



Annual Report

State Fiscal Years 2021-2022

**State Long-Term Care
Ombudsman Program**

November 2022

Overview

This report is required by Section 101A.262 of Title 6 of the Texas Human Resources Code, [Chapter 101A](#), Subchapter F.¹ It is issued on November 1 of each even-numbered year to inform the public of the work of the State Long-Term Care Ombudsman Program (Ombudsman Program) on behalf of residents of nursing facilities and assisted living facilities (ALFs). The report includes information and findings relating to the problems and concerns of residents and recommendations to solve the problems, resolve the concerns, and improve the quality of the residents' care and lives. The Office of the State Long-Term Care Ombudsman is independent within the Texas Health and Human Services (HHS).

Mission

The mission of the Ombudsman Program is to improve the quality of life and care for residents of nursing facilities and ALFs by providing prompt, informal complaint resolution and promoting systemic change on behalf of residents' interests.

Functions

The purpose of the Ombudsman Program is to protect the health, safety, welfare, and rights of residents. Ombudsmen:

- Identify, investigate, and resolve complaints made by, or on behalf of, residents that relate to action, inaction, or decisions that may adversely affect the health, safety, welfare, and rights of residents;
- Provide services to protect the health, safety, welfare, and rights of residents;
- Provide residents with information about the Ombudsman Program, their benefits, rights, and services;
- Make regular visits to residents in facilities, as well as promptly respond to requests received by telephone, mail, and email;

¹ See <https://statutes.capitol.texas.gov/Docs/HR/htm/HR.101A.htm>

- Represent the interests of residents before governmental agencies, and pursue administrative, legal, and other remedies to protect residents;
- Advocate for system improvements to the media and state and federal decision-makers; and
- Coordinate with and promote citizen organizations and councils.

Resident Experiences

Throughout this report, ombudsman accounts of resident experiences will be shown in italics to illustrate what it's like to live in a long-term care facility.

Link Between Hygiene and the Care and Dignity of Residents

Nursing facility residents frequently report being left for hours in soiled briefs. Results of this poor care include skin deterioration and loss of dignity. After spending hours in dirty clothing waiting for help, pressing the call button feels hopeless to residents.

An ombudsman reported an incident about a resident who needs a two-person assist and requires a lift to transfer from bed. One night, the resident received incontinent care at 8 p.m. The next day -- when family visited at 4 p.m. -- the resident reported that facility staff had not been in to check on her or change her since the previous evening. The family found the resident soaked in urine from her chest to her toes. There was a pool of urine at the foot of her bed and urine actively dripping on the floor.

A resident called his ombudsman after being in a soiled brief for over four hours. The resident kept turning his call light on for help, but aides would turn it off and tell him they were shorthanded and would get to him when they could. The resident said he knew he was not the only one who needed help but didn't want to be forgotten. Soon after, his family installed a camera in his room and found that he went 20 hours without getting his brief changed. Two weeks after a care plan meeting to address the issue, the resident slipped out of his bed because his brief leaked and made his mattress slick with urine. The fall broke his femur and he laid face down on the floor until family saw him on camera and called the facility at 4:00 a.m. to report it.

Severe Illness and Death from COVID-19

At least 10,780 nursing facility residents and 1,884 ALF residents have died from COVID-19 in Texas.² Not only have residents experienced many deaths but residents also feel the effects of staffing shortages, frequent turnover of staff, and overuse of staffing agencies whose employees don't know the residents. Staffing and care problems existed before COVID-19, but the pandemic exacerbated issues with nurse aide competency, infection prevention and control, and abuse and neglect.

Residents, their families, and facility staff called the first nine months of the COVID-19 pandemic "lockdown." The lockdown mindset has eased, but the effects of COVID-19 policies enacted at the discretion of a facility linger. This is evidenced by locked entries and exits, screening visitors, and physical distancing at meals and activities.

