



**TEXAS**

Department of Aging  
and Disability Services

Welcome Members of the Long-  
Term Care Facility Survey and  
Informal Dispute Resolution Council  
(S.B. 914)

# S. B. 914 Council Charges

- Study and make recommendations regarding a consistent survey and informal dispute resolution process for long-term care facilities
- Recommend uniform standards for those processes
- No later than January 1, 2017, submit a report on the council's findings and recommendations to state, legislative and HHS leadership.

# Proposed Meeting Dates and Objectives

- December 1, 2015 – Council established
- January 28, 2016 – First meeting
  - Orientation/Council Charge 101
- March 8, 2016 – Council meeting
- May 10, 2016 – Council meeting
- September 13, 2016 – Council meeting
  - Draft report for review
- November 8, 2016 – Final council meeting
  - Report draft finalized
- January 1, 2017 – Report due

# DADS Regulatory Services Overview

(as it relates only to the provider types indicated in S.B. 914 [SNFs/NFs, ICFs, & ALFs])

# DADS Regulatory Services

- DADS Regulatory Services regulates long-term care facilities, agencies, programs and individual providers of long-term care services.
- DADS regulates long-term care facilities and agencies through:
  - Inspections and surveys;
  - Follow-up visits;
  - Complaint and incident investigations;
  - Investigations of abuse, neglect or exploitation (ANE); and
  - Other contacts required for carrying out state licensure and federal certification responsibilities.

# Federal Rules vs. State Rules

- Many State licensure rules for NF and ICF/IID programs mirror federal rules
- Compliance with federal rules is required as conditions of Medicaid / Medicare
- The State Operations Manual (SOM) is a federal publication
- Changes to federal rules require changes through the federal register

# DADS Regulatory Services

- DADS Regulatory Services comprised of four sections:
  - Licensure and Credentialing (L&C)
  - Survey Operations
  - Enforcement
  - Policy Rules and Curriculum Development (PRC)

# DADS Regulatory Services: Licensure and Credentialing

- Reviews applications for new or continued operations
  - Analyzes elements of the application including qualifications of key personnel, ownership, and operating area
  - Communicates regularly with applicants
- Issues license and certificate upon final approval of application

# DADS Regulatory Services: Survey Operations

- Ensures facilities comply with state and federal rules/regulations regarding minimum standards of care for residents
- “Boots on the ground” section
- Surveyors verify compliance of long-term care facilities, cite compliance deficiencies if applicable
- Apply the state licensing rules and federal certification regulations
  - SOM provides guidance to states conducting certification surveys

# DADS Regulatory Services: Survey Operations

- 11 DADS regions statewide
- Regionally based survey teams conduct:
  - initial certification and recertification surveys;
  - licensure inspections;
  - complaint investigations; and
  - incident investigations.

# Survey Operations Overview

- **Observe:**
  - Surveyors observe and document.
  - They observe residents, the program environment, resident activities, staff interaction and all aspects of provider operation required by state and federal law.
- **Interview:**
  - Surveyors interview residents, families, legally authorized representatives and others.
  - Surveyors also interview facility/agency/provider staff.
- **Review:**
  - Surveyors perform record reviews to verify information and confirm what is observed and heard during interviews.

# Survey Operations: Outline of Survey Process

- Preparation
- Entrance Conference
- Post Entry Investigation
- Information Analysis
- Exit Conference
- Report

# Survey Operations: NF/SNF

- Task 1 – Offsite Survey Process
- Task 2 – Entrance Conference
- Task 3 – Initial Tour
- Task 4 – Sample Selection
- Task 5 – Information Gathering
  - General Observations
  - Kitchen/Food service
  - Resident Review
  - Quality of Life
  - Medication Pass and Pharmacy
  - Quality Assessment and Assurance Review
  - Abuse Prohibition Review
- Task 6 – Information Analysis for deficiency determination
- Task 7 – Exit Conference

# Survey Operations: ICFs/IID

To qualify for Medicaid reimbursement, ICFs/IID must be certified and comply with federal standards (conditions of participation) in eight areas, including:

- governing body and facility management;
- client protections;
- facility staffing;
- active treatment services;
- client behavior and facility practices;
- health care services;
- the physical environment; and
- dietetic services.

