SEC. 242.0021. CONTROLLING PERSON.

(a) A person is a controlling person if the person has the ability, acting alone or in concert with others, to directly or indirectly influence, direct, or cause the direction of the management, expenditure of money, or policies of an institution or other person.
(b) For purposes of this chapter, "controlling person" includes:
(1) a management company, landlord, or other business entity that operates or contracts with others for the operation of an institution;
(2) any person who is a controlling person of a management company or other business entity that operates an institution or that contracts with another person for the operation of an institution; and
(3) any other individual who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of an institution, is in a position of actual control or authority with respect to the institution, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility.
(b-1) Notwithstanding any other provision of this section, for purposes of this chapter, a controlling person of an institution or of a management company or other business entity described by Subsection (b)(1) that is a publicly traded corporation or is controlled by a publicly traded corporation means an officer or director of the corporation. The term does not include a shareholder or lender of the publicly traded corporation.
(c) A controlling person described by Subsection (b)(3) does not include a person, such as an employee, lender, secured creditor, or landlord, who does not exercise any influence or control, whether formal or actual, over the operation of an institution.
(d) The department may adopt rules that define the ownership interests and other relationships that qualify a person as a controlling person.

SEC. 242.010. CHANGE OF ADMINISTRATORS.

An institution that hires a new administrator or person designated as chief manager shall:
(1) notify the department in writing not later than the 30th day after the date on which the change becomes effective; and
(2) pay a $20 administrative fee to the department.

SEC. 242.015. LICENSED ADMINISTRATOR.

(a) Each institution must have a licensed nursing facility administrator.
(b) The administrator shall:
(1) manage the institution;
(2) be responsible for:
(A) delivery of quality care to all residents; and
(B) implementation of the policies and procedures of the institution; and
(3) work at least 40 hours per week on administrative duties.
SEC. 242.035. LICENSING CATEGORIES.

(a) The department shall determine the rank of licensing categories.
(b) Unless prohibited by another state or federal requirement, the department shall allow a licensed institution to operate a portion of the institution under the standards of a lower licensing category. The board shall establish procedures and standards to accommodate an institution’s operation under the lower category.

SEC. 242.037. RULES; MINIMUM STANDARDS.

(a) The department shall make and enforce rules and minimum standards to implement this chapter, including rules and minimum standards relating to quality of life, quality of care, and residents’ rights.
...(b) The rules and standards adopted under this chapter may be more stringent than the standards imposed by federal law for certification for participation in the state Medicaid program.
...(i) The minimum standards adopted by the board under this section must require that each institution, as part of an existing training program, provide each registered nurse, licensed vocational nurse, nurse aide, and nursing assistant who provides nursing services in the institution at least one hour of training each year in caring for people with dementia.

SEC. 242.0371. NOTICE OF CERTAIN EMPLOYMENT POLICIES.

(a) An institution licensed under this chapter shall prepare a written statement describing the institution’s policy for:
(1) the drug testing of employees who have direct contact with residents; and
(2) the conducting of criminal history record checks of employees and applicants for employment in accordance with Chapter 250.
(b) The institution shall provide the statement to:
(1) each person applying for services from the institution or the person’s next of kin or guardian; and
(2) any person requesting the information.

SEC. 242.0395. REGISTRATION WITH TEXAS INFORMATION AND REFERRAL NETWORK.

(a) An institution licensed under this chapter shall register with the Texas Information and Referral Network under Section 531.0312, Government Code, to assist the state in identifying persons needing assistance if an area is evacuated because of a disaster or other emergency.
(b) The institution is not required to identify individual residents who may require assistance in an evacuation or to register individual residents with the Texas Information and Referral Network for evacuation assistance.
(c) The institution shall notify each resident and the resident’s next of kin or guardian regarding how to register for evacuation assistance with the Texas Information and Referral Network.
SEC. 242.040. CERTIFICATION OF INSTITUTIONS THAT CARE FOR PERSONS WITH ALZHEIMER’S DISEASE AND RELATED DISORDERS.

(a) The department shall establish a system for certifying institutions that meet standards adopted by the board concerning the specialized care and treatment of persons with Alzheimer’s disease and related disorders.
(b) An institution is not required to be certified under this section in order to provide care and treatment of persons with Alzheimer’s disease and related disorders.
(c) The board by rule may adopt standards for the specialized care and treatment of persons with Alzheimer’s disease and related disorders and provide procedures for institutions applying for certification under this section. The rules must provide for annual certification.
(d) The board may establish and charge fees for the certification in an amount necessary to administer this section.
(e) An institution may not advertise or otherwise communicate that the institution is certified by the department to provide specialized care for persons with Alzheimer’s disease or related disorders unless the institution is certified under this section.

SEC. 242.042. POSTING.

(a) Each institution shall prominently and conspicuously post for display in a public area of the institution that is readily available to residents, employees, and visitors:
(1) the license issued under this chapter;
(2) a sign prescribed by the department that specifies complaint procedures established under this chapter or rules adopted under this chapter and that specifies how complaints may be registered with the department;
(3) a notice in a form prescribed by the department stating that licensing inspection reports and other related reports which show deficiencies cited by the department are available at the institution for public inspection and providing the department’s toll-free telephone number that may be used to obtain information concerning the institution;
(4) a concise summary of the most recent inspection report relating to the institution;
(5) notice that the department can provide summary reports relating to the quality of care, recent investigations, litigation, and other aspects of the operation of the institution;
(6) notice that the Texas Board of Nursing Facility Administrators can provide information about the nursing facility administrator;
(7) any notice or written statement required to be posted under Section 242.072(c);
(8) notice that informational materials relating to the compliance history of the institution are available for inspection at a location in the institution specified by the sign; and
(9) notice that employees, other staff, residents, volunteers, and family members and guardians of residents are protected from discrimination or retaliation as provided by Sections 242.133 and 242.1335.
(b) The notice required by Subsection (a)(8) must also be posted at each door providing ingress to and egress from the institution.
(c) The informational materials required to be maintained for public inspection by an institution under Subsection (a)(8) must be maintained in a well-lighted accessible location and must include:
(1) any information required to be included under Section 242.504; and
(2) a statement of the institution’s record of compliance with this chapter and the rules and
standards adopted under this chapter that is updated not less frequently than bi-monthly
and that reflects the record of compliance during the period beginning one year before the
date the statement is last updated, in the form required by the department.
(d) The notice required by Subsection (a)(9) must be posted in English and a second
language as required by department rule.
(e) The department shall post detailed compliance information regarding each institution
licensed by the department, including the information an institution is required to make
accessible by Subsection (c), on the department’s website. The department shall update
the website once a month to provide the most current compliance information regarding
each institution.

SEC. 242.049. QUALITY IMPROVEMENT.

(a) The department may evaluate data for quality of care in nursing homes.
(b) The department may gather data on a form or forms to be provided by the department
to improve the quality of care in nursing homes and may provide information to nursing
homes which will allow them to improve and maintain the quality of care which they
provide. Data referred to in this section can include information compiled from documents
otherwise available under Chapter 552, Government Code, including but not limited to
individual survey reports and investigation reports.
(c) All licensed nursing homes in the state may be required to submit information
designated by the department as necessary to improve the quality of care in nursing
homes.
(d) The collection, compilation, and analysis of the information and any reports produced
from these sources shall be done in a manner that protects the privacy of any individual
about whom information is given and is explicitly confidential. The department shall
protect and maintain the confidentiality of the information. The information received by
the department, any information compiled as a result of review of internal agency
documents, and any reports, compilations, and analyses produced from these sources shall
not be available for public inspection or disclosure, nor are these sources public records
within the meaning of Chapter 552, Government Code. The information and any
compilations, reports, or analyses produced from the information shall not be subject to
discovery, subpoena, or other means of legal compulsion for release to any person or entity
except as provided in this section and shall not be admissible in any civil, administrative, or
criminal proceeding. This privilege shall be recognized by Rules 501 and 502 of the Texas
Rules of Evidence.
(e) The information and reports, compilations, and analyses developed by the department
for quality improvement shall be used only for the evaluation and improvement of quality
care in nursing homes. No department proceeding or record shall be subject to discovery,
subpoena, or other means of legal compulsion for release to any person or entity, and shall
not be admissible in any civil, administrative, or criminal proceeding. This privilege shall
be recognized by Rules 501 and 502 of the Texas Rules of Evidence.
(f) Notwithstanding Subsection (d), the department shall transmit reports, compilations,
and analyses of the information provided by a nursing home to that nursing home, and
such disclosure shall not be violative of this section nor shall it constitute a waiver of
confidentiality.
(g) A member, agent, or employee of the department may not disclose or be required to disclose a communication made to the department or a record or proceeding of the department required to be submitted under this section except to the nursing home in question or its agents or employees.