Nursing Facilities

At the time this report was issued, hundreds of residents and facility staff have COVID-19 disease. Unfortunately, few treatments are administered to nursing facility residents despite residents being eligible and effective treatments that are available through the Texas Department of State Health Services and commercially.

ALFs

Thirty-four percent of ALFs are certified to care for residents with Alzheimer's disease or a related condition. COVID-19 disproportionately affected residents living in Alzheimer's certified ALFs. Seventy-six percent of Alzheimer's certified ALFs had at least one resident that tested positive for COVID-19 and 69% of ALF residents who died from COVID-19 lived in an Alzheimer's certified ALF. Four hundred and twelve deaths occurred in ALFs that exclusively serve people living with Alzheimer's or a related condition.

² Sources: [HHS COVID-19 Case Count](https://www.hhs.texas.gov/services/health/coronavirus-covid-19/texas-covid-19-case-count-vaccination-data)
<https://www.hhs.texas.gov/services/health/coronavirus-covid-19/texas-covid-19-case-count-vaccination-data> reported 10/17/2022 for nursing facilities and 9/1/2022 for ALFs

Different Treatment Based on Vaccination Status

An ALF announced it was finally arranging activities outside the facility, which was standard for the facility prior to the COVID-19 pandemic. These outings included scenic drives, dining, and shopping trips but they exclude residents who are not vaccinated for COVID-19. Because an ALF is only required to provide one activity for residents every week, as long as this facility offers one facility-based activity for residents who are not vaccinated, it is in compliance with state rules.

Staff and Volunteer Ombudsmen

Staff and volunteer ombudsmen must complete 36 hours of certification training and 18 hours of annual continuing education.

Staff

The Ombudsman Program is staffed with 110 ombudsmen, some of whom work part-time. Most staff ombudsmen work in a local office and are typically assigned 30-60 facilities to visit and respond to requests for assistance and complaints.

A 1995 Institute of Medicine study recommended one full-time equivalent (FTE) staff per 2,000 licensed facility beds.³ With 86.5 FTEs in local offices responsible for 3,211 facilities statewide, the Ombudsman Program has one FTE per 2,527 beds.

Staff ombudsman turnover was between 15 and 17 percent in 2019, 2020, and 2022. In 2021, staff turnover was 25 percent. The continued service of experienced ombudsmen is a top priority for the program.

Volunteers

Currently, volunteers make up about 75% of the total number of ombudsmen statewide. Volunteers are usually assigned one or two facilities to visit. The number of volunteers at year end are shown in the table below.

Year End	Number of Active Volunteers
2019	386
2020	347
2021	268
2022	290

³ Institute of Medicine. 1995. [Real People Real Problems: An Evaluation of the Long-Term Care Ombudsman Programs of the Older Americans Act](https://doi.org/10.17226/9059). Washington, DC: The National Academies Press. <https://doi.org/10.17226/9059>.

In FY21, volunteer ombudsmen donated 3,471 hours to the Ombudsman Program.
In FY22, volunteers donated 6,964 hours.

Why Ombudsmen Are Needed

Residents say they have no one to help them get out of bed and go to the dining room or participate in activities. They report feeling isolated and depressed because they are stuck in their rooms.

Residents who require assistance from two staff report not being able to leave their room for days because no one is available to get them up. Some residents say they are in despair as they see no end in sight.

Residents say staff are rough with them when showering, changing their briefs, dressing, and feeding them because they worked a double shift or rush to get to the next resident. The residents feel unimportant, uncared for, or like they are a burden to the staff. A resident said that staff treat her "like a dog."

Ombudsmen directly observe staff who openly confront residents about "always calling out for help", tell residents to "stop pushing your button", tell them "You don't need me to do that, do it yourself," and make derogatory comments about residents.

Visits by an Ombudsman

The purpose of an ombudsman visit is to monitor residents' health, safety, welfare, and rights; communicate with residents, which may involve receiving, investigating, and resolving a complaint; and observe conditions of the facility. When conducting a visit, volunteer and staff ombudsmen must comply with facility requirements related to infection control.

