



Long-Term Care Regulation Provider Letter

Number: PL 2022-29 (Revised)
Title: New Rules Implementing House Bill (H.B.) 1423 and Senate Bill (S.B.) 199, S.B. 271 and S.B. 383, 87 th Legislature, Regular Session, 2021
Provider Types: Assisted Living Facility (ALF) and Nursing Facility (NF)
Date Issued: January 23, 2023

1.0 Subject and Purpose

This letter is being revised to provide additional guidance to ALF providers regarding the Employee Applicant Out-of-State Background Check Disclosure Statement found in section 2.3.

This letter provides guidance for new rules in Texas Administrative Code, Title 26 (26 TAC), Chapters 553 (ALF) and 559 (NF), **effective as of December 6, 2022**. The new rules implement H.B. 1423, S.B. 199, S.B. 271, and S.B. 383, 87th Legislature, Regular Session, 2021.

2.0 Policy Details & Provider Responsibilities

This section provides a summary of the implementation of the new rules and how they impact each provider type.

2.1 NF Survey Frequency, Implementation of H.B 1423

The new rules in 26 TAC §554.2002 implement [H.B. 1423](#), which increases the survey frequency of required unannounced NF inspections from two per three-year licensing period to one annually. "Annually" means a statewide average of once every 12 months. The new rules also allow Texas Health and Human Services Commission (HHSC) to conduct a follow-up inspection for evaluation and monitoring purposes to ensure HHSC is citing deficiencies consistently.

2.2 NF Defibrillators, Implementation of S.B 199

The new rules in 26 TAC §554.1935 implement [S.B. 199](#), which requires NFs to conduct monthly inspections of its automated external defibrillator. In addition to the monthly inspection, the new rules require that the defibrillator be:

- placed in a designated location;
- ready for use; and
- not damaged in a manner that could prevent operation.

2.3 ALF Employee Applicant Out-of-State Disclosure Statement, Implementation of S.B. 271

The new rules at 26 TAC §553.257 implement [S.B. 271](#), which requires ALFs to obtain a signed disclosure, on HHSC prescribed [Form 3649](#), from all applicants for employment regarding out-of-state criminal convictions. If an applicant for employment indicates that they have lived in another state within the past five years, the facility must perform a name-based criminal history check for any state in which the applicant has lived during that 5-year period. ALFs must begin using HHSC [Form 3649](#) as of December 6, 2022, for all applicants for employment, **or incorporating the language from the form into their facility application for employment. If a facility incorporates the language into their facility application, they do not need to use HHSC Form 3649. It is up to each facility to determine which option they would like to use. HHSC Form 3649 will be revised to include the option to incorporate the language into the facility application for employment.**

HHSC Form 3649 includes a date of birth field. An applicant is not required by HHSC to provide their date of birth for the purposes of obtaining their background information, but facilities can choose to request it if needed. HHSC Form 3649 will be revised to make the date of birth field optional.

If a name-based criminal history check is not available for an applicant for employment because the state only offers a fingerprint-based check, facilities should document that the state does not offer a name-based criminal history check and include the documentation in the employee's personnel file.

