

## TEXAS

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Sec. 242.011. LANGUAGE REQUIREMENTS PROHIBITED. An institution may not prohibit a resident or employee from communicating in the person's native language with another resident or employee for the purpose of acquiring or providing medical treatment, nursing care, or institutional services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

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.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.10, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 324, Sec. 3, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 192, Sec. 1, eff. Sept. 1, 2001. Amended by: Acts 2009, 81st Leg., R.S., Ch. 102, Sec. 1, eff. September 1, 2009.

## SUBCHAPTER L. RIGHTS OF RESIDENTS

### Sec. 242.501. RESIDENT'S RIGHTS.

(a) The department by rule shall adopt a statement of the rights of a resident. The statement must be consistent with Chapter 102, Human Resources Code, but shall reflect the unique circumstances of a resident at an institution. At a minimum, the statement of the rights of a resident must address the resident's constitutional, civil, and legal rights and the resident's right:

- (1) to be free from abuse and exploitation;
- (2) to safe, decent, and clean conditions;
- (3) to be treated with courtesy, consideration, and respect;
- (4) to not be subjected to discrimination based on age, race, religion, sex, nationality, or disability and to practice the resident's own religious beliefs;
- (5) to place in the resident's room an electronic monitoring device that is owned and operated by the resident or provided by the resident's guardian or legal representative;
- (6) to privacy, including privacy during visits and telephone calls;
- (7) to complain about the institution and to organize or participate in any program that presents residents' concerns to the administrator of the institution;
- (8) to have information about the resident in the possession of the institution maintained as confidential;
- (9) to retain the services of a physician the resident chooses, at the resident's own expense or through a health care plan, and to have a physician explain to the resident, in language that the resident understands, the resident's complete medical condition, the recommended treatment, and the expected results of the treatment, including reasonably expected effects, side effects, and risks associated with psychoactive medications;
- (10) to participate in developing a plan of care, to refuse treatment, and to refuse to participate in experimental research;
- (11) to a written statement or admission agreement describing the services provided by the

institution and the related charges;  
(12) to manage the resident's own finances or to delegate that responsibility to another person;  
(13) to access money and property that the resident has deposited with the institution and to an accounting of the resident's money and property that are deposited with the institution and of all financial transactions made with or on behalf of the resident;  
(14) to keep and use personal property, secure from theft or loss;  
(15) to not be relocated within the institution, except in accordance with standards adopted by the department under Section 242.403;  
(16) to receive visitors;  
(17) to receive unopened mail and to receive assistance in reading or writing correspondence;  
(18) to participate in activities inside and outside the institution;  
(19) to wear the resident's own clothes;  
(20) to discharge himself or herself from the institution unless the resident is an adjudicated mental incompetent;  
(21) to not be discharged from the institution except as provided in the standards adopted by the department under Section 242.403;  
(22) to be free from any physical or chemical restraints imposed for the purposes of discipline or convenience, and not required to treat the resident's medical symptoms; and  
(23) to receive information about prescribed psychoactive medication from the person prescribing the medication or that person's designee, to have any psychoactive medications prescribed and administered in a responsible manner, as mandated by Section 242.505, and to refuse to consent to the prescription of psychoactive medications.

(b) A right of a resident may be restricted only to the extent necessary to protect:

(1) a right of another resident, particularly a right of the other resident relating to privacy and confidentiality; or

(2) the resident or another person from danger or harm.

(c) The department may adopt rights of residents in addition to those required by Subsection (a) and may consider additional rights applicable to residents in other jurisdictions.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 919, Sec. 1, eff. June 14, 2001; Acts 2001, 77th Leg., ch. 1224, Sec. 2, eff. June 15, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 10.004, eff. Sept. 1, 2003.

Sec. 242.502. RIGHTS CUMULATIVE. The rights established under this subchapter are cumulative of the rights established under any other law.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.503. DUTIES OF INSTITUTION.

(a) An institution shall develop and implement policies to protect resident rights.

(b) An institution and the staff of an institution may not violate a right adopted under this subchapter.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

#### Sec. 242.504. INFORMATION ABOUT RESIDENT'S RIGHTS AND VIOLATIONS.

(a) An institution shall inform each resident and the resident's next of kin or guardian of the rights adopted under this subchapter and shall explain the rights to the resident and the resident's next of kin or guardian. The institution shall provide a written statement of:

- (1) all of the resident's rights; and
- (2) any additional rules adopted by the institution involving resident rights and responsibilities.

(b) The institution shall provide a copy of the written statement to:

- (1) each resident;
- (2) the next of kin or guardian of each resident; and
- (3) each member of the staff of the institution.

(c) The institution shall maintain a copy of the statement, signed by the resident or the resident's next of kin or guardian, in the institution's records.

(d) The institution shall post the written statement in the manner required by Section 242.042.

(e) An institution that has been cited by the department for a violation of any right adopted under this subchapter shall include a notice of the citation in the informational materials required by Section 242.042(a)(8). The notice of citation must continue to be included in the informational materials until any regulatory action or proceeding with respect to the violation is complete and the department has determined that the institution is in full compliance with the applicable requirement.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

#### SUBCHAPTER R. ELECTRONIC MONITORING OF RESIDENT'S ROOM

Sec. 242.841. DEFINITIONS. In this subchapter:

(1) "Authorized electronic monitoring" means the placement of an electronic monitoring device in the room of a resident of an institution and making tapes or recordings with the device after making a request to the institution to allow electronic monitoring.

(2) "Electronic monitoring device":

(A) includes:

- (i) video surveillance cameras installed in the room of a resident; and
  - (ii) audio devices installed in the room of a resident designed to acquire communications or other sounds occurring in the room; and
- (B) does not include an electronic, mechanical, or other device that is specifically used for the nonconsensual interception of wire or electronic communications.

Added by Acts 2001, 77th Leg., ch. 1224, Sec. 1, eff. June 15, 2001.

Sec. 242.842. CRIMINAL AND CIVIL LIABILITY. (a) It is a defense to prosecution under Section 16.02, Penal Code, or any other statute of this state under which it is an offense to intercept a communication or disclose or use an intercepted communication, that the communication was intercepted by an electronic monitoring device placed in the room of a resident of an institution.

(b) This subchapter does not affect whether a person may be held to be civilly liable under other law in connection with placing an electronic monitoring device in the room of a resident of an institution or in connection with using or disclosing a tape or recording made by the device except:

(1) as specifically provided by this subchapter; or

(2) to the extent that liability is affected by:

(A) a consent or waiver signed under this subchapter; or

(B) the fact that authorized electronic monitoring is required to be conducted with notice to persons who enter a resident's room.

(c) A communication or other sound acquired by an audio electronic monitoring device installed under the provisions of this subchapter concerning authorized electronic monitoring is not considered to be:

(1) an oral communication as defined by Section 1, Article 18.20, Code of Criminal Procedure; or

(2) a communication as defined by Section 123.001, Civil Practice and Remedies Code.

Added by Acts 2001, 77th Leg., ch. 1224, Sec. 1, eff. June 15, 2001.

Sec. 242.843. COVERT USE OF ELECTRONIC MONITORING DEVICE; LIABILITY OF DEPARTMENT OR INSTITUTION.

(a) For purposes of this subchapter, the placement and use of an electronic monitoring device in the room of a resident is considered to be covert if:

(1) the placement and use of the device is not open and obvious; and

(2) the institution and the department are not informed about the device by the resident, by a person who placed the device in the room, or by a person who is using the device.

(b) The department and the institution may not be held to be civilly liable in connection with the covert placement or use of an electronic monitoring device in the room of a resident.

Added by Acts 2001, 77th Leg., ch. 1224, Sec. 1, eff. June 15, 2001.

Sec. 242.844. REQUIRED FORM ON ADMISSION. The department by rule shall prescribe a form that must be completed and signed on a resident's admission to an institution by or on behalf of the resident. The form must state:

(1) that a person who places an electronic monitoring device in the room of a resident or who uses or discloses a tape or other recording made by the device may be civilly liable for any unlawful violation of the privacy rights of another;

(2) that a person who covertly places an electronic monitoring device in the room of a resident or who consents to or acquiesces in the covert placement of the device in the room of a resident has waived any privacy right the person may have had in connection with images or sounds that may be acquired by the device;

(3) that a resident or the resident's guardian or legal representative is entitled to conduct authorized electronic monitoring under Subchapter R, Chapter 242, Health and Safety Code, and that if the institution refuses to permit the electronic monitoring or fails to make reasonable physical accommodations for the authorized electronic monitoring that the person should contact the Texas Department of Human Services;

(4) the basic procedures that must be followed to request authorized electronic monitoring;

(5) the manner in which this chapter affects the legal requirement to report abuse or neglect when electronic monitoring is being conducted; and

(6) any other information regarding covert or authorized electronic monitoring that the department considers advisable to include on the form.

Added by Acts 2001, 77th Leg., ch. 1224, Sec. 1, eff. June 15, 2001.

Sec. 242.845. AUTHORIZED ELECTRONIC MONITORING: WHO MAY REQUEST.

(a) If a resident has capacity to request electronic monitoring and has not been judicially declared to lack the required capacity, only the resident may request authorized electronic monitoring under this subchapter, notwithstanding the terms of any durable power of attorney or similar instrument.

(b) If a resident has been judicially declared to lack the capacity required for taking an action such as requesting electronic monitoring, only the guardian of the resident may request electronic monitoring under this subchapter.

(c) If a resident does not have capacity to request electronic monitoring but has not been judicially declared to lack the required capacity, only the legal representative of the resident may request electronic monitoring under this subchapter. The department by rule shall prescribe:

(1) guidelines that will assist institutions, family members of residents, advocates for residents, and other interested persons to determine when a resident lacks the required capacity; and

(2) who may be considered to be a resident's legal representative for purposes of this subchapter, including:

(A) persons who may be considered the legal representative under the terms of an instrument executed by the resident when the resident had capacity; and

(B) persons who may become the legal representative for the limited purpose of this subchapter under a procedure prescribed by the department.

Added by Acts 2001, 77th Leg., ch. 1224, Sec. 1, eff. June 15, 2001.