Visits are generally unannounced to the facility staff. Conversations between an ombudsman and a resident or complainant are confidential. While onsite, ombudsmen may attend care plan meetings when invited by a resident, attend resident and family council meetings when invited by a council, and train facility staff upon request of a facility. Numbers of visits by facility setting are provided in the table below.

Type of Facility	Number of Licensed Facilities ⁴	Number of FY21 Ombudsman Visits	Number of FY22 Ombudsman Visits
A, B, and C ALF	2,010	5,912	11,077
Nursing Facility	1,201	5,833	12,837

Observations of Weight Loss

Ombudsmen report residents they have known for years are dramatically losing weight. One ombudsman watched staff place a plate of food in front of a resident that they know is unable to feed himself and walk away, just to return later and pick up the plate that had not been touched. On a visit, an ombudsman observed a resident with a plate of cold food in front of her with food scattered all over the tray. The resident said, "I can't feed myself, and they know this. They always come in and put my tray down in front of me and then walk away." The ombudsman learned that food was

⁴ Data as of Sept. 2022 from [Long-Term Care Regulation](http://www.hhs.texas.gov/providers/long-term-care-providers) webpage found at www.hhs.texas.gov/providers/long-term-care-providers

all over the resident's tray because she was trying to feed herself by bending forward to eat using only her mouth.

An ombudsman observed a resident she had known for years but had not seen in several months. The ombudsman was shocked when on a visit she observed how much weight he had lost. When the ombudsman asked about his weight he said, "They don't feed me." The resident had a stroke and cannot feed himself. He said that staff drop his food tray in front of him and walk away. He waits until someone comes back and tells them he hasn't eaten. Staff tell him, "There's nothing I can do, we are short staffed and have to help other people."

Information and Assistance

Ombudsmen provide information and assistance (I&A) to residents and non-facility staff who seek information about the Ombudsman Program, residents' rights, and facility requirements. In FY21-22, ombudsmen reported over 40,000 instances of I&A.

Staff and volunteer ombudsmen provide similar information to facility staff. In FY21-22, ombudsmen reported over 28,000 instances of I&A to facilities.

Meetings, Hearings, Training, and Survey Participation

In FY21-22, ombudsmen:

- Attended over 1,500 care and service plan meetings for residents
- Attended almost 900 resident council meetings and over 70 family council meetings
- Participated in 260 fair hearings for appeal of a resident discharge or Medicaid denial
- Trained 121 facilities
- Participated in 3,343 Long-Term Care Regulation facility surveys

Complaints

In FY21-22, ombudsmen investigated 2,582 complaints regarding ALFs and 10,862 complaints regarding nursing facilities. A complaint investigation and resolution is typically completed within two months.

Who Makes Complaints

Anyone may make a complaint to an ombudsman if it relates to the health, safety, welfare, or rights of a resident. More than half of complaints received are voiced by a resident. A family member, guardian, or friend is the next most likely source of a complaint, followed by an ombudsman. The table below shows the type of complainant and the percent of complaints made by them.

Percent of Complainants by Type

Rank	Complainant	Percent
1	Resident	54%
2	Family, Guardian, or Friend	28%
3	Ombudsman	10%
4	Facility Staff	3.5%
5	Concerned Person or Group	2.5%
6	Unknown	2%

ALF Policies After Resident Death

Written agreements between an ALF and resident require the resident to give prior notice to move out. Some agreements do not account for a resident's death or when moving out is necessary for the resident's health. After one resident died, family moved their belongings from the room within two days of their parent's death, but because 30-day notice was required by the agreement the facility aggressively pursued payment from family for the subsequent month's rent on the deceased resident's room.

Assisted Living Facilities

Ombudsmen verified 91% of all complaints received and resolved 84% to the satisfaction of the complainant. The table below explains the five most common complaints received about an ALF.

