Long-Term Care Regulatory Provider Letter

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<th>Number:</th>
<th>PL 2022-22 (Replaces PL 12-09)</th>
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<td>Title:</td>
<td>Appropriate Placement Determination</td>
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<tr>
<td>Provider Types:</td>
<td>Assisted Living Facilities (ALF)</td>
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1.0 Subject and Purpose

This PL describes the process a facility should follow if an inappropriately placed resident is identified. If the resident wants to remain in the facility and the facility agrees, the facility must follow certain procedures to request that the resident remain in the facility. If the facility does not want to retain the resident or the resident does not want to remain, the facility must follow certain discharge procedures.

2.0 Policy Details & Provider Responsibilities

If a resident’s condition changes, the resident may no longer be appropriate for the facility’s license. A resident may experience a change in condition due to an accident, medical change, ambulatory change, or diagnosis of a terminal condition. Either HHSC or the facility may identify an inappropriately placed resident. The facility may use the attached document *Evaluating Placement for ALFs* to help determine if a resident is appropriately placed.

If an ALF or HHSC surveyor determines a resident is inappropriately placed but the resident wishes to remain in the facility, the ALF may request the resident remain by submitting certain required documents.

2.1 Resident Meets Evacuation Criteria
If a resident who is inappropriately placed meets the evacuation criteria and both the resident and the ALF want the resident to remain in the facility and age in place, then the ALF must satisfy all of the following requirements:

- **Form 1124** – The ALF completes and signs Form 1124 (Facility Request) if it agrees the resident can remain at the facility. Since the resident meets the evacuation criteria, the facility must complete the section titled, “Complete this section when the resident meets the evacuation requirements.”

- **Form 1125** – The ALF obtains a written statement from the resident indicating that the resident wants to remain in the facility. If the resident lacks capacity to give a statement, the resident’s guardian, legally authorized representative (LAR), or family member may complete the written statement. The resident or guardian/LAR/family member must sign and complete Form 1125 (Resident’s Request to Remain in Facility).

- **Form 1126** – The ALF obtains a written assessment from a physician stating that the resident can be considered appropriately placed based on the resident's medical conditions and related nursing needs, ambulatory and transfer abilities, and mental status. The physician must sign and complete form 1126 (Physician’s Assessment).

The facility must submit the required documents to the HHSC regional office no later than the 10th working day after the ALF determines a resident is inappropriately placed or the 10th working day after the ALF receives the Statement of Licensing Violations and Plan of Correction (Form 3724) and the Report of Contact (Form 3614-A).

HHSC will review the submitted documentation. As long as the ALF submitted the required documentation within the required timeframe, the resident may remain in the ALF. The HHSC regional office will send a letter to the ALF confirming that the regional office received all required documentation in a timely manner.

**2.2 Resident Does Not Meet Evacuation Criteria**
If a resident who is inappropriately placed does not meet the evacuation criteria, but both the resident and the ALF want the resident to remain in the facility and age in place, then the ALF must satisfy the following requirements to request an evacuation waiver:

- **Form 1124** – The ALF completes and signs Form 1124 (Facility Request) if it agrees the resident can remain at the facility. Since the resident does not meet the evacuation criteria, the facility must complete the section titled, “EVACUATION WAIVER: Complete this section when the resident does not meet the evacuation requirements.”

- **Form 1125** – The ALF obtains a written statement from the resident indicating that the resident wants to remain in the facility. If the resident lacks capacity to give a statement, the resident’s guardian, LAR, or family member may complete the written statement. The resident or guardian/LAR/family member must sign and complete Form 1125 (Resident’s Request to Remain in Facility).

- **Form 1126** – The ALF obtains a written assessment from a physician stating that the resident can be considered appropriately placed based on the resident's medical conditions and related nursing needs, ambulatory and transfer abilities, and mental status. The physician must sign and complete form 1126 (Physician’s Assessment).