Sec. 242.846. AUTHORIZED ELECTRONIC MONITORING: FORM OF REQUEST; CONSENT OF OTHER RESIDENTS IN ROOM.

(a) A resident or the guardian or legal representative of a resident who wishes to conduct authorized electronic monitoring must make the request to the institution on a form prescribed by the department.

(b) The form prescribed by the department must require the resident or the resident's guardian or legal representative to:

(1) release the institution from any civil liability for a violation of the resident's privacy rights in connection with the use of the electronic monitoring device;

(2) choose, when the electronic monitoring device is a video surveillance camera, whether the camera will always be unobstructed or whether the camera should be obstructed in specified circumstances to protect the dignity of the resident; and

(3) obtain the consent of other residents in the room, using a form prescribed for this purpose by the department, if the resident resides in a multiperson room.

(c) Consent under Subsection (b)(3) may be given only:

(1) by the other resident or residents in the room;

(2) by the guardian of a person described by Subdivision (1), if the person has been judicially declared to lack the required capacity; or

(3) by the legal representative who under Section 242.845(c) may request electronic monitoring on behalf of a person described by Subdivision (1), if the person does not have capacity to sign the form but has not been judicially declared to lack the required capacity.

(d) The form prescribed by the department under Subsection (b)(3) must condition the consent of another resident in the room on the other resident also releasing the institution

from any civil liability for a violation of the person's privacy rights in connection with the use of the electronic monitoring device.

(e) Another resident in the room may:

(1) when the proposed electronic monitoring device is a video surveillance camera, condition consent on the camera being pointed away from the consenting resident; and  
(2) condition consent on the use of an audio electronic monitoring device being limited or prohibited.

(f) If authorized electronic monitoring is being conducted in the room of a resident and another resident is moved into the room who has not yet consented to the electronic monitoring, authorized electronic monitoring must cease until the new resident has consented in accordance with this section.

(g) The department may include other information that the department considers to be appropriate on either of the forms that the department is required to prescribe under this section.

(h) The department may adopt rules prescribing the place or places that a form signed under this section must be maintained and the period for which it must be maintained.

(i) Authorized electronic monitoring:

(1) may not commence until all request and consent forms required by this section have been completed and returned to the institution; and  
(2) must be conducted in accordance with any limitation placed on the monitoring as a condition of the consent given by or on behalf of another resident in the room.

Added by Acts 2001, 77th Leg., ch. 1224, Sec. 1, eff. June 15, 2001.

#### Sec. 242.847. AUTHORIZED ELECTRONIC MONITORING: GENERAL PROVISIONS.

(a) An institution shall permit a resident or the resident's guardian or legal representative to monitor the room of the resident through the use of electronic monitoring devices.

(b) The institution shall require a resident who conducts authorized electronic monitoring or the resident's guardian or legal representative to post and maintain a conspicuous notice at the entrance to the resident's room. The notice must state that the room is being monitored by an electronic monitoring device.

(c) Authorized electronic monitoring conducted under this subchapter is not compulsory and may be conducted only at the request of the resident or the resident's guardian or legal representative.

(d) An institution may not refuse to admit an individual to residency in the institution and may not remove a resident from the institution because of a request to conduct authorized electronic monitoring. An institution may not remove a resident from the institution because covert electronic monitoring is being conducted by or on behalf of a resident.

(e) An institution shall make reasonable physical accommodation for authorized electronic monitoring, including:

(1) providing a reasonably secure place to mount the video surveillance camera or other electronic monitoring device; and

(2) providing access to power sources for the video surveillance camera or other electronic monitoring device.

(f) The resident or the resident's guardian or legal representative must pay for all costs associated with conducting electronic monitoring, other than the costs of electricity. The resident or the resident's guardian or legal representative is responsible for:

(1) all costs associated with installation of equipment; and

(2) maintaining the equipment.

(g) An institution may require an electronic monitoring device to be installed in a manner that is safe for residents, employees, or visitors who may be moving about the room. The department may adopt rules regarding the safe placement of an electronic monitoring device.

(h) If authorized electronic monitoring is conducted, the institution may require the resident or the resident's guardian or legal representative to conduct the electronic monitoring in plain view.

(i) An institution may but is not required to place a resident in a different room to accommodate a request to conduct authorized electronic monitoring.

Added by Acts 2001, 77th Leg., ch. 1224, Sec. 1, eff. June 15, 2001.

## SUBCHAPTER S. FAMILY COUNCIL

Sec. 242.901. DEFINITIONS. In this subchapter:

(1) "Department" means the Department of Aging and Disability Services.

(2) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(3) "Family council" means a group of family members, friends, or legal guardians of residents, who organize and meet privately or openly.

Added by Acts 2007, 80th Leg., R.S., Ch. 798, Sec. 3, eff. September 1, 2008.

Sec. 242.902. FAMILY COUNCIL. A family council may:

(1) make recommendations to the institution proposing policy and operational decisions affecting resident care and quality of life; and

(2) promote educational programs and projects that will promote the health and happiness of residents.

Added by Acts 2007, 80th Leg., R.S., Ch. 798, Sec. 3, eff. September 1, 2008.

Sec. 242.903. DUTIES OF INSTITUTION.

(a) An institution shall consider the views and recommendations of the family council and make a reasonable effort to resolve the council's grievances.

(b) An institution may not:

(1) prohibit the formation of a family council;

(2) terminate an existing family council;

(3) deny a family council the opportunity to accept help from an outside person;

(4) limit the rights of a resident, family member, or family council member to meet with an outside person, including:

(A) an employee of the institution during nonworking hours if the employee agrees; and

(B) a member of a nonprofit or government organization;

(5) prevent or interfere with the family council receiving outside correspondence addressed to the council;

(6) open family council mail; or

(7) wilfully interfere with the formation, maintenance, or operation of a family council, including interfering by:

(A) discriminating or retaliating against a family council participant; and

(B) wilfully scheduling events in conflict with previously scheduled family council meetings if the institution has other scheduling options.

(c) On admission of a resident, an institution shall inform the resident's family members in writing of:

(1) the family members' right to form a family council; or

(2) if a family council already exists, the council's:

(A) meeting time, date, and location; and

(B) contact person.

(d) An institution shall:

(1) include notice of a family council in a mailing that occurs at least semiannually;

(2) permit a representative of a family council to discuss concerns with an individual conducting an inspection or survey of the facility;

(3) provide a family council with adequate space on a prominent bulletin board to post notices and other information;

- (4) provide a designated staff person to act as liaison for a family council; and
- (5) respond in writing to a written request by a family council within five working days.

Added by Acts 2007, 80th Leg., R.S., Ch. 798, Sec. 3, eff. September 1, 2008.

#### Sec. 242.904. MEETINGS.

(a) On written request, an institution shall allow a family council to meet in a common meeting room of the institution at least once a month during hours mutually agreed upon by the family council and the institution.

(b) Institution employees or visitors may attend a family council meeting only at the council's invitation.

Added by Acts 2007, 80th Leg., R.S., Ch. 798, Sec. 3, eff. September 1, 2008.

Sec. 242.905. VISITING. A family council member may authorize in writing another member to visit and observe a resident represented by the authorizing member unless the resident objects.

Added by Acts 2007, 80th Leg., R.S., Ch. 798, Sec. 3, eff. September 1, 2008.

#### Sec. 242.906. ADMINISTRATION; RULES.

(a) The department shall administer this subchapter.

(b) The executive commissioner shall adopt rules necessary to implement this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 798, Sec. 3, eff. September 1, 2008.

#### RULE §19.305 Resident Rooms

...(13) Locks on bedroom doors are permitted when they meet definite patient needs, including the following situations:

(A) married couples whose rights of privacy could be infringed upon unless bedroom door locks are permitted.

#### SUBCHAPTER E RESIDENT RIGHTS

##### RULE §19.401 Introduction

(a) The resident has a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility. A facility must protect and promote the rights of each resident.

(b) The Texas Department of Human Services (DHS) has developed the following statement of the rights of a resident.

Figure: 40 TAC §19.401(b)

#### Statement of Resident Rights

You, the resident, do not give up any rights when you enter a nursing facility. The facility must encourage and assist you to fully exercise your rights. Any violation of these rights is against the law. It is against the law for any nursing facility employee to threaten, coerce, intimidate or retaliate against you for exercising your rights.

If anyone hurts you, threatens to hurt you, neglects your care, takes your property, or violates your dignity, you have the right to file a complaint with the facility administrator or with the Texas Department of Human Services by calling 1-800-458-9858.

You have a right to:

- (1) all care necessary for you to have the highest possible level of health;
- (2) safe, decent and clean conditions;
- (3) be free from abuse and exploitation;
- (4) be treated with courtesy, consideration, and respect;
- (5) be free from discrimination based on age, race, religion, sex, nationality, or disability and to practice your own religious beliefs;
- (6) privacy, including privacy during visits and telephone calls;
- (7) complain about the facility and to organize or participate in any program that presents residents' concerns to the administrator of the facility;
- (8) have facility information about you maintained as confidential;
- (9) retain the services of a physician of your choice, at your own expense or through a health care plan, and to have a physician explain to you, in language you understand, your complete medical condition, the recommended treatment, and the expected results of the treatment, including reasonably expected effects, side effects, and risks associated with psychoactive medications;
- (10) participate in developing a plan of care, to refuse treatment, and to refuse to participate in experimental research;
- (11) a written statement or admission agreement describing the services provided by the facility and the related charges;
- (12) manage your own finances or to delegate that responsibility to another person;
- (13) access money and property you have deposited with the facility and to an accounting of your money and property that are deposited with the facility and of all financial transactions made with or on behalf of you;
- (14) keep and use personal property, secure from theft or loss;
- (15) not be relocated within the facility, except in accordance with nursing facility regulations;
- (16) receive visitors;
- (17) receive unopened mail and to receive assistance in reading or writing correspondence;
- (18) participate in activities inside and outside the facility;
- (19) wear your own clothes;
- (20) discharge yourself from the facility unless you have been adjudicated mentally incompetent;

(21) not be discharged from the facility, except as provided in the nursing facility regulations;

(22) be free from any physical or chemical restraints imposed for the purposes of discipline or convenience and not required to treat your medical symptoms

(23) receive information about prescribed psychoactive medication from the person who prescribes the medication or that person's designee, to have any psychoactive medications prescribed and administered in a responsible manner, as mandated by the Health and Safety Code, §242.505, and to refuse to consent to the prescription of psychoactive medications; and

(24) place an electronic monitoring device in your room that is owned and operated by you or provided by your guardian or legal representative.

