

§9.153 Definitions

(19) Condition of a serious nature--~~A [Except as provided in paragraph (35) of this section, a]~~ condition in which a program provider's noncompliance with a certification principle results in:

(A) actual or potential for serious physical, emotional, or financial harm to an individual;
or

(B) actual minor physical, emotional, or financial harm to an individual.

~~[caused or could cause physical, emotional, or financial harm to one or more of the individuals receiving services from the program provider.]~~

() Critical violation--A violation that DADS determines results in:

(A) actual or potential for death or serious physical, emotional, or financial harm to an individual; or

(B) actual minor physical, emotional, or financial harm to an individual.

(35) Hazard to health or safety--A condition in which ~~[serious injury or]~~ death or serious physical harm of an individual or other person is imminent because of a program provider's noncompliance with a certification principle.

() Isolated--One of the following:

(A) if there is harm or potential harm resulting from a citation, isolated means that one or a very limited number of individuals are affected; or

(B) if there is no harm and no potential for harm resulting from a citation, isolated means a situation that has occurred only occasionally.

() Non-critical violation--A violation that DADS determines results in:

(A) potential for minor physical, emotional, or financial harm to an individual; or

(B) no harm to an individual.

() Pattern--One of the following:

(A) if there is harm or potential harm resulting from a citation, pattern means that more than a very limited number of individuals are affected but is not pervasive; or

(B) if there is no harm and no potential for harm resulting from a citation, pattern means a situation that has occurred more than occasionally but is not pervasive.

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() Pervasive--One of the following:

(A) if there is harm or potential harm resulting from a citation, pervasive means that a substantial number of individuals are affected; or

(B) if there is no harm and no potential for harm resulting from a citation, pervasive means a situation that has occurred frequently.

() Serious emotional harm--A highly unpleasant mental reaction with observable signs of distress, such as anguish, grief, fright, humiliation, or fury, that warranted or would reasonably be expected to have warranted treatment by a physician or a licensed mental health professional.

() Serious financial harm--Loss of wages, money, property, or resources in a total amount of twenty dollars or more per individual for a period beginning the date of the review exit conference of the previous review to the date of the review exit conference of the current review.

() Serious physical harm--Severe physical injury, illness, pain, or impairment of physical condition, including:

(A) a fracture, dislocation of any joint, an internal injury, a contusion larger than two and one half inches, a concussion, a second- or third-degree burn, or a laceration requiring sutures;

(B) a severe adverse health effect that results or could result from failure to receive medications in the amounts or at the times prescribed; or

(C) any other harm that warranted, or would reasonably be expected to have warranted, hospitalization or medical treatment by a physician or nurse practitioner.

() Willfully interfering--Acting or not acting to intentionally prevent, interfere with, or impede, or to attempt to intentionally prevent, interfere with, or impede.

§9.171. DADS Surveys and Residential Visits [Review] of a Program Provider [and Residential Visit].

(a) A [The] program provider must be in continuous compliance with the [HCS Program] certification principles contained in §§9.172 - 9.174 and §§9.177 - 9.180 of this subchapter (relating to Certification Principles: Mission, Development, and Philosophy of Program Operations; Certification Principles: Rights of Individuals; Certification Principles: Service Delivery; Certification Principles: Staff Member and Service Provider Requirements; Certification Principles: Quality Assurance; Certification Principles: Restraint; and Certification Principles: Prohibitions).

(b) To [DADS conducts on-site certification reviews of the program provider, at least annually, to] evaluate evidence of a [the] program provider's compliance with the certification principles, at a minimum, DADS conducts:

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(1) an initial certification survey within 120 calendar days after the date DADS approves the enrollment or transfer of the first individual to receive HCS Program services from a program provider with a provisional contract; and

(2) an annual certification survey of each program provider.

