SUBCHAPTER D - FACILITY CONSTRUCTION

Rules

§19.300 General Requirements
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SUBCHAPTER D FACILITY CONSTRUCTION

RULE §19.302 Waivers

The Texas Department of Human Services (DHS) may grant a waiver for certain provisions of the physical plant and environment which, in DHS's opinion, would be impractical for the facility to meet. In granting the waiver, DHS will determine that there will be no adverse effect on resident health and safety and the requirement, if not waived, would impose an unreasonable waiver.

RULE §19.344 Plans, Approvals, and Construction Procedures

...hardship on the facility. DHS may require offsetting or equivalent provisions in granting a...

SUBCHAPTER D FACILITY CONSTRUCTION

At the option of the applicant, the Texas Department of Human Services (DHS) will review plans for new buildings, additions, conversion of buildings not licensed by DHS, or remodeling of existing licensed facilities. DHS will, within 30 days, inform the applicant in writing of the results of the review. If the plans comply with DHS's architectural requirements, DHS may not subsequently change the architectural requirement applicable to the project unless the change is required by federal law or the applicant fails to complete the project within two years. DHS may grant a waiver of this two-year period for delays due to unusual circumstances. There is no time limit to complete a project, only a time limit for completing a project using requirements that

...
have been revised after the project was reviewed.

(1) Submittal of plans.

(A) For review of plans, submit one copy of working drawings and specifications (contract documents) before construction begins. Documents must be in sufficient detail to interpret compliance with these standards and assure proper construction. Documents must be prepared according to accepted architectural practice and must include general construction, special conditions, and schedules.

(B) Final copies of plans must have (in the reproduction process by which plans are reproduced) a title block that shows name of facility, person, or organization preparing the sheet, sheet numbers, facility address, and drawing date. Sheets and sections covering structural, electrical, mechanical, and sanitary engineering final plans, designs, and specifications must bear the seal of a registered professional engineer approved by the State Board of Registration for Professional Engineers to operate in Texas. Contract documents for additions, remodeling, and construction of an entirely new facility must be prepared by an architect licensed by the Texas State Board of Architectural Examiners. Drawings must bear the seal of the architect.

(C) A final plan for a major addition to a facility must include a basic layout to scale of the entire building onto which the addition will connect. North direction must be shown. The entire basic layout usually can be to scale such as 1/16 inch per foot or 1/32 inch per foot for very large buildings.

(D) Plans and specifications for conversions or remodeling must be complete for all parts and features involved.

(E) The sponsor is responsible for employing qualified personnel to prepare the contract documents for construction. If the contract documents have errors or omissions to the extent that conformance with standards cannot be reasonably assured or determined, a revised set of documents for review may be requested.

(F) The review of plans and specifications by DHS is based on general utility, the minimum licensing standards, and conformance of the Life Safety Code, and is not to be construed as all inclusive approval of the structural, electrical, or mechanical components, nor does it include a
review of building plans for compliance with the Texas Accessibility Standards as administered and enforced by the Texas Department of Licensing and Regulation.

(G) Fees for plan review will be required in accordance with §19.219 of this title (relating to Plan Review Fees).

(2) Contract documents.

(A) Site plan documents must include:
   (i) grade contours;
   (ii) streets (with names);
   (iii) north arrow;
   (iv) fire hydrants;
   (v) fire lanes;
   (vi) utilities, public or private;
   (vii) fences; and
   (viii) unusual site conditions, such as
   (I) ditches;
   (II) low water levels;
   (III) other buildings on-site; and
   (IV) indications of buildings five feet or less beyond site property lines.

(B) Foundation plan documents must include general foundation design and details.

(C) Floor plan documents must include:
   (i) room names, numbers, and usages;
   (ii) doors (numbered), including swing;
   (iii) windows;
   (iv) legend or clarification of wall types;
   (v) dimensions;
   (vi) fixed equipment;
   (vii) plumbing fixtures;
(viii) kitchen basic layout; and
(ix) identification of all smoke barrier walls (outside wall to outside wall) or fire walls.

(D) For both new construction and additions or remodeling to existing buildings, an overall plan of the entire building must be drawn or reduced to fit on an 8 1/2-inch by 11-inch sheet.

(E) Schedules must include:
(i) door materials, widths, and types;
(ii) window materials, sizes, and types;
(iii) room finishes; and
(iv) special hardware.

(F) Elevations and roof plan must include:
(i) exterior elevations, including
   (I) material note indications; and
   (II) any rooftop equipment;
(ii) roof slopes;
(iii) drains;
(iv) gas piping, etc.; and
(v) interior elevations where needed for special conditions.