- **Form 1127** – The ALF notifies the fire marshal with jurisdiction over the facility (local or state) that a waiver of evacuation is being requested. The ALF obtains the fire marshal’s signature acknowledging the required notification on Form 1127 (Fire Marshal / State Fire Marshal Notification). The fire marshal or state fire marshal is the public official who is responsible for the management of fire and life safety related codes and standards, and for fire prevention and investigation services for local, county, or state jurisdictions. This form notifies the fire marshal or state fire marshal that there has been a determination that a specific resident is inappropriately placed, and the resident no longer meets all requirements for evacuation. Although the fire marshal or state fire marshal may make comments, the form is only for notification.
purposes and does not require that the fire marshal or state fire
marshal approve or disapprove the resident to remain in the facility.
This form is signed by whichever marshal is the fire authority
having jurisdiction. This is the marshal that inspects and signs the
facility’s license application. It may be the local fire marshal or, in
certain areas, the state fire marshal.

- **Form 1129** – The ALF notifies the fire suppression authority of the
change in evacuation capability of the resident. The ALF obtains the
fire suppression authority’s signature acknowledging the required
notification on Form 1129 (Fire Suppression Authority Notification).
The fire suppression authority is the paid or volunteer fire-fighting
organization or tactical unit that is responsible for fire suppression
operations and related duties once a fire incident occurs within its
jurisdiction. This is the fire-fighting organization that would respond
to an actual fire at the facility. This form notifies the fire
suppression authority that there has been a determination that the
specific resident is inappropriately placed, and the resident no
longer meets all requirements for evacuation. Although the fire
suppression authority may make comments, the form is only for
notification purposes and does not require that the fire suppression
authority approve or disapprove the resident to remain in the
facility. The fire suppression authority signs this form.

- **Resident’s Evacuation Needs Plan** – The ALF must develop a
detailed plan explaining how the facility will meet the evacuation
needs of the inappropriately placed resident, as well as the needs of
the other residents. The plan should include:

  o specific staff positions that will be on duty to assist with
    evacuation and their shift times;

  o specific staff positions that will be on duty and awake at
    night; and

  o specific staff training that relates to resident evacuation.

- **Floor Plan** – The ALF must submit a copy of the facility floor plan,
to scale, that labels all rooms by use and indicates the specific
resident’s room.
• **Facility Emergency Evacuation Plan** – The ALF must submit a copy of the facility’s emergency evacuation plan. Submission of the entire emergency preparedness and response plan described in 26 TAC §553.275(c) is not required. Only the facility’s emergency evacuation plan is required.

• **Form 4719** – The ALF must submit copies of Form 4719 (Fire Drill Report) for the last 12-month period.

• **Recent Comprehensive Assessment** – The ALF must submit a copy of a comprehensive assessment of the resident completed within the last 60 days. The assessment must address the areas required in 26 TAC §553.259(b)(1) that discuss the resident assessment.

• **Service Plan** – The ALF must submit a copy of the service plan that addresses all aspects of the resident’s care, particularly those areas identified when the resident was determined to be inappropriately placed. The ALF must address the resident’s medical condition(s) and related nursing needs, hospitalizations within the last 60 days, any significant change in condition within the last 60 days, specific staffing needs, and services provided by an outside provider.

• **Additional Fire Safety Measures** – The ALF must submit any other information that relates to the required fire safety features of the facility that will ensure the evacuation capability of any resident. Include any information related to fire safety features that exceed minimum requirements.

The facility must submit the required forms and documents to the HHSC regional office no later than the 10th working day after the ALF determines a resident is inappropriately placed or the 10th working day after the ALF receives the Statement of Licensing Violations and Plan of Correction (Form 3724) and the Report of Contact (Form 3614-A).

**2.2.1 HHSC Document Review**

HHSC reviews the submitted documentation to determine if a waiver of evacuation capability will be granted or denied. HHSC notifies the ALF and
regional office in writing of its determination within 10 working days from the date the request is received in the HHSC regional office. HHSC will also review the waiver of evacuation during the facility’s next licensure inspection.