# Survey Operations: ICFs/IID

- CMS mandates eight survey tasks to determine compliance with conditions of participation:
  - Task 1 - Sample Selection
  - Task 2 - Review of Facility Systems to Prevent Abuse, Neglect, Mistreatment and to Resolve Complaints
  - Task 3 - Individual Observations
  - Task 4 - Required Interviews with Individuals and/or Family/Advocate, and Direct Care Staff
  - Task 5 - Drug Pass Observation
  - Task 6 - Visit to Each Area of the Facility Serving Certified Individuals
  - Task 7 - Record Review of Individuals in the Sample
  - Task 8 - Team Assessment of Compliance and Formation of the Report of ICFs/IID Deficiencies

# Survey Operations: Assisted Living Facilities

- ALFs inspected according to the licensing standards
  - Health and Safety Code Chapter 247
  - 40 TAC Chapter 92
- Process for conducting a survey is modeled after the CMS survey tasks for long-term care facilities, using the same seven survey tasks
- Comprehensive checklist for 40 TAC Chapter 92 (Form 2382) used for the survey process; copy is left with the administrator at exit

# Survey Operations: Information Analysis

- Surveyor team confers to determine which potential deficient practices may exist
  - based on the information gathered from observation, interviews and record reviews
- Surveyor/survey team meets with an administrator to review preliminary findings of the survey
- Surveyors do not direct the administrator about the operations of the facility
- If there is an immediate threat to health and safety, survey team will communicate with the administrator regarding the threat

# Survey Operations: After the Survey

- After the exit conference and consultation with their respective manager, surveyor submits listing of deficiencies and violations that they found, along with their evidence, to the regional program leadership team.
  - Survey team may consult with other regional leadership teams or with state office enforcement and legal staff as necessary.
- Surveyors' report is reviewed by regional office; regional office determines what deficiencies and violations will be included in the forms to be presented to the facility or agency.
- Facility has ten working days to submit a plan of correction (PoC) for each violation cited and ten calendar days to submit a PoC for each deficiency cited.
  - PoCs must be approved by DADS.

# Survey Operations: After the Survey

- Staff performs a follow-up survey or desk review to determine whether the deficiencies have been corrected. The surveyor or survey team submits a follow-up report.
- The PoC and follow-up survey process can occur more than once.
- Should a licensure or re-certification deadline pass before the deficiencies or violations are corrected, the provider could lose licensure or certification.
- Regional and state office Enforcement staff and Legal Services staff often advise regional staff and surveyors during this process.

# DADS Regulatory Services: Complaint Intake

- Complaints come to Regulatory Services through Consumer Rights and Services (CRS). The CRS division manages complaint intake for facilities and agencies regulated by DADS:
  - answers more than 70,000 complaint calls per year;
  - maintains a complaint database;
  - provides consultation and program information to callers; and
  - Department of Family and Protective Services (DFPS) referrals also pass through CRS

Complaints can be reported by local authorities, individuals receiving care, family members, advocates or any citizen as well as facility staff

# DADS Regulatory Services: Incidents

- Incident reports originate from facilities required to self-report certain types of incidents
- Facilities must notify CRS of allegations that someone in their care has been physically, sexually, verbally or mentally abused, neglected or exploited (ANE)
- ICFs/IID must report ANE allegations to DFPS.
- CRS processes complaints and incidents that are then sent to DADS Survey Operations for investigation

# DADS Regulatory Services: Investigations

- DADS investigates all complaints
- An investigation is an abbreviated survey. It is always unannounced and the confidentiality of the complainant and individual is protected.
- The difference is the investigator focuses on the allegation of the complaint. Each allegation is investigated according to the specific regulation it pertains to.
- For ICFs/IID, DFPS conducts ANE investigations

# DADS Regulatory Services: Enforcement

- Enforcement and legal action may be taken in cases where the provider is cited with no right to correct the deficiencies or violations, or in cases where an action against the provider's certification or license is recommended.
- The Enforcement section includes four units:
  - Screening and Analysis
  - Provider Licensing Enforcement
  - Professional Credentialing Enforcement
  - Survey and Certification Enforcement

# Survey and Certification Enforcement

- Enforcement receives referrals from Survey Operations
- Support regional survey staff in interpreting and applying state licensing rules and federal regulations and participate in regional enforcement meetings for situations that include but are not limited to:
  - surveys identifying immediate jeopardy/immediate threat;
  - federal oversight and support surveys; and
  - surveys of special focus facilities.