~~[Based on a review, DADS takes action as described in §9.185 of this subchapter (relating to Program Provider Compliance and Corrective Action).]~~

~~[(e) After a program provider has obtained a provisional contract, DADS conducts an initial on-site certification review within 120 calendar days after the date DADS approves the enrollment or transfer of the first individual to receive HCS Program services from the provider under the provisional contract.]~~

~~(c) [(d)]~~ If DADS certifies a program provider after completion of an initial or annual certification survey ~~[review]~~, the certification period is for no more than 365 calendar days.

(d) If, after the initial certification survey, a program provider does not provide an HCS Program or CFC service for at least 60 consecutive days during a certification period, DADS does not conduct an annual certification survey unless the program provider provides an HCS Program or CFC service before the end of the certification period.

(e) DADS may also conduct a survey of a ~~[reviews of the]~~ program provider at any time during a certification period.

(f) During any survey ~~[review]~~, DADS may review the HCS Program services or CFC services provided to any individual to determine if a ~~[the]~~ program provider is in compliance with the certification principles.

(g) DADS conducts an exit conference at the end of all surveys ~~[on-site reviews]~~, at a time and location determined by DADS, and at the exit conference gives the program provider a written preliminary survey ~~[review]~~ report.

(h) If a program provider disagrees with any of the findings in a preliminary survey ~~[review]~~ report, the program provider may request that DADS conduct an informal review of those findings.

(1) To request an informal review of any of the findings in the preliminary survey ~~[review]~~ report, the program provider must:

(A) complete DADS Form 3610 "Informal Review Request" as instructed on the form; and

(B) mail or fax the completed DADS Form 3610 to the address or fax number listed on the form.

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(2) DADS must receive the completed form within seven calendar days after the date of the review exit conference.

(i) Within 10 business days after the date of the survey exit conference, DADS sends to a program provider:

(1) a final survey report; and

(2) if DADS imposes an administrative penalty in accordance with §9.181 of this subchapter (relating to Administrative Penalties), a written notice of the administrative penalty.

(j) [~~(3)~~] If DADS receives a timely request for an informal review of any of the findings in the preliminary survey report, DADS, within 15 business days after receipt of the request:

(1) [~~(A)~~] notifies the program provider in writing of the results of the informal review [~~within 10 calendar days of receipt of the request~~]; and

(2) [~~(B)~~] based on the results of the informal review, sends the program provider:

(A) if necessary, a revised final survey [~~review~~] report; and

(B) if necessary, a revised written notice of an administrative penalty [~~within 21 calendar days after the date of the review exit conference~~].

~~[(i) If a program provider does not request an informal review as described in subsection (h) of this section, DADS sends the program provider a final review report within 21 calendar days after the date of the review exit conference.]~~

(k) [(j)] In addition to the surveys [~~on-site certification reviews~~] described in [~~subsection (b) of~~] this section, DADS conducts, at least annually, unannounced visits of each residence in which host home/companion care, residential support, or supervised living is provided to verify that the residence provides an environment that complies with DADS *Waiver Survey and Certification Residential Checklist*, which is found at www.dads.state.tx.us.

(l) [~~(k)~~] Based on the information obtained from a visit described in subsection (k) [(j)] of this section, DADS may:

(1) require the program provider to complete corrective action before the residential visit ends;

(2) require the program provider to submit evidence of corrective action within a time period determined by DADS; or

(3) conduct a survey [~~a review~~] of the program provider in accordance with this section.

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(m) Based on a survey, DADS takes action as described in §9.185 of this subchapter (relating to Program Provider Compliance and Corrective Action).

New §9.181. Administrative Penalties.

(a) DADS may impose and collect an administrative penalty against an HCS program provider for:

(1) a violation of a certification principles contained in §§9.172 - 9.174 and §§9.177 - 9.180 of this subchapter (relating to Certification Principles: Mission, Development, and Philosophy of Program Operations; Certification Principles: Rights of Individuals; Certification Principles: Service Delivery; Certification Principles: Staff Member and Service Provider Requirements; Certification Principles: Quality Assurance; Certification Principles: Restraint; and Certification Principles: Prohibitions); and

(2) any of the following actions:

(A) making a false statement of a material fact the program provider knows or should know is false with respect to a matter under investigation by DADS;

(B) falsifying documentation; or

(C) willfully interfering with the work of a representative of DADS or the enforcement of this subchapter.

