HEALTH AND SAFETY CODE

TITLE 4. HEALTH FACILITIES

SUBTITLE B. LICENSING OF HEALTH FACILITIES

CHAPTER 242. CONVALESCENT AND NURSING HOMES AND RELATED INSTITUTIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 242.001. SCOPE, PURPOSE, AND IMPLEMENTATION. (a) It is the goal of this chapter to ensure that institutions in this state deliver the highest possible quality of care. This chapter, and the rules and standards adopted under this chapter, establish minimum acceptable levels of care. A violation of a minimum acceptable level of care established under this chapter or a rule or standard adopted under this chapter is forbidden by law. Each institution licensed under this chapter shall, at a minimum, provide quality care in accordance with this chapter and the rules and standards. Components of quality of care addressed by these rules and standards include:

(1) quality of life;
(2) access to care;
(3) continuity of care;
(4) comprehensiveness of care;
(5) coordination of services;
(6) humaneness of treatment;
(7) conservatism in intervention;
(8) safety of the environment;
(9) professionalism of caregivers; and
(10) participation in useful studies.

(b) The rules and standards adopted under this chapter may be more stringent than the standards imposed by federal law for certification for participation in the state Medicaid program. The rules and standards may not be less stringent than the Medicaid certification standards imposed under the Omnibus Budget Reconciliation Act of 1987 (OBRA), Pub.L. No. 100-203.
The rules and standards adopted under this chapter apply to each licensed institution. The rules and standards are intended for use in state surveys of the facilities and any investigation and enforcement action and are designed to be useful to consumers and providers in assessing the quality of care provided in an institution.

The legislature finds that the construction, maintenance, and operation of institutions shall be regulated in a manner that protects the residents of the institutions by:

1. providing the highest possible quality of care;
2. strictly monitoring all factors relating to the health, safety, welfare, and dignity of each resident;
3. imposing prompt and effective remedies for noncompliance with licensing standards; and
4. providing the public with information concerning the operation of institutions in this state.

It is the legislature's intent that this chapter accomplish the goals listed in Subsection (d).

This chapter shall be construed broadly to accomplish the purposes set forth in this section.


Sec. 242.002. DEFINITIONS. In this chapter:

1. "Board" means the Texas Board of Human Services.
2. "Commissioner" means the commissioner of human services.
3. "Controlling person" means a person who controls an institution or other person as described by Section 242.0021.
4. "Department" means the Department of Aging and Disability Services.
5. "Elderly person" means an individual who is 65 years of age or older.
5-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.
6. "Facility" means an institution.
7. "Governmental unit" means the state or a political...
subdivision of the state, including a county or municipality.

(8) "Home" means an institution.

(9) "Hospital" has the meaning assigned by Chapter 241 (Texas Hospital Licensing Law).

(10) "Institution" means an establishment that:

(A) furnishes, in one or more facilities, food and shelter to four or more persons who are unrelated to the proprietor of the establishment; and

(B) provides minor treatment under the direction and supervision of a physician licensed by the Texas Medical Board, or other services that meet some need beyond the basic provision of food, shelter, and laundry.

(11) "Person" means an individual, firm, partnership, corporation, association, joint stock company, limited partnership, limited liability company, or any other legal entity and includes a legal successor of those entities.

(12) "Resident" means an individual, including a patient, who resides in an institution.


Acts 2007, 80th Leg., R.S., Ch. 404, Sec. 1, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 763, Sec. 1, eff. June 19, 2009.

Sec. 242.0021. CONTROLLING PERSON. (a) A person is a controlling person if the person has the ability, acting alone or in concert with others, to directly or indirectly influence, direct, or cause the direction of the management, expenditure of money, or policies of an institution or other person.

(b) For purposes of this chapter, "controlling person" includes:
(1) a management company, landlord, or other business entity that operates or contracts with others for the operation of an institution;

(2) any person who is a controlling person of a management company or other business entity that operates an institution or that contracts with another person for the operation of an institution; and

(3) any other individual who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of an institution, is in a position of actual control or authority with respect to the institution, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility.

(b-1) Notwithstanding any other provision of this section, for purposes of this chapter, a controlling person of an institution or of a management company or other business entity described by Subsection (b)(1) that is a publicly traded corporation or is controlled by a publicly traded corporation means an officer or director of the corporation. The term does not include a shareholder or lender of the publicly traded corporation.

(c) A controlling person described by Subsection (b)(3) does not include a person, such as an employee, lender, secured creditor, or landlord, who does not exercise any influence or control, whether formal or actual, over the operation of an institution.

(d) The department may adopt rules that define the ownership interests and other relationships that qualify a person as a controlling person.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.03, eff. Sept. 1, 1997.
Amended by:

Act 2009, 81st Leg., R.S., Ch. 917, Sec. 1, eff. September 1, 2009.

Sec. 242.003. EXEMPTIONS. Except as otherwise provided, this chapter does not apply to:
(1) a hotel or other similar place that furnishes only food, lodging, or both, to its guests;
(2) a hospital;
(3) an establishment conducted by or for the adherents of a well-recognized church or religious denomination for the purpose of providing facilities for the care or treatment of the sick who depend exclusively on prayer or spiritual means for healing, without the use of any drug or material remedy, if the establishment complies with safety, sanitary, and quarantine laws and rules;
(4) an establishment that furnishes, in addition to food, shelter, and laundry, only baths and massages;
(5) an institution operated by a person licensed by the Texas Board of Chiropractic Examiners;
(6) a facility that:
(A) primarily engages in training, habilitation, rehabilitation, or education of clients or residents;
(B) is operated under the jurisdiction of a state or federal agency, including the Department of Assistive and Rehabilitative Services, Department of Aging and Disability Services, Department of State Health Services, Health and Human Services Commission, Texas Department of Criminal Justice, and Department of Veterans Affairs; and
(C) is certified through inspection or evaluation as meeting the standards established by the state or federal agency;
(7) a foster care type residential facility that serves fewer than five persons and operates under rules adopted by the Texas Department of Human Services or the executive commissioner of the Health and Human Services Commission, as applicable; and
(8) a facility licensed under Chapter 252 or exempt from licensure under Section 252.003.

Sec. 242.004. SIMULTANEOUS CARE FOR PREGNANT WOMEN AND OTHER WOMEN. This chapter does not prohibit an institution defined by Section 242.002(6)(B) from simultaneously caring for pregnant women and other women younger than 50 years of age.


Sec. 242.005. PERFORMANCE REPORTS. (a) The department and the attorney general each shall prepare annually a full report of the operation and administration of their respective responsibilities under this chapter, including recommendations and suggestions considered advisable.

(b) The Legislative Budget Board and the state auditor shall jointly prescribe the form and content of reports required under this section, provided, however, that the state auditor's participation under this section is subject to approval by the legislative audit committee for inclusion in the audit plan under Section 321.013(c), Government Code.

(c) The department and the attorney general shall submit the required reports to the governor and the legislature not later than October 1 of each year.


Sec. 242.006. DIRECTORY OF LICENSED INSTITUTIONS. (a) The department shall prepare and publish annually a directory of all licensed institutions.

(b) The directory must contain:

(1) the name and address of the institution;

(2) the name of the proprietor or sponsoring organization; and

(3) other pertinent data that the department considers useful and beneficial to those persons interested in institutions operated in accordance with this chapter.

(c) The department shall make copies of the directory
available to the public.


Sec. 242.007. CONSULTATION AND COOPERATION. (a) Whenever possible, the department shall use the services of and consult with state and local agencies in carrying out its responsibility under this chapter.

(b) The department may cooperate with local public health officials of a county or municipality in carrying out this chapter and may delegate to those officials the power to make inspections and recommendations to the department in accordance with this chapter.

(c) The department may coordinate its personnel and facilities with a local agency of a municipality or county and may provide advice to the municipality or county if the municipality or county decides to supplement the state program with additional rules required to meet local conditions.


Sec. 242.008. EMPLOYMENT OF PERSONNEL. The department may employ the personnel necessary to administer this chapter properly.


Sec. 242.009. FEDERAL FUNDS. The department may accept and use any funds allocated by the federal government to the department for administrative expenses.


Sec. 242.010. CHANGE OF ADMINISTRATORS. An institution that hires a new administrator or person designated as chief manager shall:

(1) notify the department in writing not later than the 30th day after the date on which the change becomes effective; and
(2) pay a $20 administrative fee to the department.


Sec. 242.011. 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.


Sec. 242.013. PAPERWORK REDUCTION RULES. (a) The department shall:

(1) adopt rules to reduce the amount of paperwork an institution must complete and retain; and

(2) attempt to reduce the amount of paperwork to the minimum amount required by state and federal law unless the reduction would jeopardize resident safety.

(b) The department, the contracting agency, and providers shall work together to review rules and propose changes in paperwork requirements so that additional time is available for direct resident care.


Sec. 242.014. PROHIBITION OF REMUNERATION. (a) An institution may not receive monetary or other remuneration from a person or agency that furnishes services or materials to the institution or its occupants for a fee.

(b) The department may revoke the license of an institution that violates Subsection (a).


Sec. 242.015. LICENSED ADMINISTRATOR. (a) Each institution must have a licensed nursing facility administrator.
(b) The administrator shall:

(1) manage the institution;

(2) be responsible for:
   (A) delivery of quality care to all residents; and
   (B) implementation of the policies and procedures of the institution; and

(3) work at least 40 hours per week on administrative duties.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.05, eff. Sept. 1, 1997.

Sec. 242.016. FEES AND PENALTIES. Except as expressly provided by this chapter, a fee or penalty collected by or on behalf of the department under this chapter must be deposited to the credit of the general revenue fund and may be appropriated only to the department to administer and enforce this chapter. Investigation and attorney's fees may not be assessed or collected by or on behalf of the department or other state agency unless the department or other state agency assesses and collects a penalty described under this chapter.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.05, eff. Sept. 1, 1997.

Sec. 242.017. ADMISSIBILITY OF CERTAIN EVIDENCE IN CIVIL ACTIONS. (a) The following are not admissible as evidence in a civil action:

(1) any finding by the department that an institution has violated this chapter or a rule adopted under this chapter; or

(2) the fact of the assessment of a penalty against an institution under this chapter or the payment of the penalty by an institution.

(b) This section does not apply in an enforcement action in which the state or an agency or political subdivision of the state is a party.