(G) Details must include:
(i) wall sections as needed, especially for special conditions;
(ii) cabinet and built-in work, basic design only;
(iii) cross sections through buildings as needed; and
(iv) miscellaneous details and enlargements as needed.

(H) Building structure documents must include:
(i) structural framing layout and details (primarily for column, beam, joist, and structural building);
(ii) roof framing layout (when it cannot be adequately shown on cross section); and
(iii) cross sections in quantity and detail to show sufficient structural design and structural
details as necessary to assure adequate structural design and calculated design loads.

(I) Electrical documents must include:
(i) electrical layout, including lights, convenience outlets, equipment outlets, switches, and other electrical outlets and devices;
(ii) service, circuiting, distribution, and panel diagrams;
(iii) exit light system (exit signs and emergency egress lighting);
(iv) emergency electrical provisions (such as generators and panels):
(v) staff communication system;
(vi) fire alarm and similar systems (such as control panel, devices, and alarms); and
(vii) sizes and details sufficient to assure safe and properly operating systems.

(J) Plumbing documents must include:
(i) plumbing layout with pipe sizes and details sufficient to assure safe and properly operating systems;
(ii) water systems;
(iii) sanitary systems;
(iv) gas systems; and
(v) other systems normally considered under the scope of plumbing, fixtures, and provisions for combustion air supply.

(K) Heating, ventilating, and air-conditioning systems (HVAC) documents must include:
(i) sufficient details of HVAC systems and components to assure a safe and properly operating installation, including, but not limited to, heating, ventilating, and air-conditioning layout, ducts, protection of duct inlets and outlets, combustion air, piping, exhausts, and duct smoke and/or fire dampers; and
(ii) equipment types, sizes, and locations.

(L) Sprinkler system documents must include:
(i) plans and details of National Fire Protection Association (NFPA) designed systems;
(ii) plans and details of partial systems provided only for hazardous areas; and
(iii) electrical devices interconnected to the alarm system.

(M) Specifications must include:

(i) installation techniques;

(ii) quality standards and/or manufacturers;

(iii) references to specific codes and standards;

(iv) design criteria;

(v) special equipment;

(vi) hardware;

(vii) finishes; and

(viii) any others as needed to amplify drawings and notes.

(N) Other layouts, plans, or details as may be necessary for a clear understanding of the design and scope of the project, including plans covering private water or sewer systems, must be reviewed by local health or wastewater authority having jurisdiction.

(3) Construction phase.

(A) DHS must be notified in writing before construction starts.

(B) All construction not done in accordance with the completed plans and specifications as submitted for review and as modified in accordance with review requirements will require additional drawings if the change is significant.

(4) Initial survey of completed construction.

(A) Upon completion of construction, including grounds and basic equipment and furnishings, a final construction inspection (initial survey) of the facility must be performed by DHS before admitting residents. An initial architectural inspection will be scheduled after DHS receives a notarized licensure application, required fee, fire marshal approval, and a letter from an architect or engineer stating that to the best of their knowledge the facility meets the architectural requirements for licensure.

(B) After the completed construction has been surveyed by DHS and found acceptable, this information will be forwarded to the DHS Facility Enrollment Section as part of the information
needed to issue a license to the facility. In the case of additions or remodeling of existing facilities, a revision or modification to an existing license may be necessary. The building, including basic furnishings and operational needs, grades, drives, and parking, must essentially be 100% complete at the time of this initial visit for occupancy approval and licensing. A facility may accept up to three residents between the time it receives initial approval from DHS and the time the license is issued.

(C) The following documents must be available to DHS’s architectural inspecting surveyor at the time of the survey of the completed building:

(i) written approval of local authorities as required in subparagraph (A) of this paragraph;

(ii) written certification of the fire alarm system by the installing agency (the Texas State Fire Marshal’s Fire Alarm Installation Certificate);

(iii) documentation of materials used in the building that are required to have a specific limited fire or flame spread rating, including special wall finishes or floor coverings, flame retardant curtains (including cubicle curtains), rated ceilings, etc., and, in the case of carpeting, a signed letter from the installer verifying that the carpeting installed is named in the laboratory test document;

(iv) approval of the completed sprinkler system installation by the Texas Department of Insurance or designing engineer. A copy of the material list and test certification must be available;

(v) service contracts for maintenance and testing of alarm systems, sprinkler systems, etc.;

(vi) a copy of gas test results of the facility’s gas lines from the meter;

(vii) a written statement from an architect/engineer stating, to the best of his knowledge, the building was constructed in substantial compliance with the construction documents, the Life Safety Code, DHS licensure standards, and local codes; and

(viii) any other such documentation as needed.

(5) Nonapproval of new construction.