(h) Nothing in this section is intended to abridge the department's enforcement responsibilities under this chapter or under any other law.

(i) Any information, reports, and other documents produced which are subject to any means of legal compulsion or which are considered to be public information under Subchapter E and the rules adopted under that subchapter shall continue to be subject to legal compulsion and be treated as public information under Subchapter E after the effective date of this Act, even though such information, reports, and other documents may be used in the collection, compilation, and analysis described in Subsections (b) and (d).

SEC. 242.052. DRUG TESTING OF EMPLOYEES.

(a) An institution may establish a drug testing policy for employees of the institution. An institution that establishes a drug testing policy under this subsection may adopt the model drug testing policy adopted by the board or may use another drug testing policy.

(b) The board by rule shall adopt a model drug testing policy for use by institutions. The model drug testing policy must be designed to ensure the safety of residents through appropriate drug testing and to protect the rights of employees. The model drug testing policy must:

1. require at least one scheduled drug test each year for each employee of an institution that has direct contact with a resident in the institution; and
2. authorize random, unannounced drug testing for employees described by Subdivision (1).

SUBCHAPTER E. REPORTS OF ABUSE AND NEGLECT

Sec. 242.122. REPORTING OF ABUSE AND NEGLECT.

(a) A person, including an owner or employee of an institution, who has cause to believe that the physical or mental health or welfare of a resident has been or may be adversely affected by abuse or neglect caused by another person shall report the abuse or neglect in accordance with this subchapter.

(b) Each institution shall require each employee of the institution, as a condition of employment with the institution, to sign a statement that the employee realizes that the employee may be criminally liable for failure to report those abuses.

(c) A person shall make an oral report immediately on learning of the abuse or neglect and shall make a written report to the same agency not later than the fifth day after the oral report is made.

Sec. 242.151. PHYSICIAN SERVICES.

(a) An institution shall have at least one medical director who is licensed as a physician in this state.

Sec. 242.153. DIRECTOR OF NURSING SERVICES. An institution shall have a director of nursing services who shall be a registered nurse.
Sec. 242.182. RESPITE CARE.
(a) An institution licensed under this chapter may provide respite care for an elderly or handicapped person according to a plan of care.
(b) The board may adopt rules for the regulation of respite care provided by an institution licensed under this chapter.

Sec. 242.183. PLAN OF CARE. (a) The institution and the person arranging the care must agree on the plan of care and the plan must be filed at the institution before the institution admits the person for the care.

Sec. 242.184. NOTIFICATION. An institution that offers respite care shall notify the department in writing that it offers respite care.

SUBCHAPTER H. CARE FOR RESIDENTS WITH ALZHEIMER'S DISEASE AND RELATED DISORDERS

Sec. 242.202. DISCLOSURE REQUIRED.
(a) An institution covered by this subchapter shall provide a disclosure statement disclosing the nature of its care or treatment of residents with Alzheimer's disease and related disorders to:
(1) an individual seeking placement as a resident with Alzheimer's disease or a related disorder;
(2) an individual attempting to place another individual as a resident with Alzheimer's disease or a related disorder; or
(3) a person seeking information about the institution's care or treatment of residents with Alzheimer's disease and related disorders.
(b) The disclosure statement must be displayed with the institution's license as it is posted under Section 242.042.
...
(c) The institution must file the disclosure statement with the department as part of the report filed under Section 242.033(d). The department shall verify contents of the disclosure statement as part of the license renewal process.
(d) The disclosure statement must contain the following categories of information:
(1) the institution's philosophy of care;
(2) the preadmission, admission, and discharge process;
(3) resident assessment, care planning, and implementation of the care plan;
(4) staffing patterns, such as resident-to-staff ratios, and staff training;
(5) the physical environment of the institution;
(6) resident activities;
(7) program costs;
(8) systems for evaluation of the institution's programs for residents;
(9) family involvement in resident care; and
(10) the toll-free telephone number maintained by the department for acceptance of complaints against the institution.
(e) The institution must update the disclosure statement as needed to reflect changes in the operation of the institution.
RULE §19.202 BUILDING APPROVAL

Change of ownership. The applicant for a change of ownership license must provide to DHS a copy of a letter notifying the local health authority of the request for a change of ownership. The local health authority may provide recommendations to DHS regarding the status of compliance with local codes, ordinances, or regulations.

RULE §19.204 APPLICATION REQUIREMENTS

(a) Applications. All applications must be made on forms prescribed by and available from DADS.

...(2) Changes to information required in the application must be reported to DADS, as required by §19.1918 of this title (relating to Disclosure of Ownership).

...(4) for a facility which advertises, markets, or otherwise promotes that it provides services to residents with Alzheimer's disease and related disorders, a disclosure statement, using the departmental form, describing the nature of its care or treatment of residents with Alzheimer's disease and related disorders, as required by the Texas Health and Safety Code, §242.202.

(A) Failure to submit the required disclosure statement will result in an administrative penalty in accordance with §19.2112 of this title (relating to Administrative Penalties).

(B) The disclosure statement must contain the following information:

(i) the facility's philosophy of care for residents with Alzheimer's disease and related disorders;

(ii) the preadmission, admission, and discharge process;

(iii) resident assessment, care planning, and implementation of the care plan;

(iv) staffing patterns, such as resident to staff ratios, and staff training;

(v) the physical environment of the facility;

(vi) resident activities;

(vii) program charges;

(viii) systems for evaluation of the facility's program;

(ix) family involvement in resident care; and

(x) the telephone number for DADS' toll-free complaint line.

(C) The disclosure statement must be updated and submitted to DADS as needed to reflect changes in special services for residents with Alzheimer's disease or a related condition.

Change of Ownership License
(a) .... The license holder and new license applicant must notify the Department of Aging and Disability Services before a change of ownership occurs.

(1) Sole proprietor. A change of ownership occurs if:

(A) the sole proprietor who is licensed to operate the facility sells or otherwise transfers its business of operating the facility to an entity not licensed to operate the facility; or

(B) upon the death of the sole proprietor, the facility continues to operate.

(2) General Partnership (as defined in the Texas Business Organization Code, §1.002). A change of ownership occurs if:

(A) a partner of a general partnership that is licensed to operate the facility is added or substituted;

(B) the partnership that is licensed to operate the facility is sold or otherwise transferred to an entity that is not licensed to operate the facility;
(C) the entity that is licensed to operate the facility sells or otherwise transfers its business of operating the facility to an entity that is not licensed to operate the facility;
(D) for any reason other than correction of an error, the federal taxpayer identification number changes; or
(E) the entity that is licensed to operate the facility is terminated and fails or is ineligible to be reinstated, and the facility continues to operate.
(3) Limited Partnership (as defined in the Texas Business Organization Code, §1.002). A change of ownership occurs if:
(A) a general partner of a limited partnership that is licensed to operate the facility is added or substituted;
(B) ownership of the limited partnership that is licensed to operate the facility changes by 50% or more and one or more controlling person is added;
(C) the partnership that is licensed to operate the facility is sold or otherwise transferred to an entity that is not licensed to operate the facility;
(D) the entity that is licensed to operate the facility sells or otherwise transfers its business of operating the facility to an entity that is not licensed to operate the facility;
(E) for any reason other than correction of an error, the federal taxpayer identification number changes; or
(F) the entity that is licensed to operate the facility is terminated and fails or is ineligible to be reinstated, and the facility continues to operate.
(4) Nonprofit organization. A change of ownership occurs if:
(A) the nonprofit organization that is licensed to operate the facility is sold or otherwise transferred to an entity that is not licensed to operate the facility;
(B) the entity that is licensed to operate the facility sells or otherwise transfers its business of operating the facility to an entity that is not licensed to operate the facility;
(C) for any reason other than correction of an error, the federal taxpayer identification number changes; or
(D) the entity that is licensed to operate the facility is terminated and fails or is ineligible to be reinstated, and the facility continues to operate.
(5) For-profit corporation or limited liability company. A change of ownership occurs if:
(A) ownership of the business entity that is licensed to operate the facility changes by 50% or more and one or more controlling person is added;
(B) the business entity that is licensed to operate the facility is sold or otherwise transferred to an entity that is not licensed to operate the facility;
(C) the entity that is licensed to operate the facility sells or otherwise transfers its business of operating the facility to an entity that is not licensed to operate the facility;
(D) for any reason other than correction of an error, the federal taxpayer identification number changes; or
(E) the entity that is licensed to operate the facility is terminated and fails or is ineligible to be reinstated, and the facility continues to operate.
(6) City, county, state or federal government authority, hospital district, or hospital authority. A change of ownership occurs if:
(A) the governmental entity that is licensed to operate the facility sells or otherwise transfers its business of operating the facility to an entity that is not licensed to operate the facility; or
(B) the entity that is licensed to operate the facility is terminated and the facility continues to operate.
(7) Trust, living trust, estate or any other entity type not included in paragraphs (1) - (6) of this subsection. A change of ownership occurs if:
(A) the entity that is licensed to operate the facility is sold or otherwise transferred to an entity that is not licensed to operate the facility;
(B) the entity that is licensed to operate the facility sells or otherwise transfers its business of operating the facility to an entity that is not licensed to operate the facility; for any reason other than correction of an error, the federal taxpayer identification number changes; or the entity that is licensed to operate the facility is terminated and the facility continues to operate.
(8) For license holders that have multiple-level ownership structures, a change of ownership also occurs if any action described in paragraphs (1) - (7) of this subsection occurs at any level of the license holder's entire ownership structure.
(9) For paragraphs (3)(B) and (5)(A) of this subsection, the substitution of the executor of a decedent's estate for a decedent is not the addition of a controlling person.
(10) A conversion as described in Subchapter C of Chapter 10 of the Texas Business Organization Code is not a change of ownership if no controlling person is added.