FY21-22 ALF Complaints

Rank	Complaint Description	Number Received	Percent Verified	Percent Resolved
1	Food Services	184	90%	88%
2	Problems with Medications	162	91%	87%
3	Housekeeping, Laundry, Pest Control, and Infection Control	158	89%	91%
4	Constraints on Visiting	141	96%	89%
5	Involuntary Discharge	126	96%	78%

Care Without Dignity

A small ALF was cited by a Long-Term Care Regulation surveyor after facility staff were found to have bathed two residents in the backyard, using a hose and in plain view of other residents. Residents confirmed it had happened more than once.

Evacuation Due to Infestations

In 2021, three ALFs had rat infestations that required relocation of all residents from the building. Two of the buildings also had a roach infestation and housed over 100 residents. Health and Human Services issued emergency suspension orders to close the two large facilities. Residents were forced to rush their decisions about where to move. In 2022, two other ALFs evacuated because of a bed bug infestation.

Nursing Facilities

Ombudsmen verified 94% of all complaints received and resolved 86% to the satisfaction of the complainant. The table below explains the 10 most common complaints received about a nursing facility.

FY21-22 Nursing Facility Complaints

Rank	Complaint Description	Number Received	Percent Verified	Percent Resolved
1	Involuntary Discharge	992	96%	83%
2	Unmet Requests for Help	835	94%	87%
3	Personal Property Lost, Damaged, or Stolen	547	91%	85%
4	Assistance with Personal Hygiene	552	94%	89%
5	Food Services	561	95%	87%
6	Dignity and Respect	540	96%	88%
7	Housekeeping, Laundry, Pest Abatement, and Infection Control	434	96%	89%
8	Medications	463	88%	85%
9	Other Rights and Preferences, Including Choice, Religion, and Voting	430	95%	90%
10	Constraints on Visiting	390	96%	92%

Medicaid Application Help Not Provided

One day, a facility issued six discharge notices to residents because the facility had not assisted the residents to apply for Medicaid. As a result, the facility wasn't getting paid. Due to turnover and inexperience of business office and administrative staff, no one noticed that these residents didn't get help for several months.

Ombudsmen report some business office staff do not understand the Medicaid application process or the facility's responsibility to help residents apply for benefits.

Representing Residents in a Discharge Appeal

A U.S. Office of Inspector General report issued in November 2021 about nursing facility-initiated discharges concludes that discharge was the top complaint received by state long-term care ombudsman programs from 2013 to 2019.⁵ The report includes recommendations to CMS and state long-term care ombudsman programs to better understand the problem and address it. Available national data show that discharge continues to be the top complaint received in 2020 and 2021 for state long-term care ombudsman programs.

When a facility initiates discharged the resident wants to stay, many residents rely on an ombudsman to make their case to stay in the facility. Ombudsmen frequently represent residents in their discharge appeal, helping a resident explain how their needs can be met at the facility or how the facility failed to meet its legal requirements. Advocacy regarding discharge is time-consuming and technical, but helping a resident live in the facility of their choice is worth it.

Staffing Is the Underlying Cause of Many Complaints

Of the 10 most frequent complaints received, complaints about unmet requests for help, personal hygiene, food services, dignity and respect, housekeeping and infection control, and medications relate to an insufficient number of staff. Understaffing also leads to residents having more unmet behavioral health needs, which a facility may try to solve with discharge rather than meet its requirements.

Negligent Care from Insufficient Numbers of Staff

Example 1

Residents told their ombudsman that their facilities are so short staffed on nights and weekends that their urine bags have burst or

⁵ U.S. Office of Inspector General, "[Facility-Initiated Discharges in Nursing Homes Require Further Attention](https://oig.hhs.gov/oei/reports/OEI-01-18-00250.asp)", Nov. 2021, OEI-01-18-00250, <https://oig.hhs.gov/oei/reports/OEI-01-18-00250.asp>

backed up into their bladders. The ombudsman reports that residents go more than eight hours without getting their brief changed, which has led to urinary tract infection, skin breakdown, pressure ulcers, and potentially deadly infections.

