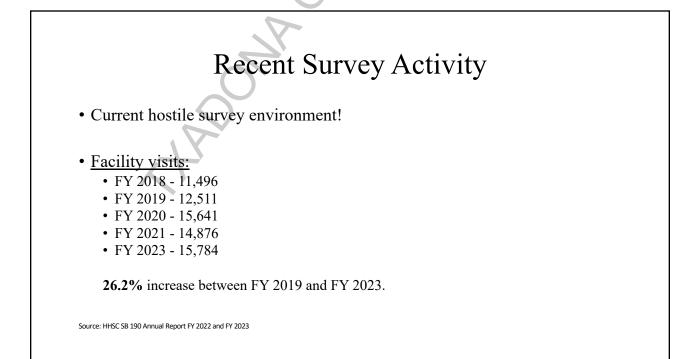


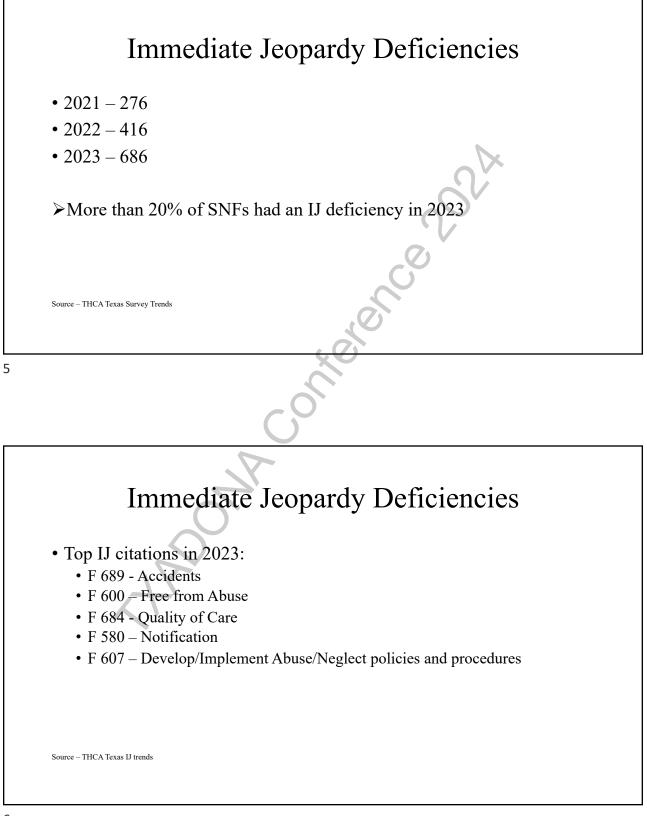
LTC Nurses' Role in Survey Enforcement Process

>Importance and Impact of Negative Survey Findings

- Types of enforcement actions
- TBON actions
- Healthcare liability actions
- ≻Minimizing the Damage
 - Importance of Plans of Correction
 - Challenging deficiencies/license violations in the IDR/IIDR process
 - Nurses' Role in the IDR and appeals process

3





Survey Enforcement – Facility Based Actions

• Federal enforcement – CMS

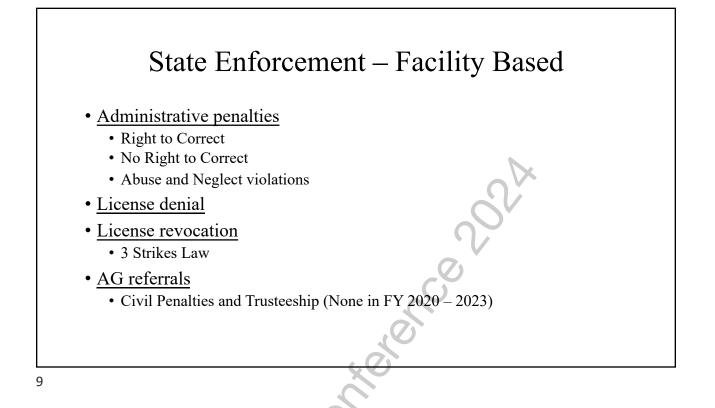
• State enforcement – HHSC

Simultaneous enforcement when Abuse/Neglect is cited

7

Federal Enforcement – Facility Based

- Termination of Provider Agreements 6 months from survey
- <u>DPNA</u> no reimbursement for Medicaid, Medicare or TriCare new admissions during DPNA period.
 - Statutory 3 months
 - Optional 15 days notice (IJ/SQC)
 - DPNA period ends with date of substantial compliance (importance of POC date)
- <u>Civil Money Penalties</u>
 - Per-instance past non-compliance (\$2,670 \$26,685)
 - Per-day default (\$8,140 \$26,685 per day)