RULE §19.326 SAFETY OPERATIONS

(a) The facility must have a written emergency preparedness and response plan. Procedures to be followed in an internal or external disaster should be attached to the plan. The plan must address, at a minimum, the eight core functions of emergency management, which are: direction and control; warning (how the facility will be notified of emergencies and who they will notify); communication (with whom and by what mechanism); sheltering arrangements; evacuation (destinations, routes); transportation; health and medical needs; and resource management (supplies, staffing, emergency equipment, records). Plans should address those natural, technological, and man-made emergencies that could affect the facility and must be coordinated with the local emergency management coordinator. Information about the local emergency management coordinator may be obtained from the office of the local mayor or county judge.

(1) The facility must maintain the plan and procedures at the nurses station and with department managers within the facility. The facility must ensure that the plan and procedures are reviewed at least annually. Changes in administrator, construction, or emergency phone numbers will require the facility to review and possibly modify the disaster plan. All reviews of disaster plans must be documented.

(2) The facility must include in the disaster plan, evacuation routes and procedures to be followed in the event of fire, explosion, or other disaster. The plan must also include procedures for the prompt transfer of casualties, clinical records, medications, and notification of appropriate persons.

(3) All employees must be familiar with the disaster plan and must be instructed in the location and use of the facility’s alarm systems, fire-fighting equipment, and procedures. The facility must post fire and explosion evacuation routes prominently throughout the facility. The facility must have a fire safety plan within the disaster plan. The fire safety plan must be rehearsed quarterly on each shift with at least one rehearsal conducted each month. A comprehensive fire drill report form must be completed for each rehearsal of the fire safety plan.

(4) In smaller, simple, one story buildings where all exits are obvious, the Texas Department of Human Services (DHS) may not require the posting of evacuation routes.
(5) The facility must have an emergency contingency plan to ensure the residents’ comfort and safety, including the provision of potable water.

(6) Emergency telephone numbers must be clearly posted on or near each phone. Emergency telephone numbers must include the local fire department, ambulance, and police.

(b) The facility must report all fires to DHS on the Fire Report for Long Term Care Facilities Form within 15 days after the fire. The facility must immediately notify DHS by phone of disasters or any fires which caused death or serious injury. Telephone reports must be followed by written reports. Failure of the fire alarm,

(c) Severe weather drills and other emergency drills must be held as needed and as called for by the facility’s policy and procedure manual.

(d) The fire alarm and sprinkler systems must be inspected and tested at least once every three months by a licensed agent. Each quarterly inspection and test must be of the complete system, including smoke dampers and individual sprinkler heads. A standard report form of the inspection must be completed by the agent and kept on file by the facility. The report must include the signature of the person making the inspection and the date of the inspection. The facility must maintain a current contract on file for the services of the inspecting company.

(e) The facility may, at its own discretion, make simple periodic tests of the basic fire alarm system, such as by activating a manual-pull station, particularly when conducting required fire drills. At any time the facility staff verifies or suspects some malfunction of the system, the condition must be immediately investigated and corrected.

**RULE §19.601 RESIDENT BEHAVIOR AND FACILITY PRACTICE**

...(c) Staff treatment of residents. The facility must develop and implement written policies and procedures that prohibit mistreatment, neglect, and abuse of residents, and misappropriation of residents’ property.

(1) The facility must:
(A) not use verbal, mental, sexual, or physical abuse, corporal punishment, or involuntary seclusion; and

(2) not employ individuals who have: been found guilty of
(i) abusing, neglecting, or mistreating residents by a court of law, or
(ii) had a finding entered into the state nurse aide registry concerning abuse, neglect, mistreatment of residents, or misappropriation of their property; and
(iii) been convicted of any crime contained in §250.006, Health and Safety Code; and

(C) report any knowledge it has of actions by a court of law against an employee, which would indicate unfitness for service as a nurse aide or other staff to the state nurse aide registry or licensing authority.

(2) The facility must ensure that all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source, and misappropriation of resident property, are reported immediately to the administrator of the facility and to other officials in accordance with Texas law through established procedures (see §19.602 of this title (relating to Incidents of Abuse and Neglect Reportable to the Texas Department of Human Services and Law Enforcement Agencies by Facilities)).

(3) The facility must have evidence that all alleged violations are thoroughly investigated and must prevent further potential abuse while the investigation is in progress.
(4) The results of all investigations must be reported to the administrator or his
designated representative and to other officials in accordance with Texas law (including to
the state survey and certification agency) within five workdays of the incident, and if the
alleged violation is verified, appropriate corrective action must be taken.

RULE §19.702 ACTIVITIES

...(c) Activity directors must complete eight hours of approved continuing education or
equivalent continuing education units each year. Approval bodies include organizations or
associations recognized as such by certified therapeutic recreation specialists or certified
activity professionals or registered occupational therapists.

RULE §19.910 QUALITY ASSURANCE EARLY WARNING SYSTEM

The Department of Aging and Disability Services (DADS) uses an early warning system to
detect conditions that could be detrimental to the health, safety, and welfare of residents.
(1) Quality-of-care monitors are based in regional offices and monitor long-term care
(LTC) facilities on visits that may be announced or unannounced and may occur on any day
and at any time, including nights, weekends, and holidays.
(2) Priority for monitoring visits is given to LTC facilities with a history of resident care
deficiencies.
(3) Quality-of-care monitors assess:
(A) the overall quality of life in the facility; and
(B) specific conditions in the facility directly related to resident care.
(4) The quality-of-care monitor assessment visits include:
(A) observation of the care and services rendered to residents; and
(B) formal and informal interviews with residents, family members, facility staff, resident
guests, volunteers, other regular staff, and resident representatives and advocates.
(5) The identity of a resident or a family member of a resident interviewed by a quality-of-
care monitor is confidential and may not be disclosed.
(6) The findings of a monitoring visit, both positive and negative, will be provided orally
and in writing to the facility administrator or, in the absence of the facility administrator, to
the administrator on duty or the director of nursing.
(7) The quality-of-care monitor may recommend to the facility administrator procedural
and policy changes and staff training to improve the care or quality of life of residents.
(8) Conditions observed by the quality-of-care monitor that may constitute an immediate
threat to the health or safety of a resident will be immediately reported to the regional
office supervisor for appropriate action and, as appropriate or as required by law, to law
enforcement, adult protective services, other divisions of DADS, or other responsible
agencies.

RULE §19.1601 INFECTION CONTROL

...(5) The Quality Assessment and Assurance Committee as described in §19.1917 of this
title (relating to Quality Assessment and Assurance) will monitor the infection control
program.
RULE §19.1901 ADMINISTRATION

A nursing facility must be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident.

(a) Licensure. A nursing facility (NF) must be licensed by the Texas Department of Human Services (DHS) as described in §19.201 of this title (relating to Criteria for Licensing).

(b) Compliance with federal, state, and local laws and professional standards. The facility must operate and provide services in compliance with all applicable federal, state, and local laws, regulations, and codes, and with accepted professional standards and principles that apply to professionals providing services in such a facility.