(b) To determine the range of an administrative penalty imposed against a program provider for a violation described in subsection (a)(1) of this section, DADS considers:

(1) the seriousness of the violation; and

(2) the frequency of the violation.

(c) DADS determines the seriousness of a violation described in subsection (a)(1) of this section as one of the following:

(1) actual or potential for death or serious physical, emotional or financial harm;

(2) actual minor physical, emotional, or financial harm; or

(3) potential for minor physical, emotional, or financial harm or no harm.

(d) DADS determines the frequency of a violation described in subsection (a)(1) of this section as one of the following:

(1) isolated;

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(2) pattern; or

(3) pervasive.

(e) The range of the administrative penalty imposed against a program provider for a violation described in subsection (a)(1) of this section is set forth in the following table:

<u>Seriousness of a Violation</u>	<u>Frequency of a Violation</u>		
	<u>Isolated</u>	<u>Pattern</u>	<u>Pervasive</u>
<u>Actual or potential for death or serious physical, emotional or financial harm</u>	<u>\$500-3000</u>	<u>\$1000-4000</u>	<u>\$1500-5000</u>
<u>Actual minor physical, emotional, or financial harm</u>	<u>\$100-1000</u>	<u>\$100-2500</u>	<u>\$100-3500</u>
<u>Potential for minor physical, emotional, or financial harm or no harm</u>	<u>\$50-\$200</u>	<u>\$50-350</u>	<u>\$50-500</u>

(f) DADS considers the following factors in determining the amount of an administrative penalty within the established range for a violation described in subsection (a)(1) of this section:

(1) the threat or degree of harm to the health or safety of individuals resulting from the violation;

(2) the program provider's history of violations within the previous 24 months;

(3) whether the program provider:

(A) had prior knowledge of the violation, including whether the program provider identified the violation through the program provider's internal quality assurance process; and

(B) made any efforts to mitigate or correct the identified violation;

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(4) the penalty amount necessary to deter future violations; and

(5) any other matter justice may require.

(g) If DADS determines that the seriousness of a violation described in subsection (a)(1) of this section is potential for minor physical, emotional, or financial harm or no harm, DADS allows the program provider an opportunity to correct the violation, in accordance with §9.185 of this subchapter (relating to Program Provider Compliance and Corrective Action).

(h) For a violation described in subsection (a)(1) of this section, a program provider commits a separate violation each day the program provider continues to violate the certification principle.

(i) For an administrative penalty imposed for an action described in subsection (a)(2) of this section, DADS imposes the penalty no more than once per survey. DADS does not allow a program provider an opportunity to correct the action before imposing an administrative penalty. The amount of the administrative penalty for each action is as follows:

(1) \$1000 for making a false statement of a material fact the program provider knows or should know is false with respect to a matter under investigation by DADS;

(2) \$1000 for falsifying documentation; and

(3) \$1000 for willfully interfering with the work of a representative of DADS or the enforcement of this subchapter.

(j) If DADS imposes an administrative penalty against a program provider for a violation or action described in subsection (a)(1) or (2) of this section, DADS does not, at the same time, impose a vendor hold or otherwise withhold contract payments from the program provider for the same violation or action.

§9.185. Program Provider Compliance and Corrective Action.

(a) As a result of a survey described in §9.171 of this subchapter (relating to DADS Surveys and Residential Visits of a Program Provider), DADS takes action against a program provider as [a result of a review as] described in this section.