Your rights may be restricted only to the extent necessary to protect you or another person from danger or harm or to protect a right of another resident, particularly those relating to privacy and confidentiality.

(c) The facility must give a copy of the Statement of Resident Rights to each resident, next of kin or guardian, and facility staff member. The facility must maintain a copy of the statement, signed by the resident or the resident's next of kin or guardian, in the facility records.

(d) The Statement of Resident Rights must be posted in accordance with §19.1921 of this title (relating to General Requirements for a Nursing Facility).

Source Note: The provisions of this §19.401 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective March 1, 1998, 23 TexReg 1314; amended to be effective July 1, 2002, 27 TexReg 4362

#### RULE §19.402 Exercise of Rights

- (a) The resident has the right to exercise his rights as a resident at the facility and as a citizen or resident of the United States.
- (b) The resident has the right to be free of interference, coercion, discrimination, or reprisal from the facility in exercising his rights.
- (c) In the case of a resident adjudged incompetent under the laws of the State of Texas by a court of competent jurisdiction, the rights of the resident are exercised by the person appointed under Texas law to act on the resident's behalf.
- (d) The facility must comply with all applicable provisions of the Human Resources Code, Title 6, Chapter 102. An individual may not be denied appropriate care on the basis of his race, religion, color, national origin, sex, age, handicap, marital status, or source of payment.
- (e) The facility must allow the resident the right to observe his religious beliefs. The facility must respect the religious beliefs of the resident in accordance with 42 United States Code §1396f.
- (f) Competent adults may issue directives or durable powers of attorney for health care, subject to the requirements of §19.419 of this title (relating to Directives and Durable Powers of Attorney for Health Care).
- (g) In the case of a resident not adjudicated incompetent by a state court, any legal

surrogate designated in accordance with state law may exercise the resident's rights to the extent provided by state law.

Source Note: The provisions of this §19.402 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective July 1, 1996, 21 TexReg 4408.

#### RULE §19.403 Notice of Rights and Services

(a) The facility must inform the resident, the resident's next of kin or guardian, both orally and in writing, in a language that the resident understands, of the resident's rights and all rules and regulations governing resident conduct and responsibilities during the stay in the facility. This notification must be made prior to or upon admission and during the resident's stay if changed.

(b) The facility must also inform the resident, upon admission and during the stay, in a language the resident understands, of the following:

- (1) facility admission policies;
- (2) a description of the protection of personal funds as described in §19.404 of this subchapter (relating to Protection of Resident Funds);
- (3) the Human Resources Code, Title 6, Chapter 102; or a written list of the rights and responsibilities contained in the Human Resources Code, Title 6, Chapter 102;
- (4) a written description of the services available through the DADS Office of the State Long Term Care Ombudsman. This information must be made available to each facility by the ombudsman program. Facilities are responsible for reproducing this information and making it available to residents, their families, and legal representatives;
- (5) a written statement to the resident, the resident's next of kin, or guardian describing the facility's policy for:  
the drug testing of employees who have direct contact with residents; and  
the criminal history checks of employees and applicants for employment; and
- (6) DADS' rules and the facility's policies related to the use of restraint and involuntary seclusion. This information must also be given to the resident's legally authorized representative, if the resident has one.

(c) Upon admission of a resident, a facility must:

- (1) provide written information to the resident's family representative, in a language the representative understands, of the right to form a family council; or
- (2) inform the resident's family representative, in writing, if a family council exists, of the council's meeting time, date, location and contact person.

(d) Receipt of information in subsections (a) - (c) of this section, and any amendments to it, must be acknowledged in writing by all parties receiving the information.

(e) The facility must post a copy of the documents specified in subsections (a) - (b) of this section in a conspicuous location.

(f) The resident or the resident's legal representative has the following rights:

(1) upon an oral or written request to the facility, to access all records pertaining to the resident, including clinical records, within 24 hours (excluding weekends and holidays); and

(2) after receipt of the resident's records for inspection, to purchase photocopies of all or any portion of the records, at a cost not to exceed the community standard, upon request and two workdays advance notice to the facility.

(g) The resident has the right to be fully informed in language the resident understands of the resident's total health status, including the resident's medical condition.

(h) The resident has the right to refuse treatment, to formulate an advance directive (as specified in §19.419 of this subchapter (relating to Advance Directives), and to refuse to participate in experimental research.

(1) If the resident refuses treatment, the resident must be informed of the possible consequences.

(2) If the resident chooses to participate in experimental research, the resident must be fully notified of the research and possible effects of the research. The research may be carried on only with the full written consent of the resident's physician, and the resident.

(3) Experimental research must comply with Federal Drug Administration regulations on human research as found in 45 Code of Federal Regulations, Part 4b, Subpart A.

(i) The facility must inform a resident before, or at the time of admission, and periodically during the resident's stay (if there are any changes), of services available in the facility and of charges for those services, including any charges for services not covered under Medicare or by the facility's per diem rate. Notice must be in writing, at least 30 days before the effective date of any changes in rates for services not covered by the current charge, or in Medicaid-certified facilities, by Medicaid.

(j) The facility must provide a written description of a resident's legal rights, which includes:

(1) a description of the manner of protecting personal funds, described in §19.404 of this subchapter;

(2) a posting of names, addresses, and telephone numbers of all pertinent state client advocacy groups such as DADS, the state ombudsman program, the protection and advocacy network, and, in Medicaid-certified facilities, the Medicaid fraud control unit; and

(3) a statement that the resident may file a complaint with DADS concerning resident abuse, neglect, and misappropriation of resident property in the facility.

(k) The facility must inform a resident of the name, specialty, and way of contacting the physician responsible for the resident's care.

(l) Notification of changes.

(1) A facility must immediately inform the resident; consult with the resident's physician; and if known, notify the resident's legal representative or an interested family member when there is:

(A) an accident involving the resident that results in injury and has the potential for requiring physician intervention;

(B) a significant change in the resident's physical, mental, or psychosocial status (that is, a deterioration in health, mental, or psychosocial status in either life-threatening conditions or clinical complications);

(C) a need to alter treatment significantly (that is, a need to discontinue an existing form of treatment due to adverse consequences, or to commence a new form of treatment); or

(D) a decision to transfer or discharge the resident from the facility.

(2) The facility also must promptly notify the resident and, if known, the resident's legal representative or interested family member when there is:

(A) a change in room or roommate assignment as described in §19.701(4)(B) of this chapter (relating to Quality of Life); or

(B) a change in resident rights under federal or state law or regulations as described in subsection (a) of this section.

(3) The facility must record and periodically update the address and phone number of the resident's family or legal representative, or a responsible party.

(m) Additional requirements for Medicaid-certified facilities. Medicaid-certified facilities must:

(1) provide the resident with the state-developed notice of rights under §1919(e)(6) of the Social Security Act (see also §19.402 of this subchapter (relating to Exercise of Rights));

(2) inform a resident who is entitled to Medicaid benefits, in writing, at the time of admission to the nursing facility or, when the resident becomes eligible for Medicaid of:

(A) the items and services that are included in nursing facility services provided under the State Plan and for which the resident may not be charged;

(B) those other items and services that the facility offers and for which the resident may be charged, and the amount of charges for those services;

(3) inform each resident when changes are made to the items and services specified in paragraphs (2)(A) and (2)(B) of this subsection;

(4) provide a written description of the requirements and procedures for establishing eligibility for Medicaid, including the right to request an assessment under §1924(c) of the Social Security Act, which:

(A) is used to determine the extent of a couple's nonexempt resources at the time of institutionalization; and

(B) attributes to the community spouse an equitable share of resources that cannot be considered available for payment toward the cost of the institutionalized spouse's medical care in the process of spending down to Medicaid eligibility levels; and

(5) prominently display in the facility written information, and provide to residents and potential residents oral and written information about how to apply for and use Medicare

and Medicaid benefits, and how to receive funds for previous payments covered by such benefits.

Source Note: The provisions of this §19.403 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective March 1, 1998, 23 TexReg 1314; amended to be effective August 1, 2000, 25 TexReg 6779; amended to be effective July 1, 2001, 26 TexReg 3824; amended to be effective May 1, 2002, 27 TexReg 3207; amended to be effective August 1, 2002, 27 TexReg 6052; amended to be effective June 1, 2006, 31 TexReg 4449; amended to be effective September 1, 2008, 33 TexReg 6151

#### RULE §19.404 Protection of Resident Funds

(a) Management of financial affairs. The resident has the right to manage his financial affairs and the facility may not require residents to deposit their personal funds with the facility. The resident may designate another person to manage his financial affairs.

(b) Management of personal funds.

(1) Licensed-only facilities. Upon written authorization of a resident, the facility may hold, safeguard, manage, and account for the personal funds of the resident deposited with the facility. The facility will act as a fiduciary agent if the facility holds, safeguards, and accounts for the resident's personal funds.

(2) Medicaid-certified facilities. Upon written authorization of a resident, the facility must hold, safeguard, manage, and account for the personal funds of the resident deposited with the facility, as described in §19.405 of this title (relating to Additional Requirements for Trust Funds in Medicaid-Certified Facilities). The facility will act as a fiduciary agent if the facility holds, safeguards, and accounts for the resident's personal funds.