(c) Medicaid-certified facilities’ relationship to other Health and Human Services regulations. In addition to compliance with the regulations set forth in these Nursing Facility Requirements for Licensure and Certification, as Medicaid providers, facilities are obliged to meet the applicable provisions of other federal regulations, including but not limited to those pertaining to nondiscrimination on the basis of race, color, or national origin (45 Code of Federal Regulations, Part 80), nondiscrimination on the basis of handicap (45 Code of Federal Regulations, Part 84), nondiscrimination on the basis of age (45 Code of Federal Regulations, Part 91), protection of human subjects of research (45 Code of Federal Regulations, Part 46), and fraud and abuse (42 Code of Federal Regulations, Part 455). Although these regulations are not in themselves considered requirements under 42 Code of Federal Regulations 483, their violation may result in the termination or suspension of payment with federal funds, or the refusal to grant or continue payment with federal funds.

RULE §19.1902 GOVERNING BODY

(a) The facility must have a governing body, or designated persons functioning as a governing body that is legally responsible for establishing and implementing policies regarding the management and operation of the facility. The governing body must have periodically updated written policies and procedures that are formally adopted and dated, specifying and governing all services. The policies and procedures must be available to all of the facility’s governing body’s members, staff, residents, family or legal representatives of residents, and the public. The governing body must:

1. designate a person to exercise the administrator’s authority when the facility does not have an administrator. The facility must secure a licensed nursing home administrator within 30 days; and
2. ensure that a person designated as being in authority notifies the Texas Department of Human Services immediately when the facility does not have an administrator.

(b) The facility must operate under the supervision of a nursing facility administrator who is:

1. licensed by the Texas Board of Nursing Facility Administrators;
2. responsible for management of the facility; and
3. required to work at least 40 hours per week on administrative duties.

(c) The administrator must be accountable to the governing body for overall management of the nursing facility.
RULE §19.1903 REQUIRED TRAINING OF NURSE AIDES

See also §19.1929 of this title (relating to Staff Development).

(1) Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(A) Licensed health professional--A physician; physician assistant; nurse practitioner; physical, speech, or occupational therapist; physical or occupational therapy assistant; registered professional nurse; licensed practical nurse; or licensed or certified social worker.

(B) Nurse aide--An individual providing nursing or nursing-related services to residents in a facility under the supervision of a licensed nurse. This definition does not include an individual who is a licensed health professional or a registered dietitian or someone who volunteers such services without monetary compensation.

(2) General rule. A facility must not use any individual working in the facility as a nurse aide for more than four months, on a full-time basis, unless:

that individual is competent to provide nursing and nursing related services; and

that individual:

(i) has completed a training and competency evaluation program, or a competency evaluation program approved by the state as meeting the requirements of 42 Code of Federal Regulations §§483.151-493.154; or

(ii) has been deemed or determined competent as provided in 42 Code of Federal Regulations §483.150(a) and (b).

(3) Nonpermanent employees. A facility must not use on a temporary, per diem, leased, or any basis other than a permanent employee any individual who does not meet the requirements in paragraphs (2)(A) and (B) of this section.

(4) Competency. A facility must not use any individual who has worked less than four months as a nurse aide in that facility unless the individual:

(A) is a full-time employee in a state-approved training and competency evaluation program;

(B) has demonstrated competence through satisfactory participation in a state-approved nurse aide training and competency evaluation program, or competency evaluation program; or

(C) has been deemed or determined competent as provided in 42 Code of Federal Regulations §483.150(a) and (b).

(5) Registry verification. Before allowing an individual to serve as a nurse aide, a facility must receive registry verification that the individual has met competency evaluation requirements and is not designated in the registry as having a finding concerning abuse, neglect or mistreatment of a resident, or misappropriation of a resident’s property, unless:

(A) the individual is a full-time employee in a training and competency evaluation program approved by the state; or

(B) the individual can prove that he has recently successfully completed a training and competency evaluation program, or competency evaluation program approved by the state and has not yet been included in the registry. Facilities must follow up to ensure that such an individual actually becomes registered.

(6) Multi-state registry verification. Before allowing an individual to serve as a nurse aide, a facility must seek information from every state registry, established under §1819(e)(2)(A) or §1919(e)(2)(A) of the Social Security Act, that the facility believes will include information about the individual.
(7) Required retraining. If, since an individual's most recent completion of a training and competency evaluation program, there has been a continuous period of 24 consecutive months during none of which the individual provided nursing or nursing-related services for monetary compensation, the individual must complete a new training and competency evaluation program or a new competency evaluation program.

(8) Regular in-service education. The facility must complete a performance review of every nurse aide at least once every 12 months, and must provide regular in-service education based on the outcome of these reviews. The in-service training must:
   (A) be sufficient to ensure the continuing competence of nurse aides, but must be no less than 12 hours per year;
   (B) address areas of weakness as determined in nurse aides' performance reviews and may address the special needs of residents as determined by the facility staff; and
   (C) for nurse aides providing services to individuals with cognitive impairments, also address the care of the cognitively impaired.

(9) The facility must comply with the nurse aide training and registry rules found in Chapter 94 of this title (relating to Nurse Aides).

RULE §19.1904 Proficiency of Nurse Aides
The facility must ensure that nurse aides are able to demonstrate competency in skills and techniques necessary to care for residents' needs, as identified through resident assessments, and described in the plan of care.

RULE §19.1905 STAFF QUALIFICATIONS
(a) The facility must employ on a full-time, part-time, or consultant basis those professionals necessary to carry out the provisions of these requirements of participation.
(b) Professional staff must be licensed, certified or registered in accordance with applicable state laws.

RULE §19.1906 USE OF OUTSIDE RESOURCES
(a) If the facility does not employ a qualified professional to furnish a specific service to be provided by the facility, the facility must have that service furnished to residents by a person or agency outside the facility under an agreement described in subsection (b) of this section.
(b) Agreements pertaining to services furnished by outside resources must specify in writing that the facility assumes responsibility for:
   obtaining services that meet professional standards and principles; and
   the timeliness of the services.
(c) Except for those members of the comprehensive assessment team, the facility allows outside resources access to the clinical records of only those residents who have orders for the service(s) to be provided.

RULE §19.1907 MEDICAL DIRECTOR
(a) The nursing facility must designate a physician to serve as medical director.
(b) The medical director is responsible for:
   (i) implementation of resident care policies (see §19.1922 of this title (relating to Resident Care Policies)); and
(ii) the coordination of medical care in the facility.

**RULE §19.1908 LABORATORY SERVICES**

(a) The facility must provide or obtain clinical laboratory services to meet the needs of its residents. The facility is responsible for the quality and timeliness of the services.

(1) If the facility provides its own laboratory services, the services must meet the applicable conditions for coverage of the services furnished by laboratories specified in 42 Code of Federal Regulations, Part 493.

(2) If the facility provides blood bank and transfusion services, it must meet the requirements for laboratories specified in 42 Code of Federal Regulations, Part 493.

(3) If the laboratory chooses to refer specimens for testing to another laboratory, the referral laboratory must be approved or licensed to test specimens in the appropriate specialties and/or subspecialties of services in accordance with 42 Code of Federal Regulations, Part 493.

(4) If the facility does not provide laboratory services on site, it must have an agreement to obtain these services only from a laboratory that meets the requirements of 42 Code of Federal Regulations, Part 493, or from a physician's office.

(b) The facility must:

(1) provide or obtain laboratory services only when ordered by the attending physician;

(2) promptly notify the attending physician of the findings;

(3) assist the resident in making transportation arrangements to and from the source of service, if the resident needs assistance; and

(4) file in the resident’s clinical record laboratory reports that are dated and contain the name and address of the issuing laboratory.

**RULE §19.1909 RADIOLOGY AND OTHER DIAGNOSTIC SERVICES**

(a) The nursing facility must provide or obtain radiology and other diagnostic services to meet the needs of its residents. The facility is responsible for the quality and timeliness of the services.

(1) If the facility provides its own diagnostic services, the services must meet the applicable conditions of participation for hospitals contained in 42 Code of Federal Regulations §482.26.

(2) If the facility does not provide its own diagnostic services, it must have an agreement to obtain these services from a provider or supplier that is approved to provide these services under Medicare.