(c) Notwithstanding any other provision of this section, evidence described by Subsection (a) is admissible as evidence in a
civil action only if:

(1) the evidence relates to a material violation of this chapter or a rule adopted under this chapter or assessment of a monetary penalty with respect to:

(A) the particular incident and the particular individual whose personal injury is the basis of the claim being brought in the civil action; or

(B) a finding by the department that directly involves substantially similar conduct that occurred at the institution within a period of one year before the particular incident that is the basis of the claim being brought in the civil action; and

(2) the evidence of a material violation has been affirmed by the entry of a final adjudicated and unappealable order of the department after formal appeal; and

(3) the record is otherwise admissible under the Texas Rules of Evidence.

Added by Acts 2003, 78th Leg., ch. 204, Sec. 16.02, eff. Sept. 1, 2003.

SUBCHAPTER B. LICENSING, FEES, AND INSPECTIONS

Sec. 242.031. LICENSE REQUIRED. A person or governmental unit, acting severally or jointly with any other person or governmental unit, may not establish, conduct, or maintain an institution in this state without a license issued under this chapter.


Sec. 242.032. LICENSE OR RENEWAL APPLICATION. (a) An application for a license or renewal of a license is made to the department on a form provided by the department and must be accompanied by the license fee.

(b) The application must contain information that the department requires.

(c) The applicant or license holder must furnish evidence to
affirmatively establish the applicant's or license holder's ability to comply with:

(1) minimum standards of medical care, nursing care, and financial condition; and

(2) any other applicable state or federal standard.

(d) The department shall consider the background and qualifications of:

(1) the applicant or license holder;

(2) a partner, officer, director, or managing employee of the applicant or license holder;

(3) a person who owns or who controls the owner of the physical plant of a facility in which the institution operates or is to operate; and

(4) a controlling person with respect to the institution for which a license or license renewal is requested.

(e) In making the evaluation required by Subsection (d), the department shall require the applicant or license holder to file a sworn affidavit of a satisfactory compliance history and any other information required by the department to substantiate a satisfactory compliance history relating to each state or other jurisdiction in which the applicant or license holder and any other person described by Subsection (d) operated an institution at any time during the five-year period preceding the date on which the application is made. The department by rule shall determine what constitutes a satisfactory compliance history. The department may also require the applicant or license holder to file information relating to the history of the financial condition of the applicant or license holder and any other person described by Subsection (d) with respect to an institution operated in another state or jurisdiction at any time during the five-year period preceding the date on which the application is made.

(f) Information obtained under this section regarding an applicant's or license holder's financial condition is confidential and may not be disclosed to the public.

Sec. 242.033. ISSUANCE AND RENEWAL OF LICENSE. (a) After receiving an application for a license, the department shall issue the license if, after inspection and investigation, it finds that the applicant or license holder, and any other person described by Section 242.032(d), meet the requirements established under each provision of this chapter and any rule or standard adopted under this chapter.

(b) The department may issue a license only for:

1. the premises and persons or governmental unit named in the application; and

2. the maximum number of beds specified in the application.

(c) A license may not be transferred or assigned.

(d) Except as provided by Subsection (f), a license is renewable every two years after:

1. an inspection, unless an inspection is not required as provided by Section 242.047;

2. payment of the license fee; and

3. department approval of the report filed every two years by the licensee.

(e) The report required for license renewal under Subsection (d)(3) must comply with rules adopted by the board that specify the date of submission of the report, the information it must contain, and its form.

(f) The initial license issued to a license holder who has not previously held a license under this subchapter is a probationary license. A probationary license is valid for only one year. At the end of the one-year period, a license under Subsection (a) shall be issued but only after:

1. the department finds that the license holder and any other person described by Section 242.032(d) continue to meet the requirements established under each provision of this chapter and any rule or standard adopted under this chapter;

2. an inspection, unless an inspection is not required as provided by Section 242.047;
(3) payment of the license fee; and
(4) department approval of the report required for license renewal that complies with rules adopted under Subsection (e).


Sec. 242.0335. EXPEDITED ISSUANCE OF CHANGE OF OWNERSHIP LICENSE TO CERTAIN CURRENT LICENSE HOLDERS. (a) The department shall maintain, and keep current, a list of license holders that operate an institution in this state and that have excellent operating records according to the information available to the department. The department by rule shall establish specific criteria for designating a license holder as eligible for the list.

(b) The department shall establish a procedure under which a listed license holder may be granted expedited approval in obtaining a change of ownership license to operate another existing institution in this state. The procedure may involve allowing a listed license holder to submit an affidavit demonstrating that the license holder continues to meet the criteria for being listed and continues to meet the requirements described by Subsection (c).

(c) An applicant for a change of ownership license must meet all applicable requirements that an applicant for renewal of a license must meet under this subchapter, including under Section 242.032(d), and under rules that the department has adopted under this subchapter. Any requirement relating to inspections or to an accreditation review applies only to institutions operated by the license holder at the time the application is made for the change of ownership license.

(d) Subsection (c) applies only to a license holder designated as eligible for and placed on the list maintained under Subsection (a).

Added by Acts 2001, 77th Leg., ch. 731, Sec. 1, eff. Sept. 1, 2001. Amended by Acts 2001, 77th Leg., ch. 1284, Sec. 7.05, eff. June 15,
Sec. 242.0336. TEMPORARY CHANGE OF OWNERSHIP LICENSE. (a) For purposes of this section, a temporary change of ownership license is a temporary 90-day license issued to an applicant who proposes to become the new operator of an institution existing on the date the application is filed.

(b) After receiving an application for a temporary change of ownership license, the department shall issue a temporary license to the applicant if, after investigation, the department finds that the applicant and any other person described by Section 242.032(d) meet:

(1) the requirements established under Section 242.032(c); and

(2) the department's standards for background and qualifications under Sections 242.032(d) and (e).

(b-1) Except as provided by Subsection (b-2), the department may not issue a temporary change of ownership license before the 31st day after the date the department has received both:

(1) the application for the license; and

(2) notification, in writing, of the intent of the institution's existing license holder to transfer operation of the institution to the applicant beginning on a date specified by the applicant.

(b-2) Notwithstanding Section 242.0335, the department shall establish criteria under which the department may waive the 30-day requirement or the notification requirement of Subsection (b-1). The criteria may include the occurrence of forcible entry and detainer, death, or divorce or other events that affect the ownership of the institution by the existing license holder.

(b-3) After receipt of an application or written notification described by Subsection (b-1), the department may place a hold on payments to the existing license holder in an amount not to exceed the average of the monthly vendor payments paid to the facility, as determined by the department. The department shall release funds to the previous license holder not later than the 120th day after the date on which the final reporting requirements are met and any resulting informal reviews or formal appeals are resolved. The
department may reduce the amount of funds released to the previous license holder by the amount owed to the department or the Health and Human Services Commission under the previous license holder's Medicaid contract or license.

(b-4) The executive commissioner of the Health and Human Services Commission shall adopt rules for the department that define a change of ownership. In adopting the rules, the executive commissioner shall consider:

1. the proportion of ownership interest that is being transferred to another person;
2. the addition or removal of a stockholder, partner, owner, or other controlling person;
3. the reorganization of the license holder into a different type of business entity; and
4. the death or incapacity of a stockholder, partner, or owner.

(b-5) The executive commissioner may adopt rules for the department that require a license holder to notify the department of any change, including a change that is not a change of ownership, as that term is defined by rules adopted under Subsection (b-4). Nothing in this section prevents the department from acting under Section 242.061 or any other provision of this chapter.

(c) The department shall issue or deny a temporary change of ownership license not later than the 31st day after the date of receipt of the completed application. The effective date of a temporary change of ownership license issued under this section is the date requested in the application unless:

1. the department does not receive the application and written notification described by Subsection (b-1) at least 30 days before that date; and
2. no waiver under Subsection (b-2) applies.

(c-1) If the department does not receive the application and written notification required by Subsection (b-1) at least 30 days before the effective date requested in the application and Subsection (b-2) does not apply, the effective date of the temporary change of ownership license is the 31st day after the date the department receives both the application and the
(d) Except as provided in Subsection (d-1), after the department issues a temporary change of ownership license to the applicant, the department shall conduct an inspection or survey of the nursing facility under Section 242.043 as soon as reasonably possible. During the period between the issuance of the temporary license and the inspection or survey of the nursing facility or desk review under Subsection (d-1), the department may not place a hold on vendor payments to the temporary license holder.

(d-1) The department shall establish criteria under which a desk review of the facility's compliance with applicable requirements may be substituted for the on-site inspection or survey under Subsection (d).

(e) After conducting an inspection or survey under Subsection (d) or a desk review under Subsection (d-1), the department shall issue a license under Section 242.033 to the temporary change of ownership license holder if the nursing facility passes the desk review, inspection, or survey and the applicant meets the requirements of Section 242.033. If the nursing facility fails to pass the desk review, inspection, or survey or the applicant fails to meet the requirements of Section 242.033, the department may:

1. place a hold on vendor payments to the temporary change of ownership license holder; and
2. take any other action authorized under this chapter.

(f) If the applicant meets the requirements of Section 242.033 and the nursing facility passes a desk review, initial inspection, or subsequent inspection before the temporary change of ownership license expires, the license issued under Section 242.033 is considered effective on the date the department determines under Subsection (c) or (c-1).

(g) A temporary change of ownership license issued under Subsection (b) expires on the 90th day after the effective date established under Subsection (c) or (c-1).

Amended by:
Sec. 242.034. LICENSE FEES. (a) The board may establish by rule license fees for institutions licensed by the department under this chapter. The license fee may not exceed $250 plus:

(1) $10 for each unit of capacity or bed space for which a license is sought; and

(2) a background examination fee imposed under Subsection (d).

(b) The license fee for a probationary license issued under Section 242.033(f) may not exceed $125 plus:

(1) $5 for each unit of capacity or bed space for which the license is sought; and

(2) a background examination fee imposed under Subsection (d).

(c) An additional license fee may be charged as provided by Section 242.097.

(d) The board may establish a background examination fee in an amount necessary to defray the department's expenses in administering its duties under Sections 242.032(d) and (e).

(e) The applicable license fee must be paid with each application for a probationary license, an initial license, a renewal license, or a change of ownership license.

(f) The state is not required to pay the license fee.

(g) An approved increase in bed space is subject to an additional fee.

(h) The license fees established under this chapter are an allowable cost for reimbursement under the medical assistance program administered by the Texas Department of Human Services under Chapter 32, Human Resources Code. Any fee increases shall be reflected in reimbursement rates prospectively.

(i) An applicant for license renewal who submits an application later than the 45th day before the expiration date of a current license is subject to a late fee in accordance with department rules.
Sec. 242.035. LICENSING CATEGORIES. (a) The department shall determine the rank of licensing categories.