(b) If DADS determines after an initial or annual [a] certification survey [review] described in §9.171(b) of this subchapter [~~relating to DADS Review of a Program Provider and Residential Visit~~], that a program provider is in compliance with the [a] certification principles, DADS:

(1) gives the program provider a written survey report at the exit conference stating that the program provider is in compliance with the certification principles; and

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(2) certifies the program provider as described in §9.171(c) [~~§9.171(d)~~] of this subchapter and requires no action by the program provider [~~is required~~].

~~[(e) DADS does not certify a program provider for a new certification period if DADS determines at a certification review, except for the initial certification review described in §9.171(e) of this subchapter, that:~~

~~(1) at the time of the certification review, the program provider is not providing HCS Program services or CFC services to any individuals; and~~

~~(2) for the period beginning the first day of the current certification period through the 121st day before the end of the current certification period, the program provider did not provide HCS Program services or CFC services to an individual for at least 60 consecutive calendar days.]~~

~~(c) [~~(d)~~] If [~~Except as provided in subsections (j)–(l) of this section, if~~] DADS determines based on a survey [~~from a review~~] that a program provider is not in compliance with [~~provider's failure to comply with one or more of~~] the certification principles; [~~is not of a serious nature,~~]~~

(1) DADS gives the program provider a written preliminary survey report described in §9.171(g) of this subchapter at the exit conference that contains:

(A) a list of the violations; and

(B) a statement of whether a violation is a condition of a serious nature; and

(2) [~~requires~~] the program provider must, within 10 business days after the date of the survey exit conference, [~~to~~] submit [~~a corrective action plan~~] to DADS for approval a plan of correction for the violations in the preliminary survey report, using DADS Plan of Correction form [~~within 14 calendar days after the date of DADS final review report~~].

(d) If DADS determines based on the preliminary survey report that a program provider's failure to comply with one or more of the certification principles constitutes a critical violation, DADS:

(1) imposes an administrative penalty in accordance with §9.181 of this subchapter (relating to Administrative Penalties); and

(2) notifies the program provider of the administrative penalty in accordance with §9.171(i) of this subchapter.

(e) A program provider's [~~The corrective action~~] plan of correction required by subsection (c)(2) [~~(d)~~] of this section must specify a date by which corrective action will be completed for each violation, and such date must:

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(1) for a violation that is a condition of a serious nature, as stated in the preliminary survey report, be no later than 30 [90] calendar days after the date of the survey [review] exit conference; and

(2) for a violation, that is not a condition of a serious nature, be no later than 45 calendar days after the date of the survey exit conference.

(f) Within 10 business [14-calendar] days after the date DADS receives the [~~corrective action~~] plan of correction required by subsection (c)(2) [~~(d)~~] of this section, DADS notifies the program provider of whether the plan is approved or not approved.

(1) If DADS approves the plan of correction, the program provider must complete the corrective action in accordance with the plan of correction. [;]

(2) If DADS does not approve the plan of correction, the program provider must submit a revised plan of correction within 10 calendar days after the date of DADS written notice that the plan of correction was not approved.

~~[(1) DADS certifies the program provider; and]~~

~~[(2) the program provider must complete corrective action in accordance with the corrective action plan.]~~

(g) Within 10 business days after the date DADS receives the revised plan of correction required by subsection (f)(2) of this section, DADS notifies the program provider of whether the plan is approved or not approved. If DADS approves the revised plan of correction the program provider must complete the corrective action in accordance with the revised plan of correction.

(h) [(g)] If the program provider does not submit a [corrective action] plan of correction as required by subsection (c)(2) or (f)(2) [(d)] of this section, or DADS notifies the program provider that the revised plan of correction required by subsection (f)(2) of this section is not approved, DADS may:

~~[(1) request that the program provider submit a revised corrective action plan within a time period determined by DADS;]~~

~~(1) [(2)] impose a vendor hold against the program provider until the program provider submits a [corrective action] plan of correction approved by DADS; or~~

~~(2) [(3)] deny or terminate certification of the program provider.~~

(i) DADS may take one or more of the following actions to determine if the program provider has completed its corrective action in accordance with an approved plan of correction:

(1) request the program provider to submit written evidence of correction to DADS; or

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(2) conduct a survey or an on-site visit:

(A) for a violation that is a condition of a serious nature that is determined by DADS to be a critical violation, no sooner than 31 calendar days after the survey exit conference; and

(B) for a violation that is not a condition of a serious nature that is determined by DADS to be a non-critical violation, no sooner than 46 calendar days after the survey exit conference.