Example 2

An ombudsman observed a call light on and found a resident that had fallen halfway off of her bed. The ombudsman searched for 15 minutes to find staff to help. By the time the ombudsman returned to the resident's room with facility staff, the resident had fallen completely to the ground. The ombudsman filed a complaint to Health and Human Services, alleging insufficient staffing, but the surveyor was unable to cite because documentation showed the facility had sufficient staff and the facility complied with its own policies.

Example 3

A resident reported he got sores on his buttocks from staff leaving feces and urine on him until he could feel his skin burn with pain. He said when he pushes the call button, it takes 45 minutes to an hour for staff to respond while he lies in his feces and urine. He described the pain as unbearable and said when staff finally come in to check on him, they say they are short staffed and will need to come back with another staff person who can help. The resident said that staff rush his incontinent care and leave feces on his body. He feels like a burden and wishes he was strong enough to leave the facility. His wife feels she must stay at the facility every day until 11:00 p.m. so she can ensure he is properly cleaned after an incontinence episode.

Staffing and Workforce Recommendations

Problem: Understaffing of Nursing Facilities

Staffing is an essential element of quality care.⁶ The examples provided in this report demonstrate the critical need for an adequate number of staff to care for residents. Reporting shows that facilities will understaff for profit, which results in residents going without being bathed, brushing teeth, eating, or getting the right medication.^{7,8,9} Ombudsmen know that even great staff cannot give quality care if there are not enough of them. But there are few consequences, and sometimes none, for understaffing a facility. State policies that pay the same for poorly staffed facilities and well-staffed facilities creates a perverse incentive that needs correction.

Texas has the lowest nursing facility staffing rates in the country, according to facility-reported payroll data to CMS.¹⁰ A 2022 Issue Brief from the Medicaid and CHIP Payment and Access Commission noted that **87% of Texas nursing facilities have a one- or two-star CMS staffing rating**. The brief notes that, “Even if a facility receives adequate overall payment from the state, it may not allocate that revenue to direct care staff if it does not have an incentive to do so. To counteract these incentives, several states have adopted minimum staffing

⁶ Harrington C, Schnelle JF, McGregor M, Simmons SF. The Need for Higher Minimum Staffing Standards in U.S. Nursing Homes. *Health Serv Insights*. 2016 Apr 12;9:13-9. doi: 10.4137/HSI.S38994. PMID: 27103819; PMCID: PMC4833431.

⁷ Rau, Jordan, [Care Suffers as More Nursing Homes Feed Money into Corporate Webs \(December 31, 2017\)](https://khn.org/news/care-suffers-as-more-nursing-homes-feed-moneyinto-corporate-webs). <https://khn.org/news/care-suffers-as-more-nursing-homes-feed-moneyinto-corporate-webs>

⁸ Government Accountability Office (GAO). [Private Investment Homes Sometimes Differed from Others in Deficiencies, Staffing, and Financial Performance](http://www.gao.gov/products/GAO-11-571). (GAO-11-571): July 15, 2011. <http://www.gao.gov/products/GAO-11-571>

⁹ O'Neill, C., Harrington, C., Kitchener, M., Saliba, D. Quality of care in nursing homes: an analysis of the relationships among profit, quality, and ownership. *Med Care*. 2003; 41(12):1318–1330

¹⁰ See [The Payroll Based Journal \(PBJ\) Nurse Staffing and Non-Nurse Staffing Datasets](https://data.cms.gov/quality-of-care/payroll-based-journal-daily-nurse-staffing) <https://data.cms.gov/quality-of-care/payroll-based-journal-daily-nurse-staffing> and [Nursing Home Staffing](https://nursinghome411.org/data/staffing/) <https://nursinghome411.org/data/staffing/>

standards that exceed the federal requirements and have designed Medicaid payment methods to incentivize greater spending on staffing.”¹¹

HHS Long-Term Care Regulation data on staffing-related citations from FY20-22 show that HHS issued 71 nursing facility citations for insufficient staffing with only six deficiencies cited at a level of G or higher, which notes actual harm. With so few staffing violations identified, we believe the subjective rule language of “sufficient staffing” of a nursing facility leaves surveyors with an imprecise means of evaluating staffing and perpetuates the understaffing problem. We need a more objective measure of staffing compliance if our goal is to have enough staff to care for residents.