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


Sec. 242.036. GRADING. (a) The board may adopt, publish, and enforce minimum standards relating to the grading of an institution, other than an institution that provides maternity care, in order to recognize those institutions that provide more than the minimum level of services and personnel as established by the board.

(b) An institution that has a superior grade shall prominently display the grade for public view.

(c) As an incentive to attain the superior grade, an institution may advertise its grade, except that it may not advertise a superior grade that has been canceled.

(d) The department may not award a superior grade to an institution that, during the year preceding the grading inspection, violated state or federal law, rules, or regulations relating to:

1. the health, safety, or welfare of its residents;
2. resident funds;
3. the confidentiality of a resident's records;
4. the financial practices of the institution; or
5. the control of medication in the institution.

(e) The department shall cancel an institution's superior
grade if the institution:

(1) does not meet the criteria established for a superior grade; or

(2) violates a state or federal law, rule, or regulation described by Subsection (d).


Sec. 242.037. RULES; MINIMUM STANDARDS. (a) The department shall make and enforce rules and minimum standards to implement this chapter, including rules and minimum standards relating to quality of life, quality of care, and residents' rights.

(b) The rules and standards adopted under this chapter may be more stringent than the standards imposed by federal law for certification for participation in the state Medicaid program.

(c) The rules and standards adopted by the department may not be less stringent than the Medicaid certification standards and regulations imposed under the Omnibus Budget Reconciliation Act of 1987 (OBRA), Pub.L. No. 100-203.

(d) To implement Sections 242.032(d) and (e), the department by rule shall adopt minimum standards for the background and qualifications of any person described by Section 242.032(d). The department may not issue or renew a license if a person described by Section 242.032 does not meet the minimum standards adopted under this section.

(e) In addition to standards or rules required by other provisions of this chapter, the board shall adopt, publish, and enforce minimum standards relating to:

(1) the construction of an institution, including plumbing, heating, lighting, ventilation, and other housing conditions, to ensure the residents' health, safety, comfort, and protection from fire hazard;

(2) the regulation of the number and qualification of all personnel, including management and nursing personnel, responsible for any part of the care given to the residents;

(3) requirements for in-service education of all employees who have any contact with the residents;

(4) training on the care of persons with Alzheimer's
disease and related disorders for employees who work with those persons;

(5) sanitary and related conditions in an institution and its surroundings, including water supply, sewage disposal, food handling, and general hygiene in order to ensure the residents' health, safety, and comfort;

(6) the nutritional needs of each resident according to good nutritional practice or the recommendations of the physician attending the resident;

(7) equipment essential to the residents' health and welfare;

(8) the use and administration of medication in conformity with applicable law and rules;

(9) care and treatment of residents and any other matter related to resident health, safety, and welfare;

(10) licensure of institutions; and

(11) implementation of this chapter.

(f) The board shall adopt, publish, and enforce minimum standards requiring appropriate training in geriatric care for each individual who provides services to geriatric residents in an institution and who holds a license or certificate issued by an agency of this state that authorizes the person to provide the services. The minimum standards may require that each licensed or certified individual complete an appropriate program of continuing education or in-service training, as determined by board rule, on a schedule determined by board rule.

(g) To administer the surveys for provider certification provided for by federal law and regulation, the department must identify each area of care that is subject to both state licensing requirements and federal certification requirements. For each area of care that is subject to the same standard under both federal certification and state licensing requirements, an institution that is in compliance with the federal certification standard is considered to be in compliance with the same state licensing requirement.

(h) The board shall adopt each rule adopted by the Texas Board of Health under Section 161.0051 as part of the rules and standards adopted under this chapter that apply to institutions
serving residents who are elderly persons.

(i) The minimum standards adopted by the board under this section must require that each institution, as part of an existing training program, provide each registered nurse, licensed vocational nurse, nurse aide, and nursing assistant who provides nursing services in the institution at least one hour of training each year in caring for people with dementia.


Sec. 242.0371. NOTICE OF CERTAIN EMPLOYMENT POLICIES. (a) An institution licensed under this chapter shall prepare a written statement describing the institution's policy for:

(1) the drug testing of employees who have direct contact with residents; and

(2) the conducting of criminal history record checks of employees and applicants for employment in accordance with Chapter 250.

(b) The institution shall provide the statement to:

(1) each person applying for services from the institution or the person's next of kin or guardian; and

(2) any person requesting the information.


Sec. 242.0373. RESTRAINT AND SECLUSION. A person providing services to a resident of an institution shall comply with Chapter 322 and the rules adopted under that chapter.
Sec. 242.038. REASONABLE TIME TO COMPLY. The board by rule shall give an institution that is in operation when a rule or standard is adopted under this chapter a reasonable time to comply with the rule or standard.


Sec. 242.0385. EARLY COMPLIANCE REVIEW. (a) The department by rule shall adopt a procedure under which a person proposing to construct or modify an institution may submit building plans to the department for review for compliance with the department's architectural requirements before beginning construction or modification. In adopting the procedure, the department shall set reasonable deadlines by which the department must complete review of submitted plans.

(b) The department shall, within 30 days, review plans submitted under this section for compliance with the department's architectural requirements and inform the person in writing of the results of the review. If the plans comply with the department's architectural requirements, the department may not subsequently change the architectural requirements applicable to the project unless:

(1) the change is required by federal law; or
(2) the person fails to complete the project within a reasonable time.

(c) The department may charge a reasonable fee for conducting a review under this section.

(d) A fee collected under this section shall be deposited in the general revenue fund and may be appropriated only to the department to conduct reviews under this section.

(e) The review procedure provided by this section does not include review of building plans for compliance with the Texas Accessibility Standards as administered and enforced.

Sec. 242.039. FIRE SAFETY REQUIREMENTS. (a) The board shall adopt rules necessary to specify the edition of the Life Safety Code of the National Fire Protection Association that will be used to establish the life safety requirements for an institution licensed under this chapter.

(b) The board shall adopt the edition of the Life Safety Code of the National Fire Protection Association for fire safety as designated by federal law and regulations for an institution or portion of an institution that is constructed after September 1, 1993, and for an institution or portion of an institution that was operating or approved for construction on or before September 1, 1993.

(c) The board may not require more stringent fire safety standards than those required by federal law and regulation. The rules adopted under this section may not prevent an institution licensed under this chapter from voluntarily conforming to fire safety standards that are compatible with, equal to, or more stringent than those adopted by the board.

(d) Licensed health care facilities in existence at the time of the effective date of this subsection may have their existing use or occupancy continued if such facilities comply with fire safety standards and ordinances in existence at the time of the effective date of this subsection.

(e) Notwithstanding any other provision of this section, a municipality shall have the authority to enact additional and higher fire safety standards applicable to new construction beginning on or after the effective date of this subsection.

(f)(1) An advisory committee is created to propose rules for adoption by the department concerning the applicability of municipal ordinances and regulations to the remodeling and renovation of existing structures to be used as health care facilities licensed under this chapter.

(2) The advisory committee shall be appointed by the board and composed as follows:

(A) two municipal fire marshals;

(B) four individuals representing the nursing home industry;
(C) the commissioner of human services or a designee;
(D) one building official from a municipality that has adopted the Uniform Building Code;
(E) one building official from a municipality that has adopted the Standard Building Code;
(F) one architect licensed under state law;
(G) one member of the Texas Board of Human Services; and

(H) one state Medicaid director or designee.

(3) The advisory committee shall serve without compensation or remuneration of any kind.

(g) The executive commissioner of the Health and Human Services Commission shall adopt rules to implement an expedited inspection process that allows an applicant for a license or for a renewal of a license to obtain a life safety code and physical plant inspection not later than the 15th day after the date the request is made. The department may charge a fee to recover the cost of the expedited inspection. The rules must permit the department to set different fee amounts based on the size and type of institution.

Acts 2009, 81st Leg., R.S., Ch. 917, Sec. 2, eff. September 1, 2009.

Sec. 242.0395. REGISTRATION WITH TEXAS INFORMATION AND REFERRAL NETWORK. (a) An institution licensed under this chapter shall register with the Texas Information and Referral Network under Section 531.0312, Government Code, to assist the state in identifying persons needing assistance if an area is evacuated because of a disaster or other emergency.

(b) The institution is not required to identify individual residents who may require assistance in an evacuation or to register individual residents with the Texas Information and Referral Network for evacuation assistance.

(c) The institution shall notify each resident and the
resident's next of kin or guardian regarding how to register for evacuation assistance with the Texas Information and Referral Network.

Added by Acts 2009, 81st Leg., R.S., Ch. 1280, Sec. 1.17, eff. September 1, 2009.

Sec. 242.040. CERTIFICATION OF INSTITUTIONS THAT CARE FOR PERSONS WITH ALZHEIMER'S DISEASE AND RELATED DISORDERS. (a) The department shall establish a system for certifying institutions that meet standards adopted by the board concerning the specialized care and treatment of persons with Alzheimer's disease and related disorders.

(b) An institution is not required to be certified under this section in order to provide care and treatment of persons with Alzheimer's disease and related disorders.

(c) The board by rule may adopt standards for the specialized care and treatment of persons with Alzheimer's disease and related disorders and provide procedures for institutions applying for certification under this section. The rules must provide for annual certification.

(d) The board may establish and charge fees for the certification in an amount necessary to administer this section.

(e) An institution may not advertise or otherwise communicate that the institution is certified by the department to provide specialized care for persons with Alzheimer's disease or related disorders unless the institution is certified under this section.


Sec. 242.041. FALSE COMMUNICATION CONCERNING CERTIFICATION; CRIMINAL PENALTY. (a) An institution commits an offense if the institution violates Section 242.040(e).

(b) An offense under this section is a Class C misdemeanor.


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
(2) a statement of the institution's record of compliance with this chapter and the rules and standards adopted under this chapter that is updated not less frequently than bi-monthly and that reflects the record of compliance during the period beginning one year before the date the statement is last updated, in the form required by the department.

(d) The notice required by Subsection (a)(9) must be posted in English and a second language as required by department rule.

(e) The department shall post detailed compliance information regarding each institution licensed by the department, including the information an institution is required to make accessible by Subsection (c), on the department's website. The department shall update the website once a month to provide the most current compliance information regarding each institution.


Sec. 242.043. INSPECTIONS. (a) The department or the department's representative may make any inspection, survey, or investigation that it considers necessary and may enter the premises of an institution at reasonable times to make an inspection, survey, or investigation in accordance with board rules.