(j) If DADS determines at the end of a survey or on-site visit described in subsection (i)(2)(A) of this section that the program provider has completed the corrective action on a critical violation, the administrative penalty imposed in accordance with subsection (d)(1) of this section stops accruing for the critical violation on the date corrective action was completed, as determined by DADS.

(k) If DADS determines at the end of a survey or on-site visit described in subsection (i)(2)(A) of this section that the program provider has not completed the corrective action on a critical violation, DADS takes action in accordance with this subsection.

(1) If DADS determines at the end of a survey that the program provider has not completed the corrective action on a critical violation, DADS takes one of the following actions:

(A) continues the administrative penalty and conducts another survey or on-site visit to determine if the program provider completed the corrective action;

(B) imposes a vendor hold against the program provider; or

(C) denies or terminates certification of the program provider.

(2) If from a survey or on-site visit described in paragraph (1)(A) of this subsection, DADS determines that the program provider has completed the corrective action, the administrative penalty stops accruing on the date corrective action was completed, as determined by DADS.

(3) If from a survey described in paragraph (1)(A) of this subsection, DADS determines that the program provider has not completed the corrective action, the administrative penalty stops accruing and DADS:

(A) imposes a vendor hold against the program provider; or

(B) denies or terminates certification of the program provider.

(l) A program provider may request that, during a survey or on-site visit described in subsection (i)(2)(A) of this section, DADS determine if the program provider has completed

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some or all of the corrective action on non-critical violations in accordance with the corrective action plan approved by DADS.

(1) If DADS determines that the program provider has completed some or all of the corrective action on non-critical violations, DADS incorporates the findings into the preliminary survey report from the survey described in subsection (i)(2)(A) of this section.

(2) If DADS determines that the program provider has not completed all of the corrective action on non-critical violations, the program provider must complete any remaining corrective action in accordance with the plan of correction approved by DADS.

(m) If DADS determines at the end of a survey or on-site visit described in subsection (i)(2)(B) of this section that the program provider has completed the corrective action in accordance with the plan of correction and corrected all non-critical and critical violations, DADS will certify the program provider.

(n) If DADS determines at the end of a survey described in subsection (i)(2)(B) of this section that the program provider has not completed the corrective action on non-critical violations, DADS takes action in accordance with this subsection.

(1) If DADS determines at the end of a survey that the program provider has not completed the corrective action on non-critical violations, DADS:

(A) imposes an administrative penalty in accordance with §9.181 of this subchapter;

(B) notifies the program provider of the administrative penalty in accordance with §9.171(i) of this subchapter; and

(C) except as provided in paragraph (2) of this subsection, conducts a survey or onsite visit no earlier than 30 calendar days after the date of the exit conference of the survey described in subsection (i)(2)(B) of this section.

(2) DADS may conduct a survey or onsite visit earlier than 30 calendar days after the exit conference of the survey or visit described in subsection (i)(2)(B) of this section if the program provider has submitted evidence of corrective action to DADS during the 30 day period.

(3) If from the survey or on-site visit described in paragraph (1)(C) or (2) of this subsection, DADS determines that the program provider has completed the corrective action, the administrative penalty stops accruing on the date corrective action was completed, as determined by DADS.

(4) If from the survey described in paragraph (1)(C) or (2) of this subsection, DADS determines that the program provider has not completed the corrective action, DADS takes one of the following actions:

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(A) continues the administrative penalty and conducts another survey or on-site visit to determine whether the program provider completed the corrective action;

(B) imposes a vendor hold against the program provider; or

(C) denies or terminates certification of the program provider.