(c) Statement of resident rights and responsibilities. The facility must provide each resident and responsible party with a written statement at the time of admission that meets the following requirements:

(1) the statement describes the resident's rights to select how personal funds will be handled. The following alternatives must be included:

(A) the resident has the right to manage his financial affairs;

(B) the facility may not require residents to deposit their personal funds with the facility;

(C) the facility has an obligation, upon written authorization of a resident, to hold, safeguard, manage, and account for the personal funds of the resident deposited with the facility;

(D) the resident has a right to apply to the Social Security Administration to have a representative payee designated for federal or state benefits to which he may be entitled; and

(E) except when subparagraph (D) of this paragraph applies, the resident has a right to designate in writing another person to manage personal funds;

(2) the statement notes, when applicable, that any charge for the facility handling a Medicaid recipient's personal funds is included in the facility's basic rate; and

(3) the statement advises the resident that the facility must have written permission from the resident, responsible party, or legal representative to handle his personal funds.

Source Note: The provisions of this §19.404 adopted to be effective May 1, 1995, 20 TexReg 2393.

#### RULE §19.405 Additional Requirements for Trust Funds in Medicaid-certified Facilities

(a) Deposit of funds. The facility must keep funds received from a resident for holding, safeguarding, and accounting, separate from the facility's funds. This separate account must be identified "Trustee, (Name of Facility), Resident's Trust Fund Account." A facility may commingle the trust funds of Medicaid recipients and private-pay residents.

If the funds are commingled, the facility must provide, upon request, the following information. This information must be provided to the Texas Department of Human Services (DHS), the Texas attorney general's Medicaid Fraud Control Unit, and the U.S. Department of Health and Human Services:

(1) copies of release forms signed and dated by each private-pay resident or responsible party whose funds are commingled. The facility must include in the release forms permission for the facility to maintain trust fund records of private-pay residents in the same manner as the Medicaid recipient's trust funds. The release forms must:

- (A) be secured from the private-pay residents upon admission or at the time of request for trust fund services; and
- (B) include a provision allowing inspection of the private-pay resident's trust fund records by the agencies referenced in this subsection; and

(2) legible copies of the trust fund records of private-pay residents whose funds are commingled. The facility must keep these records in the same manner as the financial records of Medicaid recipients as specified in this section.

(b) Funds in excess of \$50. The facility must deposit any residents' personal funds in excess of \$50 in an interest-bearing account (or accounts) that is separate from any of the facility's operating accounts, and that credits all interest earned on the residents' funds to that account. In pooled accounts, there must be a separate accounting for each resident's share.

(c) Funds less than \$50. The facility must maintain a resident's personal funds that do not exceed \$50 in a noninterest-bearing account, interest-bearing account, or petty cash fund.

(d) Accounting and records. The facility must establish and maintain current, written, individual records of all financial transactions involving the resident's personal funds that the facility is holding, safeguarding, and accounting. The facility must keep these records in accordance with the American Institute of Certified Public Accountants' Generally Accepted Accounting Standards. The facility must also keep records in accordance with requirements of law for a trustee in a fiduciary relationship that exists for these financial transactions. The facility must include at least the following in these records:

(1) resident's name;

(2) identification of resident's representative payee, responsible party, or legal representative, if any;

(3) admission date;

(4) resident's earned interest, if any;

(5) documentation for all transactions. Facility staff must document, on the resident's trust-fund ledger or deposit/withdrawal document, the date and amount of each deposit and withdrawal, the name of the person who accepted the withdrawn funds and the balance after each transaction. Each withdrawal must be signed by the resident on the trust-fund ledger or deposit/withdrawal document. If the resident cannot sign, the transaction must be signed by at least one witness. This witness can be any person except the person(s) responsible for accounting for the trust funds, that person's supervisor, or the person(s) who accepts the withdrawn funds; and

(6) receipts for purchases and payments, including cash-register tapes or sales statements from a seller. Receipts are required when the purchase is made by the facility or someone other than the resident, responsible party, legal representative, or individual, other than facility personnel, authorized in writing by the resident, and when the purchase is for items costing more than one dollar. Receipts are not required when purchase is made by the resident, responsible party, legal representative, or individual, other than facility personnel, authorized in writing by the resident, or when the item(s) purchased costs one dollar or less. Required receipts must contain:

(A) the resident's name;

(B) the date the receipt was written or created;

(C) the amount of money spent for the resident;

(D) the specific item(s) purchased with the trust-fund money;

(E) the name of the business from which the purchase was made; and

(F) the signature of the resident. If the signature of the resident cannot be obtained, the signature of a witness as described in paragraph (5) of this subsection must be obtained; and the facility or DHS staff must be able to determine, at a future audit date, the witness's name, address, and relationship to the resident or facility. If the disbursement has been prior authorized as evidenced by the resident's or witness's signature and date on the trust-fund ledger or deposit/withdrawal documents, the signature is not required on the receipt.

(e) Notice of certain balances. The facility must notify each resident that receives Medicaid benefits:

(1) when the amount in the resident's account reaches \$200 less than SSI resource limit for one person, specified in §1611(a)(3)(B) of the Social Security Act; and

(2) that, if the amount in the account, in addition to the value of the resident's other nonexempt resources, reaches the SSI resource limit for one person, the resident may lose eligibility for Medicaid or SSI.

(f) Conveyance upon death. Upon the death of a resident with a personal fund deposited with the facility, the facility must convey within 30 days the resident's funds and a final accounting of those funds to the individual or probate jurisdiction administering the

resident's estate, or make a bona fide effort to locate the responsible party or heir to the estate (see also §19.416 of this title (relating to Personal Property)). Within 30 days of a Medicaid recipient's death, the facility must use the following procedures to clear the recipient's account:

(1) the facility must set up a trust fund for the deceased recipient or deposit the money to already existing accounts;

(2) once DHS-designated regional staff verify that the money owed the deceased recipient is on hand and held in trust, DHS considers the account cleared if the facility supplies DHS with a notarized affidavit outlining the facility's intention. The affidavit must contain:

(A) the recipient's name;

(B) the amount of money being held;

(C) the facility's efforts to locate the responsible party or heirs;

(D) a facility statement acknowledging that this money is not the property of the facility, but the property of the deceased person's estate; and

(E) a statement that the facility will hold the money in trust until the legal heir or responsible party is located or the money escheats to the state. Money held in trust in the facility is subject to future audit and will be reviewed each time the facility is audited; and

(3) facilities choosing not to hold this money in trust for Medicaid recipients may send the money to the Texas Department of Human Services, Fiscal Division, P.O. Box 149055, Austin, Texas 78714-9055, at any time before the money escheats to the state. The money must be identified as escheat money. The facility must include the notarized affidavit described in paragraph (2) of this subsection with the money for identification.

(g) Assurance of financial security. The facility must purchase a surety bond, or otherwise provide assurance satisfactory to the Secretary of Health and Human Services to assure the security of all personal funds of residents deposited with the facility.

(1) The amount of a surety bond must equal the average monthly balance of all the facility's resident trust fund accounts for the 12-month period preceding the bond issuance or renewal date.

(2) Resident trust fund accounts are specific only to the single facility purchasing a resident trust fund surety bond.

(3) If a facility employee is responsible for the loss of funds in a resident's trust fund account, the resident, the resident's family, and the resident's legal representative are not obligated to make any payments to the facility that would have been made out of the trust fund had the loss not occurred.

(h) Limitation on charges to personal funds. The facility may not impose a charge against the personal funds of a resident for any item or service for which payment is made under Medicaid or Medicare. Items or services included in Medicare or Medicaid payment which may not be billed to the resident's personal funds by the facility include:

(1) nursing services as required in §19.1001 of this title (relating to Nursing Services);

(2) dietary services as required in §19.1101 of this title (relating to Dietary Services);

(3) an activities program as required in §19.702 of this title (relating to Activities);

(4) room and bed maintenance services;

(5) routine personal hygiene items and services as required to meet the needs of residents, including, but not limited to:

(A) hair hygiene supplies;

(B) comb;

(C) brush;

(D) bath soaps, disinfecting soaps, or specialized cleansing agents when indicated to treat special skin problems or to fight infection;

(E) razor;

(F) shaving cream;

(G) toothbrush;

(H) toothpaste;

(I) denture adhesive;

(J) denture cleaner;

(K) dental floss;

(L) moisturizing lotion;

(M) tissues;

(N) cotton balls;

(O) cotton swabs;

(P) deodorant;

(Q) incontinent care and supplies, to include, but not limited to cloth or disposable briefs (diapers), to be provided as follows:

(i) if attaining or maintaining the resident's highest practicable physical, mental, or psychosocial well-being necessitates the use of briefs (diapers), the facility must provide them. The type of brief (diaper) provided should be based on an individual assessment of the resident's medical and psychosocial condition.

(ii) If the family makes written request to the facility to put briefs (diapers) on the recipient, and the attending physician and director of nurses (DON) document in the clinical record that there is no medical or psychosocial need for briefs (diapers), the recipient, responsible party, or family may be billed for the briefs (diapers), or the recipient's personal funds may be used to purchase the items, or both;

(R) sanitary napkins and related supplies;

(S) towels;

(T) washcloths;

(U) hospital gowns;

(V) over-the-counter drugs;

(W) hair and nail hygiene services;

(X) bathing; and

(Y) personal laundry; and

(6) medically-related social services as required in §19.703 of this title (relating to Social Services General Requirements).

(i) Items and services that may be charged to a resident's personal funds. The facility may charge the resident for requested services that are more expensive than or in excess of covered services in accordance with §19.2601 of this title (relating to Vendor Payment (Items and Services Included)). The following list contains general categories and examples of items and services that the facility may charge to a resident's personal funds if they are requested by a resident, if the facility informs the resident that there will be a charge, and if payment is not made by Medicare or Medicaid:

- (1) telephone;
- (2) television and/or radio for personal use;
- (3) personal comfort items, including smoking materials, notions and novelties, and confections;
- (4) cosmetics and grooming items and services in excess of those for which payment is made under Medicare or Medicaid;
- (5) personal clothing;
- (6) personal reading material;
- (7) gifts purchased on behalf of a resident;
- (8) flowers and plants;
- (9) social events and entertainment offered outside the scope of the activities program, provided under §19.702 of this title (relating to Activities);
- (10) noncovered special care services, such as privately hired nurses and aides;
- (11) private room, except when therapeutically required, such as isolation for infection control; and
- (12) specially-prepared or alternative food requested instead of the food generally prepared by the facility, as required in §19.1101 of this title (relating to Dietary Service).