(b) The department is entitled to access to books, records, and other documents maintained by or on behalf of an institution to the extent necessary to enforce this chapter and the rules adopted under this chapter.

(c) A license holder or an applicant for a license is considered to have consented to entry and inspection of the institution by a representative of the department in accordance with this chapter.
The department shall establish procedures to preserve all relevant evidence of conditions found during an inspection, survey, or investigation that the department reasonably believes threaten the health and safety of a resident, including photography and photocopying of relevant documents, such as a license holder's notes, a physician's orders, and pharmacy records, for use in any legal proceeding.

(e) When photographing a resident, the department:
   (1) shall respect the privacy of the resident to the greatest extent possible; and
   (2) may not make public the identity of the resident.

(f) An institution, an officer or employee of an institution, and a resident's attending physician are not civilly liable for surrendering confidential or private material under this section, including physician's orders, pharmacy records, notes and memoranda of a state office, and resident files.

(g) The department shall establish in clear and concise language a form to summarize each inspection report and complaint investigation report.

(h) The department shall establish proper procedures to ensure that copies of all forms and reports under this section are made available to consumers, service recipients, and the relatives of service recipients as the department considers proper.


Sec. 242.044. UNANNOUNCED INSPECTIONS. (a) Each licensing period, the department shall conduct at least two unannounced inspections of each institution.

(b) For at least two unannounced inspections each licensing period of an institution other than one that provides maternity care, the department shall invite at least one person as a citizen advocate from:
   (1) the American Association of Retired Persons;
   (2) the Texas Senior Citizen Association;
   (3) the Texas Retired Federal Employees;
   (4) the department's Certified Long Term Care Ombudsman;
another statewide organization for the elderly.

(c) In order to ensure continuous compliance, the department shall randomly select a sufficient percentage of institutions for unannounced inspections to be conducted between 5 p.m. and 8 a.m. Those inspections must be cursory to avoid to the greatest extent feasible any disruption of the residents.

(d) The department may require additional inspections.


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

Sec. 242.0445. REPORTING OF VIOLATIONS. (a) The department or the department's representative conducting an inspection, survey, or investigation under Section 242.043 or 242.044 shall:

(1) list each violation of a law or rule on a form designed by the department for inspections; and

(2) identify the specific law or rule the facility violated.

(b) At the conclusion of an inspection, survey, or investigation under Section 242.043 or 242.044, the department or the department's representative conducting the inspection, survey, or investigation shall discuss the violations with the facility's management in an exit conference. The department or the department's representative shall leave a written list of the violations with the facility at the time of the exit conference. If the department or the department's representative discovers any additional violations during the review of field notes or preparation of the official final list, the department or the department's representative shall give the facility an additional exit conference regarding the additional violations. An additional exit conference must be held in person and may not be held by telephone, e-mail, or facsimile transmission.

(b-1) Not later than the fifth working day after the date the facility receives the final statement of violations under this section, the facility shall provide a copy of the statement to a
representative of the facility's family council.

(c) The facility shall submit a plan to correct the violations to the regional director not later than the 10th working day after the date the facility receives the final official statement of violations.

Added by Acts 1999, 76th Leg., ch. 233, Sec. 2, eff. Sept. 1, 1999. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 798, Sec. 2, eff. September 1, 2008.

Acts 2007, 80th Leg., R.S., Ch. 974, Sec. 3, eff. September 1, 2007.

Sec. 242.045. DISCLOSURE OF UNANNOUNCED INSPECTIONS; CRIMINAL PENALTY. (a) Except as expressly provided by this chapter, a person commits an offense if the person intentionally, knowingly, or recklessly discloses to an unauthorized person the date, time, or any other fact about an unannounced inspection of an institution before the inspection occurs.

(b) In this section, "unauthorized person" does not include:

(1) the department;

(2) the office of the attorney general;

(3) a statewide organization for the elderly, including the American Association of Retired Persons, the Texas Senior Citizen Association, and the Texas Retired Federal Employees;

(4) an ombudsman or representative of the Texas Department on Aging;

(5) a representative of an agency or organization when a Medicare or Medicaid survey is made concurrently with a licensing inspection; or

(6) any other person or entity authorized by law to make an inspection or to accompany an inspector.

(c) An offense under this section is a third degree felony.

(d) A person convicted under this section is not eligible for state employment.

Sec. 242.046. OPEN HEARING. (a) The department shall hold an open hearing in a licensed institution, other than an institution that provides maternity care, if the department has taken a punitive action against the institution in the preceding 12 months or if the department receives a complaint from an ombudsman, advocate, resident, or relative of a resident relating to a serious or potentially serious problem in the institution and the department has reasonable cause to believe the complaint is valid. The department is not required to hold more than one open meeting in a particular institution in each year.

(b) The department shall give notice of the time, place, and date of the hearing to:

(1) the institution;

(2) the designated closest living relative or legal guardian of each resident; and

(3) appropriate state or federal agencies that work with the institution.

(c) The department may exclude an institution's administrators and personnel from the hearing.

(d) The department shall notify the institution of any complaints received at the hearing and, without identifying the source of the complaints, provide a summary of them to the institution.

(e) The department shall determine and implement a mechanism to notify confidentially a complainant of the results of the investigation of the complaint.


Sec. 242.047. ACCREDITATION REVIEW TO SATISFY INSPECTION OR CERTIFICATION REQUIREMENTS. (a) The department shall accept an annual accreditation review from the Joint Commission on Accreditation of Health Organizations for a nursing home instead of an inspection for renewal of a license under Section 242.033 and in satisfaction of the requirements for certification by the department for participation in the medical assistance program...
under Chapter 32, Human Resources Code, and the federal Medicare program, but only if:

1. the nursing home is accredited by the commission under the commission's long-term care standards;
2. the commission maintains an annual inspection or review program that, for each nursing home, meets the department's applicable minimum standards as confirmed by the board;
3. the commission conducts an annual on-site inspection or review of the home;
4. the nursing home submits to the department a copy of its annual accreditation review from the commission in addition to the application, fee, and any report required for renewal of a license or for certification, as applicable; and
5. the department has:
   A. determined whether a waiver or authorization from a federal agency is necessary under federal law, including for federal funding purposes, before the department accepts an annual accreditation review from the joint commission:
      i. instead of an inspection for license renewal purposes;
      ii. as satisfying the requirements for certification by the department for participation in the medical assistance program; or
      iii. as satisfying the requirements for certification by the department for participation in the federal Medicare program; and
   B. obtained any necessary federal waivers or authorizations.

b) The department shall coordinate its licensing and certification activities with the commission.

c) The department and the commission shall sign a memorandum of agreement to implement this section. The memorandum must provide that if all parties to the memorandum do not agree in the development, interpretation, and implementation of the memorandum, any area of dispute is to be resolved by the board.

d) Except as specifically provided by this section, this section does not limit the department in performing any duties and inspections authorized by this chapter or under any contract...
relating to the medical assistance program under Chapter 32, Human Resources Code, and Titles XVIII and XIX of the Social Security Act (42 U.S.C. Sections 1395 et seq. and 1396 et seq.), including authority to take appropriate action relating to an institution, such as closing the institution.

(e) This section does not require a nursing home to obtain accreditation from the commission.


Sec. 242.048. LICENSING SURVEYS. The department shall provide a team to conduct surveys to validate findings of licensing surveys. The purpose of validation surveys is to assure that survey teams throughout the state survey in a fair and consistent manner. A facility subjected to a validation survey must correct deficiencies cited by the validation team but is not subject to punitive action for those deficiencies.


Sec. 242.049. QUALITY IMPROVEMENT. (a) The department may evaluate data for quality of care in nursing homes.

(b) The department may gather data on a form or forms to be provided by the department to improve the quality of care in nursing homes and may provide information to nursing homes which will allow them to improve and maintain the quality of care which they provide. Data referred to in this section can include information compiled from documents otherwise available under Chapter 552, Government Code, including but not limited to individual survey reports and investigation reports.

(c) All licensed nursing homes in the state may be required to submit information designated by the department as necessary to improve the quality of care in nursing homes.

(d) The collection, compilation, and analysis of the information and any reports produced from these sources shall be done in a manner that protects the privacy of any individual about whom information is given and is explicitly confidential. The
department shall protect and maintain the confidentiality of the information. The information received by the department, any information compiled as a result of review of internal agency documents, and any reports, compilations, and analyses produced from these sources shall not be available for public inspection or disclosure, nor are these sources public records within the meaning of Chapter 552, Government Code. The information and any compilations, reports, or analyses produced from the information shall not be subject to discovery, subpoena, or other means of legal compulsion for release to any person or entity except as provided in this section and shall not be admissible in any civil, administrative, or criminal proceeding. This privilege shall be recognized by Rules 501 and 502 of the Texas Rules of Evidence.

(e) The information and reports, compilations, and analyses developed by the department for quality improvement shall be used only for the evaluation and improvement of quality care in nursing homes. No department proceeding or record shall be subject to discovery, subpoena, or other means of legal compulsion for release to any person or entity, and shall not be admissible in any civil, administrative, or criminal proceeding. This privilege shall be recognized by Rules 501 and 502 of the Texas Rules of Evidence.

(f) Notwithstanding Subsection (d), the department shall transmit reports, compilations, and analyses of the information provided by a nursing home to that nursing home, and such disclosure shall not be violative of this section nor shall it constitute a waiver of confidentiality.

(g) A member, agent, or employee of the department may not disclose or be required to disclose a communication made to the department or a record or proceeding of the department required to be submitted under this section except to the nursing home in question or its agents or employees.

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

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


Sec. 242.051. NOTIFICATION OF AWARD OF EXEMPLARY DAMAGES. (a) If exemplary damages are awarded under Chapter 41, Civil Practice and Remedies Code, against an institution or an officer, employee, or agent of an institution, the court shall notify the department.

(b) If the department receives notice under Subsection (a), the department shall maintain the information contained in the notice in the records of the department relating to the history of the institution.

Added by Acts 2001, 77th Leg., ch. 1284, Sec. 2.01, eff. June 15, 2001.

Sec. 242.052. DRUG TESTING OF EMPLOYEES. (a) An institution may establish a drug testing policy for employees of the institution. An institution that establishes a drug testing policy under this subsection may adopt the model drug testing policy adopted by the board or may use another drug testing policy.

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

(1) require at least one scheduled drug test each year for each employee of an institution that has direct contact with a resident in the institution; and

(2) authorize random, unannounced drug testing for
employees described by Subdivision (1).


