Oversight of Long-Term Care Facilities in Texas

David Kostroun
Deputy Executive Commissioner
Regulatory Services

November 13, 2018
The Regulatory Services division at the Health and Human Services Commission (HHSC) oversees the regulation of the following provider types:

- Long-term care (LTC) providers, such as nursing facilities and assisted living facilities
- Health care providers, including hospitals and dialysis centers
- Child care providers

The division also oversees investigations of allegations of abuse and neglect in provider settings and triages complaints about providers.
The Long-Term Care Regulatory (LTCR) program regulates the following provider types throughout the state:

- Nursing Facilities
- Assisted Living Facilities
- Intermediate Care Facilities for Individuals with an Intellectual Disability
- Prescribed Pediatric Extended Care Centers
- Home and Community Support Services Agencies (home health, hospice, and personal assistance)
- Day Activity and Health Services
- Home and Community-based Services and Texas Home Living Medicaid waiver programs, both of which serve individuals with intellectual and developmental disabilities (regulated via certification on behalf of the Centers for Medicare and Medicaid Services (CMS))
Who We Regulate

The LTCR program is also responsible for:

• Nursing facility administrator licensing and investigations
• Medication aides
• Nurse aide training and competency evaluation program
• Nurse aide certification
• Employee misconduct registry
How We Regulate

LTCR regulatory oversight includes:

• Inspections and surveys
• Follow-up visits
• Complaint and incident investigations, including investigations of abuse and neglect allegations
• Other contacts required for carrying out state and federal licensure or certification responsibilities
Definitions of Abuse and Neglect

**Abuse** is the negligent or willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical or emotional harm or pain to a resident – abuse can be physical, emotional, or sexual.

**Neglect** is defined as a facility’s failure to provide goods or services, including medical services, that are necessary to avoid physical or emotional harm, pain or mental illness to a resident.

The Texas Administrative Code requires facility owners or employees who believe abuse or neglect of a resident has occurred to report it to HHSC for investigation.
In cases of recurring or serious problems with abuse and neglect in facilities, HHSC can and does take enforcement action against a facility:

- License suspension and revocation
- Suspension of new admissions
- Emergency suspension and closure
- Referral to the Attorney General
- Administrative penalties up to $10,000 (per violation, per day)
Abuse and Neglect Data

- Since 2014, regulatory citations related to abuse and neglect against nursing facilities have gradually declined.
Reducing Anti-Psychotic Use in Nursing Facilities

HHSC has worked closely with Texas nursing facilities to assist them in significantly reducing the unnecessary use of anti-psychotic medications on residents

- Since 2011, antipsychotic use has declined **49 percent** in Texas
- In 2014, Texas ranked 51st of 50 states and Washington D.C. on measures of antipsychotic use
- Texas is now ranked 17th, showing the greatest reduction of any state in the past five years

Since 2014, HHSC has seen a gradual decline in the number of citations it has issued to facilities for unnecessary use of drugs on residents:
- From 181 citations in fiscal year 2014 to 138 in fiscal year 2018
Reducing Anti-Psychotic Use in Nursing Facilities
Quality Monitoring Program

To reduce incidents of abuse and neglect and improve services in facilities, the Regulatory Division coordinates closely with the HHSC Quality Monitoring Program (QMP)

- QMP is *not a regulatory program* and does not cite deficiencies
- Rather, it sends teams of nurses, pharmacists, and dietitians to facilities with problematic regulatory histories to provide them with best-practice counsel, training, and technical assistance
- QMP has played a key role in reducing the use of inappropriate medications in Texas nursing facilities

**Other QMP initiatives to reduce abuse and neglect:**

- POWER: Abuse, Neglect, and Exploitation Academy – Two-day regional conferences for providers conducted in 2017
- Facility-based in-service trainings
- Alzheimer’s Disease and Dementia Care Seminar
“Three Strikes Bill”

- Required HHSC to revoke a nursing facility license if the provider had committed three violations posing an immediate threat to resident health and safety due to abuse or neglect within a 24-month period
Impact of Senate Bill 304

• Since implementing SB 304 on September 1, 2016, 151 strikes have been issued against Texas nursing facilities

• Of the 116 strikes currently active:
  o One strike = 99 facilities
  o Two strikes = 7 facilities
  o Three strikes = 1 facility

• Nineteen facilities have changed ownership since receiving a strike
  o Results in a new license number, and the strike count starts over

• QMP has deployed “rapid response teams” to six nursing facilities after they received a second strike
Criminal Background Checks in Long-Term Care Facilities

- Facilities are required to conduct name-based criminal background checks on all certified nurse aides and medication aides before they can be hired.
- Other programs regulated by HHSC require providers to conduct FBI fingerprint-based checks, which allows HHSC to receive ongoing notifications of criminal incidents involving employees anywhere in the nation.
- Moving to fingerprint-based checks for certified nurse aides and medication aides would require a statutory change.
- HHSC cites LTC facilities for failure to conduct proper criminal background checks on their employees.