(j) Request for items or services that may be charged to a resident's personal funds. The facility must:

- (1) not charge a resident, nor his representative, for any item or service not requested by the resident;
- (2) not require a resident, nor his representative, to request any item or service as a condition of admission or continued stay; and
- (3) inform the resident or his representative, when he requests an item or service for which a charge will be made, that there will be a charge for the item or service and the amount of the charge.

(k) Access to financial record. The individual financial record must be available on request to the resident, responsible party, or legal representative.

(l) Quarterly statement. The individual financial record must be available, through quarterly statements and on request, to the resident or his legal representative. The statement must reflect any recipient funds which the facility has deposited in an account as well as any recipient funds held by the facility in a petty cash account. The statement must include at least the following:

- (1) balance at the beginning of the statement period;
- (2) total deposits and withdrawals;
- (3) interest earned, if any;
- (4) identification number and location of any account in which the recipient's personal

funds have been deposited; and  
(5) ending balance.

(m) Banking charges.

(1) Charges for checks, deposit slips, and services for pooled checking accounts are the responsibility of the facility and may not be charged to the recipient, family, or responsible party. These costs, however, may be reported as allowable costs by the facility on its cost report.

(2) Bank service charges and charges for checks and deposit slips may be deducted from the individual checking accounts if it is the recipient's written, individual choice to have this type of account to preserve his dignity and independence.

(3) Bank fees on individual accounts established solely for the convenience of the facility are the responsibility of the facility and may not be charged to the recipient, family, or responsible party. However, the facility may report these costs as allowable costs on its cost report.

(4) The facility may not charge the recipient, family, or responsible party for the administrative handling of either type of account. These costs may be reported as allowable costs by the facility on its cost report.

(5) If the facility places any part of the resident's money in savings accounts, certificates of deposit, or any other plan whereby interest or other benefits are accrued, the facility must distribute the interest or benefit to participating residents on an equitable basis. If pooled accounts are used, interest must be prorated on the basis of actual earnings or end-of-quarter balances.

(n) Access to funds.

(1) Personal funds held in the facility. Upon a Medicaid recipient's request, or transfer or discharge, the facility must return to the recipient, the representative payee, responsible party, or the legal representative the full balance of the recipient's personal funds that the facility has received for holding, safeguarding, and accounting. Because funds held in the facility are usually small amounts, the facility is expected to meet this requirement during normal business hours at the time of request, transfer, or discharge, whichever occurs first. Response to requests received during hours other than normal business hours must be made immediately at the beginning of the next normal business hours. For purposes of this paragraph, normal business hours are 8:00 a.m. to 5:00 p.m. Monday through Friday, excluding national holidays.

(2) Personal funds held outside the facility. Upon request or if a recipient is transferred or discharged, the facility must, within five business days, return to the recipient, representative payee, responsible party, or the legal representative the full balance of a recipient's personal funds that the facility has deposited in an account, including any interest accrued.

(o) Handling of monthly benefits. If the Social Security Administration has determined that a Title II and Title XVI Supplemental Security Income (SSI) benefit to which the recipient is entitled should be paid through a representative payee, the provisions in 20 Code of Federal Regulations (CFR), §§404.2001-404.2065, for Old Age, Survivors, and Disability Insurance benefits and 20 CFR, §§416.601-416.665, for SSI benefits apply.

(p) Change of ownership. If the ownership of a facility changes, the old owner must transfer the bank balances or trust funds to the new owner with a list of the residents and their balances. The old owner must get a receipt from the new owner for the transfer of these funds. The old owner must keep this receipt for audit purposes.

(q) Alternate forms of documentation. Without prior written approval of DHS, alternate forms of documentation, including affidavits, will not be accepted by DHS to verify the resident's personal fund expenditures or as proof of compliance with any requirements specified in these requirements for resident's personal funds.

(r) Limitation on certain charges. A nursing facility may not impose charges for certain Medicaid-eligible individuals, for nursing facility services that exceed the per diem amount established by DHS for such services. "Certain Medicaid-eligible individuals" means an individual who is entitled to medical assistance for nursing facility services, but for whom such benefits are not being paid because, in determining the individuals' income to be applied monthly to the payment for the costs of nursing facility services, the amount of such income exceeds the payment amounts established by DHS.

Source Note: The provisions of this §19.405 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective September 1, 2003, 28 TexReg 6941; amended to be effective August 31, 2004, 29 TexReg 8140

#### RULE §19.406 Free Choice

(a) Resident rights. The resident has the right to:

(1) choose and retain a personal attending physician, subject to that physician's compliance with the facility's standard operating procedures for physician practices in the facility;

(2) be fully informed in advance about care and treatment and of any changes in that care or treatment that may affect the resident's well-being; and

(3) unless adjudged incompetent or otherwise found to be incapacitated under the laws of the State of Texas, participate in planning care and treatment or changes in care and treatment. See §19.419 of this title (relating to Directives and Durable Powers of Attorney).

(b) Licensed-only facilities. The resident must be allowed complete freedom of choice to obtain pharmacy services from any pharmacy that is qualified to perform the services. A facility must not require residents to purchase pharmaceutical supplies or services from the facility itself or from any particular vendor. The resident has the right to be informed of prices before purchasing any pharmaceutical item or service from the facility, except in an emergency.

(c) Additional requirements regarding freedom of choice for Medicaid recipients. The recipient must be allowed complete freedom of choice to obtain any Medicaid services from any institution, agency, pharmacy, person, or organization that is qualified to perform the services, unless the provider causes the facility to be out of compliance with the requirements specified in this chapter.

(1) A facility must not require recipients to purchase supplies or services, including pharmaceutical supplies or services, from the facility itself or from any particular vendor. The recipient has the right to be informed of prices before purchasing any item or services from the facility, except in an emergency (see §19.1502(b)(3) of this title (relating to Choice of Pharmacy Provider)).

(2) The facility must furnish Medicaid recipients with complete information about available Medicaid services, how to obtain these services, their rights to freely choose service providers as specified in this subsection and the right to request a hearing before the Texas Department of Human Services (DHS) if the right to freely choose providers has been abridged without due process.

Source Note: The provisions of this §19.406 adopted to be effective May 1, 1995, 20 TexReg 2393.

#### RULE §19.407 Privacy and Confidentiality

The resident has the right to personal privacy and confidentiality of his personal and clinical records. (See also §19.1910(e) of this title (relating to Clinical Records) and §19.403(e) of this title (relating to Notice of Rights and Services).)

(1) Personal privacy includes accommodations, medical treatment, written and telephone communications, personal care, visits, and meetings of family and resident groups, but this does not require the facility to provide a private room for each resident.

(2) Except as provided in paragraph (3)(B) of this section, the resident may approve or refuse the release of personal and clinical records to any individual outside of the facility.

(3) The resident's right to refuse release of personal and clinical records does not apply when:

- (A) the resident is transferred to another health care institution;
- (B) record release is required by law; or
- (C) during surveys.

(4) The facility must ensure the resident's right to privacy in the following areas:

- (A) accommodations as described in §19.1701 of this title (relating to General Requirements);
- (B) medical treatment. The facility must provide privacy to each resident during examinations, treatment, case discussions, and consultations. Staff must treat these matters confidentially;
- (C) personal care;
- (D) access and visitation as described in §19.413 of this title (relating to Access and Visitation Rights);
- (E) governmental searches are permitted only if there exists probable cause to believe an illegal substance or activity is being concealed. Administrative searches by the appropriate entity, such as the fire inspector, are allowed only for limited purposes, but such searches would not ordinarily extend to the resident's personal belongings. The Texas Department of

Human Services (DHS) and the nursing facility must provide for and allow residents their individual freedoms. State statutes authorize inspections of the nursing facility but do not authorize inspection of those areas in which an individual has a reasonable expectation of privacy. Any direct participation by DHS personnel in an inspection of "the contents of residents' personal drawers and possessions," is in violation of federal and state law; and (F) the resident has the right to privacy for meetings with family and resident groups.

(5) All information that contains personal identification or descriptions which would uniquely identify an individual resident or a provider of health care is considered to be personal and private and will be kept confidential. Personal identifying information (except for PCN numbers) will be deleted from all records, reports, and/or minutes from formal studies which are forwarded to DHS, or anyone else. These records, reports, and/or minutes, which have been de-identified, will still be treated as confidential. All such material mailed to DHS or anyone else must be in a sealed envelope marked "Confidential."

Source Note: The provisions of this §19.407 adopted to be effective May 1, 1995, 20 TexReg 2393.

#### RULE §19.408 Grievances

(a) A resident has the right to:

(1) voice grievances without discrimination or reprisal. These grievances include those with respect to treatment which has been furnished as well as that which has not been furnished;

(2) prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents; and

(3) notify state agencies of complaints against a facility. Complaints will be acknowledged by the staff of the agency that receives the complaint. All complaints will be investigated, whether oral or written.

(b) A nursing facility may not retaliate or discriminate against a resident, a family member or guardian of the resident, or a volunteer because the resident, the resident's family member or guardian, a volunteer, or any other person:

makes a complaint or files a grievance concerning the facility;

reports a violation of law, including a violation of laws or regulations regarding nursing facilities; or

(3) initiates or cooperates in an investigation or proceeding of a governmental entity relating to care, services, or conditions at the nursing facility.

(c) A facility may not discharge or otherwise retaliate against:

(1) an employee, resident, or other person because the employee, resident, or other person files a complaint, presents a grievance, or otherwise provides in good faith information

relating to the misuse of a restraint or involuntary seclusion at the facility; or

(2) a resident because someone on behalf of the resident files a complaint, presents a grievance, or otherwise provides in good faith information relating to the misuse of a restraint or involuntary seclusion at the facility.

Source Note: The provisions of this §19.408 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective March 1, 1998, 23 TexReg 1314; amended to be effective August 1, 2000, 25 TexReg 6779; amended to be effective May 1, 2002, 27 TexReg 2832; amended to be effective June 1, 2006, 31 TexReg 4449

#### RULE §19.409 Examination of Survey Results

The resident has the right to:

(1) examine the results of the most recent survey of the facility conducted by federal or state surveyors and any plan of correction in effect with respect to the facility. The facility must make the results available for examination in a place readily accessible to residents, and must post a notice of their availability; and

(2) receive information from agencies acting as client advocates, and be afforded the opportunity to contact these agencies.