(A) If, during the initial on-site survey of completed construction, the surveyor finds certain
basic requirements not met, DHS may recommend the facility not be licensed and approved for occupancy. Such items may include the following:

(i) substantial changes made during construction that were not submitted to DHS for review and that may require revised "as-built" drawings to cover the changes. This may include architectural, structural, mechanical, and electrical items as specified in paragraph (3)(B) of this section;

(ii) construction that does not meet minimum code or licensure standards, such as corridors that are less than required width, ceilings installed at less than the minimum seven-foot, six-inch height, resident bedroom dimensions less than required, and other such features that would disrupt or otherwise adversely affect the residents and staff if corrected after occupancy;

(iii) no written approval by local authorities;

(iv) fire protection systems, including, but not limited to, fire alarm systems, emergency power and lighting, and sprinkler systems, not completely installed or not functioning properly;

(v) required exits not all usable according to National Fire Protection Association (NFPA) 101 requirements;

(vi) telephone not installed or not properly working;

(vii) sufficient basic furnishings, essential appliances, and equipment not installed or not functioning; and

(viii) any other basic operational or safety feature that would preclude safe and normal occupancy by residents on that day.

(B) If the surveyor encounters only minor deficiencies, licensure may be recommended based on an approved written plan of correction from the facility's administrator.

(C) Copies of reduced-size floor plans on an 8 1/2-inch by 11-inch sheet must be submitted in duplicate to DHS for record/file use and for the facility's use for evacuation plan, fire alarm zone identification, etc. The plan must contain basic legible information such as scale, room usage names, actual bedroom numbers, doors, windows, and any other pertinent information.
(1) Life safety from fire.

(A) The facility must meet the applicable provisions of the 1985 edition of the Life Safety Code of the National Fire Protection Association (NFPA) as designated by federal law and regulations (Health and Safety Code, §242.039(b)). The Life Safety Code is available for inspection at the Office of the Federal Register Information Center, Washington, D.C. Copies may be obtained from the NFPA, BatteryMarch Park, Quincy, Massachusetts 02200. The New Health Care Occupancies chapter of the Life Safety Code is applicable to new construction, conversions of existing unlicensed buildings, remodeling, and additions. The Existing Health Care Occupancies chapter of the Life Safety Code is applicable to existing nursing homes.

(B) After consideration of the findings of the Texas Department of Human Services (DHS) for Medicare/Medicaid certified facilities, the Health Care Financing Administration (HCFA) may waive specific provisions of the Life Safety Code which, if rigidly applied, would result in unreasonable hardship on the facility, but only if the waiver does not adversely affect the health and safety of residents or personnel.

**RULE §19.1001 Nursing Services**

The facility must have sufficient staff to provide nursing and related services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care. Nursing services to children must be provided by staff who have been instructed and have demonstrated competence in the care of children. Care and services are to be provided as specified in §19.901 of this title (relating to Quality of Care).

(1) Sufficient staff.

(A) The facility must provide services by sufficient numbers of each of the following types of personnel on a 24-hour basis to provide nursing care to all residents in accordance with resident care plans:
(i) except when waived under paragraph (3) of this section, licensed nurses; and
(ii) other nursing personnel.

(B) Except when waived under paragraph (3) of this section, the facility must designate a licensed nurse to serve as a charge nurse on each tour of duty.

(2) Registered nurse.

(A) Except when waived under paragraph (3) or (4) of this section, the facility must use the services of a registered nurse for at least eight consecutive hours a day, seven days a week.

(B) Except when waived under paragraph (4) of this section, the facility must designate a registered nurse to serve as the director of nursing on a full-time basis, 40 hours per week.

(C) The director of nursing may serve as a charge nurse only when the facility has an average daily occupancy of 60 or fewer residents.

(3) Waiver of requirement to provide licensed nurses on a 24-hour basis.

(A) To the extent that a facility is unable to meet the requirements of paragraphs (1)(B) and (2)(A) of this section, the state may waive these requirements with respect to the facility, if:
(i) the facility demonstrates to the satisfaction of the Texas Department of Human Services (DHS) that the facility has been unable, despite diligent efforts (including offering wages at the community prevailing rate for nursing facilities), to recruit appropriate personnel;
(ii) DHS determines that a waiver of the requirement will not endanger the health or safety of individuals staying in the facility;
(iii) the state finds that, for any periods in which licensed nursing services are not available, a registered nurse or a physician is obligated to respond immediately to telephone calls from the facility; and
(iv) the waivered facility has a full-time registered or licensed vocational nurse on the day shift seven days a week. For purposes of this requirement, the starting time for the day shift must be between 6 a.m. and 9 a.m. The facility must specify in writing the schedule that it follows.

(B) A waiver granted under the conditions listed in this paragraph is subject to annual state review.
(C) In granting or renewing a waiver, a facility may be required by the state to use other qualified, licensed personnel.