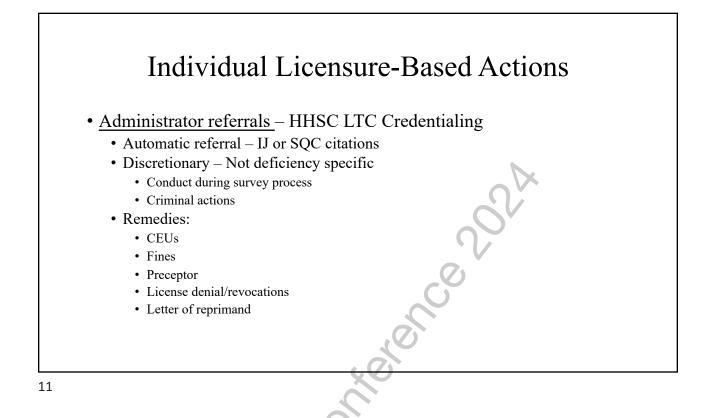


License Revocation/Denials & 3 Strike Law

- 1 license denial FY 2023
- 0 license revocation in FY 2023
- Three Strike Rule:
 - If a facility receives 3 IJ abuse/neglect deficiencies in separate visits within 24 months, license revocation is <u>mandatory</u>.

• As of 9/9/24:

- 100 NFs with 1 strike
- 13 NF with 2 strikes
- 2 NFs with 3 strikes (2024)



Individual Licensure-Based Actions

- Referrals to independent licensing agencies Discretionary
 - Texas Board of Nursing
 - Texas Medical Board
 - Texas Behavioral Health Executive Counsel (Social Workers)

• Employee Misconduct Registry

- Certified nurse aides
- Certified medication aides

Criminal Actions

1.Section 21.02, Penal Code (continuous sexual abuse of a disabled individual),

2.Section 22.011, Penal Code (sexual assault);

3.Section 22.02, Penal Code (aggravated assault);

4.Section <u>22.04</u>, Penal Code (injury to an elderly individual or disabled individual);

5.Section <u>22.041</u>, Penal Code (endangering an elderly individual, or disabled individual);

6.Section <u>35A.02</u>, Penal Code (health care fraud);

7.Section <u>37.10</u>, Penal Code (tampering with governmental record)

** Charges can result from local police investigation or investigation by the

Texas Medicaid Fraud Control Unit (MFUC)

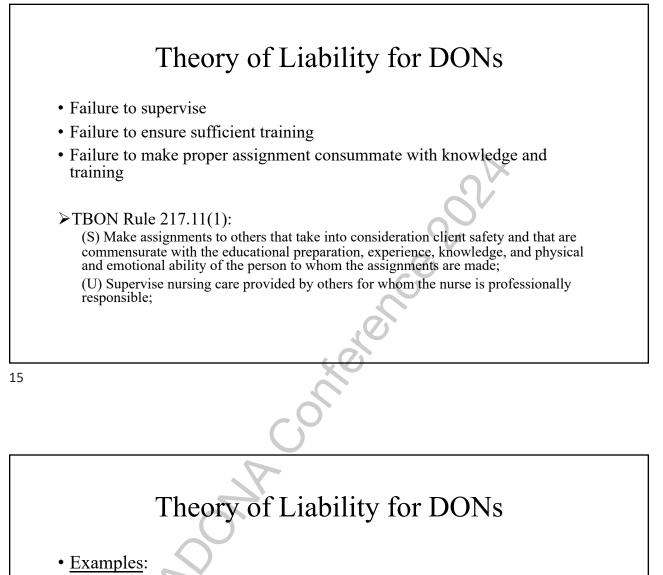
13

Texas Board of Nursing Actions in LTC

- HHSC referrals Discretionary
 - RNs
 - RN/DONs
 - LVNs

• **TBON** investigation

- Subpoena for documents sent to facility
- Nurse notification of potential violation of the Nurse Practice Act > deadline for response – 20 days
- Nurse is entitled to all documents TBON has obtained in their investigation prior to filing a formal response.

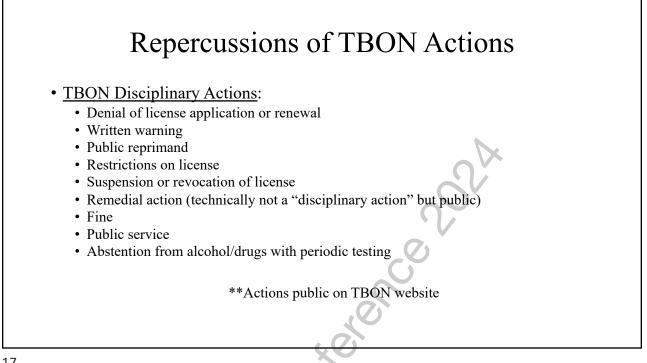


≻Trach care

► Reading and reporting of labs and radiology

• Situations:

