



Assisted Living Facility Rules: A Review of Select Rules

State Long-term Care Ombudsman Office

Objectives

- ▶ Gain knowledge about ALF regulations
- ▶ Apply regulations to common complaints
- ▶ Discuss problem-solving strategies when no regulation applies
- ▶ Distinguish ALF and nursing home rules



ALF Rules

- ▶ No Federal Law
- ▶ Health and Safety Code, Chapter 247
- ▶ Licensing Standards for Assisted Living Facilities, Chapter 92



Pop Quiz

ALFs are defined by rule to include all of the following services except:

- personal care
- medication administration
- limited skilled nursing
- social services
- care assessments



Outline of Rules

Chapter 92

- ▶ **Subchapter A, Introduction:**
 - ▶ definitions, types of ALFs, license fees
- ▶ **Subchapter B, Application Procedures**
 - ▶ Criteria for licensing, application requirements, renewal procedures, change of ownership, relocation, change in capacity, provisional license
- ▶ **Subchapter C, Standards for Licensure**
 - ▶ Standards for employees, Service Plans, Activities, Admission, Records, Medication, Food; Details on Alzheimer's Certification
- ▶ **Subchapter D, Facility Construction**
 - ▶ Standards for construction and life safety.



Outline of Rules

- ▶ **Subchapter E, Inspections, Surveys, and Visits**
- ▶ **Subchapter F, Abuse, Neglect, and Exploitations**
 - ▶ Complaint investigation and general provisions
- ▶ **Subchapter G, Miscellaneous Provisions**
 - ▶ Investigation of Facility Employees, Procedures for Inspection of Public Records, Resident Rights, Provider Rights, Required Postings, Authorized Electronic Monitoring
- ▶ **Subchapter H, Enforcement**
- ▶ **Subchapter I, Access to Residents and Records by the Long-term Care Ombudsman Program**



§92.125 (a) Resident Rights

- ▶ **These are only part of the resident rights.**
- ▶ Residents have a right to:
 - ▶ Unrestricted communication, including personal visitation with any person of the resident's choice (J)
 - ▶ Access the resident's records
 - ▶ Choose and retain a personal physician (N)
 - ▶ Refuse medical treatment (P)
 - ▶ Unaccompanied access to a telephone at a reasonable hour or in case of an emergency or personal crisis (Q)
 - ▶ Privacy, while attending to personal needs and private place for receiving visitors or associating with other residents. (R)



Resident Rights Continued

- ▶ Residents have a right to:
 - ▶ An individual locked area for personal property (U)
 - ▶ Leave the facility temporarily or permanently subject to contractual or financial obligations (Z)
 - ▶ Access to services of a representative of the State Long Term Care Ombudsman Program (AA)



Ombudsmen Problem Solving: Resident Rights

- ▶ Ombudsmen always advocate for the resident's right.



Medications

▶ § 92.2 (33-36): Definition of Medications

▶ (A) any substance:

- (i) Recognized as a drug in the Official United States Pharmacopoeia....
- (ii) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease
- (iii) Other than food intended to affect the structure or any function of the body; and
- (iv) Intended for use as a component of any substance specified in this definition.

▶ Includes over-the-counter medications



Medications

- ▶ **§ 92.2 (33-36): Definition of Medications**
 - ▶ Medication administration- the direct application of medication to the body of a resident by an individual legally allowed to administer medications
 - ▶ Medication assistance or supervision- the assistance or supervision of the medication regimen by facility staff
 - ▶ Medication (self-administration)- the capability of a resident to administer the resident's own medication or treatments without assistance from the facility staff.



Medications

▶ §92.41 (j) Medications.

▶ (1) Administration:

- ▶ Must be administered by a facility employee and according to physician's orders.
- ▶ Physician sample medications may be administered to the resident by the facility if the medication has specific dosage instructions.
- ▶ Each resident's medications must be listed on an individual resident's medication profile record.

▶ (2) Supervision:

- ▶ reminders to take medication
 - ▶ opening containers
 - ▶ pouring prescribed dosage
 - ▶ returning medications to storage area
 - ▶ obtaining medication from a pharmacy
-



Medications

- ▶ (3) Self-administration
 - ▶ Residents store and take their own medication
 - ▶ Medications must be counseled at least once a month to determine if the resident is able to self-administer medications/treatments. Written record of counseling must be kept by the facility.
- ▶ (4) Medication taken is not documented; only if a dose is missed.
- ▶ (5) Storage: facilities must provide a locked area for medications, keeping each resident's medications separate.
- ▶ (6) Disposal of medications



Ombudsman Problem Solving: Medications

- ▶ Ombudsman have access to medication storage and medication records.
 - ▶ Must have a reason to enter these areas.
 - ▶ Facility staff should be present when in these areas.
- ▶ Review resident records and service plans.
 - ▶ Does the resident have physician orders?
 - ▶ When was the last time the resident was evaluated for self-administration?