SUBCHAPTER C. GENERAL ENFORCEMENT

Sec. 242.061. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE.
(a) The department, after providing notice and opportunity for a hearing to the applicant or license holder, may deny, suspend, or revoke a license if the department finds that the applicant, the license holder, or any other person described by Section 242.032(d) has:

(1) violated this chapter or a rule, standard, or order adopted or license issued under this chapter in either a repeated or substantial manner;

(2) committed any act described by Sections 242.066(a) (2)-(6); or

(3) failed to comply with Section 242.074.

(b) The status of a person as an applicant for a license or a license holder is preserved until final disposition of the contested matter, except as the court having jurisdiction of a judicial review of the matter may order in the public interest for the welfare and safety of the residents.

(c) The department may deny, suspend, or revoke the license of an institution if any person described by Section 242.032(d) has been excluded from holding a license under Section 242.0615.

(d) A court having jurisdiction of a judicial review of the matter may not order arbitration, whether on motion of any party or on the court's own motion, to resolve a dispute involving the denial, suspension, or revocation of a license under this section or the conduct with respect to which the denial, suspension, or revocation of the license is sought.

Sec. 242.0615. EXCLUSION. (a) The department, after providing notice and opportunity for a hearing, may exclude a person from eligibility for a license under this chapter if the person or any person described by Section 242.032(d) has substantially failed to comply with this chapter and the rules adopted under this chapter. The authority granted by this subsection is in addition to the authority to deny issuance of a license under Section 242.061(a).

(b) Exclusion of a person under this section must extend for a period of at least two years, but may not exceed a period of 10 years.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.13, eff. Sept. 1, 1997.

Sec. 242.062. EMERGENCY SUSPENSION OR CLOSING ORDER. (a) The department shall suspend an institution's license or order an immediate closing of part of the institution if:

(1) the department finds the institution is operating in violation of the standards prescribed by this chapter; and

(2) the violation creates an immediate threat to the health and safety of a resident.

(b) The board by rule shall provide for the placement of residents during the institution's suspension or closing to ensure their health and safety.

(c) An order suspending a license or closing a part of an institution under this section is immediately effective on the date on which the license holder receives written notice or a later date specified in the order.

(d) An order suspending a license or ordering an immediate closing of a part of an institution is valid for 10 days after the effective date of the order.

(e) A court having jurisdiction of a judicial review of the matter may not order arbitration, whether on motion of any party or on the court's own motion, to resolve a dispute involving an emergency suspension or closing order under this section or the conduct with respect to which the emergency suspension or closing
order is sought.


Sec. 242.063. INJUNCTION. (a) The department may petition a district court for:

(1) a temporary restraining order to restrain a person from a violation or threatened violation of the standards imposed under this chapter or any other law affecting residents if the department reasonably believes that the violation or threatened violation creates an immediate threat to the health and safety of a resident; and

(2) an injunction to restrain a person from a violation or threatened violation of the standards imposed under this chapter or by any other law affecting residents if the department reasonably believes that the violation or threatened violation creates a threat to the health and safety of a resident.

(b) A district court, on petition of the department, may by injunction:

(1) prohibit a person from violating the standards or licensing requirements prescribed by this chapter;

(2) restrain or prevent the establishment, conduct, management, or operation of an institution without a license issued under this chapter; or

(3) grant the injunctive relief warranted by the facts on a finding by the court that a person is violating or threatening to violate the standards or licensing requirements prescribed by this chapter.

(c) The attorney general, on request by the department, shall institute and conduct in the name of the state a suit authorized by this section or Subchapter D.

(d) A suit for a temporary restraining order or other injunctive relief must be brought in the county in which the alleged violation occurs.

(e) Repealed by Acts 2003, 78th Leg., ch. 198, Sec. 2.58(b).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended
Sec. 242.064. LICENSE REQUIREMENT; CRIMINAL PENALTY. (a) A person commits an offense if the person violates Section 242.031. (b) An offense under this section is punishable by a fine of not more than $1,000 for the first offense and not more than $500 for each subsequent offense. (c) Each day of a continuing violation after conviction is a separate offense.


Sec. 242.065. CIVIL PENALTY. (a) A person who violates or causes a violation of this chapter or a rule adopted under this chapter is liable for a civil penalty of not less than $1,000 or more than $20,000 for each act of violation if the department determines the violation threatens the health and safety of a resident. (b) In determining the amount of a penalty to be awarded under this section, the trier of fact shall consider: (1) the seriousness of the violation; (2) the history of violations committed by the person or the person's affiliate, employee, or controlling person; (3) the amount necessary to deter future violations; (4) the efforts made to correct the violation; (5) any misrepresentation made to the department or to another person regarding: (A) the quality of services rendered or to be rendered to residents; (B) the compliance history of the institution or any institutions owned or controlled by an owner or controlling person of the institution; or (C) the identity of an owner or controlling person of the institution; (6) the culpability of the individual who committed the violation; and
(7) any other matter that should, as a matter of justice or equity, be considered.

(c) Each day of a continuing violation constitutes a separate ground for recovery.

(d) Any party to a suit under this section may request a jury.

(e) If a person who is liable under this section fails to pay any amount the person is obligated to pay under this section, the state may seek satisfaction from any owner, other controlling person, or affiliate of the person found liable. The owner, other controlling person, or affiliate may be found liable in the same suit or in another suit on a showing by the state that the amount to be paid has not been paid or otherwise legally discharged. The department by rule may establish a method for satisfying an obligation imposed under this section from an insurance policy, letter of credit, or other contingency fund.

(f) On request by the department, the attorney general may institute an action in a district court to collect a civil penalty under this section.

(g) A payment made to satisfy an obligation under this section is not an allowable cost for reimbursement under the state Medicaid program.

(h) A civil penalty awarded under this section constitutes a fine, penalty, or forfeiture payable to and for the benefit of a government unit and is not compensation for actual pecuniary loss.

(i) In this section, "affiliate" means:

(1) with respect to a partnership other than a limited partnership, each partner of the partnership;

(2) with respect to a corporation:
   (A) an officer;
   (B) a director;
   (C) a stockholder who owns, holds, or has the power to vote at least 10 percent of any class of securities issued by the corporation, regardless of whether the power is of record or beneficial; and
   (D) a controlling individual;

(3) with respect to an individual:
   (A) each partnership and each partner in the
partnership in which the individual or any other affiliate of the individual is a partner; and
(B) each corporation or other business entity in which the individual or another affiliate of the individual is:
   (i) an officer;
   (ii) a director;
   (iii) a stockholder who owns, holds, or has the power to vote at least 10 percent of any class of securities issued by the corporation, regardless of whether the power is of record or beneficial; and
   (iv) a controlling individual;
(4) with respect to a limited partnership:
   (A) a general partner; and
   (B) a limited partner who is a controlling individual;
(5) with respect to a limited liability company:
   (A) an owner who is a manager as described by the Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes); and
   (B) each owner who is a controlling individual; and
(6) with respect to any other business entity, a controlling individual.


Sec. 242.066. ADMINISTRATIVE PENALTY. (a) The department may assess an administrative penalty against a person who:
(1) violates this chapter or a rule, standard, or order adopted or license issued under this chapter;
(2) makes a false statement, that the person knows or should know is false, of a material fact:
   (A) on an application for issuance or renewal of a license or in an attachment to the application; or
   (B) with respect to a matter under investigation by the department;
(3) refuses to allow a representative of the department to inspect:
   (A) a book, record, or file required to be maintained by an institution; or
   (B) any portion of the premises of an institution;
(4) wilfully interferes with the work of a representative of the department or the enforcement of this chapter;
(5) wilfully interferes with a representative of the department preserving evidence of a violation of this chapter or a rule, standard, or order adopted or license issued under this chapter;
(6) fails to pay a penalty assessed by the department under this chapter not later than the 10th day after the date the assessment of the penalty becomes final; or
(7) fails to notify the department of a change of ownership before the effective date of the change of ownership.
(b) Except as provided by Subsection (f) and Section 242.0665(c), the penalty may not exceed $10,000 a day for each violation.
(c) Each day of a continuing violation constitutes a separate violation.
(d) The board shall establish gradations of penalties in accordance with the relative seriousness of the violation.
(e) In determining the amount of a penalty, the department shall consider any matter that justice may require, including:
   (1) the gradations of penalties established under Subsection (d);
   (2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited act and the hazard or potential hazard created by the act to the health or safety of the public;
   (3) the history of previous violations;
   (4) deterrence of future violations; and
   (5) efforts to correct the violation.
(f) The penalty for a violation of Section 242.072(c) or a right of a resident adopted under Subchapter L may not exceed $1,000 a day for each violation. This subsection does not apply to conduct that violates both Subchapter K or a standard adopted
under Subchapter K and a right of a resident adopted under Subchapter L.

(g) The persons against whom an administrative penalty may be assessed under Subsection (a) include:

(1) an applicant for a license under this chapter;
(2) a license holder;
(3) a partner, officer, director, or managing employee of a license holder or applicant; and
(4) a person who controls an institution.

(h) A penalty assessed under Subsection (a)(6) is in addition to the penalty previously assessed and not timely paid.


Acts 2007, 80th Leg., R.S., Ch. 809, Sec. 12, eff. September 1, 2007.

Sec. 242.0663. VIOLATION OF LAW RELATING TO ADVANCE DIRECTIVES. (a) The department shall assess an administrative penalty under this subchapter against an institution that violates Section 166.004.

(b) Notwithstanding Sections 242.066(b) and (c), a penalty assessed in accordance with this section shall be $500 and a separate penalty may not be assessed for a separate day of a continuing violation.

(c) Section 242.0665 does not apply to a penalty assessed in accordance with this section.

Added by Acts 1999, 76th Leg., ch. 450, Sec. 2.04, eff. Sept. 1, 1999.

Sec. 242.0665. RIGHT TO CORRECT. (a) The department may not collect an administrative penalty against an institution under this subchapter if, not later than the 45th day after the date the institution receives notice under Section 242.067(c), the institution corrects the violation.

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(b) Subsection (a) does not apply:

(1) to a violation that the department determines:
   (A) results in serious harm to or death of a resident;
   (B) constitutes a serious threat to the health or safety of a resident; or
   (C) substantially limits the institution's capacity to provide care;
(2) to a violation described by Sections 242.066(a)(2)-(7);
(3) to a violation of Section 242.133 or 242.1335; or
(4) to a violation of a right of a resident adopted under Subchapter L.

(c) An institution that corrects a violation under Subsection (a) must maintain the correction. If the institution fails to maintain the correction until at least the first anniversary of the date the correction was made, the department may assess an administrative penalty under this subchapter for the subsequent violation. A penalty assessed under this subsection shall be equal to three times the amount of the penalty assessed but not collected under Subsection (a). The department is not required to provide the institution an opportunity to correct the subsequent violation under this section.