2.2.2 Facility Requirements to Receive an Evacuation Waiver

HHSC will determine whether to grant or deny a waiver of evacuation capability for each determination of inappropriate placement. Upon notification that HHSC has approved a waiver of evacuation capability, the ALF must immediately initiate all provisions of the emergency plan proposed to HHSC. The emergency plan should not have an adverse effect on any other residents of the facility. If the emergency plan is not followed and there are health or safety concerns for the resident, HHSC may cite the facility for a violation of the licensing requirements including any immediate threat to the health or safety of a resident(s). The ALF must then discharge the resident. The resident has 30 days from the discharge notice date to move from the facility.

2.2.3 Resident Discharge

If an HHSC surveyor determines that a resident is inappropriately placed at a facility and the facility agrees with the determination and does not wish to retain the resident, then the facility must discharge the resident. If the facility determines that a resident has undergone a change in condition and no longer meets the criteria for appropriate placement according to the facility’s license and does not wish to retain the resident, then the facility must discharge the resident. If the facility fails to obtain the required written statements required for an evacuation waiver or if HHSC does not approve the evacuation waiver request based on the written statements submitted, then the facility must discharge the resident.

If HHSC determines during a future visit that the facility has not discharged the resident or has not submitted appropriate documentation, these findings of disregarding the criteria for obtaining a waiver for inappropriate placement of a resident will be considered intentional and repeated, and HHSC may pursue enforcement action against the facility. HHSC may:
• assess an administrative penalty if the facility intentionally or repeatedly disregards the inappropriately placed resident waiver process;

• seek an emergency suspension or closing order against the facility if the department determines there is a significant risk to the residents of the facility and an immediate threat to the health and safety of the residents; or

• seek other sanctions against the facility if HHSC determines there is a significant risk to a resident of the facility and an immediate threat to the health and safety of a resident.

### 3.0 Background/History

Texas Health and Safety Code (HSC) Section 247.066, Appropriate Placement Determination, allows a resident to remain in an ALF if the health and safety of this resident and other residents is not in jeopardy and the resident can receive adequate care at the facility according to the facility license or if the resident arranges for additional care to be obtained from other providers.

In the Licensing Standards for Assisted Living Facilities, 26 TAC §553.259(e), describe the procedures an ALF must follow when a resident is determined to be inappropriately placed. An inappropriately placed resident may be allowed to age in place and remain in the facility if the facility follows the required procedures to retain the resident.

### 4.0 Resources

- **Form 1124** – Facility Request
- **Form 1125** – Resident’s Request to Remain in Facility
- **Form 1126** – Physician’s Assessment
- **Form 1127** – Fire Marshal / State Fire Marshal Notification
- **Form 1129** – Fire Suppression Authority Notification
- **Form 4719** – Fire Drill Report
5.0 Contact Information

If you have any questions about this letter, please contact the Policy and Rules Section by email at LTCRPolicy@hhs.texas.gov or call (512) 438-3161.
Evaluating Placement for ALFs

Start

Has resident’s condition changed?

NO
Resident is appropriately placed.

YES
Additional services required to ensure resident receives adequate care.

Can resident receive adequate care?

NO
Facility must discharge resident.

YES
Resident can receive adequate care from facility or other providers.

Does resident meet facility’s evacuation criteria?

NO
Facility must request evacuation waiver to retain resident.

Submit:
- 1124
- 1125
- 1126
- 1127
- 1129
- Res. Evac. Plan
- Floor Plan
- Emerg. Evac. Plan
- 4719
- Rec. Comp. Assessment
- Service Plan
- Add. Fire Safety Features

YES
Facility must submit documents to retain resident.

Submitted by 10th business day to region?

NO
Facility must discharge resident.

YES
Facility implements evacuation plan immediately. Facility may retain resident.

Waiver request approved?

NO
Facility must discharge resident.

YES
Facility implements evacuation plan immediately. Facility may retain resident.

Has resident’s condition changed?

YES
HHSC reviews waiver request.

NO
Facility must discharge resident.

Submitted by 10th business day to region?

YES
Facility may retain resident.

NO
Facility must discharge resident.

YES
Facility implements evacuation plan immediately. Facility may retain resident.