Source Note: The provisions of this §19.409 adopted to be effective May 1, 1995, 20 TexReg 2393.

#### RULE §19.410 Refunds in Medicaid-certified Facilities

(a) The nursing facility must refund private funds paid to the facility for periods covered by Medicaid, including retroactive periods of Medicaid coverage, when:

(1) the Medicaid vendor payment has been accepted by the nursing facility; or

(2) the nursing facility has been notified by the Texas Department of Human Services (DHS) about an individual's eligibility for Medicaid.

(b) The nursing facility must make the refund within 30 days of:

(1) notification of eligibility for nursing home coverage;

(2) notification of correction of applied income (see also §19.2316(f) of this title (relating to Collection of Applied Income) which specifies procedures concerning applied income refunds at the time of discharge); or

(3) receipt of any vendor payment from DHS for any covered period.

(c) When the facility becomes aware of the need for a refund as indicated in subsection (a) of this section, facility staff must write to the resident or his responsible party, notifying him about his right to a refund and the amount due.

Source Note: The provisions of this §19.410 adopted to be effective May 1, 1995, 20 TexReg 2393.

#### RULE §19.411 Work

The resident has the right to:

- (1) refuse to perform services for the facility; and
- (2) perform services for the facility, if he chooses, when:
  - (A) the facility has documented the need or desire for work in the plan of care;
  - (B) the plan specifies the nature of the services performed and whether the services are voluntary or paid;
  - (C) compensation for paid services is at or above prevailing rates; and
  - (D) the resident agrees to the work arrangement described in the plan of care.

Source Note: The provisions of this §19.411 adopted to be effective May 1, 1995, 20 TexReg 2393.

#### RULE §19.412 Mail

The resident has the right to privacy in written communications, including the right to:

- (1) send and receive mail promptly that is unopened;
- (2) request facility staff to help open and read incoming mail and help address and post outgoing mail;
- (3) have access to stationery, postage, and writing implements at the resident's own expense.

Source Note: The provisions of this §19.412 adopted to be effective May 1, 1995, 20 TexReg 2393.

#### RULE §19.413 Access and Visitation Rights

(a) A resident has the right to have access to, and the facility must provide immediate access to a resident to, the following:

- (1) in Medicaid-certified facilities, a representative of the Secretary of Health and Human Services;
- (2) a representative of the State of Texas;
- (3) the resident's individual physician;
- (4) a representative of the Office of the State Long Term Care Ombudsman (the Office), as described in §85.401(r) of this title (relating to Long-Term Care Ombudsman Program);
- (5) a representative of Advocacy, Incorporated, which is responsible for the protection and advocacy system for developmentally disabled individuals established under the

Developmental Disabilities Assistance and Bill of Rights Act, part C;

(6) a representative of Advocacy, Incorporated, which is responsible for the protection and advocacy system for mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act;

(7) subject to the resident's right to deny or withdraw consent at any time, immediate family or other relatives of the resident; and

(8) subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, others who are visiting with the consent of the resident.

(b) A facility must provide reasonable access to a resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time.

(c) A facility must allow a certified ombudsman, as defined in §85.2 of this title (relating to Definitions), and a staff person of the Office access:

(1) to the medical and social records of a resident, including an incident report involving the resident, if the certified ombudsman or staff person of the Office has the consent of the resident or the legally authorized representative of the resident;

(2) to the medical and social records of a resident 60 years of age or older, including an incident report involving the resident, in accordance with the Older Americans Act, §712(b); and

(3) to the administrative records, policies, and documents of the facility to which the facility residents or general public have access.

Source Note: The provisions of this §19.413 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective September 1, 2008, 33 TexReg 7280

#### RULE §19.414 Telephone

(a) The resident has the right to have reasonable access to the use of a telephone (other than a pay phone), where calls can be made without being overheard, and which can also be used for making calls to summon help in case of emergency.

(b) The facility must permit residents to contract for private telephones at their own expense. The facility must not require private telephones to be connected to a central switchboard.

Source Note: The provisions of this §19.414 adopted to be effective May 1, 1995, 20 TexReg 2393.

#### RULE §19.415 Postmortem Procedures

The facility must have policies regarding postmortem procedures, including soliciting and meeting the resident's or families' requests regarding notification of a death, disposition of possessions or personal property, and choice of funeral homes.

Source Note: The provisions of this §19.415 adopted to be effective March 1, 1998, 23 TexReg 1314.

#### RULE §19.416 Personal Property

The resident has the right to retain and use personal possessions, including some furnishings, and appropriate clothing as space permits, unless to do so would infringe upon the rights or health and safety of other residents. Reasons for any limitations are documented in the resident's clinical record. See §19.1921(i) of this title (relating to General Requirements for a Nursing Facility).

(1) If the resident dies, personal property must be transferred to the estate or the person designated by the resident.

(2) If it is donated or sold to the facility by the resident or estate, the transaction must be documented.

(3) If the resident dies and there is no responsible party, family, or legal guardian and no arrangements have been made for the disposition of property, the facility must dispose of property according to the Texas Property Code, Title 6, Chapter 71 (concerning Escheat of Property) and according to the Texas Probate Code, Chapter 10 (concerning Payment of Estates into State Treasury).

Source Note: The provisions of this §19.416 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective July 1, 1996, 21 TexReg 4408.

#### RULE §19.417 Married Couples

The resident must be ensured privacy for visits with his spouse. The resident has the right to share a room with his spouse when married residents live in the same facility and both spouses consent to the arrangement.

Source Note: The provisions of this §19.417 adopted to be effective May 1, 1995, 20 TexReg 2393.

#### RULE §19.418 Self-administration of Drugs

An individual may self-administer drugs if the interdisciplinary team, as defined in §19.802(b)(2) of this title (relating to Comprehensive Care Plans), has determined that this practice is safe.

Source Note: The provisions of this §19.418 adopted to be effective May 1, 1995, 20 TexReg 2393.

#### RULE §19.419 Advance Directives

(a) Competent adults may issue advance directives in accordance with applicable laws. An advance directive has the meaning as defined in Texas Health and Safety Code, §166.002.

(b) A facility must maintain policies and procedures implementing the following with respect to all adult residents:

(1) The facility must:

(A) maintain written policies regarding the implementation of advance directives; and  
(B) include a clear and precise statement of any procedure the facility is unwilling or unable to provide or withhold in accordance with an advance directive.

(2) The facility must:

(A) when a resident is admitted, provide the resident or the appropriate person referenced in paragraph (8) of this subsection with a copy of:

(i) the advance care planning educational material provided by DADS;  
(ii) the resident's rights under Texas law (whether statutory or as recognized by the courts of the state) to make decisions concerning medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate advance directives; and  
(iii) the facility's policies respecting the implementation of these rights, including the written policies regarding the implementation of advance directives;  
(iv) within 14 days after the resident is admitted, orally review and discuss the information provided in accordance with subparagraph (A) of this paragraph and the importance of planning for end-of-life care with the resident or with the appropriate person referenced in paragraph (8) of this subsection; and  
(v) annually and when there is a significant positive change or a significant deterioration in the resident's clinical condition, provide, review, and discuss the written information regarding advance directives listed in subparagraph (A) of this paragraph with the resident or with the appropriate person referenced in paragraph (8) of this subsection.

(3) The facility must document the oral discussion and the provision of the written information in the resident's clinical record. The facility must document in the resident's clinical record whether or not the resident has executed an advance directive.

(4) The facility must not condition the provision of care or otherwise discriminate against a resident based on whether or not the resident has executed an advance directive.

(5) The facility must ensure compliance with the requirements of Texas law, whether statutory or as recognized by the courts of Texas, respecting advance directives.

(6) The facility must provide, individually or with others, education for staff and the community on issues concerning advance directives. For the community, this may include newsletters, newspaper articles, local news reports, or commercials. For educating staff, this may include in-service programs.

(7) The facility must provide the attending physician, emergency medical technician, and hospital personnel with any information relating to a resident's known existing advance

directive and assist with coordinating physicians' orders with the resident's known existing advance directive.

(8) Except as provided in paragraph (9) of this subsection, if a resident is in a comatose or otherwise incapacitated state, and therefore is unable to receive information or articulate whether the resident has executed an advance directive, the facility must provide, review, and discuss written information regarding advance directives, including advance care planning educational material provided by DADS and facility policies regarding the implementation of advance directives, in the following order of preference, to:

- the resident's legal guardian;
- a person responsible for the resident's health care decisions;
- the resident's spouse;
- the resident's adult child;
- the resident's parents; or
- the person admitting the resident.

(9) If a resident is in a comatose or otherwise incapacitated state, and therefore is unable to receive information or articulate whether the resident has executed an advance directive, and if the facility is unable, after diligent search, to locate a person listed under paragraph (8) of this subsection, the facility is not required to provide written information regarding advance directives. The facility must document in the resident's clinical record its attempts to make a diligent search.

(10) If a resident, who was incompetent or otherwise incapacitated and was unable to receive information regarding advance directives, including written policies regarding the implementation of advance directives, later becomes able to receive the information, the facility must provide, review, and discuss the written information at the time the resident becomes able to receive the information.

(11) If the resident or a relative, surrogate, or other concerned or related person presents the facility with a copy of the resident's advance directive, the facility must comply with the advance directive, including recognition of a Medical Power of Attorney, to the extent allowed under state law. If no one comes forward with a previously executed advance directive and the resident is incapacitated or otherwise unable to receive information or articulate whether he has executed an advance directive, the facility must document in the resident's clinical record that the resident was not able to receive information and was unable to communicate whether an advance directive existed.

(c) Failure to provide the facility's written policies as required in subsection (b)(2)(A)(iii) of this section when a resident is admitted will result in an administrative penalty of \$500.

