



## Long-Term Care Regulation Provider Letter

<b>Number:</b> PL 2022-28
<b>Title:</b> New Rules Implementing House Bill (H.B) 1681 87 <sup>th</sup> Legislature, Regular Session, 2021
<b>Provider Types:</b> Assisted Living Facility (ALF)
<b>Date Issued:</b> November 21, 2022

### 1.0 Subject and Purpose

This letter is being issued to provide guidance to ALFs regarding new rules that implement [H.B 1681](#), 87<sup>th</sup> Legislature, Regular Session 2021, and **will be adopted effective December 6, 2022**. The new rules prohibit new construction of ALFs in a 100-year floodplain in counties of more than 3.3 million residents.

This letter will help ALFs determine if and how the new rules will impact their facility based on the location of the facility, licensure application date, and construction status.

### 2.0 Policy Details & Provider Responsibilities

Effective December 6, 2022, newly constructed ALFs must comply with rules at Texas Administrative Code, Title 26, §553.17 and §553.103, and must not be located in a 100-year floodplain, if the facility is located in a county with more than 3.3 million residents. As of the date of this letter this only applies to Harris County. The new rules do not apply to expansions or renovations of existing facilities.

Texas Health and Human Services Commission (HHSC) will accept flood maps or other official documentation from the Federal Emergency Management Agency (FEMA), or if not mapped by FEMA, from the United States Department of Agriculture soil maps, as proof that a facility is in

compliance with this requirement.

### **2.1 Facilities Licensed Before December 6, 2022**

An ALF that applies for an initial license or is initially licensed **before December 6, 2022**, and continually operated under an ALF license without interruption since then, is considered an existing ALF for the purpose of this requirement and does not need to meet the 100-year floodplain requirement.

### **2.2 Facilities Licensed On or After December 6, 2022**

An ALF that applies for an initial license or is initially licensed **on or after December 6, 2022**, is considered a new ALF, for the purposes of this requirement, and must meet the 100-year floodplain requirement.

### **2.3 Facilities Beginning Construction Before December 6, 2022**

An ALF beginning construction before December 6, 2022, even if the facility did not receive a plan review, does not need to meet the 100-year floodplain requirement, if the facility can provide evidence the construction started, or the applicant had received a permit to begin construction, before December 6, 2022.

HHSC considers the date facility construction begins to be the date the building construction permit for the facility was approved by local authorities<sup>1</sup>.

## **3.0 Background/History**

The new ALF rules in 26 TAC, Chapter 553, related to building in a 100-year floodplain, implement H.B 1681 87<sup>th</sup> Legislature, Regular Session 2021.

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<sup>1</sup> [26 TAC §553.31\(c\)](#)

#### **4.0 Contact Information**

If you have any questions about this letter, please contact the Policy and Rules Unit by email at [LTCRPolicy@hhs.texas.gov](mailto:LTCRPolicy@hhs.texas.gov) or call (512) 438-3161.