Amended by:
Acts 2007, 80th Leg., R.S., Ch. 809, Sec. 13, eff. September 1, 2007.

Sec. 242.067. REPORT RECOMMENDING ADMINISTRATIVE PENALTY.
(a) The department may issue a preliminary report stating the facts on which it concludes that a violation of this chapter or a rule, standard, or order adopted or license issued under this chapter has occurred if it has:

(1) examined the possible violation and facts surrounding the possible violation; and
(2) concluded that a violation has occurred.

(b) The report may recommend a penalty under Section 242.069 and the amount of the penalty.

(c) The department shall give written notice of the report to the person charged with the violation not later than the 10th day after the date on which the report is issued. The notice must include:

1. a brief summary of the charges;
2. a statement of the amount of penalty recommended;
3. a statement of whether the violation is subject to correction under Section 242.0665 and, if the violation is subject to correction under that section, a statement of:
   A. the date on which the institution must file with the department a plan of correction to be approved by the department; and
   B. the date on which the plan of correction must be completed to avoid assessment of the penalty; and
4. a statement that the person charged has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(d) Not later than the 20th day after the date on which the notice under Subsection (c) is sent, the person charged may:

1. give to the department written consent to the department's report, including the recommended penalty;
2. make a written request for a hearing; or
3. if the violation is subject to correction under Section 242.0665, submit a plan of correction to the department for approval.

(e) If the violation is subject to correction under Section 242.0665, and the person reports to the department that the violation has been corrected, the department shall inspect the correction or take any other step necessary to confirm that the violation has been corrected and shall notify the person that:

1. the correction is satisfactory and that a penalty is not assessed; or
2. the correction is not satisfactory and that a penalty is recommended.

(f) Not later than the 20th day after the date on which a
notice under Subsection (e)(2) is sent, the person charged may:

(1) give to the department written consent to the department's report, including the recommended penalty; or

(2) make a written request for a hearing.

(g) If the person charged with the violation consents to the administrative penalty recommended by the department, does not timely respond to a notice sent under Subsection (c) or (e), or fails to correct the violation to the department's satisfaction, the commissioner or the commissioner's designee shall assess the administrative penalty recommended by the department.

(h) If the commissioner or the commissioner's designee assesses the recommended penalty, the department shall give written notice to the person charged of the decision and the person shall pay the penalty.


Sec. 242.068. HEARINGS ON ADMINISTRATIVE PENALTIES. (a) An administrative law judge shall order a hearing and give notice of the hearing if a person charged under Section 242.067(c) requests a hearing.

(b) The hearing shall be held before an administrative law judge.

(c) The administrative law judge shall make findings of fact and conclusions of law regarding the occurrence of a violation of this chapter or a rule or order adopted or license issued under this chapter.

(d) Based on the findings of fact and conclusions of law, the administrative law judge by order shall find:

(1) a violation has occurred and assess an administrative penalty; or

(2) a violation has not occurred.

(e) Proceedings under this section are subject to Chapter 2001, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended...
Sec. 242.069. NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY; INTEREST; REFUND. (a) The commissioner shall give notice of the decision taken under Section 242.068(d) to the person charged. If the commissioner finds that a violation has occurred and has assessed an administrative penalty, the commissioner shall give written notice to the person charged of:

1. the findings;
2. the amount of the penalty;
3. the rate of interest payable with respect to the penalty and the date on which interest begins to accrue;
4. whether payment of the penalty or other action under Section 242.071 is required; and
5. the person's right to judicial review of the order.

(b) Not later than the 30th day after the date on which the commissioner's order is final, the person charged with the penalty shall:

1. pay the full amount of the penalty; or
2. file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, the failure to correct the violation to the department's satisfaction, or all of the above.

(c) Notwithstanding Subsection (b), the department may permit the person to pay the penalty in installments or may require the person to use the amount of the penalty under the department's supervision in accordance with Section 242.071.

(d) If the person does not pay the penalty within the 30-day period:

1. the penalty is subject to interest; and
2. the department may refer the matter to the attorney general for collection of the penalty and interest.

(e) If a penalty is reduced or not assessed, the commissioner shall:

1. remit to the person charged the appropriate amount of any penalty payment plus accrued interest; or
execute a release of the supersedeas bond if one has been posted.

(f) Accrued interest on amounts remitted by the commissioner under Subsection (e)(1) shall be paid:
   (1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and
   (2) for the period beginning on the date the penalty is paid under Subsection (b) and ending on the date the penalty is remitted.

(g) Interest under Subsection (d) shall be paid:
   (1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and
   (2) for the period beginning on the date the notice of the commissioner's order is received by the person and ending on the date the penalty is paid.


Sec. 242.0695. USE OF ADMINISTRATIVE PENALTY. Money from an administrative penalty collected under this subchapter may be appropriated for the purpose of funding the grant program established under Section 161.074, Human Resources Code.

Added by Acts 2005, 79th Leg., Ch. 786, Sec. 2, eff. September 1, 2005.

Sec. 242.070. APPLICATION OF OTHER LAW. The department may not assess more than one monetary penalty under this chapter and Chapter 32, Human Resources Code, for a violation arising out of the same act or failure to act, except as provided by Section 242.0665(c). The department may assess the greater of a monetary penalty under this chapter or a monetary penalty under Chapter 32, Human Resources Code, for the same act or failure to act.

Added by Acts 1995, 74th Leg., ch. 1049, Sec. 4, eff. Sept. 1,
Sec. 242.071. AMELIORATION OF VIOLATION. (a) In lieu of demanding payment of an administrative penalty assessed under Section 242.066, the commissioner may, in accordance with this section, allow the person to use, under the supervision of the department, any portion of the penalty to ameliorate the violation or to improve services, other than administrative services, in the institution affected by the violation.

(b) The department shall offer amelioration to a person for a charged violation if the department determines that the violation does not constitute immediate jeopardy to the health and safety of an institution resident.

(c) The department may not offer amelioration to a person if:
    (1) the person has been charged with a violation which is subject to correction under Section 242.0665; or
    (2) the department determines that the charged violation constitutes immediate jeopardy to the health and safety of an institution resident.

(d) The department shall offer amelioration to a person under this section not later than the 10th day after the date the person receives from the department a final notification of assessment of administrative penalty that is sent to the person after an informal dispute resolution process but before an administrative hearing under Section 242.068.

(e) A person to whom amelioration has been offered must file a plan for amelioration not later than the 45th day after the date the person receives the offer of amelioration from the department. In submitting the plan, the person must agree to waive the person's right to an administrative hearing under Section 242.068 if the department approves the plan.

(f) At a minimum, a plan for amelioration must:
    (1) propose changes to the management or operation of the institution that will improve services to or quality of care of residents of the institution;
    (2) identify, through measurable outcomes, the ways in
which and the extent to which the proposed changes will improve services to or quality of care of residents of the institution;

(3) establish clear goals to be achieved through the proposed changes;

(4) establish a timeline for implementing the proposed changes; and

(5) identify specific actions necessary to implement the proposed changes.

(g) A plan for amelioration may include proposed changes to:

(1) improve staff recruitment and retention;

(2) offer or improve dental services for residents; and

(3) improve the overall quality of life for residents.

(h) The department may require that an amelioration plan propose changes that would result in conditions that exceed the requirements of this chapter or the rules adopted under this chapter.

(i) The department shall approve or deny an amelioration plan not later than the 45th day after the date the department receives the plan. On approval of a person's plan, the department shall deny a pending request for a hearing submitted by the person under Section 242.067(d).

(j) The department may not offer amelioration to a person:

(1) more than three times in a two-year period; or

(2) more than one time in a two-year period for the same or similar violation.

(k) In this section, "immediate jeopardy to health and safety" means a situation in which immediate corrective action is necessary because the institution's noncompliance with one or more requirements has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident receiving care in the institution.

Sec. 242.072. OTHER REMEDIES. (a) If the commissioner finds that an institution has committed an act for which a civil penalty may be imposed under Section 242.065, the commissioner may, as appropriate under the circumstances, order the institution to immediately suspend admissions.

(b) A suspension of admissions ordered under Subsection (a) is effective on the date a representative of the institution receives notice of the order and of the manner in which the order may be appealed. The department must provide an opportunity for a hearing with respect to an appeal of the order not later than the 14th day after the date the suspension becomes effective.

(c) During the period that an institution is ordered to suspend admissions, the institution shall post a notice of the suspension on all doors providing ingress to and egress from the institution. The notice shall be posted in the form required by the department.

(d) A person commits an offense if the person knowingly:
   (1) violates Subsection (c); or
   (2) removes a notice posted under Subsection (c) before the facility is allowed to admit residents.

(e) An offense under Subsection (d) is a Class C misdemeanor.

(f) A court having jurisdiction of a judicial review of the matter may not order arbitration, whether on motion of any party or on the court's own motion, to resolve a dispute involving an order suspending admissions under this section or the conduct with respect to which the order suspending admissions is sought.


Sec. 242.073. LEGAL ACTION BY THE ATTORNEY GENERAL. (a) The department and the attorney general shall work in close cooperation throughout any legal proceedings requested by the department.

(b) The commissioner must approve any settlement agreement to a suit brought under this chapter or any other law relating to the health and safety of residents in institutions.
Sec. 242.074. NOTIFICATION OF CHANGE IN FINANCIAL CONDITION.

(a) An institution shall notify the department of a significant change in the institution's financial position, cash flow, or results of operation that could adversely affect the institution's delivery of essential services, including nursing services, dietary services, and utilities, to residents of the institution.

(b) The department may verify the financial condition of an institution in order to identify any risk to the institution's ability to deliver essential services.

(c) A person that knowingly files false information under this section may be prosecuted under the Penal Code.

(d) The department shall adopt rules to implement this section. The rules shall include the conditions that constitute a significant change in an institution's financial condition that are required to be reported under Subsection (a).

(e) The information obtained by the department under this section is confidential and is not subject to disclosure under Chapter 552, Government Code. The department may release the information to:

1. the institution; or
2. a person other than the institution if the institution consents in writing to the disclosure.

(f) A person who knowingly discloses information in violation of Subsection (e) commits an offense. An offense under this subsection is a Class A misdemeanor.

(g) The provisions in Subsection (e) relating to the confidentiality of records do not apply to:

1. an institution whose license has been revoked or suspended; or
2. the use of information in an administrative proceeding initiated by the department or in a judicial proceeding.