(d) A facility that provides services to children must ensure that:

(1) prior to admission to the facility, the primary physician, who has been providing care to the child, has discussed advance directives with the family or guardian and has provided documentation of this discussion to the facility; and

(2) the decision made by the family or guardian regarding advance directives is addressed in the comprehensive care plan (see §19.802 of this title (relating to Comprehensive Care Plans)).

Source Note: The provisions of this §19.419 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective August 1, 2000, 25 TexReg 6779; amended to be effective April 1, 2007, 32 TexReg 1582

#### RULE §19.420 Documentation for the Delegation of Long-Term Care Resident's Rights

(a) The delegation of resident rights may occur in three cases:

(1) when a competent individual chooses to allow another to act for him, such as with a Durable Power of Attorney;

(2) when the resident has been adjudicated to be incompetent by a court of law and a guardian has been appointed; or

(3) when the physician has determined that, for medical reasons, the resident is incapable of understanding and exercising such rights. The Health and Safety Code, Chapter 313, Consent to Medical Treatment, provides guidance under certain circumstances when a resident is comatose, incapacitated, or otherwise mentally or physically incapable of communication.

(b) In order to assure preservation of rights, the physician and the facility must document specific information concerning the incapability of the resident to understand and exercise his rights.

(c) Facility documentation must cover:

(1) the relationship of the resident to the person assuming his rights and responsibilities;

(2) the authority allowing the responsible person to act for the resident;

(3) resident assessments, care plans, and progress notes that address the resident's inability to exercise his rights and responsibilities; and

(4) assurance that the resident who is mentally capable of understanding and exercising his rights, but physically incapable of doing so, receives interventions which facilitate the exercise of his rights.

(d) Physician documentation must cover:

(1) resident's comatose state, incapacity, or other mental or physical inability to communicate;

(2) proposed medical treatment or decision;

(3) periodic assurance that there has been no essential change in the resident's mental function; and

(4) reevaluation whenever a significant change in resident status occurs or for orders that impact on resident rights (such as "No CPR").

Source Note: The provisions of this §19.420 adopted to be effective May 1, 1995, 20 TexReg 2393.

#### RULE §19.421 Refusal of Certain Transfers in Medicaid-certified Facilities

(a) An individual has the right to refuse a transfer to another room within the facility, if the purpose of the transfer is to relocate:

(1) a resident of a skilled nursing facility (SNF) from the distinct part of the facility that is an SNF to a part of the facility that is not an SNF; or

(2) a resident of a nursing facility from the distinct part of the facility that is a nursing facility to a distinct part of the facility that is an SNF.

(b) A resident's exercise of the right to refuse transfer under this section does not affect the individual's eligibility or entitlement to Medicaid benefits.

Source Note: The provisions of this §19.421 adopted to be effective May 1, 1995, 20 TexReg 2393.

#### RULE §19.422 Authorized Electronic Monitoring (AEM)

(a) A facility must permit a resident or the resident's guardian or legal representative to monitor the resident's room through the use of electronic monitoring devices.

(b) A facility may not refuse to admit an individual and may not discharge a resident because of a request to conduct authorized video monitoring.

(c) The Texas Department of Human Services (DHS) Information Regarding Authorized Electronic Monitoring form must be signed by or on behalf of all new residents upon admission. The form must be completed and signed by or on behalf of all current residents by July 1, 2003. A copy of the form must be maintained in the active portion of the resident's clinical record.

Figure: 40 TAC §19.422(c)

#### Texas Department of Human Services (DHS) Information Regarding Authorized Electronic Monitoring

A resident or the resident's guardian or legal representative is entitled to conduct authorized electronic monitoring (AEM) under Subchapter R, Chapter 242, Health and Safety Code. To request AEM, you, your guardian or your legal representative must:

- 1) complete the Request for Authorized Electronic Monitoring form (available from the facility);
- 2) obtain the consent of other residents, if any, in your room, using the Consent to Authorized Electronic Monitoring form (available from the facility); and
- 3) give the form(s) to the facility administrator or designee.

Who may request AEM?

- 1) The resident, if the resident has capacity to request AEM and has not been judicially declared to lack the required capacity.
- 2) The guardian of the resident, if the resident has been judicially declared to lack the required capacity.
- 3) The legal representative of the resident, if the resident does not have capacity to request AEM and has not been judicially declared to lack the required capacity.

Who determines if the resident does not have the capacity to request AEM?

The resident's physician will make the determination regarding the capacity to request AEM. When the resident's physician has determined the resident lacks capacity to request AEM, a person from the following list, in order of priority, may act as the resident's legal representative for the limited purpose of requesting AEM:

- 1) a person named in the resident's medical power of attorney or other advance directive;
- 2) the resident's spouse;
- 3) an adult child of the resident who has the waiver and consent of all other qualified adult children of the resident to act as the sole decision-maker;
- 4) a majority of the resident's reasonably available adult children;
- 5) the resident's parents; or
- 6) the individual clearly identified to act for the resident by the resident before the resident became incapacitated or the resident's nearest living relative.

Who may consent to AEM?

- 1) The other resident(s) in the room.
- 2) The guardian of the other resident, if the resident has been judicially declared to lack the required capacity.
- 3) The legal representative of the other resident, if the resident does not have capacity to sign the form, but has not been judicially declared to lack the required capacity. The legal representative is determined by following the procedure for determining a legal representative, as stated above, under "Who determines if the resident does not have the capacity to request AEM?"

Can a resident be discharged or refused admittance for requesting AEM?

A facility may not refuse to admit an individual and may not discharge a resident because of a request to conduct AEM. If either of these situations occur, you should report the occurrence to the local office of Long Term Care-Regulatory, Texas Department of Human Services.

What about covert electronic monitoring?

A facility may not discharge a resident because covert electronic monitoring is being conducted by or on behalf of a resident. A facility attempting to discharge a resident because of covert electronic monitoring should be reported to the local office of Long Term Care-Regulatory, Texas Department of Human Services.

What is required if a covert electronic monitoring device is discovered?

If a covert electronic monitoring device is discovered by a facility and is no longer covert as

defined in §242.843, Health and Safety Code, the resident must meet all requirements for AEM before monitoring is allowed to continue.

Is notice of AEM required?

Anyone conducting AEM must post and maintain a conspicuous notice at the entrance to the resident's room. The notice must state that an electronic monitoring device is monitoring the room.

What is required for the installation of monitoring equipment?

The resident or the resident's guardian or legal representative must pay for all costs associated with conducting AEM, including installation in compliance with life safety and electrical codes, maintenance, removal of the equipment, posting and removal of the notice, or repair following removal of the equipment and notice, other than the cost of electricity.

A facility may require an electronic monitoring device to be installed in a manner that is safe for residents, employees, or visitors who may be moving about the room. A facility may also require that AEM be conducted in plain view.

The facility must make reasonable physical accommodation for AEM, which includes providing:

- 1) a reasonably secure place to mount the video surveillance camera or other electronic monitoring device; and
- 2) access to power sources for the video surveillance camera or other electronic monitoring device.

If the facility refuses to permit AEM or fails to make reasonable physical accommodations for AEM, you should report the facility's refusal to the local office of Long Term Care-Regulatory, Texas Department of Human Services.

Are facilities subject to administrative penalties for violations of the electronic monitoring rules?

Yes, DHS may assess an administrative penalty of \$500 against a facility for each instance in which the facility:

- 1) refuses to permit a resident or the resident's guardian or legal representative to conduct AEM;
- 2) refuses to admit an individual or discharges a resident because of a request to conduct AEM;
- 3) discharges a resident because covert electronic monitoring is being conducted by or on behalf of the resident; or
- 4) violates any other provision related to AEM.

How does AEM affect the reporting of abuse and neglect?

The Texas Health and Safety Code, §242.122, requires an individual to report abuse or neglect immediately. Section 242.131 establishes a criminal penalty for failure to report abuse and neglect. If abuse or neglect has occurred, the most important thing is to report it, regardless of whether the reporting meets the legal definition of timely. Abuse and neglect cannot be addressed unless reported.

For purposes of the duty to report abuse or neglect and the criminal penalty for the failure to report abuse or neglect, the following apply:

- 1) A person who is conducting electronic monitoring on behalf of a resident is considered to have viewed or listened to a tape or recording made by the electronic monitoring device on or before the 14th day after the date the tape or recording is made.
- 2) If a resident, who has capacity to determine that the resident has been abused or neglected and who is conducting electronic monitoring, gives a tape or recording made by the electronic monitoring device to a person and directs the person to view or listen to the tape or recording to determine whether abuse or neglect has occurred, the person to whom the resident gives the tape or recording is considered to have viewed or listened to the tape or recording on or before the seventh day after the date the person receives the tape or recording.
- 3) A person is required to report abuse based on the person's viewing of or listening to a tape or recording only if the incident of abuse is acquired on the tape or recording. A person is required to report neglect based on the person's viewing of or listening to a tape or recording only if it is clear from viewing or listening to the tape or recording that neglect has occurred.
- 4) If abuse or neglect of the resident is reported to the facility and the facility requests a copy of any relevant tape or recording made by an electronic monitoring device, the person who possesses the tape or recording must provide the facility with a copy at the facility's expense. The cost of the copy cannot exceed the community standard.
- 5) A person who sends more than one tape or recording to DHS must identify each tape or recording on which the person believes an incident of abuse or evidence of neglect may be found. Tapes or recordings should identify the place on the tape or recording that an incident of abuse or evidence of neglect may be found.

What is required for the use of a tape or recording by an agency or court?

Subject to applicable rules of evidence and procedure, a tape or recording created through the use of covert monitoring or AEM may be admitted into evidence in a civil or criminal court action or administrative proceeding. A court or administrative agency may not admit into evidence a tape or recording created through the use of covert monitoring or AEM or take or authorize action based on the tape or recording unless:

- 1) the tape or recording shows the time and date the events on the tape or recording occurred, if the tape or recording is a video tape or recording;
- 2) the contents of the tape or recording have not been edited or artificially enhanced; and
- 3) any transfer of the contents of the tape or recording was done by a qualified professional and the contents were not altered, if the contents have been transferred from the original format to another technological format.

Are there additional provisions of the law?