(o) If the survey described in subsection (c) of this section is an annual certification survey, DADS does not certify the program provider until DADS determines that the program provider is in compliance with the certification principles.

~~[(h) DADS determines whether the program provider completed the corrective action in accordance with the corrective action plan required by subsection (d) of this section during DADS first review of the program provider after the corrective action completion date.]~~

~~[(i) If DADS determines at the end of a review that a program provider's failure to comply with one or more of the certification principles results in a condition of a serious nature, DADS:]~~

~~[(1) requires the program provider to complete corrective action within 30 calendar days after the date of the review exit conference; and]~~

~~[(2) conducts a follow-up review after the 30-day period to determine if the program provider completed the corrective action.]~~

(p) [(j)] If DADS determines from a survey [a review] that a hazard to the health or safety of one or more individuals exists, DADS requires the program provider to remove the hazard by the end of the survey [review]. If the program provider does not remove the hazard by the end of the survey [review], DADS:

(1) denies or terminates certification of the program provider; and

(2) coordinates with the LIDDAs [local authorities] the immediate provision of alternative services for the individuals.

(q) [(k)] If DADS determines from a survey [review] that a program provider committed any of the actions described in §9.181(a)(2) of this subchapter [has falsified documentation used to demonstrate compliance with this subchapter], DADS takes one of the following actions [may]:

(1) imposes an administrative penalty against the program provider as described in §9.181 of this subchapter;

(2) [(4)] imposes [impose] a vendor hold against the program provider; or

(3) [(2)] denies or terminates [deny or terminate] certification of the program provider.

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~~[(1) If after a review, DADS determines that a program provider remains out of compliance with a certification principle found out of compliance in the previous review, DADS:]~~

~~[(1) requires the program provider to, within 14 days after the review exit conference, or within another time period determined by DADS, submit evidence demonstrating its compliance with the certification principle;]~~

~~[(2) imposes or continues a vendor hold against the program provider; or]~~

~~[(3) denies or terminates certification of the program provider.]~~

~~(r) [(m)]~~ If DADS imposes a vendor hold in accordance with this section:

(1) for a program provider with a provisional contract, DADS initiates termination of the program provider's contract in accordance with §49.534 of this title (relating to Termination of Contract by DADS); or

(2) for a program provider with a standard contract, DADS conducts a survey no earlier than 30 calendar days after the effective date of the vendor hold ~~[follow-up review]~~ to determine if the program provider completed the corrective action required to release the vendor hold; and

(A) if the program provider completed the corrective action, DADS releases the vendor hold; or

(B) if the program provider has not completed the corrective action, DADS denies or terminates certification ~~[takes action as described in subsection (1) of this section]~~.

~~(s) [(n)]~~ If DADS determines that a program provider is out of compliance with §9.177(o) or (p) of this subchapter (relating to Certification Principles: Staff Member and Service Provider Requirements), corrective action required by DADS may include the program provider paying or ensuring payment to a service provider of supported home living or CFC PAS/HAB who was not paid the wages required by §9.177(o) of this subchapter, the difference between the amount required and the amount paid to the service provider.

§9.186. Program Provider's Right to Administrative Hearing.

(a) A program provider may request an administrative hearing in accordance with Chapter 91 of this title (relating to Hearings Under the Administrative Procedure Act) and 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act) if DADS takes or proposes to take the following action:

(1) vendor hold;

(2) contract termination;

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(3) imposition of an administrative penalty;

(4) [~~3~~] recoupment of payments made to the program provider; or

(5) [~~4~~] denial of a program provider's claim for payment, including denial of a retroactive LOC and denial of a recommended LON.

(b) If the basis of an administrative hearing requested under this section is a dispute regarding an LON assignment, the program provider may receive an administrative hearing only if reconsideration was requested by the program provider in accordance with §9.165 of this subchapter (relating to Reconsideration of LON Assignment).

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