Added by Acts 1999, 76th Leg., ch. 452, Sec. 2.
Sec. 242.091. FINDINGS AND PURPOSE. (a) The legislature finds that the closing of a nursing or convalescent home for violations of laws and rules may:

(1) in certain circumstances, have an adverse effect on both the home's residents and their families; and

(2) in some cases, result in a lack of readily available funds to meet the basic needs of the residents for food, shelter, medication, and personal services.

(b) The purpose of this subchapter is to provide for:

(1) the appointment of a trustee to assume the operations of the home in a manner that emphasizes resident care and reduces resident trauma; and

(2) a fund to assist a court-appointed trustee in meeting the basic needs of the residents.


Sec. 242.092. DEFINITION. In this subchapter, "home" means a nursing or convalescent home.


Sec. 242.093. APPOINTMENT BY AGREEMENT. (a) A person holding a controlling interest in a home may, at any time, request the department to assume the operation of the home through the appointment of a trustee under this subchapter.

(b) After receiving the request, the department may enter into an agreement providing for the appointment of a trustee to take charge of the home under conditions considered appropriate by both parties if the department considers the appointment desirable.

(c) An agreement under this section must:

(1) specify all terms and conditions of the trustee's appointment and authority; and

(2) preserve all rights of the residents as granted by law.

(d) The agreement terminates at the time specified by the parties or when either party notifies the other in writing that the
party wishes to terminate the appointment agreement.


Sec. 242.094. IN VOLUNTARY APPOINTMENT. (a) The department may request the attorney general to bring an action in the name and on behalf of the state for the appointment of a trustee to operate a home if:

(1) the home is operating without a license;
(2) the department has suspended or revoked the home's license;
(3) license suspension or revocation procedures against the home are pending and the department determines that an imminent threat to the health and safety of the residents exists;
(4) the department determines that an emergency exists that presents an immediate threat to the health and safety of the residents; or
(5) the home is closing and arrangements for relocation of the residents to other licensed institutions have not been made before closure.

(b) A trustee appointed under Subsection (a)(5) may only ensure an orderly and safe relocation of the home's residents as quickly as possible.

(c) After a hearing, a court shall appoint a trustee to take charge of a home if the court finds that involuntary appointment of a trustee is necessary.

(d) If possible, the court shall appoint as trustee an individual whose background includes institutional medical administration.

Text of subsection (e) as added by Acts 1993, 73rd Leg., ch. 583, Sec. 2

(e) Venue for an action brought under this section is in Travis County.

Text of subsection (e) as added by Acts 1993, 73rd Leg., ch. 815,
(e) Venue for actions brought under this section shall be in Travis County.

(f) A court having jurisdiction of a judicial review of the matter may not order arbitration, whether on motion of any party or on the court's own motion, to resolve the legal issues of a dispute involving the:

(1) appointment of a trustee under this section; or

(2) conduct with respect to which the appointment of trustee is sought.


Sec. 242.0945. QUALIFICATIONS OF TRUSTEES. (a) A court may appoint a person to serve as a trustee under this subchapter only if the proposed trustee can demonstrate to the court that the proposed trustee will be:

(1) present at the home as required to perform the duties of a trustee; and

(2) available on call to appropriate staff at the home, the department, and the court as necessary during the time the trustee is not present at the home.

(b) A trustee shall report to the court in the event that the trustee is unable to satisfy the requirements of Subsection (a)(1) or (2).

(c) On the motion of any party or on the court's own motion, the court may replace a trustee who is unable to satisfy the requirements of Subsection (a)(1) or (2).

(d) A trustee's charges must separately identify personal hours worked for which compensation is claimed. A trustee's claim for personal compensation may include only compensation for activities related to the trusteeship and performed in or on behalf of the home.
Sec. 242.0946. NEPOTISM PROHIBITION. A person serving as a trustee under this subchapter may not employ or otherwise appoint an individual to work with the trustee in the home who is related to the trustee within the third degree of consanguinity or affinity, as determined under Chapter 573, Government Code.

Added by Acts 1999, 76th Leg., ch. 439, Sec. 1, eff. Sept. 1, 1999.

Sec. 242.095. FEE; RELEASE OF FUNDS. (a) A trustee appointed under this subchapter is entitled to a reasonable fee as determined by the court. In determining the trustee's personal compensation for nursing facility administrator activities, the court shall consider reasonable a rate that is equal to 150 percent of the maximum allowable rate for an owner-administrator under the state's Medicaid reimbursement rules. The court shall determine the reasonableness of the trustee's personal compensation for other duties. On the motion of any party, the court shall review the reasonableness of the trustee's fees. The court shall reduce the amount if the court determines that the fees are not reasonable.

(b) The trustee may petition the court to order the release to the trustee of any payment owed the trustee for care and services provided to the residents if the payment has been withheld, including a payment withheld by the Texas Department of Human Services at the recommendation of the department.

(c) Withheld payments may include payments withheld by a governmental agency or other entity during the appointment of the trustee, such as payments:

(1) for Medicaid, Medicare, or insurance;
(2) by another third party; or
(3) for medical expenses borne by the resident.

(d) If the department appoints a trustee under this subchapter for a veterans home as defined by Section 164.002, Natural Resources Code, the Veterans' Land Board is responsible for the trustee's fee under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended
Sec. 242.096. NURSING AND CONVALESCENT HOME TRUST FUND AND EMERGENCY ASSISTANCE FUNDS. (a) The nursing and convalescent home trust fund is with the comptroller and shall be made available to the department for expenditures without legislative appropriation to make emergency assistance funds available to a home.

(b) A trustee of a home may use the emergency assistance funds only to alleviate an immediate threat to the health or safety of the residents. The use may include payments for:

1. food;
2. medication;
3. sanitation services;
4. minor repairs;
5. supplies necessary for personal hygiene; or
6. services necessary for the personal care, health, and safety of the residents.

(c) A court may order the department to disburse emergency assistance funds to a home if the court finds that:

1. the home has inadequate funds accessible to the trustee for the operation of the home;
2. there exists an emergency that presents an immediate threat to the health and safety of the residents; and
3. it is in the best interests of the health and safety of the residents that funds are immediately available.

(d) The department shall disburse money from the nursing and convalescent home trust fund as ordered by the court in accordance with board rules.

(e) Any unencumbered amount in the nursing and convalescent home trust fund in excess of $10,000,000 at the end of each fiscal year shall be transferred to the credit of the general revenue fund and may be appropriated only to the department for its use in administering and enforcing this chapter.
Sec. 242.0965. ASSISTED LIVING FACILITY TRUST FUND AND EMERGENCY ASSISTANCE FUNDS. (a) The assisted living facility trust fund is a trust fund with the comptroller and shall be made available to the department for expenditures without legislative appropriation to make emergency assistance funds available to an assisted living facility.

(b) A trustee of an assisted living facility may use the emergency assistance funds only to alleviate an immediate threat to the health or safety of the residents. The use may include payments for:

1. food;
2. medication;
3. sanitation services;
4. minor repairs;
5. supplies necessary for personal hygiene; or
6. services necessary for the personal care, health, and safety of the residents.

(c) A court may order the department to disburse emergency assistance funds to an assisted living facility if the court finds that:

1. the assisted living facility has inadequate funds accessible to the trustee for the operation of the assisted living facility;
2. an emergency exists that presents an immediate threat to the health and safety of the residents; and
3. it is in the best interests of the health and safety of the residents that funds are immediately available.

(d) The department shall disburse money from the assisted living facility trust fund as ordered by the court in accordance with board rules.

(e) Any unencumbered amount in the assisted living facility trust fund in excess of $500,000 at the end of each fiscal year shall be transferred to the credit of the general revenue fund and may be appropriated only to the department for its use in administering and enforcing Chapter 247.
Sec. 242.097. ADDITIONAL LICENSE FEE--NURSING AND CONVALESCENT HOMES. (a) In addition to the license fee provided by Section 242.034, the department shall adopt an annual fee to be charged and collected if the amount of the nursing and convalescent home trust fund is less than $10,000,000. The fee shall be deposited to the credit of the nursing and convalescent home trust fund created by this subchapter.

(b) The department may charge and collect a fee under this section more than once each year only if necessary to ensure that the amount in the nursing and convalescent home trust fund is sufficient to make the disbursements required under Section 242.096. If the department makes a second or subsequent assessment under this subsection in any year, the department shall notify the governor and the members of the Legislative Budget Board.

(c) The department shall set the fee for each nursing and convalescent home at $1 for each licensed unit of capacity or bed space in that home or in an amount necessary to provide not more than $10,000,000 in the fund. The total fees assessed in a year may not exceed $20 for each licensed unit of capacity or bed space in a home.

(d) This section does not apply to a veterans home as defined by Section 164.002, Natural Resources Code.

Sec. 242.0975. ADDITIONAL LICENSE FEE--ASSISTED LIVING FACILITIES. (a) In addition to the license fee provided by Section 247.024, the department shall adopt an annual fee to be charged and collected if the amount of the assisted living facility trust fund is less than $500,000. The fee shall be deposited to the
credit of the assisted living facility trust fund created by this subchapter.

(b) The department may charge and collect a fee under this section more than once each year only if necessary to ensure that the amount in the assisted living facility trust fund is sufficient to make the disbursements required under Section 242.0965. If the department makes a second or subsequent assessment under this subsection in any year, the department shall notify the governor and the Legislative Budget Board.

(c) The department shall set the fee on the basis of the number of beds in assisted living facilities required to pay the fee and in an amount necessary to provide not more than $500,000 in the assisted living facility trust fund.


Sec. 242.098. REIMBURSEMENT. (a) A home that receives emergency assistance funds under this subchapter shall reimburse the department for the amounts received, including interest.

(b) Interest on unreimbursed amounts begins to accrue on the date on which the funds were disbursed to the home. The rate of interest is the rate determined under Section 304.003, Finance Code, to be applicable to judgments rendered during the month in which the money was disbursed to the home.

(c) The owner of the home when the trustee was appointed is responsible for the reimbursement.

(d) The amount that remains unreimbursed on the expiration of one year after the date on which the funds were received is delinquent and the Texas Department of Human Services may determine that the home is ineligible for a Medicaid provider contract.

(e) The department shall deposit the reimbursement and interest received under this section to the credit of the nursing and convalescent home trust fund.

(f) The attorney general shall institute an action to collect the funds due under this section at the request of the department.
Venue for an action brought under this section is in Travis County.