A person who places an electronic monitoring device in the room of a resident or who uses or discloses a tape or other recording made by the device may be civilly liable for any unlawful violation of the privacy rights of another.

A person who covertly places an electronic monitoring device in the room of a resident or who consents to or acquiesces in the covert placement of the device in the room of a

resident has waived any privacy right the person may have had in connection with images or sounds that may be acquired by the device.

A person who intentionally hampers, obstructs, tampers with, or destroys an electronic monitoring device installed in a resident's room in accordance with the Health and Safety Code, Subchapter R, Chapter 242, or a tape or recording made by the device, commits a Class B misdemeanor. It is a defense to prosecution that the person took the action with the effective consent of the resident on whose behalf the electronic monitoring device was installed or the resident's guardian or legal representative.

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Signature of Resident/ Person Signing of Behalf of Resident      Date

(d) A resident, or the resident's guardian or legal representative, who wishes to conduct AEM must request AEM by giving a completed, signed, and dated DHS Request for Authorized Electronic Monitoring form to the administrator or designee. A copy of the form must be maintained in the active portion of the resident's clinical record.

(1) If a resident has capacity to request AEM and has not been judicially declared to lack the required capacity, only the resident may request AEM, notwithstanding the terms of any durable power of attorney or similar instrument.

(2) If a resident has been judicially declared to lack the capacity required to request AEM, only the guardian of the resident may request AEM.

(3) If a resident does not have capacity to request AEM and has not been judicially declared to lack the required capacity, only the legal representative of the resident may request AEM.

(A) A resident's physician makes the determination regarding the capacity to request AEM. Documentation of the determination must be made in the resident's clinical record.

(B) When a resident's physician determines the resident lacks capacity to request AEM, a person from the following list, in order of priority, may act as the resident's legal representative for the limited purpose of requesting AEM:

- (i) a person named in the resident's medical power of attorney or other advance directive;
- (ii) the resident's spouse;
- (iii) an adult child of the resident who has the waiver and consent of all other qualified adult children of the resident to act as the sole decision-maker;
- (iv) a majority of the resident's reasonably available adult children;
- (v) the resident's parents; or
- (vi) the individual clearly identified to act for the resident by the resident before the resident became incapacitated or the resident's nearest living relative.

(e) A resident, or the resident's guardian or legal representative, who wishes to conduct AEM also must obtain the consent of other residents in the room, using the DHS Consent to Authorized Electronic Monitoring form. When complete, the form must be given to the administrator or designee. A copy of the form must be maintained in the active portion of the resident's clinical record.

(1) Consent to AEM may be given only by:

(A) the other resident or residents in the room;

(B) the guardian of the other resident, if the resident has been judicially declared to lack the required capacity; or

(C) the legal representative of the other resident, determined by following the same procedure established under (d)(3) of this section.

(2) Another resident in the room may condition consent on:

(A) pointing the camera away from the consenting resident, when the proposed electronic monitoring is a video surveillance camera; and

(B) limiting or prohibiting the use of an audio electronic monitoring device.

(3) AEM must be conducted in accordance with any limitation placed on the monitoring as a condition of the consent given by or on behalf of another resident in the room. The resident's roommate, their guardian, or legal representative assumes responsibility for assuring AEM is conducted according to the designated limitations.

(4) If AEM is being conducted in a resident's room, and another resident is moved into the room who has not yet consented to AEM, the monitoring must cease until the new resident, or the resident's guardian or legal representative, consents.

(f) When the completed Request for Authorized Electronic Monitoring form and the Consent to Authorized Electronic Monitoring form, if applicable, have been given to the administrator or designee, AEM may begin.

(1) Anyone conducting AEM must post and maintain a conspicuous notice at the entrance to the resident's room. The notice must state that the room is being monitored by an electronic monitoring device.

(2) The resident, or the resident's guardian or legal representative, must pay for all costs associated with conducting AEM, including installation in compliance with life safety and electrical codes, maintenance, removal of the equipment, posting and removal of the notice, or repair following removal of the equipment and notice, other than the cost of electricity.

(3) The facility must meet residents' requests to have a video camera obstructed to protect their dignity.

(4) The facility must make reasonable physical accommodation for AEM, which includes providing:

(A) a reasonably secure place to mount the video surveillance camera or other electronic monitoring device; and

(B) access to power sources for the video surveillance camera or other electronic monitoring device.

(g) All facilities, regardless of whether AEM is being conducted, must post an 8-inch by 11-inch notice at the main facility entrance. The notice must be entitled "Electronic Monitoring" and must state, in large, easy-to-read type, "The rooms of some residents may be monitored

electronically by or on behalf of the residents. Monitoring may not be open and obvious in all cases."

(h) A facility may:

(1) require an electronic monitoring device to be installed in a manner that is safe for residents, employees, or visitors who may be moving about the room, and meets all local and state regulations;

(2) require AEM to be conducted in plain view;

(3) place a resident in a different room to accommodate a request for AEM.

(i) A facility may not discharge a resident because covert electronic monitoring is being conducted by or on behalf of a resident. If a facility discovers a covert electronic monitoring device and it is no longer covert as defined in §242.843, Health and Safety Code, the resident must meet all the requirements for AEM before monitoring is allowed to continue.

(j) DHS may assess an administrative penalty of \$500 against a facility for each instance in which the facility:

(1) refuses to permit a resident, or the resident's guardian or legal representative, to conduct AEM;

(2) refuses to admit an individual or discharges a resident because of a request to conduct AEM;

(3) discharges a resident because covert electronic monitoring is being conducted by or on behalf of the resident; or

(4) violates any other provision related to AEM.

(k) All instances of abuse or neglect must be reported to DHS, as required by §19.602 of this title (relating to Incidents of Abuse and Neglect Reportable to the Texas Department of Human Services (DHS) by Facilities). For purposes of the duty to report abuse or neglect and the criminal penalty for the failure to report abuse or neglect, established under the Health and Safety Code, §242.122, the following apply:

(1) A person who is conducting electronic monitoring on behalf of a resident is considered to have viewed or listened to a tape or recording made by the electronic monitoring device on or before the 14th day after the date the tape or recording is made.

(2) If a resident, who has capacity to determine that the resident has been abused or neglected and who is conducting electronic monitoring, gives a tape or recording made by the electronic monitoring device to a person and directs the person to view or listen to the tape or recording to determine whether abuse or neglect has occurred, the person to whom the resident gives the tape or recording is considered to have viewed or listened to the tape or recording on or before the seventh day after the date the person receives the tape or recording.

(3) A person is required to report abuse based on the person's viewing of or listening to a tape or recording only if the incident of abuse is acquired on the tape or recording. A person is required to report neglect based on the person's viewing of or listening to a tape or recording only if it is clear from viewing or listening to the tape or recording that neglect has occurred.

(4) If abuse or neglect of the resident is reported to the facility and the facility requests a copy of any relevant tape or recording made by an electronic monitoring device, the person who possesses the tape or recording must provide the facility with a copy at the facility's expense. The cost of the copy must not exceed the community standard. If the contents of the tape or recording are transferred from the original technological format, a qualified professional must do the transfer.

(5) A person who sends more than one tape or recording to DHS must identify each tape or recording on which the person believes an incident of abuse or evidence of neglect may be found. Tapes or recordings should identify the place on the tape or recording that an incident of abuse or evidence of neglect may be found.

Source Note: The provisions of this §19.422 adopted to be effective July 1, 2002, 27 TexReg 4362

#### RULE §19.706 Resident Group and Family Council

(a) A resident has the right to organize and participate in resident groups in a facility.

(b) A facility must assist residents who require assistance to attend resident group meetings.

(c) A resident's family has the right to meet in the facility with the families of other residents in the facility and organize a family council. A family council may:

(1) make recommendations to the facility proposing policy and operational decisions affecting resident care and quality of life; and

(2) promote educational programs and projects intended to promote the health and happiness of residents.

(d) If a resident group or family council exists, a facility must:

(1) listen to and consider the views and act upon the grievances and recommendations of residents and families concerning proposed policy and operational decisions affecting resident care and life in the facility;

(2) provide a resident group or family council with private space;

(3) provide a designated staff person responsible for providing assistance and responding to written requests that result from resident group and family council meetings; and

(4) allow staff or visitors to attend meetings at the resident group's or family council's invitation.

(e) If a family council exists, a facility must:

(1) upon written request, allow the family council to meet in a common meeting room of the facility at least once a month during hours mutually agreed upon by the family council and the facility;

(2) provide the family council with adequate space on a prominent bulletin board to post notices and other information;

designate a staff person to act as the family council's liaison to the facility;

respond in writing to written requests by the family council within five working days;

(5) include information about the existence of the family council in a mailing that occurs at least semiannually; and

(6) permit a representative of the family council to discuss concerns with an individual conducting an inspection or survey of the facility.

(f) Unless the resident objects, a family council member may authorize, in writing, another member to visit and observe a resident represented by the authorizing member.

(g) A facility must not limit the rights of a resident, a resident's family member, or a family council member to meet with an outside person, including:

(A) an employee of the facility during the employee's nonworking hours if the employee agrees; or

(B) a member of a nonprofit or government organization.

(h) A facility must not:

(1) terminate an existing family council;

(2) prevent or interfere with the family council from receiving outside correspondence addressed to the family council or open family council mail; or

(3) willfully interfere with the formation, maintenance, or operation of a family council, including interfering by:

(A) denying a family council the opportunity to accept help from an outside person;

(B) discriminating or retaliating against a family council participant; or

(C) willfully scheduling events in conflict with previously scheduled family council meetings, if the facility has other scheduling options.

Source Note: The provisions of this §19.706 adopted to be effective September 1, 2008, 33 TexReg 6151

#### RULE §19.1010 Nursing Practices

...(f) If permitted by written policies of the nursing facility, an RN or a physician's assistant may determine and pronounce a person dead in situations other than when an individual is being supported by artificial means which preclude determination that the person's spontaneous respiratory and circulatory functions have ceased.

(1) the apparent death of a resident must be reported immediately to the attending physician, relatives, and any guardian or legal representatives...

## 2208 Standards for Certified Alzheimer's Facilities

### (a) General requirements.

...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.