

Department of Aging and Disability Services

Report to the 79th Texas Legislature on
Nursing Facility Contract Minimum Standards

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This report is submitted to the 79th Texas Legislature by the Department of Aging and Disability Services (DADS), in accordance with the requirements of H.B. 2292, Sec. 2.92(s), 78th Legislature, Regular Session, 2003, codified in the Texas Human Resources Code, Section 32.021(s). HB 2292 also established an independent Nursing Facility Quality Assurance Team (NFQAT), charged with:

- 1) developing and recommending clearly defined minimum standards to be considered for inclusion in Medicaid contracts between the Department of Human Services (DHS)/DADS and nursing facilities; and
- 2) developing and recommending improvements to consumers' access to information regarding the quality of care in nursing facilities.

The NFQAT was required to report on its work and recommendations to the Governor and the Legislative Budget Board for consideration by the 79th Legislature. The submission of the NFQAT report (attached as Appendix 1) regarding improved contract standards and performance measures was delayed until October 2004 to complete appointments to the NFQAT and allow sufficient time to complete their work. DADS is in the very early stage of considering those recommendations and will be sharing them with our stakeholders to ensure proper consideration.

We anticipate extensive dialogue with stakeholders during the process of weighing the NFQAT recommendations and further evaluating the minimum standards of nursing facility Medicaid contracts. The department anticipates that the next report to the legislature on this subject, due November 2005, will represent the product of that work.

Per HB 2292, the DADS Nursing Facility Contract Minimum Standards report provides current and historical information about the status of:

- 1) recommendations for improving the quality of information provided to consumers regarding nursing facilities;
- 2) minimum standards and performance measures included in the department's contracts with those facilities;
- 3) the performance of those facilities with regard to the minimum standards;
- 4) the number of facilities with which the department has terminated a contract or to which the department will not award a contract because the facilities do not meet the minimum standards; and
- 5) the overall impact of the minimum standards on the quality of care provided by the facilities, consumers' access to facilities, and cost of care.

1) Recommendations For Improving The Quality Of Information Provided To Consumers Regarding Nursing Facilities

The NFQAT report made a number of recommendations related to improvements in access and navigation of the Quality Reporting System (QRS), a Web-based consumer information system that helps consumers make better-informed choices in selecting a long-term care provider. These recommendations and department action taken in response to date include:

Improve access to QRS from other DADS web pages.

- *Create a direct link from the DADS home page, marked by a prominent icon, to QRS.*

As part of long-term plans to restructure content on the new DADS Internet site, we will consider creation of user-friendly ways to access the information on the QRS site, including use of plain language descriptions. Until these enhancements are completed, a direct link to the QRS site from the DADS home page will not be available. As an interim step, the navigation of the DADS Internet site was modified to include a direct link to Long Term Care Provider Services information, including a link to the QRS site. In addition, the QRS site can be accessed via the Services to Texas section of the DADS Internet site, which is devoted to consumer-related information.

- *Increase consumer awareness of how to choose a nursing home and access other available resources; include a method of evaluating the campaign for effectiveness.*
- *Provide a section on how to navigate the long-term care process in all DADS publications, and list the two web sites—CMS (Nursing Home Compare) and QRS.*

The NFQAT made a series of recommendations regarding improvements in public awareness and outreach that would result from increased publicity regarding QRS. The department is considering these recommendations in its formulation of a comprehensive communications and public awareness strategy.

Increase consumer confidence in understanding and navigation of QRS.

- *In the QRS NF Profile pages, change “dual certification” to “Medicare/Medicaid beds,” and the glossary (g) icon to “Read More.”*
- *Indicate Deficiency Severity using text and a color code for harm levels: levels one and two, green; level three, yellow; level four (IJ), red.*
- *Bold the entire last sentence in the QRS yellow Caution Box to stress the importance of visiting the nursing facility.*

- *In the QRS NF Profile pages, provide a link to Nursing Home Compare.*
- *Add the AAA Ombudsmen 1-800-252-2412 to the Caution Box on the QRS web site.*
- *Create a link at the QRS homepage that points to the DADS web page and gives alternatives to nursing homes.*
- *In the QRS NF Profile pages, include the number of complaints, number of allegations, and number of substantiated allegations by calendar year for three years.*

Each of the above recommended modifications to the QRS website have been made.

- *Add a bar graph comparison showing facility percentile for staffing and case mix.*

The department has surveyed commercial off-the-shelf programming software available for this purpose. There is currently no tool that would generate the case-mix and staffing data in a graphical representation. The department will continue to survey new technologies until it identifies a new commercial product that would make such graphs possible. Once the technology is identified and procured, the department will implement this request.