2.4 ALF and NF Memory Care Disclosure Statements, Implementation of S.B. 383

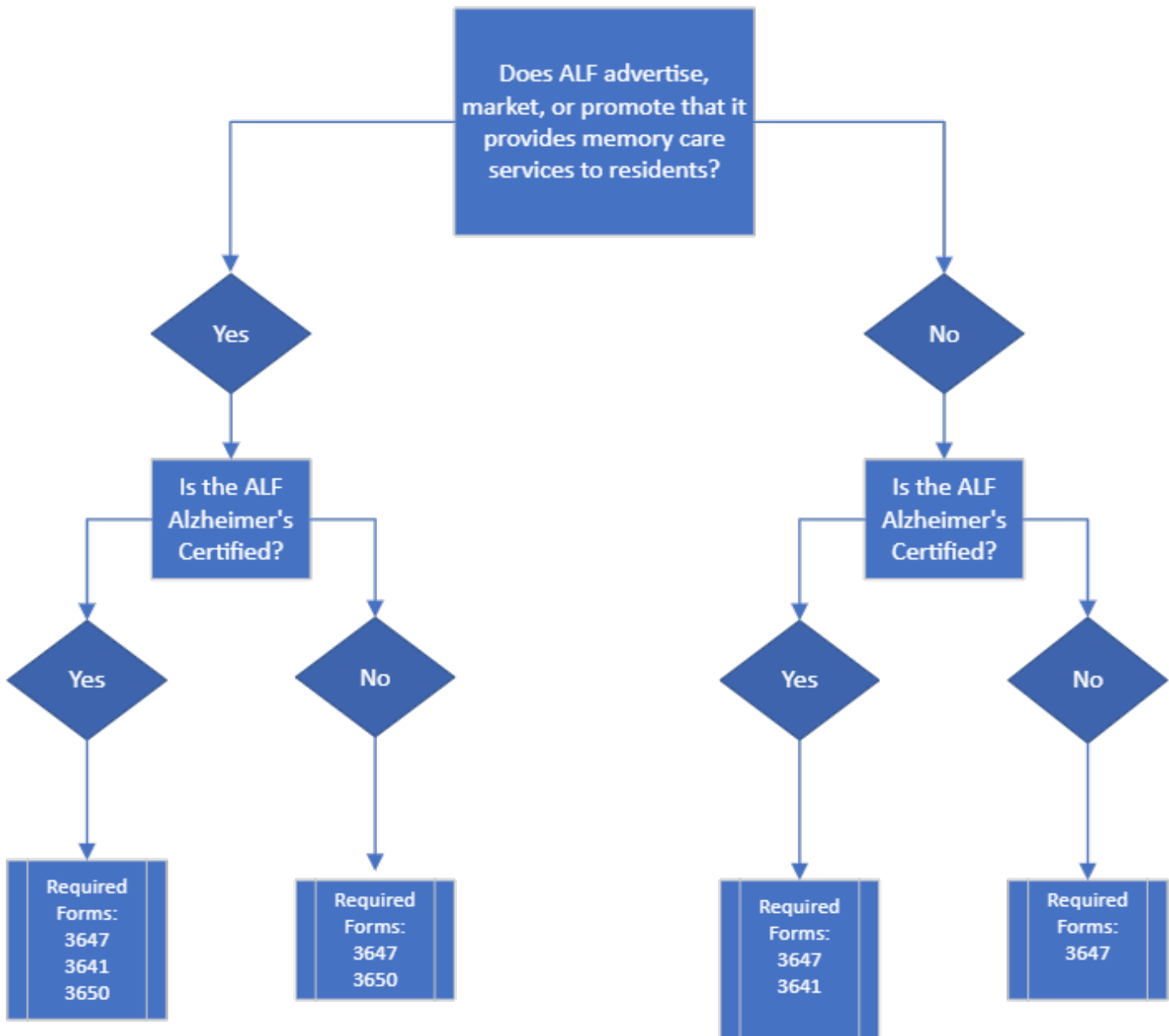
The new rules at 26 TAC §§553.3, 553.259, 554.101, 554.204, 554.403, and 554.1921 implement [S.B. 383](#), which requires ALFs and NFs to provide an HHSC-prescribed memory care disclosure statement if the facility advertises, markets, or otherwise promotes that it provides memory care services to residents. The disclosure statement must indicate if the facility is certified or not certified to provide services to residents with Alzheimer's disease or related disorders.

If a facility does not advertise, market, or otherwise promote that it provides memory care services to residents, the facility does not need to complete the memory care disclosure statement.