# Survey & Certification Enforcement (continued)

Provides due process for all enforcement activity (NF, ALF, and ICF)

## Nursing facilities:

Non-compliance with Medicare/Medicaid certification:

- facility may only contest the finding of non-compliance, they may not contest the resulting remedy (resulting remedies may include: civil money penalties, directed plan of correction, directed in-service training, denial of payment for new admissions, termination of certification, and loss of Nurse Aide Training program);
  - Actions may be initiated by regional staff.

Examples of Licensure actions: administrative penalties, suspension of admissions, injunction, emergency suspension and closing order, civil penalties, court appointed trustee, license revocation, suspension, denial of renewal.

- Administrative penalties may be initiated by regional staff.

# ALF Enforcement:

## Licensed:

- administrative penalties;
- civil penalties;
- Injunction;
- emergency suspension and closing order;
- court appointed trustee; and
- license revocation, suspension, denial of renewal

## Unlicensed

- injunction; and
- civil penalties

# ICFs/IID Enforcement:

## Non-compliance with Medicare/Medicaid certification

- Resulting remedies may include these examples: directed plan of correction, directed in-service training, termination of certification.
  - Facilities may only contest the finding of non-compliance
  - They may not contest the resulting remedy: directed plan of correction, directed in-service training, termination of certification
  - Termination of Medicaid certification automatically results in Medicaid contract termination

## Licensing

### Non compliance with licensing requirements may result in:

- Administrative penalties, civil penalties, injunction, license revocation, suspension, denial of renewal, emergency suspension & closing order

# Due Process

- Final action is not taken until after a formal and informal due process has been exhausted
- Informal is opportunity to show compliance (OSC), Informal Reconsideration (IR) and Informal Dispute Resolution (IDR)
- Formal due process enforcement action cases are heard in two venues:
  - Step 1 - State Office of Administrative Hearings (SOAH)
  - Step 2- State district court for civil penalties and injunctions

# The Basics: New Rules and Regs

Policy, Rules, and Curriculum (PRC).supports  
DADS Regulatory Services as well as internal and  
external stakeholders.



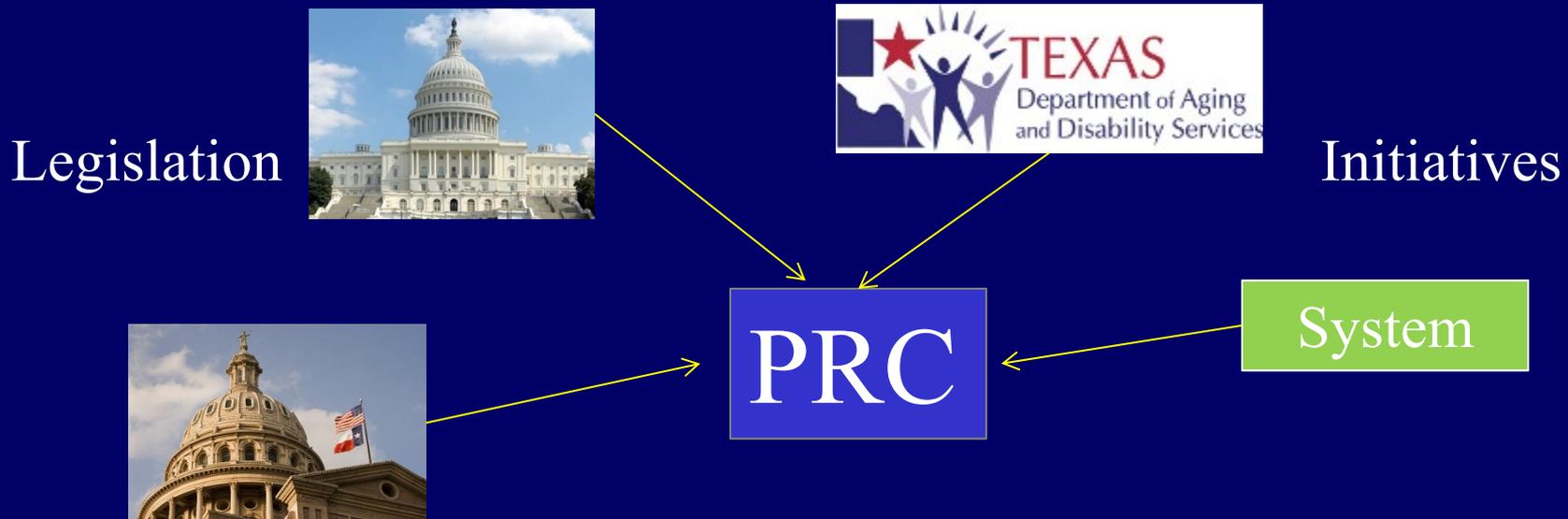
# The Basics: New Rules and Regs

PRC's main function is to produce the state licensure rules, regulatory policies and curricula used for training to ensure providers of DADS services maintain compliance with state and federal minimum standards.