(D) The state agency granting a waiver of these requirements provides notice of the waiver to the state long term care ombudsman (established under §307(a)(12) of the Older Americans Act of 1965) and the protection and advocacy system in the state for the mentally ill and mentally retarded.

(E) The nursing facility that is granted a waiver by the state notifies residents of the facility (or, when appropriate, the guardians or legal representatives of the residents) and members of their immediate families of the waiver.

(4) Waiver of the requirement to provide services of a registered nurse for more than 40 hours a week in a Medicare skilled nursing facility (SNF).

(A) The secretary of the U.S. Department of Health and Human Services (secretary) may waive the requirement that a Medicare SNF provide the services of a registered nurse for more than 40 hours a week, including a director of nursing specified in paragraph (2) of this section, if the secretary finds that:

(i) the facility is located in a rural area and the supply of Medicare SNF services in the area is not sufficient to meet the needs of individuals residing in the area;

(ii) the facility has one full-time registered nurse who is regularly on duty at the facility 40 hours a week; and

(iii) the facility either has:

(I) only residents whose physicians have indicated (through physician's orders or admission notes) that they do not require the services of a registered nurse or a physician for a 48-hour period; or

(II) made arrangements for a registered nurse or a physician to spend time at the facility, as determined necessary by the physician, to provide necessary skilled nursing services on days when the regular full-time registered nurse is not on duty.

(B) The secretary provides notice of the waiver to the state long term care ombudsman
(established under §307(a)(12) of the Older Americans Act of 1965) and the protection and advocacy system in the state for the mentally ill and mentally retarded.

(C) The SNF that is granted a waiver by the state notifies residents of the facility (or, when appropriate, the guardians or legal representatives of the residents) and members of their immediate families of the waiver.

(D) A waiver of the registered nurse requirement under subparagraph (A) of this paragraph is subject to annual renewal by the secretary.

(5) Request for waiver concerning staffing levels. The facility must request a waiver through the local DHS Long Term Care-Regulatory unit, in writing, at any time the administrator determines that staffing will fall, or has fallen, below that required in paragraphs (1) and (2) of this section for a period of 30 days or more out of any 45 days.

(A) The following information must be included in the request/notification:

(i) beginning date when facility was/is unable to meet staffing requirements;

(ii) type waiver requested (24-hour licensed nurse or seven-day-per-week RN);

(iii) projected number of hours per month staffing reduced for 24-hour licensed nurse waiver or seven-day-per-week RN waiver; and

(iv) staffing adjustments made due to inability to meet staffing requirements.

(B) Waivers for licensed-only or certified facilities will be granted by Long Term Care-Regulatory staff. Waivers for a Medicare SNF receive final approval from the Health Care Financing Administration.

(C) If a facility, after requesting a waiver, is later able to meet the staffing requirements of paragraphs (1) and (2) of this section, Long Term Care-Regulatory staff must be notified, in writing, of the effective date that staffing meets requirements.

(D) Verification that the facility appropriately made a request and notification will be done at the time of survey.

(E) Amounts paid to Medicaid-certified facilities in the per diem payment to meet the staffing requirements of paragraphs (1) and (2) of this section may be adjusted if staffing requirements
are not met.

(6) Duration of waiver. Approved waivers are valid throughout the facility licensure or certification period, unless approval is withdrawn. During the relicensure or recertification survey, the determination is made for approval or denial for the next facility licensure or certification period if a waiver continues to be necessary. The facility requests a redetermination for a waiver from the Long Term Care-Regulatory staff at the time the survey is scheduled. At other times if a request is made, the Long Term Care-Regulatory staff may schedule a visit for waiver determination.

(7) Requirements for waiver approval. To be approved for a waiver, the nursing facility must meet all of the requirements stated in this subchapter and the requirements specified throughout this chapter. In some instances, the survey agency may require additional conditions or arrangements such as:

(A) an additional licensed vocational nurse on day-shift duty when the registered nurse is absent;
(B) modification of nursing services operations; and
(C) modification of the physical environment relating to nursing services.

(8) Denial or withdrawal of a waiver. Denial or withdrawal of a waiver may be made at any time if any of the following conditions exist:

(A) requirements for a waiver are not met on a continuing basis;
(B) the quality of resident care is not acceptable; or
(C) justified complaints are found in areas affecting resident care.

(9) Requirement that SNFs be in a rural area. A SNF (Medicare) must be in a rural area for waiver consideration, as specified in paragraph (4) of this section. A rural area is any area outside the boundaries of a standard metropolitan statistical area. Rural areas are defined and designated by the federal Office of Management and Budget; are determined by population, economic, and social requirements; and are subject to revisions.