- *Provide a list of questions concerning staffing that consumers should ask.*

The DADS Internet site currently provides tips on selecting a Long Term Care facility. As part of our comprehensive restructure of consumer-related information on the site, we will add information on staff levels.

Finally, the NFQAT also recommended an independent usability evaluation of QRS, which is being considered, and the evaluation of the options will be available within the next 12 months.

2) Minimum Standards And Performance Measures Included In The Department's Contracts With Nursing Facilities

In order to contract to provide nursing facility services under the Texas Medical Assistance Program, a nursing facility must be licensed by DADS. The requirement for nursing facilities to abide by the Nursing Facility Requirements for Licensure and Medicaid Certification is documented in Section I of the Contract to Provide Nursing Facility Services under the Texas Medical Assistance Program. Section I indicates "... the Department and the Facility mutually agree to the terms and conditions set forth below and to the provisions of the Nursing Facility Requirements for Licensure and Medicaid Certification (NFR/LMC) published by the Department, a copy of which has been furnished to the Facility and which is hereby incorporated by reference as part of the contract."

The current requirements for licensure and certification include a number of requirements specifically focused on quality of care, including the following examples:

- Physical Restraints [T.A.C. 19.601 (a)] - Residents are not to be restrained for discipline or convenience or if there is no medical condition that requires their application
- Activities of Daily Living: Toileting [T.A.C. 19.901 (1) (A) (iii)] - Based on a comprehensive assessment, a resident's ability to toilet does not diminish, unless the clinical condition demonstrates that it is unavoidable.
- Mental and Psychosocial Functioning [T.A.C. 19.901 (6)] - Based on their comprehensive assessment, residents exhibiting mental and/or psychosocial problems must receive appropriate treatment and services to correct the assessed problem.
- Weight Loss [T.A.C. 19.901 (9)] - Based on a comprehensive assessment, a resident maintains an acceptable nutritional status (unless the clinical condition demonstrates it is not possible) and receives the appropriate diet.
- Vaccinations [T.A.C. 19.1601 (3)] - Influenza and pneumococcal vaccines must be offered to residents according to the recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention. Employees of the facility must receive the influenza vaccine unless medically contraindicated. Refusals by residents and employees must be documented.
- Quality Assessment and Assurance [T.A.C. 19.1917 (a) & (b)] - The facility must maintain a Quality Assessment and Assurance Committee. The Quality Assessment and Assurance Committee meets at least quarterly to identify quality problem areas, and develop and implement plans to correct the problems.

Working from this base, DADS has established a workgroup to develop specific nursing facility contract performance standards regarding quality improvement. This workgroup will consider the NFQAT recommendations, per statutory direction, and will include extensive stakeholder involvement.

Consolidation of the provision and regulation of long-term services and supports within DADS provides a unique opportunity to look at contracting practices across all provider types. As these efforts are undertaken, contract minimum standards and performance measures for nursing facilities, as well as other provider types, will be modified to focus on improving quality of care and reducing duplication or conflicting standards.

3) The Performance Of The Nursing Facilities With Regard To The Minimum Standards

With regard to the minimum licensing and certification standards, Texas nursing facilities have performed as follows:

- 71.66% of nursing facilities complied with standards at the time of inspection for licensure and/or Medicare/Medicaid certification for the period of June 1, 2002-May 31, 2003.
- 74.92% of nursing facilities complied with standards at the time of inspection for licensure and/or Medicare/Medicaid certification for the period of June 1, 2003-May 31, 2004.

4) The Number Of Facilities With Which The Department Has Terminated A Contract Or To Which The Department Will Not Award A Contract Because The Facilities Do Not Meet The Minimum Standards

The department terminated the contracts of those facilities whose follow up visits did not demonstrate substantial compliance within the six month period following the finding of non-compliance, and/or the contracts of those facilities that did not meet other requirements for participation, such as ownership information disclosure. The number of facilities with which the department terminated a contract for Fiscal Year 2003 is six (6) facilities. The number of facilities with which the department terminated a contract for Fiscal Year 2004 is zero (0) facilities as those facilities that were not in compliance at the time of inspection demonstrated compliance at follow up visits.

5) Overall Impact Of Minimum Standards On Quality Of Care Provided By The Facilities, Consumers' Access To Facilities, And Cost Of Care

The DADS minimum standards for licensing and certification are a product of the rule-making process, which includes analysis of proposed rules for fiscal impact, small and micro-business impact, public benefit, environmental impact and property rights ("takings") impact, as well as stakeholder input via written and in-person public comment.

DADS will designate FY 2005 as a baseline year from which to compare the impact of changes to the nursing facility contract that result from this initiative. The objective of the agency's efforts will be to ensure that any such changes have a positive impact on quality of care, access to facilities and cost of care.