Solution 1: Require a percent of nursing facility Medicaid reimbursements to pay for direct care staff

For nursing facilities that participate in the direct care staff enhancement program, 85 percent of its add-on reimbursement must be spent on direct care staffing. We recommend that a comparable percentage is applied to the Medicaid daily rate reimbursements that all Medicaid-certified facilities receive, using the enhancement program definition of direct care staff. Outcomes should be measured by analysis of the Centers for Medicare and Medicaid Services’ payroll-based journal dataset.

Solution 2: Set a minimum direct care staffing ratio in nursing facilities

We recommend a minimum of 4.1 hours of direct care staff time is given to each resident, seven days a week. A study by CMS found that this is the minimum amount of staff time to prevent adverse outcomes for residents.¹²

¹¹ [MACPAC Issue Brief: State Policy Levers to Address Nursing Facility Staffing Issues](https://www.macpac.gov/publication/state-policy-levers-to-address-nursing-facility-staffing-issues-2/). March 2022. <https://www.macpac.gov/publication/state-policy-levers-to-address-nursing-facility-staffing-issues-2/>

¹² Centers for Medicare & Medicaid Services, Abt Associates Inc. Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes. Report to Congress: Phase II Final. Volumes I–III. Baltimore, MD: CMS, 2001.

Problem: Workforce

Studies show that high turnover is the result of poor wages and benefits, lack of training, poor management, lack of career advancement, and overly high workloads.^{13,14} Long-term care providers report a workforce shortage and have asked for help to bring new certified nurse aides and nurses into long-term care settings.

Solution 1: Implement best practices for hiring and retention

Without government intervention, a facility can hire workers by offering competitive pay and benefits, retention and longevity payments, training, staff appreciation, and help with transportation and childcare. A facility can also allow staff to self-schedule, partner with local colleges and high schools to create training programs for recruitment, and consistently assign the same staff to the same residents.

Solution 2: Set a minimum direct care staffing ratio in nursing facilities

Because high workloads contribute to burnout and turnover, setting a minimum staffing standard will reduce overly high workloads.¹⁵ As stated in the previous section, we recommend a minimum of 4.1 hours of direct care staff time is given to each resident, seven days a week.

¹³ Bryant, Olalya Ayanna, "[Employee Turnover in the Long-Term Care Industry](https://scholarworks.waldenu.edu/dissertations/3389)" (2017). Walden Dissertations and Doctoral Studies. 3389, <https://scholarworks.waldenu.edu/dissertations/3389>; Al-Hussami, M., et al, "[Nurses' turnover intentions](https://doi.org/10.1111/ijn.12124)." *Int J Nurs Pract*, 2014 20: 79-88. <https://doi.org/10.1111/ijn.12124>; Negarandeh R. Enhancing transition to workplace. *Nurs Midwifery Stud*. 2014 Apr;3(1):e17554. doi: 10.17795/nmsjournal17554. Epub 2014 Apr 17. PMID: 25414894; PMCID: PMC4228524. National Academies of Sciences, Engineering, and Medicine. 2022. [The National Imperative to Improve Nursing Home Quality: Honoring Our Commitment to Residents, Families, and Staff](https://doi.org/10.17226/26526). Washington, DC: The National Academies Press. <https://doi.org/10.17226/26526>.