True or False?

A provider can ask about a resident's history of substance abuse.



Skilled Nursing

- ▶ **Subchapter B, §92.11**

- ▶ An assisted living facility may provide temporary skilled nursing services for a period no longer than 30 days for minor illness, injury or emergency.

- ▶ **Subchapter A, §92.5 Health Care Professional**

- ▶ A home and community supports services agency may provide services to a resident in an ALF.
- ▶ A *facility* cannot provide ongoing services to a resident that are comparable to services available in a nursing facility.



Skilled Nursing

- ▶ There is no definition of skilled nursing in rule or statute.
 - ▶ Skilled nursing services provided by the facility are restricted to specific purposes, i.e. minor illness, injury or emergency. (§92.11 (a)(2)(D))
- ▶ Short-term acute episode- an illness of less than 30 days duration (Definitions, §92.2 (53))



Ombudsman Problem Solving: Skilled Nursing

- ▶ **Stay resident directed.**
- ▶ **Review the resident agreement.**
 - ▶ What is the facility's policy on providing skilled nursing?
 - ▶ What does it say about home and community support services?
- ▶ **Be a resource for facility staff and residents.**
 - ▶ Limits on a facility providing skilled nursing
 - ▶ Option of home health agency providing services
- ▶ **Remain complaint driven.**



True or False?

An ALF is required to provide only one activity a week.



Activities

- ▶ § 92.41 (b) All assisted living facilities must provide an activity and/or social program at least weekly for the residents.
- ▶ §92.53 (g) Alzheimer's Certified Facilities
- ▶ Activities must be individualized based on resident's assessment and abilities.
 - ▶ Activities must be a mixture of cognitive, recreational and self-care activities of daily living.
 - ▶ Facilities must employ someone responsible for leading activities.



Ombudsman Problem Solving: Activities

- ▶ Since the rule is limited, refer to resident rights.
- ▶ Talk with residents about forming a resident council or bringing their wishes to the resident council.
- ▶ Share activity ideas with staff
 - ▶ Emphasize benefits of well-planned activities
 - ▶ Consider talking with the corporation
- ▶ Stay complaint driven.



§92.41 (f) Inappropriate Placement

- ▶ Residents may age in place if the change in their condition does not compromise their ability to evacuate independently.
- ▶ If the person's condition compromises their ability to evacuate independently and the facility is willing to retain the resident, the facility or a surveyor must identify and then the facility must submit forms to DADS within 10 days.
- ▶ The facility must meet appropriate staffing and structure requirements, and submit all documentation.
- ▶ If the facility decides not to apply for a waiver, it must give a 30-day discharge notice to the resident.



Ombudsmen Problem Solving: Inappropriate Placement

- ▶ **Ombudsmen:**
 - ▶ Stay resident-directed.
 - ▶ What does the resident want?
 - ▶ Act as a resource.
 - ▶ Facility options
 - ▶ ALF rules
 - ▶ Do not act as regulatory.
 - ▶ Ask questions.
 - ▶ Inform of rules.



True or False?

There must be no longer than 16 hours between a substantial evening meal and breakfast the following morning.



§92. 41 (m) Dietary Guidelines

- ▶ (3) Menus must be planned one week in advance, if the menu changes it must be documented. Records of menus must be maintained for 30 days after serving
- ▶ (5) Facilities should keep a minimum four day supply of staple foods and a one day supply of perishable foods on the premises
- ▶ (6) Food stored that is subject to spoilage must be dated.



Ombudsmen Problem Solving: Dietary Needs

- ▶ **Ask residents:**
 - ▶ Do you like the food?
 - ▶ Are the proportions enough?
 - ▶ Do residents participate in meal planning?
 - ▶ Is the facility providing snacks?
 - ▶ How is the temperature of the food?
- ▶ Do you see a noticeable weight loss or gain in residents?
- ▶ If a resident needs help eating, is the facility providing it?
- ▶ To address specific dietary complaints or modifications for eating, review the resident's service plan.