(b) The facility must:

(1) provide or obtain radiology and other diagnostic services only when ordered by the attending physician;

(2) promptly notify the attending physician of the findings;

(3) assist the resident in making transportation arrangements to and from the source of service, if the resident needs assistance; and

(4) file in the resident’s clinical record signed and dated reports of x-ray and other diagnostic services.
RULE §19.1910 CLINICAL RECORDS

(a) The facility must maintain clinical records on each resident, in accordance with accepted professional health information management standards and practices, that are:
(i) complete;
(ii) accurately documented;
(iii) readily accessible;
(iv) systematically organized; and
(v) protected from unauthorized release.
(b) Clinical records must be retained for: five years after medical services end; or for a minor, three years after a resident reaches legal age under Texas law.
(c) The facility must safeguard clinical record information against loss, destruction, or unauthorized use;
(d) The facility must keep confidential all information contained in the resident’s records, regardless of the form or storage method of the records, except when release is required by:
(i) transfer to another health care institution;
(ii) law or this chapter;
(iii) third party payment contract; or
(iv) the resident.

RULE §19.1911 CONTENTS OF THE CLINICAL RECORD

(a) A resident’s clinical record must meet all documentation requirements in the Texas Health and Human Services Commission rule at 1 TAC §371.214 (relating to Resource Utilization Group Classification System).
(b) The clinical record of each resident must contain:
(1) a face sheet that contains the attending physician’s current mailing address and telephone numbers;
(2) sufficient information to identify and care for the resident, to include at a minimum:
(i) full name of resident;
(ii) full home/mailing address;
(iii) social security number;
(iv) health insurance claim numbers, if applicable;
(v) date of birth; and
(vi) clinical record number, if applicable;
(3) a record of the resident’s assessments;
(4) the comprehensive, interdisciplinary plan of care and services provided (see also §19.802 of this chapter (relating to Comprehensive Care Plans)…
(5) the results of any Preadmission Screening and Resident Review conducted by DADS;
(6) signed and dated clinical documentation from all health care practitioners involved in the resident’s care, with each page identifying the name of the resident for whom the clinical care is intended;
(7) any directives or medical powers of attorney as described in §19.419 of this chapter (relating to Advance Directives);
(8) discharge information in accordance with §19.803 of this chapter (relating to Discharge Summary (Discharge Plan of Care)) and a physician discharge summary, to
include, at least, dates of admission and discharge, admitting and discharge diagnoses, condition on discharge, and prognosis, if applicable;
(9) at admission or within 14 days after admission, documentation of an initial medical evaluation, including history, physical examination, diagnoses and an estimate of discharge potential and rehabilitation potential, and documentation of a previous annual medical examination;
(10) authentication of a hospital diagnosis, which may be in the form of a signed hospital discharge summary, a signed report from the resident’s hospital or attending physician, or a transfer form signed by the physician;
(11) the physician’s signed and dated orders, including medication, treatment, diet, restorative and special medical procedures, and routine care to maintain or improve the resident’s functional abilities (required for the safety and well-being of the resident), which must not be changed either on a handwritten or computerized physician’s order sheet after the orders have been signed by the physician unless space allows for additional orders below the physician’s signature, including space for the physician to sign and date again;
(12) arrangements for the emergency care of the resident in accordance with §19.1204 of this chapter (relating to Availability of Physician for Emergency Care);
(13) observations made by nursing personnel according to the time frames specified in §19.1010 of this chapter (relating to Nursing Practices) and which facility staff must ensure show at least the following: items as specified on the MDS assessment; and current information, including:
(i) PRN medications and results;
(ii) treatments and any notable results;
(iii) physical complaints, changes in clinical signs and behavior, mental and behavioral status, and all incidents or accidents;
(iv) flow sheets which may include bathing, restraint observation and/or release documentation, elimination, fluid intake, vital signs, ambulation status, positioning, continency status and care, and weight;
(v) the resident’s ability to participate in activities of daily living as defined in §19.1010(e)(1) of this chapter; and
(vi) dietary intake to include deviations from normal diet, rejection of substitutions, and physician’s ordered snacks and/or supplemental feedings;
(vii) the date and hour all drugs and treatments are administered; and
(viii) documentation of special procedures performed for the safety and well-being of the resident.

RULE §19.1912 ADDITIONAL CLINICAL RECORD SERVICE REQUIREMENTS

(a) Index of admissions and discharges. The facility must maintain a permanent, master index of all residents admitted to and discharged from the facility. This index must contain at least the following information concerning each resident:
(i) name of resident (first, middle, and last);
(ii) date of birth;
(iii) date of admission;
(iv) date of discharge; and
(v) social security, Medicare, or Medicaid number.
(b) Facility closure. In the event of closure of a facility, change of ownership or change of administrative authority, the new management must maintain documented proof of the
medical information required for the continuity of care of all residents. This documentation may be in the form of copies of the resident’s clinical record or the original clinical record. In a change of ownership, the two parties will agree and designate in writing who will be responsible for the retention and protection of the inactive and closed clinical records.

(c) Method of recording/correcting information. All resident care information must be recorded in ink or permanent print except for the medication/treatment diet section of the care plan. Correction of errors will be in accordance with accepted health information management standards.

(1) Erasures are not allowed on any part of the clinical record, with the exception of the medication/treatment/diet section of the resident care plan.

(2) Correction of errors will be in accordance with accepted health information management standards.

(d) Required record retention. Periodic thinning of active clinical records is permitted; however, the following items must remain in the active clinical record:

(1) current history and physical;
(2) current physician’s orders and progress notes;
(3) current resident assessment instrument (RAI) and subsequent quarterly reviews; in Medicaid-certified facilities, all RAIs and Quarterly Reviews for the prior 15-month period;
(4) current care plan;
(5) most recent hospital discharge summary or transfer form;
(6) current nursing and therapy notes;
(7) current medication and treatment records;
(8) current lab and x-ray reports;
(9) the admission record; and
(10) the current permanency plan.

(e) Readmissions.

(1) If a resident is discharged for 30 days or less and readmitted to the same facility, upon readmission, to update the clinical record, staff must:

(A) obtain current, signed physician’s orders;
(B) record a descriptive nurse note, giving a complete assessment of the resident’s condition;
(C) include any changes in diagnoses, etc.;
(D) obtain signed copies of the hospital or transferring facility history and physical and discharge summary. A transfer summary containing this information is acceptable;
(E) complete a new RAI and update the comprehensive care plan if evaluation of the resident indicates a significant change, which appears to be permanent. If no such change has occurred, then update only the resident comprehensive care plan...

(2) A new clinical record must be initiated if the resident is a new admission or has been discharged for over 30 days.

(f) Signatures.

(1) The use of electronic data transmission of facsimiles (faxing) is acceptable for sending and receiving health care documents, including the transmission of physicians’ orders. Long term care facilities may utilize electronic transmission if they adhere to the following requirements:

(A) The facility must implement safeguards to assure that faxed documents are directed to the correct location to protect confidential health information.
(B) All faxed documents must be signed by the author before transmission.
(2) Stamped signatures are acceptable for all health care documents requiring a physician’s signature, if the
(3) The facility must maintain all letters of intent on file and make them available to representatives of the Texas Department of Human Services (DHS) upon request.
(4) Use of a master signature legend in lieu of the legend on each form for nursing staff signatures of medication, treatment, or flow sheet entries is acceptable under the following circumstances.
   (A) Each nursing employee documenting on medication, treatment, or flow sheets signs his full name, title, and initials on the legend.
   (B) The original master legend is kept in the clinical records office or director of nurses’ office.
   (C) A current copy of the legend is filed at each nurses’ station.
   (D) When a nursing employee leaves employment with the facility, his name is deleted from the list by lining through it and writing the current date by the name.
   (E) The facility updates the master legend as needed for newly hired and terminated employees.
   (F) The master signature legend must be retained permanently as a reference to entries made in clinical records.
(g) Destruction of Records. When resident records are destroyed after the retention period is complete, the facility must shred or incinerate the records in a manner which protects confidentiality. At the time of destruction, the facility must document the following for each record destroyed:
   (A) resident name;
   (B) medical record number, if used;
   (C) social security number, Medicare/Medicaid number, or the date of birth; and
   (D) date and signature of person carrying out disposal.
(h) Confidentiality. The facility must develop and implement policies and procedures to safeguard the confidentiality of medical record information from unauthorized access.
   (1) Except as provided in paragraph (2) of this subsection, the facility must not allow access to a resident’s clinical record unless a physician’s order exists for supplies, equipment, or services provided by the entity seeking access to the record.
   (2) The facility must allow access and/or release confidential medical information under court order or by written authorization of the resident or his or her legal representative (see §19.407 of this title (relating to Privacy and Confidentiality)).

RULE §19.1913 Clinical Records Service Supervisor
The facility must designate in writing a clinical records supervisor who has the authority, responsibility, and accountability for the functions of the clinical records service. The clinical records supervisor must be:
   (1) A registered health information administrator (RHIA) or registered health information technician (RHIT); or
   (2) An individual with experience appropriate to the scope and complexity of services performed as determined by the Texas Department of Human Services, and who receives consultation at a minimum of every 180 days from an (RHIA) or (RHIT).