¹⁴ Sarah L. Krein, Molly Turnwald, Barry Anderson, Donovan T. Maust "[Sometimes it's not about the money... it's the way you treat people...](https://doi.org/10.1016/j.jamda.2021.11.03)": A Qualitative Study of Nursing Home Staff Turnover, *Journal of the American Medical Directors Association*, 2022,ISSN 1525-8610,<https://doi.org/10.1016/j.jamda.2021.11.03>

¹⁵ Centers for Medicare & Medicaid Services, Abt Associates Inc. Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes. Report to Congress: Phase II Final. Volumes I-III. Baltimore, MD: CMS, 2001.

Solution 3: Offer loan repayment assistance

Loan repayment continues to be a needed strategy to attract new talent to the long-term care workforce. We support a government-funded loan repayment program for nurses and nurse aides who commit to working in a long-term care facility.

Problem: ALF Alzheimer's Care Has Weak Staffing Standards

Because only 32 nursing facilities are Alzheimer's certified, 688 ALFs serve as the primary setting offering Alzheimer's certified care in Texas.¹⁶ The only minimum staffing requirement in an Alzheimer's certified ALF requires two staff immediately available for a facility with 17 or more residents.¹⁷ Licensed capacity of these facilities range from five to 96 beds.

Residents with Alzheimer's disease and related dementias have symptoms that vary widely and require highly individualized interventions. Common care needs for residents with Alzheimer's disease include supervision to avoid elopement or injury, reminders to use a toilet, encouragement or help eating, and frequent personalized activities to avoid boredom.

Solution: Set a minimum direct care staffing ratio in Alzheimer's certified ALFs

Appropriate minimum staffing ratios provide residents the supervision, quality activities, and health care services they need. An Alzheimer's certified nursing facility must have one staff for every six residents during the daytime, one staff for every 10 residents in the afternoon to evening, and one staff for every 18 residents overnight. A staffing standard for Alzheimer's certified ALFs that is comparable to an Alzheimer's certified nursing facility would protect residents and ensure they get quality care and adequate supervision.¹⁸

¹⁶ Source: [Provider Directory](https://apps.hhs.texas.gov/providers/directories/NF.PDF) <https://apps.hhs.texas.gov/providers/directories/NF.PDF>

¹⁷ Title 26 Texas Administrative Code, Chapter 553, Section 553.305

¹⁸ Title 26 Texas Administrative Code, Chapter 554, Subchapter W, Section 554.2208

Emergency Preparedness Recommendations

Problem: Emergency Response Plans Are Not Reviewed and Plans Are Not Known to the Public

Long-term care facilities regularly experience natural disasters like hurricanes, wildfires, and flooding and other emergencies like infectious disease outbreaks and active shooters. All ALFs and nursing facilities are required to maintain an all-hazards emergency preparedness and response plan. These plans may be reviewed by HHS when a surveyor is onsite, but a comprehensive review of emergency preparedness plans by HHS is not routinely conducted. The only way for the public to know what a facility's emergency plan includes is to request it from the facility.

Solution 1: Require ALFs and nursing facilities to annually submit emergency plans to HHS

Providers are accustomed to submitting reports to HHS as a condition of licensure. Facilities should be required by statute to annually submit an emergency response plan to HHS for review. Having the plans at HHS will be useful for state emergency planning and response.

Solution 2: Require HHS Long-Term Care Regulation to annually review facility emergency plans and publish results

With a modest allocation of positions, HHS could hire staff to review all emergency plans and publish key details from each plan on the HHS website. Public information should include which facilities have an onsite generator and what systems the generator is capable of powering.

Problem: Many Facilities Do Not Have Generators

Natural disasters and other emergencies present great risk to long-term care residents. The ability to heat or cool a facility during an emergency saves lives in these facilities. In August 2022, HHS released a report on generator availability and usage in ALFs and nursing facilities.¹⁹ Based on a survey of providers, 99% of nursing facilities and 47% of ALFs reported having an onsite generator. Over half of nursing facilities reported the system could power air conditioning and heating. For ALFs with a generator, 63% reported the system could power air conditioning and 67% reported the system could power heating. Only 38% of small ALFs, which are licensed for fewer than 17 beds, reported having a generator.