Discharge

- ▶ **There is no appeal process.**
- ▶ § 92.125 (a)(3)(X-Z): Resident's Bill of Rights:
 - ▶ not be transferred or discharged unless:
 - ▶ (i) the transfer is for the resident's welfare, and the resident's needs cannot be met by the facility;
 - ▶ (ii) the resident's health is improved and services are no longer needed;
 - ▶ (iii) the resident's health and safety or the health and safety of another resident would be endangered if the transfer or discharge was not made;
 - ▶ (iv) the provider ceases to operate or to participate in the program that reimburses for the resident's treatment or care; or
 - ▶ (v) the resident fails, after reasonable and appropriate notice, to pay for services;
 - ▶ not be transferred or discharged, except in an emergency, until the 30th day after the date the facility provides written notice to the resident, the resident's legal representative, or a member of the resident's family, stating:
 - ▶ the reason
 - ▶ the date of the transfer or discharge;
 - ▶ if the resident is to be transferred, the location
 - ▶ any appeal rights available to the resident;
 - ▶ leave the facility temporarily or permanently, subject to contractual or financial obligations;



Discharge Continued

- ▶ §92.125 (b)(3) (B-C): Provider's Bill of Rights:
- ▶ A provider has a right to:
 - ▶ terminate a resident's contract for just cause after a written 30-day notice;
 - ▶ terminate a contract immediately, after notice to the department, if the provider finds that a resident creates a serious or immediate threat to the health, safety, or welfare of other residents of the assisted living facility. During evening hours and on weekends or holidays, notice to DHS must be made to 1-800-458-9858;



Ombudsman Problem Solving: Discharge

- ▶ Review the resident agreement.
 - ▶ Does the facility have an appeal process?
 - ▶ What does the agreement say about discharge procedures and reasons?
- ▶ Ask the facility if they are willing to develop an appeal process.
- ▶ Consider the discharge reason and engage with facility management and the resident to discuss alternatives to discharge
 - ▶ Would they consider a trial period?
- ▶ Think out of the box.
- ▶ Be a resource to the resident on other facility options.



§92.41 (h) Resident Records

▶ Resident records.

- (1) Records that pertain to residents must be treated as confidential and properly safeguarded from unauthorized use, loss, or destruction.
- (2) Resident records must contain:
 - (A) information contained in the facility's standard and customary admission form;
 - (B) a record of the resident's assessments;
 - (C) the resident's service plan;
 - (D) physician's orders, if any;
 - (E) any advance directives;
 - (F) documentation of a health examination by a physician performed within 30 days before admission or 14 days after admission, unless a transferring hospital or facility has a physical examination in the medical record. Christian Scientists are excluded from this requirement; and
 - (G) documentation by health care professionals of any services delivered in accordance with the licensing, certification, or other regulatory standards applicable to the health care professional under law.
- (3) Records must be available to residents, their legal representatives, and DADS staff.



Ombudsman Problem Solving: Resident Records

- ▶ Refer to §92.801, Access to Residents and Records by the Long-term care Ombudsman Program
 - ▶ A facility must allow a certified ombudsman and a staff person of the Office access to the medical and social records of a resident, if the certified ombudsman or staff person has the consent of the resident or legally authorized representative
- ▶ Review the resident agreement for procedures of access to resident records
- ▶ Stay complaint driven and resident directed.



§92.41 (a)(3) Staffing

- ▶ (B) Normal staffing patterns must be posted and provided to prospective residents and their families. (See also Required Postings, §92.127)
- ▶ (C) A facility must have sufficient staff to:
 - ▶ (i) maintain order, safety, and cleanliness;
 - ▶ (ii) assist with medication regimens;
 - ▶ (iii) prepare and service meals that meet the daily nutritional and special dietary needs of each resident, in accordance with each resident's service plan;
 - ▶ (iv) assist with laundry;
 - ▶ (v) assure that each resident receives the kind and amount of supervision and care required to meet his basic needs; and
 - ▶ (vi) ensure safe evacuation of the facility in the event of an emergency



§92.41 (a)(3) Staffing Continued

- ▶ (D) A facility must meet the staffing requirements described in the subparagraph.
 - ▶ (i) Type A facility: Night shift staff in a small facility must be immediately available. In a large facility, the staff must be immediately available and awake.
 - ▶ (ii) Type B facility: Night shift staff must be immediately available and awake, regardless of the number of licensed beds.