DON off dutyHolidays, weekends, and afterhours



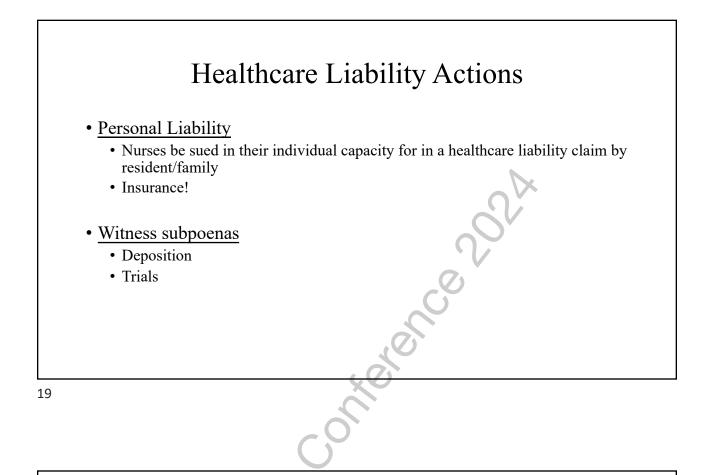
17

Repercussions of TBON Actions

- National Practitioner Databank Operated by the DHHS. National database of all medical malpractice payments and adverse actions against health care providers (including TBON action)
- Termination or refusals of employment

If obtain knowledge of a TBON investigation – <u>RESPOND</u>.

- If no harm, more likely to get dismissal
- If serious harm/death, likely to get discipline
- If get discipline, have right to appeal



Mitigating the Damage of a Bad Survey Plans of Correction

- Basic 5 bullet points
- POC date
 - The <u>last</u> POC date governs date of substantial compliance (health & LSC)
 - Should be as close to the exit date as possible
 - Generally, no more than 30 days
 - Do not exceed 45 days
- Extended POC dates:
 - Widens window for intervening complaint/incident investigations that would extend survey cycle
 - Possible DPNA imposition, particularly if optional DPNA is imposed
 - Unnecessary continuation of per day penalties
- Revisit/Desk review Will not be conducted until after the very last POC date

Mitigating the Damage of a Bad Survey IDR/IIDR Process



IDR – Informal Dispute Resolution Process

Conducted by the Michigan Peer Review Organization (MPRO)

 $IDR \ request - 10 \ calendar \ days \ after \ receipt \ of \ 2567/3724$

 $\ensuremath{\text{IDR}}\xspace$ reputtal – 5 calendar days after submission of IDR request

MPRO issues recommendation within 30 days of receipt of IDR request

HHSC/CMS can reject MPRO's IDR recommendation



<u>IIDR</u> – Independent Informal Dispute Resolution Process

Conducted by HHSC's IDR Program (within Legal Dept). Only entitled to an IIDR if CMS imposes a CMP. IIDR Request due within 10 days of receipt of CMS notice letter (must submit CMS notice with IIDR request)

HHSC has 60 days to issue decision

21

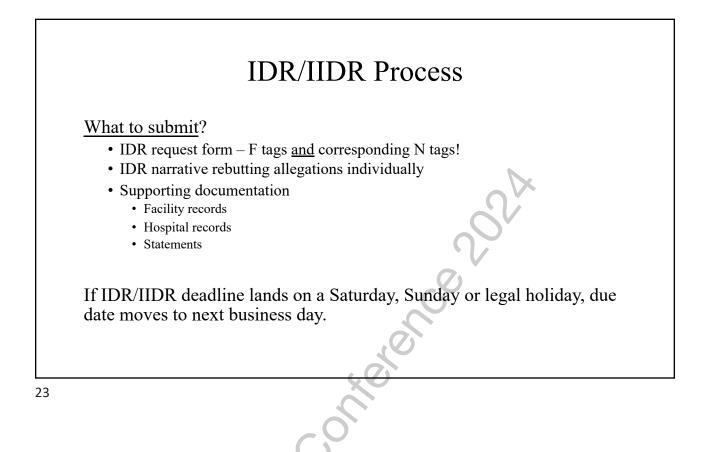
IDR/IIDR Process

What to challenge?

- Any IJ/SQC deficiency/license violation
- Abuse/Neglect violations for 3 strike purposes:
 - F 600/N 3481
 - F 607/N 3484
 - See TAC provision cited in N tag report (26 TAC 544.601(b) or (c))

What to ask for?

- Delete a deficiency
- Delete a portion of a deficiency
- · Move a deficiency
- Change scope and severity of a deficiency but <u>only</u> if the deficiency constitutes SQC or IJ.



IDR/IIDR Process

- Reviewers look only to the "4 corners" of the 2567/3724.
- What is in the report "rules" unless directly contradicted by documentary evidence
- "He said/she said" situation facility will lose
- Can delay revisit/desk review
- Rejection of MPRO decisions
 - HHSC's data 2.3% rejection rate
 - My data 90% rejection rate

IDR v. IIDR

- If need more time to prepare and have CMS notice letter IIDR
- If no CMPs IDR
- If want to challenge non-IJ or actual harm deficiencies IDR

25

Nurses' Role in the IDR & Appeal Process

If any remedies imposed and IDR unsuccessful, have right to appeal:

- State appeal state administrative penalties, license revocation/denial (SOAH)
- Federal appeal usually CMPs only (DAB)

Clinical deficiencies – nurse participation vital!

- Medical record review
- Nursing in-services
- Preparation of arguments
 - Example Pain meds

Nurses' Role in the IDR & Appeal Process Standard of care articulation: what regulations require what standard of care/facility policies require IDR rebuttal – could result in deletion or reduction of s/s of deficiencies and mitigation of remedies and referrals Appeals: Posters settlement At hearing - presentation of case Written direct testimony Live testimony