RULE §19.1914 DISASTER AND EMERGENCY PREPAREDNESS
(a) The facility must have detailed written plans and procedures to meet all potential emergencies and disasters such as fire, severe weather, and missing residents.
(b) The facility must train all employees in emergency procedures when they begin to work in the facility, periodically review the procedures with existing staff, and carry out unannounced staff drills using those procedures.

**RULE §19.1915 TRANSFER AGREEMENT**

(a) The facility must have in effect a written transfer agreement with one or more hospitals that reasonably assures that:
   (1) Residents will be transferred from the facility to the hospital and ensured of timely admission to the hospital when transfer is medically appropriate as determined by the attending physician.
   (2) Medical and other information needed for care and treatment of residents, and when the transferring facility deems it appropriate, for determining whether such residents can be adequately cared for in a less expensive setting than either the facility or the hospital, will be exchanged between the institutions.
   (3) For Medicaid-certified facilities, the hospitals must be approved for participation under the Medicare and Medicaid programs.
(b) In addition, to ensure continuity of care, the transfer agreement should:
   (1) provide for prompt diagnostic and other medical services;
   (2) ensure accountability for a resident’s personal effects at the time of transfer;
   (3) specify the steps needed to transfer a resident in a prompt, safe and efficient manner; and
   (4) provide for supplying, at the time of transfer, a summary of administrative, social, medical, and nursing information to the facility to which the resident is transferred.
(c) If the board and/or governing body for a long-term care facility and a hospital are the same, the controlling entity must have written procedures outlining how transfers will occur.
(d) The facility is considered to have a transfer agreement in effect if DHS determines that the facility attempted in good faith to enter into an agreement with a hospital sufficiently close to the facility to make transfer feasible but could not, and it is in the public interest not to enforce this requirement. The facility must document in writing its good faith effort to enter into an agreement.

**RULE §19.1916 RESPITE CARE**

Facilities offering respite care must meet the requirements of this chapter, except as provided in paragraph (4) of this section.
(1) Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.
   (A) Plan of care--A written description of the medical care or the supervision and nonmedical care needed by an individual during respite care.
   (B) Respite care--The provision by a facility to an individual, for not more than two weeks for each stay in the facility, of room, board, and care at the level ordinarily provided for permanent residents.
(2) Plan of care. The facility and the individual arranging respite care must agree on the plan of care, and the plan must be filed at the facility before the facility admits the individual.
   (A) The plan of care must be signed by:
(i) a licensed physician if the individual needing care requires medical care or treatment; or
(ii) the individual arranging the care if medical care or treatment is not required.

(B) The facility may keep a plan of care for an individual for six months from the date on which it is developed. During that period, the facility may admit the individual as frequently as needed.

(3) Notification. A facility must notify the Texas Department of Human Services (DHS) in writing that it offers respite services.

(4) Inspections. During licensing or certification inspections, or at other times DHS determines necessary, DHS inspects a facility's records of respite care services, physical accommodations for respite care, and the plan of care records to ensure that the respite care services comply with the certification requirements of this chapter, with the following exceptions.

(A) The clinical record of each respite care resident must contain:
(i) general identifying information necessary to care for the individual and maintain his clinical record;
(ii) resident assessment and care plan according to facility policy;
(iii) progress notes and/or flow sheets which document care and services;
(iv) reports of diagnostic or lab studies;
(v) physician's orders; and
(vi) discharge and readmission information as required by facility policy for respite care services.

(B) Resident assessment requirements of §19.801 of this title (relating to Resident Assessment) apply to respite care services only on the 14th day of care.

(C) The clinical records requirement found at §19.1912(e) of this title (relating to Additional Clinical Record Service Requirements) does not apply.

(5) Suspension. DHS may require an institution to cease providing respite care if DHS determines that the respite care does not meet the requirement of this chapter and that the facility cannot comply with those requirements in the respite care it provides. DHS may suspend the license of a facility that continues to provide respite care after receiving a written order from DHS to cease.

(6) Licensed capacity. When a facility provides respite care:

(A) the total number of individuals receiving services in the facility must not exceed the number of licensed beds; and

(B) any required nurse-to-resident ratio must include any individual receiving respite care services regardless of the number of hours that the individual spends in the facility.

**RULE §19.1917 QUALITY ASSESSMENT AND ASSURANCE**

(a) The facility must maintain a Quality Assessment and Assurance Committee consisting of:
   the director of nursing services;
a physician designated by the facility; and
at least three other members of the facility's staff.

(b) The Quality Assessment and Assurance Committee:
   (1) meets at least quarterly to identify issues with respect to which quality assessment and assurance activities are necessary; and
   (2) develops and implements appropriate plans of action to correct identified quality deficiencies.
(c) Texas or the Secretary of Health and Human Services may not require disclosure of the records of the Quality Assessment and Assurance Committee except insofar as such disclosure is related to the compliance of the committee with the requirements of subsection (b) of this section.
(d) Good faith attempts by the committee to identify and correct quality deficiencies may not be used as a basis for sanctions.
(e) The Quality Assessment and Assurance Committee must adopt and ensure implementation of a policy to identify, assess, and develop strategies to control risk of injury to residents and nurses associated with the lifting, transferring, repositioning, or moving of a resident. The policy must establish a process that includes:
   (1) analysis of the risk of injury to both residents and nurses posed by the resident handling needs of the resident populations served by the nursing facility and the physical environment in which resident handling and moving occurs;
   (2) annual in-service education of nurses in the identification, assessment, and control of risk of injury to residents and nurses during resident handling;
   (3) evaluation of alternative ways to reduce risks associated with resident handling, including evaluation of equipment and the environment;
   (4) restriction, to the extent feasible with existing equipment and aids, of manual resident handling or moving of all or most of a resident's weight to emergency, life-threatening, or otherwise exceptional circumstances;
   (5) collaboration with and an annual report to the nurse staffing committee;
   (6) specific procedures for nurses to refuse to perform or be involved in resident handling or moving that the nurse believes in good faith will expose a resident or a nurse to an unacceptable risk of injury;
   (7) submission of an annual report by the nursing staff to the Quality Assessment and Assurance Committee on activities related to the identification, assessment, and development of strategies to control risk of injury to residents and nurses associated with the lifting, transferring, repositioning, or moving of a resident; and
   (8) in developing architectural plans for constructing or remodeling a nursing facility or a unit of a nursing facility in which resident handling and moving occurs, consideration of the feasibility of incorporating resident handling equipment or the physical space and construction design needed to incorporate that equipment at a later date.

RULE §19.1918 DISCLOSURE OF OWNERSHIP

(a) The facility must comply with the disclosure requirements of 42 Code of Federal Regulations, §420.206 and §455.104.
(b) The facility must provide written notice to Facility Enrollment, Long-Term Care-Regulatory, Texas Department of Human Services (DHS) at the time of change if a change occurs in:
   (1) persons with an ownership or control interest, as defined in 42 Code of Federal Regulations, §420.201 and §455.101;
   (2) the officers, directors, agents or managing employees;
   (3) the corporation, association, or other company responsible for the management of the facility;
   (4) the facility's administrator or director of nursing; or
   (5) the controlling person.
(c) The notice specified in subsection (b) of this section must include the identity of each new individual or company.
(d) Failure to notify Facility Enrollment within 30 days of a change specified in subsection (b) will result in a $500 administrative penalty. If the notice is postmarked within the 30-day period, 15 days will be added to the time period to receive the notice.

RULE §19.1920 OPERATING POLICIES AND PROCEDURES

(a) The facility must have an administrative policy and procedure manual that outlines the general operating policies and procedures of the facility. The manual must include policies and procedures related to admission and admission agreements, resident care services, refunds, transfers and discharges, receiving and responding to complaints and recommendations, and protection of residents' personal property and civil rights. A copy of this manual must be made available for review upon request to each physician, staff member, resident, and resident's next of kin or guardian and to the public.
(b) The facility must have written personnel policies and procedures that are explained to employees during initial orientation and are readily available to them after that time.
(c) The facility must ensure that personnel records are correct and contain sufficient information to support placement in the assigned position (including a resume of training and experience). When appropriate, a current copy of the person’s license or permit must be in the file.
(d) Upon request of the Texas Department of Human Services (DHS), the facility must make available financial records to demonstrate the facility's compliance with applicable state laws and standards relating to licensing.