Solution: Require large ALFs and all nursing facilities to maintain safe temperatures during an emergency

ALFs with a licensed capacity of 17 or greater and all nursing facilities should be required to:

- have enough fuel onsite to maintain safe indoor air temperatures for 72 hours during a power outage and a plan for fueling emergency power for up to 120 hours;
- maintain safe temperatures in an area in the facility of sufficient size to maintain residents safely at all times; and
- for a facility that maintains a separate area in the facility with a locking device as defined by commission rule to restrict a resident's ability to exit the facility, maintain a separately powered area within the locked area.

¹⁹ "[Generator Availability in Nursing Facilities and Assisted Living Facilities](https://www.hhs.texas.gov/regulations/reports-presentations)", Aug. 2022, <https://www.hhs.texas.gov/regulations/reports-presentations>

ALF Oversight Recommendations

Problem: Inadequate Regulatory Oversight

HHS Long-Term Care Regulation has 19 surveyors to investigate complaints and conduct licensing inspections for more than 2,000 ALFs statewide. As described in this report, ALF residents have complex needs and vulnerabilities. It is imperative that there are sufficient surveyors to respond to violations, monitor for resident welfare, and respond to allegations of abuse and neglect. Until we dedicate enough surveyors to the work of surveying ALFs, investigations will not happen soon enough or thorough enough to protect residents from harm. Federal funds cannot be used to pay for surveyors in ALF settings.

Solution: Fund the HHS Request for Long-Term Care Surveyors

HHS includes an exceptional item for long-term care surveyor positions in Strategy 8.1.1 of its 2024-25 legislative appropriations request. We support funding these positions to ensure that prompt and complete complaint investigations and annual surveys are conducted in ALFs.

Problem: ALF Policies Can Undermine Residents' Rights

ALF rules require a facility to set and follow its own policies. When there is a complaint about an ALF policy, HHS generally finds the ALF be in compliance if the ALF has a policy and follows it. However, ALF policies can be at the detriment of free choice and other rights. For example, a resident who uses a motorized wheelchair can be charged significant non-refundable fees to use the wheelchair in the facility. Policies have also placed limits on when a person is allowed visitors and set unreasonable notice requirements on a resident who wants to move out.

Solution: Prohibit ALF policies that limit a resident's right

HHS should implement rule changes that prohibit facility policies from conflicting with a resident right. Rules should require that any limit placed on a resident right must be time-limited and determined necessary to protect the health and safety of the resident.

Owner Transparency Recommendations

Problem: It Is Difficult to Determine Who Owns Facilities

Cost reporting and the initial and change of ownership processes can be improved. Knowing who owns and operates a facility licensed by the State should be easily accessible to residents, regulators, and others. Some ownership detail is collected on facility cost reporting, facility licensure applications, and change of ownership applications but HHS does not make the information available to the public. The information published on facility ownership does not show common ownership or provide the public with information about quality care provided by a particular owner.

When facility revenues are made up of mostly tax dollars, the information should be available to the public. Management services, rent, and related businesses like a staffing agency can be subsidiaries of the same parent company, each collecting fees. These investment strategies warrant greater attention to ensure government funding goes to resident care.

Solution 1: Publish key elements of Medicaid cost reports

Financial information reported to HHS about each Medicaid-certified nursing facility should be available to the public. HHS should analyze and report on its website key measures of financial health as part of the cost reporting process.

Solution 2: Publish clear information on corporate ownership and quality

HHS should publish more ownership information on nursing facilities and ALFs that includes the parent company, all related companies, and any management company associated with the business. Further, it should publish quality data by common ownership and management companies on the Long-Term Care Provider Search webpage.²⁰

²⁰ The [HHS provider search](https://apps.hhs.texas.gov/LTCSearch/) page can be found at <https://apps.hhs.texas.gov/LTCSearch/>

Contact Information

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