PRC

# The Basics: New Rules and Regs

Impetus for rule and regulation changes can come from different sources including Federal and State legislation or initiatives from the agency or enterprise.



# The Basics: New Rules and Regs

The process of interpreting initiatives, writing rules, and then providing training on new rules falls to the hands of PRC's three units acting in conjunction with other sections.

Policy

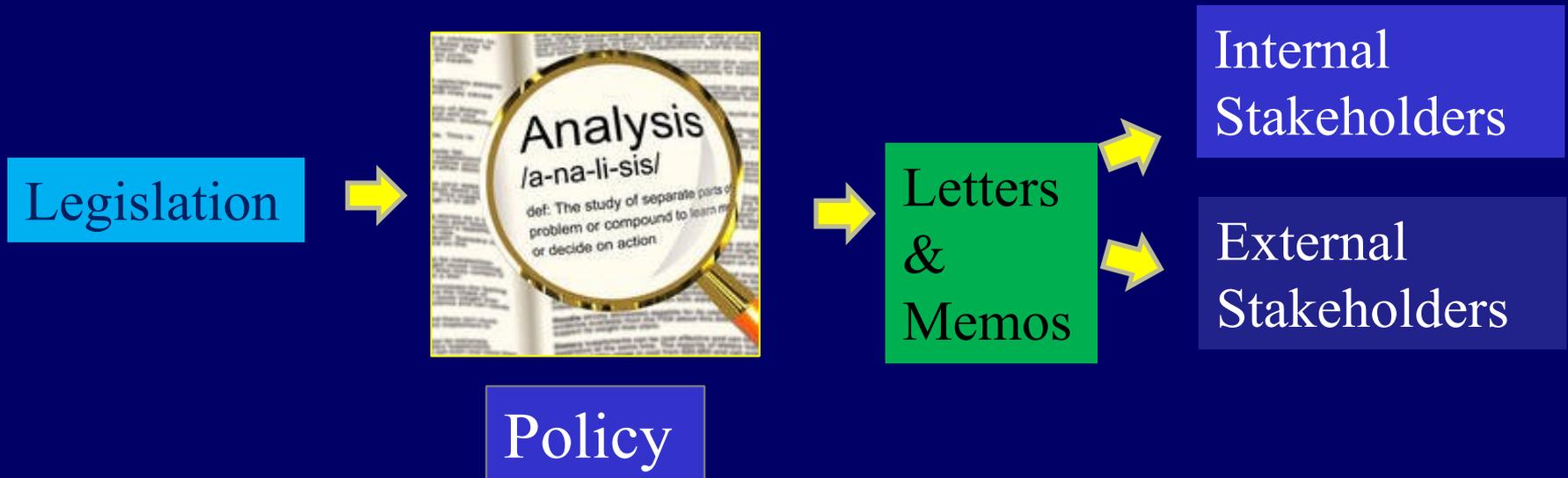
Rules

Curriculum

# PRC: Policy

The Policy staff:

- analyze government legislation impacting DADS programs to develop interpretive guidance on federal and state requirements; and
- publish findings in internal and external letters.



# PRC: Policy

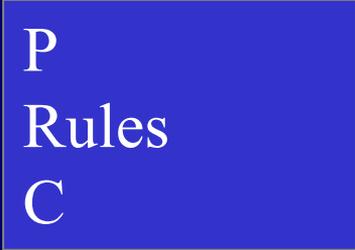
The Policy staff:

- Provides SMEs to stakeholders;
- Answers stakeholder policy questions; and
- Collaborates with Rules staff.



# The Basics: New Rules

Initiatives for rule changes can come from different sources including Federal and State legislation or initiatives from the agency or enterprise. A rule project typically averages one year.



P  
Rules  
C

# The Basics: Rules and Regs

The units interact with each other, providers and the public to fulfill the department's mission.

Survey  
Operations

Enforcement

Provider/  
Facility/  
Agency

Individual

L & C

PRC

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# Discussion