RULE §19.1921 GENERAL REQUIREMENTS FOR A NURSING FACILITY

...(c) The term "hospital" may not be used as part of the name of a nursing facility unless it has been classified and duly licensed as a hospital by the appropriate state agency.
(e)...The following items must be posted:
(1) the facility license;
(2) a complaint sign provided by DADS giving the toll-free telephone number;
(3) a notice in a form prescribed by DADS that inspection and related reports are available at the facility for public inspection;
(4) a concise summary prepared by DADS of the most recent inspection report;
(5) a notice of DADS' toll-free telephone number 1-800-458-9858 to request summary reports relating to the quality of care, recent investigations, litigation or other aspects of the operation of the facility that are available to the public;
(6) a notice that DADS can provide information about the nursing facility administrator at 512-438-2015;
(7) if a facility has been ordered to suspend admissions, a notice of the suspension, which must be posted also on all doors providing public ingress to and egress from the facility;
(8) a statement of resident rights using a form DADS provides;
(9) a notice that employees, other staff, residents, volunteers, and family members and guardians of residents are protected from discrimination or retaliation as provided by the Health and Safety Code, §242.133 and §242.1335; and that the facility has available for public inspection a copy of the Health and Safety Code, Chapter 242, Subchapter E;
(10) for a facility that advertises, markets, or otherwise promotes that it provides services to residents with Alzheimer's disease and related disorders, a disclosure statement describing the nature of its care or treatment of residents with Alzheimer's disease and related disorders in accordance with §19.204(b)(4) of this chapter (relating to Application Requirements);

(11) at each entrance to the facility, a sign that states that a person may not enter the premises with a concealed handgun and that complies with Penal Code §30.06; and

(12) daily for each shift, the current number of licensed and unlicensed nursing staff directly responsible for resident care in the facility. In addition, the nursing facility must make the information required to be posted available to the public upon request.

(f) A facility that advertises, markets, or otherwise promotes that it provides services to residents with Alzheimer's disease and related disorders must give the required department disclosure statement to an individual:

(1) with Alzheimer's disease or a related disorder, seeking placement as a resident;
(2) attempting to place another individual as a resident with Alzheimer's disease or a related disorder; or
(3) seeking information about the facility's care or treatment of residents with Alzheimer's disease or a related disorder.

(g) The reports referenced in subsection (e)(3) of this section must be maintained in a well-lighted, accessible location and must include:

(1) a statement of the facility's compliance record that is updated at least bi-monthly and reflects at least one year's compliance record, in a form required by DADS; and
(2) if a facility has been cited for a violation of residents' rights, a copy of the citation, which must remain in the reports until any regulatory action with respect to the violation is complete and DADS has determined that the facility is in full compliance with the applicable requirement.

...(i) A copy of the Health and Safety Code, Chapter 242, must be available for public inspection at the facility.

...(k) Each facility must comply with the provisions of the Health and Safety Code, Chapter 250 (relating to Nurse Aide Registry and Criminal History Checks of Employees and Applicants for Employment in Certain Facilities Serving the Elderly or Persons with Disabilities).

(l) Before a facility hires an unlicensed employee, the facility must search the employee misconduct registry (EMR) established under §253.007, Health and Safety Code, and the DADS nurse aide registry (NAR) to determine whether the individual is designated in either registry as unemployable. Both registries can be accessed on the DADS Internet website.

(m) A facility is prohibited from hiring or continuing to employ a person who is listed in the EMR or NAR as unemployable.

(n) A facility must provide notification about the EMR to an employee in accordance with §93.3 of this title (relating to Employment and Registry Information).

(o) In addition to the initial search of the EMR and NAR, a facility must:

(1) conduct a search of the NAR and EMR to determine if an employee of the facility is listed as unemployable in either registry as follows:

(A) for an employee most recently hired before September 1, 2009, by August 31, 2011, and at least every twelve months thereafter; and
(B) for an employee most recently hired on or after September 1, 2009, at least every twelve months; and
(2) keep a copy of the results of the initial and annual searches of the NAR and EMR in the employee’s personnel file.

RULE §19.1922 RESIDENT CARE POLICIES

(a) The facility must have written policies to govern the nursing care and related medical or other services provided. The written policies must include plans for promoting self-care and independence.
(b) Resident care policies are developed by the medical director and by professional personnel, including one or more physicians, licensed or registered nurses, a registered pharmacist, and the licensed nursing home administrator. The advisory group must review the policies at least annually and update them as necessary.

RULE §19.1924 FINANCIAL RECORDS

(a) Nursing facility staff must maintain current financial records in accordance with recognized fiscal and accounting procedures. The facility must ensure that records clearly identify each charge and payment made on behalf of each resident residing in the facility. The facility must clearly state in its records to whom charges were made and for whom payment was received. Medicaid-certified facilities must also comply with the following requirements.
(b) The facility must make financial records and supporting documents available at any time within working hours and without prior notification for review by the Texas Department of Human Services, the Department of Health and Human Services, and the Texas attorney general’s Medicaid Fraud Control Unit.
(c) The facility must keep the financial records in the facility for a minimum of three years and 90 days after the termination of the contract period or for three years after the end of the federal fiscal year in which services were provided if there was a provider agreement/contract with no specific termination date in effect. The facility must also keep for the same period of time supporting fiscal documents and other records necessary to ensure claims for federal matching funds.

RULE §19.1926 MEDICAID HOSPICE SERVICES

(a) When a nursing facility (NF) contracts for hospice services for residents, the nursing facility must:
   (1) have a written contract for the provision of arranged services, which must be signed by authorized representatives of the NF and hospice and must include the following:
       (A) the services to be provided;
       (B) a stipulation that hospice-related services performed by NF staff may be provided only with the express authorization of the hospice;
       (C) how the contracted services are to be coordinated, supervised, and evaluated by the hospice and the NF;
       (D) delineation of the roles of the hospice and the NF in the admission process, recipient and family assessment, and the interdisciplinary team case conferences; a requirement for documentation of services furnished; and the qualifications of the personnel providing the services;
(2) provide room and board services, which include the performance of personal care services, including assistance in the activities of daily living, administration of medication, socializing activities, maintaining the cleanliness of a resident's room, and supervision and assisting in the use of durable medical equipment and prescribed therapies;

(3) immediately notify the hospice of any significant changes in the hospice recipient’s condition;

(4) have joint procedures with the hospice provider for ordering medications that ensure the proper payor is billed and for reconciling billing between NF and hospice, including: contacting the hospice prior to filling a new prescription; and ensuring that drugs unrelated to the terminal illness are ordered through the Vendor Drug program; and

(5) ensure that hospice documentation is a part of the current clinical record, which, at a minimum, must include the current and past:

(A) Texas Medicaid Hospice Recipient Election/Cancellation form;

(B) MDS assessment;

(C) Physician Certification of Terminal Illness form;

(D) Medicare Election Statement, if dually eligible;

(E) verification that the recipient does not have Medicare Part A;

(F) hospice interdisciplinary assessments;

(G) hospice plan of care; and

(H) current interdisciplinary notes, which include the following:

(i) nurses notes and summaries;

(ii) physician orders and progress notes; and

(iii) medication and treatment sheets during the hospice certification period.

(b) The NF and hospice must ensure that the coordinated plan of care reflects the participation of the hospice, the NF, the recipient, and the recipient’s legal representative to the extent possible. The plan of care must include directives for managing pain and other uncomfortable symptoms, and must be revised and updated as necessary to reflect the recipient’s current status.

(c) The recipient has the right to refuse any services from the nursing facility and the hospice provider.

(d) The hospice retains overall professional management responsibility for directing the implementation of the plan of care related to the terminal illness and related conditions, which includes:

(1) designation of a hospice registered nurse to coordinate the implementation of the plan of care;

(2) provision of substantially all core services (physician, nursing, medical social work, and counseling services) that must be routinely provided directly by the hospice employees, and cannot be delegated to the NF, as outlined under 42 Code of Federal Regulations §418.80;

(3) provision of drugs and medical supplies as needed for palliation and management of the terminal illness and related conditions; and

(4) involvement of NF personnel in assisting with the administration of prescribed therapies in the plan of care only to the extent that the hospice would routinely use the services of a hospice patient’s family or caregiver in the home setting.

(e) The hospice may arrange to have non-core hospice services provided by the NF if the hospice assumes professional management responsibility for the services and assures
these services are performed in accordance with the policies of the hospice and the recipient’s plan of care.

(b) The NF and hospice must ensure that the coordinated plan of care reflects the participation of the hospice, the NF, the recipient, and the recipient's legal representative to the extent possible. The plan of care must include directives for managing pain and other uncomfortable symptoms, and must be revised and updated as necessary to reflect the recipient’s current status.

