



June 29, 2020

Acting Executive Commissioner Phil Wilson  
Texas Health and Human Services Commission  
4900 N. Lamar  
Austin, Texas 78711-3247  
*Electronically Delivered*

RE: Restricting Surveyor Staff to go between COVID Infected and Non-COVID Facilities

Dear Executive Commissioner Wilson:

We are writing to request modification to an existing policy position in Long Term Care Regulatory that is inconsistent with expectations set forth of nursing home and assisted living providers in Texas. With the COVID pandemic, nursing and assisted living facilities fight every day to keep the virus out, and their residents and staff safe. Both HHSC and CMS have mandated that facilities track where employees work and have strongly recommended employees refrain from working in more than one SNF or ALF. In multiple communities across Texas, local orders strictly prohibit staff from working in more than one location.

HHSC surveyors are properly conducting targeted COVID infection control surveys and other priority investigations under current direction and policy expectations. Unfortunately, HHSC surveyors are conducting surveys in facilities that have zero COVID present as well as those which have at least one infection, oftentimes on the same day. We are aware of at least one situation where a surveyor entered a facility and conducted surveyor activities. Following this visit, it was determined the surveyor was positive for COVID. While at the time of the visit, this facility was free from COVID, at least two (2) employees at the facility have subsequently tested positive following the visit by the surveyor. It is our understanding the surveyor had previously visited COVID infected facilities in the community.

Allowing surveyors to inspect "hot" facilities as well as those that have no infections runs counter to the recommendations and guidance placed on nursing home and assisted living providers set forth by the CDC and HHSC. In communities across Texas, nursing home and assisted living staff are either restricted or strongly discouraged from working between facilities to prevent the potential spread of COVID. We recognize there are insufficient survey staff to investigate each facility separately. However, like the facilities we represent which have dedicated staff for infected residents, HHSC could surely designate staff that would be responsible for inspecting COVID-19 infected facilities only. We know this virus spreads quickly among the elderly population and that research indicates facility infection rates are directly linked to community spread. As a result, HHSC should be taking every step to minimize potential exposure and prevent the spread.

Without delay, we are asking this policy to be changed and that surveyors conducting facility visits be prohibited from entering both COVID+ and COVID- facilities. However, if this policy change is not feasible, then we ask that all surveyors going into nursing homes and assisted living facilities be tested, as staff and residents of these facilities were required this past month.



Regardless of entry point, when COVID enters a nursing facility or assisted living facility, the perception is the provider did not do enough to prevent it from happening. The process does not distinguish whether the source was outside a facility's control from essential staff/visitors not employed by the facility. The process does not look at infection rates within the local community or the local referring hospital as the cause. As a result, we need to take every precaution within our control to protect the health and safety of those receiving care. We appreciate your consideration of this important issue and look forward to your response.

Respectfully,

Kevin Warren  
President & CEO  
Texas Health Care Association

George Linial  
President & CEO  
LeadingAge Texas

Diana Martinez  
President & CEO  
Texas Assisted Living Association

CC: Victoria Ford, Chief Policy and Regulatory Officer, HHSC  
David Kostroun, Deputy Executive Commissioner for Regulatory Services Division, HHSC  
Michelle Dionne-Vahalik, Associate Commissioner for Long Term Care Regulation, HHSC