess the situation each time they enter a facility. If the provider feels the surveyor did not perform the survey according to protocols, the provider should contact the surveyor's program manager, the regional director, and/or DADS Consumer Rights and Services, Complaint Intake unit at 1-800-458-9858.

Q: What qualifications must one fulfill in order to be a nursing facility surveyor?

A: Nursing facility surveyors have varied education and work experiences. The fundamental qualification is successful completion of the Surveyor Minimum Qualifications Test. DADS evaluates each applicant's qualifications through an interview process with a focus on experience in the health care arena. For qualifications for the various surveyor positions, please visit the HHSC website at <https://accesshr.hhsc.state.tx.us/>.