Staffing for Alzheimer's Certified ALFs

- ▶ §92.53 (c) Staffing. A facility must employ sufficient staff to provide services for and meet the needs of its Alzheimer's residents. In large facilities or units with 17 or more residents, two staff members must be immediately available when residents are present.



Ombudsmen Problem Solving: Staffing

- ▶ **Consider:**
 - ▶ Facility type and size
 - ▶ Resident care needs
 - ▶ Evacuation capability of residents
- ▶ Look for posting of staffing patterns.
- ▶ Stay complaint driven.



Enforcement

- ▶ **Administrative Penalties:§ 92.55 I**
- ▶ **DADS may assess an administrative penalty if a license holder:**
 - ▶ violates a rule or standard
 - ▶ makes a false statement on an application
 - ▶ refuses access to or interferes with a DADS representative
 - ▶ fails to pay an administrative penalty
 - ▶ fails to notify DADS of a change of ownership.
 - ▶ refuses to allow a DADS representative to inspect a book, record, or file that a facility must maintain or any portion of the premises of a facility



Enforcement Cont.

- ▶ Opportunity to Correct: § 92.551(g)
- ▶ A license holder has an opportunity to correct a violation to avoid paying an administrative penalty, if the violation is corrected within 45 calendar days after written notice of a violation.
- ▶ A license holder does not have an opportunity to correct a violation:
 - ▶ that DADS determines results in serious harm to or death of a resident;
 - ▶ makes a false statement on an application
 - ▶ refuses access to or interferes with a DADS representative
 - ▶ fails to pay an administrative penalty
 - ▶ fails to notify DADS of a change of ownership.
 - ▶ refuses to allow a DADS representative to inspect a book, record, or file that a facility must maintain or any portion of the premises of a facility
 - ▶ related to advance directives
 - ▶ that is the second or subsequent violation of:
 - ▶ (i) a right of the same resident under §92.125 of this chapter (relating to Resident's Bill of Rights and Provider Bill of Rights); or
 - ▶ (ii) the same right of all residents under §92.125 of this chapter; or
 - ▶ That is written because of an inappropriately placed resident, except as described in §92.41(f) of this chapter (relating to Inappropriate Placement).
- ▶ A license holder that corrects a violation must maintain the correction for at least a year.



Enforcement Cont.

▶ Options to Challenge:

- ▶ Hearing on an administrative penalty. §92.55 I (h)
 - ▶ State Office of Administrative Hearing (SOAH)- Texas Administrative Code, Chapter 357, Subchapter I
- ▶ Amelioration: §92.55 I (j)
- ▶ Informal dispute resolution (IDR) §92.83
 - ▶ If a facility and DADS cannot resolve a dispute regarding a violation, the facility is entitled to an IDR
 - ▶ Within 10 days after the facility receives the statement of violations, the facility must submit a written request for an IDR.



Resources: Provider Letters

- ▶ Aging in Place- PL 13-32
- ▶ Delegation of Insulin Administration- PL 03-35
- ▶ Home & Community Support Services Agency- S&CC 10-03
- ▶ Inappropriately Placed Residents- PL 12-09
- ▶ Prefilling Medication Planners- IL 13-18
- ▶ Skilled Nursing Services in an ALF- PL 11-37
- ▶ Skilled Nursing Services in ALFs- S&CC 13-04
- ▶ Resident Choice of Health Professionals- PL 09-14



Resources

- ▶ **DADS Computer Based Trainings for AL Managers**

- ▶ Desk Reviews and Plans of Correction:

- <http://www.dads.state.tx.us/providers/alf/training/cbt/deskreview.html>

- ▶ ALF Pre-licensure Training:

- <http://www.dads.state.tx.us/providers/alf/training/cbt/index.html>

- ▶ Annual Mandatory Training for ALFs, review retaliation and aging in place:

- <http://www.dads.state.tx.us/providers/alf/training/cbt/annual.html>



Resources

▶ AL Managers Training

▶ TALA, visit www.tala.org

▶ Next Class is in Austin, May 19-21

- Texas Regulations Class – 8 hours – \$170
- Administrator's Overview Class -16 hours – \$290

▶ TORCH, www.txtorch.com

▶ Online Courses

- 8 hour Texas Regulations Class: \$175
- Assisted Living Manager/Administrator Training Course(includes regulations): \$395

▶ Classroom courses: www.jeanoycewilson.com

- 8 hour Texas Regulations Class: \$140
- 16-hour training on management of assisted living facilities: \$285





Questions / Comments

THANK YOU FOR YOUR HARD WORK IN ALFS!