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3. provision of drugs and medical supplies as needed for palliation and management of the terminal illness and related conditions; and
4. involvement of NF personnel in assisting with the administration of prescribed therapies in the plan of care only to the extent that the hospice would routinely use the services of a hospice patient’s family or caregiver in the home setting.

(e) The hospice may arrange to have non-core hospice services provided by the NF if the hospice assumes professional management responsibility for the services and assures these services are performed in accordance with the policies of the hospice and the recipient’s plan of care.

RULE §19.1928 VOLUNTEER PROGRAM

(a) The facility must promote a volunteer program designed to assist in meeting the social and emotional needs of the residents.

(b) A volunteer council may be utilized to solicit community involvement in the volunteer program.

RULE §19.1929 STAFF DEVELOPMENT

Each facility must implement and maintain programs of orientation, training, and continuing in-service education to develop the skills of its staff, as described in §19.1903 of this title (relating to Required Training of Nurse Aides).

1. As part of orientation and annually, each employee must receive instruction regarding:
   (A) Human Immunodeficiency Virus (HIV), as outlined in the educational information provided by the Texas Department of Health Model Workplace Guidelines. At a minimum the HIV curriculum must include:
     (i) modes of transmission;
     (ii) methods of prevention;
     (iii) behaviors related to substance abuse;
     (iv) occupational precautions;
(v) current laws and regulations concerning the rights of an acquired immune deficiency syndrome/HIV-infected individual; and
(vi) behaviors associated with HIV transmission which are in violation of Texas law; and
(B) restraint reduction and the prevention of falls through competency-based training. Facilities also may choose to train on behavior management, including prevention of aggressive behavior and de-escalation techniques.

(2) Each registered nurse, licensed vocational nurse, and nurse aide (nurse assistant) who provides nursing services must receive at least one hour of training each year in caring for people who have dementia.

(3) Nursing staff, licensed nurses, and nurse aides must receive annual in-service training which includes components, appropriate to their job responsibilities, from one or more of the following categories:
   (A) communication techniques and skills useful when providing geriatric care, such as skills for communicating with the hearing impaired, visually impaired and cognitively impaired; therapeutic touch; and recognizing communication that indicates psychological abuse;
   (B) assessment and nursing interventions related to the common physical and psychological changes of aging for each body system;
   (C) geriatric pharmacology, including treatment for pain management and sleep disorders;
   (D) common emergencies of geriatric residents and how to prevent them, for example, falls, choking on food or medicines, injuries from restraint use; recognizing sudden changes in physical condition, such as stroke, heart attack, acute abdomen, and acute glaucoma; and obtaining emergency treatment; common mental disorders with related nursing implications; and
   ethical and legal issues regarding advance directives, abuse and neglect, guardianship, and confidentiality.

... (5) Minimum continuing in-service education requirements are listed in subparagraphs (A)-(B) of this paragraph. Attendance at relevant outside training may be used to satisfy the in-service education requirement. The facility must keep in-service records for each employee listed. The minimum requirements are:
   (A) licensed personnel--two hours per quarter; and
   (B) nurse aides--12 hours annually. For the purpose of this paragraph, a medication aide is considered a nurse aide and must receive the same continuing in-service education. This in-service education does not qualify as continuing education units required for renewal of a medication aide permit.

(6) A rural hospital participating in the Medicaid Swing Bed Program as specified in §19.2326 of this title (relating to Medicaid Swing Bed Program for Rural Hospitals) is not required to meet the requirements of this section, if the swing beds are used for no more than one 30-day length of stay per year, per resident.

RULE §19.2204 VOLUNTARY CERTIFICATION OF FACILITIES FOR CARE OF PERSONS WITH ALZHEIMER’S DISEASE

(a) A facility may apply for certification as a facility that provides specialized care for Alzheimer’s disease and related disorders either at the time of the initial application for a license or at any time subsequent to the issuance of a license under this chapter.
(b) Application must be made on forms prescribed by the Texas Department of Human Services (DHS). The application fee must accompany the application as provided in §19.216(c) of this title (relating to License Fees).
(c) A facility licensed under this chapter is not required to apply for certification under this section in order to provide care and treatment of persons with Alzheimer’s disease and related disorders.
(d) A facility may not advertise or otherwise communicate that the facility is certified by DHS to provide specialized care for persons with Alzheimer's disease or related disorders unless the facility is certified under this subchapter.

RULE §19.2206 GENERAL REQUIREMENTS FOR A CERTIFIED FACILITY

(a) Resident admission. The facility must admit and retain only residents whose needs can be met through service from the facility staff, or in cooperation with community resources or other providers under contract.
(b) Allowable number of residents. Each certificate must specify the maximum allowable number of residents to be cared for at any one time in the certified area. No greater number of residents must be kept in the certified area than is authorized by the certificate.
(c) Nullification of certificate. When a certificate becomes null and void, the facility must remove the certificate from display and advertising, and the certificate must be surrendered to DHS on request. A certificate is nontransferable and nonassignable; therefore, a certificate existing at the time of change of ownership becomes null and void.
(d) Display of certificate. A certificate must be displayed in a prominent location for public view. The facility may advertise as long as the certificate is in effect; however, the type of advertising must be such that the advertising can be withdrawn if the certificate becomes null and void. Upon removal of the certificate it is the responsibility of the facility to inform interested persons of the revised status. The certificate is the property of DHS.
(e) Cancellation of certificate. A certificate must be canceled if DHS finds that the certified unit is not in compliance with applicable laws and rules.
(f) Effective period of certificate. A certificate is valid for one year from the effective date of approval by DHS.

RULE §19.2208 STANDARDS FOR CERTIFIED ALZHEIMER’S FACILITIES

(a) General requirements.
   (1) Residents eligible for admission to Alzheimer’s units will have a diagnosis of Alzheimer’s disease or related dementing disorders. The need for admission to the Alzheimer’s unit must be documented by the attending physician.
   (2) Security and safety measures are provided to prevent the residents from harming themselves or leaving designated indoor or outdoor areas without supervision by staff members or other responsible escort. Policies will also be provided to prevent abuse of the rights and property of other residents.
   (3) Understanding that security measures to prevent wandering may infringe on resident rights, care must be exercised in the use of physical restraint or barriers, or chemical restraint. The specific purpose and time-limited orders for any additional physical or chemical restraint must be written and renewed according to facility policy. The frequency of such renewal must not exceed 60 days.
(4) Activity and recreational programs will be provided and utilized to the maximum extent possible for all residents in order to promote physical well being and help with behavior management. The program must be tailored to the individual resident’s needs, being appropriate for his specific impairment and stage of disease.

(5) Residents are provided privacy in treatment and in care for his or her personal needs.

(b) Staff.

(1) All assigned staff members and consultants to the unit must have documented training in the care and handling of Alzheimer’s residents, including at least:

(A) eight hours of orientation to cover the following:
   (i) facility Alzheimer’s policies;
   (ii) etiology and treatment of dementias;
   (iii) stages of Alzheimer’s disease;
   (iv) behavior management; and
   (v) communication; and

(B) four hours of the required annual continuing education must be in Alzheimer’s disease or related disorders.

(2) A social worker, licensed or temporarily licensed by the State of Texas, must be utilized as Community/Family Support Coordinator whose functions must include:

(A) evaluation of resident’s initial social history on admission;

(B) utilization of community resources;

(C) conducting quarterly family support group meetings; and

(D) identification and utilization of existing Alzheimer’s network.

(3) Specially trained staff will be maintained and assigned exclusively to the Alzheimer’s unit. Although emergency scheduling may require substitution of staff, every effort should be made to provide residents with familiar staff members in order to minimize resident confusion. Staff training will meet at least the minimum requirements in subsection (a)(2) of this section.

RULE §19.2308 CHANGE OF OWNERSHIP

(a) Definition. An ownership change is defined in §19.210(c) of this title (relating to Temporary Change of Ownership). For purposes of this section, prior owner is defined as the legal entity with a Medicaid contract for the facility before the change of ownership. The new owner is the legal entity to which DADS has assigned the contract (in accordance with 42 CFR §442.14 and subsection (d) of this section). The effective date of the ownership change is the effective date of the new owner’s license for the facility.

(b) Notice of ownership change. The prior owner must give DADS written notice of a change of ownership at least 30 days before the effective date of the change. If written notice of the change is not received 30 days before the agreed change date, DADS is not responsible for payments made to the prior owner or new owner that do not reflect the established change date. DADS will not make a duplicate payment. It is the responsibility of the prior and new owner to make arrangements between themselves for such contingencies.