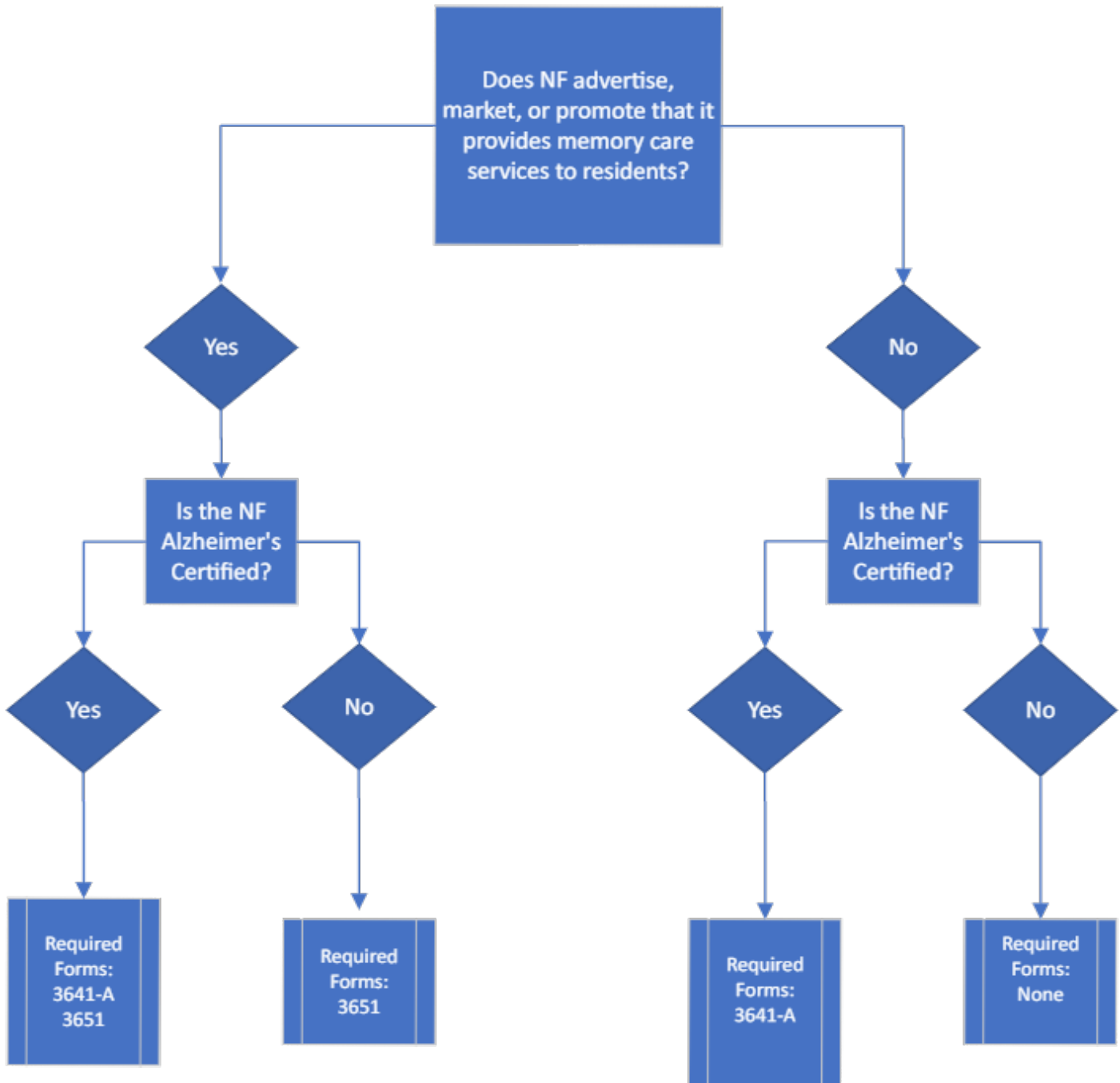
HHSC has created new forms and revised existing forms to implement this bill. Links to the forms can be found in section 4.0 of this provider letter. **Facilities are not required to submit the memory care disclosure statement to HHSC but must provide the forms to residents and anyone inquiring about memory care services in their facility.**

The charts below can be used to determine which disclosure forms are required for each provider type.

ALF



NF



2.5 Agency-Initiated Changes to Rule (ALF and NF)

In addition to legislative implementation, HHSC made other agency-initiated changes to the ALF and NF rules.

For ALFs, a change was made to §553.259(b)(4) to reflect the new TAC reference for the employee misconduct registry.

For ALFs, the disclosure statement forms were revised to include a page to add additional comments regarding care and services.

For NFs, a change was made to §554.1921(e)(12), to comply with changes to Government Code §411.204 and remove the word “concealed” when referencing handguns, and to §554.2326(e), to remove the swing bed NF applicability reference requirements as they are informational only and are found in the requirements for hospitals.

For NFs, a change was made to remove §554.1913 and amend §554.2326 to no longer require a NF to employ a clinical records supervisor or other medical records keeper. NFs must still maintain clinical records in accordance with all rules related to the clinical records, but a NF is no longer required to employ a clinical records supervisor or other medical records keeper with specific qualifications.

3.0 Background/History

HHSC is issuing this letter to notify ALFs and NFs of new rules effective December 6, 2022.

4.0 Resources

[HHSC Form 3641](#) – Alzheimer’s Assisted Living Disclosure Statement
[HHSC Form 3641-A](#) – Alzheimer’s Disclosure Statement for Nursing Facilities
[HHSC Form 3647](#) – Assisted Living Disclosure Statement
[HHSC Form 3649](#) – Assisted Living Facility Background Disclosure Statement
[HHSC Form 3650](#) – Assisted Living Facility Memory Care Disclosure Statement
[HHSC Form 3651](#) – Memory Care Disclosure Statement for Nursing Facilities

5.0 Contact Information

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