Sec. 242.099. APPLICABILITY OF OTHER LAW. Subtitle D, Title 10, Government Code does not apply to any payments made by a trustee under this subchapter.


Sec. 242.100. NOTIFICATION OF CLOSING. (a) A home that is closing temporarily or permanently, or voluntarily or involuntarily, shall notify the residents of the closing and make reasonable efforts to notify in writing each resident's nearest relative or the person responsible for the resident's support within a reasonable time before the closing.

(b) If the closing of a home is ordered by the department or is in any other way involuntary, the home shall make the notification, orally or in writing, immediately on receiving notice of the closing.

(c) If the closing of a home is voluntary, the home shall make the notification not later than one week after the date on which the decision to close is made.


Sec. 242.101. CRIMINAL PENALTY. (a) A home commits an offense if the home fails or refuses to comply with Section 242.100.

(b) An offense under this section is a Class A misdemeanor.


Sec. 242.102. INELIGIBILITY FOR LICENSE. (a) A license
holder or controlling person who operates a home for which a trustee is appointed under this subchapter and with respect to which emergency assistance funds, other than funds used to pay the expenses of the trustee, are used under this subchapter is subject to exclusion from eligibility for:

(1) issuance of an original license for a home for which the person has not previously held a license; or

(2) renewal of the license for the home for which the trustee is appointed.

(b) Exclusion under this section is governed by Section 242.0615.

Added by Acts 1999, 76th Leg., ch. 439, Sec. 3, eff. Sept. 1, 1999.

SUBCHAPTER E. REPORTS OF ABUSE AND NEGLECT

Sec. 242.121. DEFINITION. In this subchapter, "designated agency" means an agency designated by a court to be responsible for the protection of a resident who is the subject of a report of abuse or neglect.


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Sec. 242.122. REPORTING OF ABUSE AND NEGLECT. (a) A person, including an owner or employee of an institution, who has cause to believe that the physical or mental health or welfare of a resident has been or may be adversely affected by abuse or neglect caused by another person shall report the abuse or neglect in accordance with this subchapter.

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

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

Sec. 242.123. CONTENTS OF REPORT. (a) A report of abuse or neglect is nonaccusatory and reflects the reporting person's belief that a resident has been or will be abused or neglected or has died of abuse or neglect.

(b) The report must contain:

(1) the name and address of the resident;
(2) the name and address of the person responsible for the care of the resident, if available; and
(3) other relevant information.

(c) Except for an anonymous report under Section 242.124, a report of abuse or neglect under Section 242.122 or of other conduct or conditions under Section 242.1225 should also include the address or phone number of the person making the report so that an investigator can contact the person for any necessary additional information. The phone number and address as well as the name of the person making the report must be deleted from any copy of any type of report that is released to the public, to the institution, or to an owner or agent of the institution.


Sec. 242.124. ANONYMOUS REPORTS OF ABUSE OR NEGLECT. (a) An anonymous report of abuse or neglect, although not encouraged, shall be received and acted on in the same manner as an acknowledged report.

(b) An anonymous report about a specific individual that accuses the individual of abuse or neglect need not be investigated.


Sec. 242.125. PROCESSING OF REPORTS. (a) A report of abuse or neglect shall be made to the department or a local or state law enforcement agency. A report made by an owner or employee of an institution relating to abuse or neglect or another complaint described by Section 242.126(c)(1) shall be made to the department...
and to the law enforcement agency described by Section 242.135(a).

(b) Except as provided by Section 242.135, a local or state law enforcement agency that receives a report of abuse or neglect shall refer the report to the department or the designated agency.


Sec. 242.126. INVESTIGATION AND REPORT OF DEPARTMENT OR DESIGNATED AGENCY. (a) The department or the designated agency shall make a thorough investigation after receiving an oral or written report of abuse or neglect under Section 242.122 or another complaint alleging abuse or neglect.

(b) The primary purpose of the investigation is the protection of the resident.

(c) The agency shall begin the investigation:

(1) within 24 hours of receipt of the report or other allegation, if the report of abuse or neglect or other complaint alleges that:

   (A) a resident's health or safety is in imminent danger;

   (B) a resident has recently died because of conduct alleged in the report of abuse or neglect or other complaint;

   (C) a resident has been hospitalized or been treated in an emergency room because of conduct alleged in the report of abuse or neglect or other complaint;

   (D) a resident has been a victim of any act or attempted act described by Section 21.02, 21.11, 22.011, or 22.021, Penal Code; or

   (E) a resident has suffered bodily injury, as that term is defined by Section 1.07, Penal Code, because of conduct alleged in the report of abuse or neglect or other complaint; or

(2) before the end of the next working day after the date of receipt of the report of abuse or neglect or other complaint, if the report or complaint alleges the existence of circumstances that could result in abuse or neglect and that could place a resident's health or safety in imminent danger.

(d) The department shall adopt rules governing the conduct of
investigations, including procedures to ensure that the complainant and the resident, the resident's next of kin, and any person designated to receive information concerning the resident receive periodic information regarding the investigation.

(e) In investigating the report of abuse or neglect or other complaint, the investigator for the investigating agency shall:

(1) make an unannounced visit to the institution to determine the nature and cause of the alleged abuse or neglect of the resident;

(2) interview each available witness, including the resident that suffered the alleged abuse or neglect if the resident is able to communicate or another resident or other witness identified by any source as having personal knowledge relevant to the report of abuse or neglect or other complaint;

(3) personally inspect any physical circumstance that is relevant and material to the report of abuse or neglect or other complaint and that may be objectively observed;

(4) make a photographic record of any injury to a resident, subject to Subsection (n); and

(5) write an investigation report that includes:
   (A) the investigator's personal observations;
   (B) a review of relevant documents and records;
   (C) a summary of each witness statement, including the statement of the resident that suffered the alleged abuse or neglect and any other resident interviewed in the investigation; and
   (D) a statement of the factual basis for the findings for each incident or problem alleged in the report or other allegation.

(f) An investigator for an investigating agency shall conduct an interview under Subsection (e)(2) in private unless the witness expressly requests that the interview not be private.

(g) Not later than the 30th day after the date the investigation is complete, the investigator shall prepare the written report required by Subsection (e). The department shall make the investigation report available to the public on request after the date the department's letter of determination is complete. The department shall delete from any copy made available
to the public:

(1) the name of:
   (A) any resident, unless the department receives
       written authorization from a resident or the resident's legal
       representative requesting the resident's name be left in the
       report;
   (B) the person making the report of abuse or neglect
       or other complaint; and
   (C) an individual interviewed in the investigation;

and

(2) photographs of any injury to the resident.

(h) In the investigation, the department or the designated
agency shall determine:

(1) the nature, extent, and cause of the abuse or
    neglect;
(2) the identity of the person responsible for the abuse
    or neglect;
(3) the names and conditions of the other residents;
(4) an evaluation of the persons responsible for the care
    of the residents;
(5) the adequacy of the institution environment; and
(6) any other information required by the department.

(i) If the department attempts to carry out an on-site
    investigation and it is shown that admission to the institution, or
    any place where the resident is located, cannot be obtained, a
    probate or county court shall order the person responsible for the
    care of the resident or the person in charge of a place where the
    resident is located to allow entrance for the interview and
    investigation.

(j) Before the completion of the investigation the department
    shall file a petition for temporary care and protection of the
    resident if the department determines that immediate removal is
    necessary to protect the resident from further abuse or neglect.

(k) The department or the designated agency shall make a
    complete final written report of the investigation and submit the
    report and its recommendations to the district attorney and, if a
    law enforcement agency has not investigated the report of abuse or
    neglect or other complaint, to the appropriate law enforcement
(l) Within 24 hours of receipt of a report of abuse or neglect or other complaint described by Subsection (c)(1), the department or designated agency shall report the report or complaint to the law enforcement agency described by Section 242.135(a). The department or designated agency shall cooperate with that law enforcement agency in the investigation of the report or complaint as described by Section 242.135.

(m) The inability or unwillingness of a local law enforcement agency to conduct a joint investigation under Section 242.135 does not constitute grounds to prevent or prohibit the department from performing its duties under this chapter. The department shall document any instance in which a law enforcement agency is unable or unwilling to conduct a joint investigation under Section 242.135.

(n) If the department determines that, before a photographic record of an injury to a resident may be made under Subsection (e), consent is required under state or federal law, the investigator:

(1) shall seek to obtain any required consent; and

(2) may not make the photographic record unless the consent is obtained.


Acts 2007, 80th Leg., R.S., Ch. 593, Sec. 3.43, eff. September 1, 2007.

Sec. 242.127. CONFIDENTIALITY. A report, record, or working paper used or developed in an investigation made under this subchapter and the name, address, and phone number of any person making a report under this subchapter are confidential and may be disclosed only for purposes consistent with the rules adopted by the board or the designated agency. The report, record, or working paper and the name, address, and phone number of the person making
the report shall be disclosed to a law enforcement agency as necessary to permit the law enforcement agency to investigate a report of abuse or neglect or other complaint in accordance with Section 242.135.


Sec. 242.128. IMMUNITY. (a) A person who reports as provided by this subchapter is immune from civil or criminal liability that, in the absence of the immunity, might result from making the report.

(b) The immunity provided by this section extends to participation in any judicial proceeding that results from the report.

(c) This section does not apply to a person who reports in bad faith or with malice.


Sec. 242.129. PRIVILEGED COMMUNICATIONS. In a proceeding regarding the abuse or neglect of a resident or the cause of any abuse or neglect, evidence may not be excluded on the ground of privileged communication except in the case of a communication between an attorney and client.


Sec. 242.130. CENTRAL REGISTRY. (a) The department shall maintain in the city of Austin a central registry of reported cases of resident abuse or neglect.

(b) The board may adopt rules necessary to carry out this section.

(c) The rules shall provide for cooperation with hospitals and clinics in the exchange of reports of resident abuse or neglect.
Sec. 242.131. FAILURE TO REPORT; CRIMINAL PENALTY. (a) A person commits an offense if the person has cause to believe that a resident's physical or mental health or welfare has been or may be further adversely affected by abuse or neglect and knowingly fails to report in accordance with Section 242.122.

(b) An offense under this section is a Class A misdemeanor.


Sec. 242.132. BAD FAITH, MALICIOUS, OR RECKLESS REPORTING; CRIMINAL PENALTY. (a) A person commits an offense if the person reports under this subchapter in bad faith, maliciously, or recklessly.

(b) An offense under this section is a Class A misdemeanor.

(c) The criminal penalty provided by this section is in addition to any civil penalties for which the person may be liable.


Sec. 242.133. RETALIATION AGAINST EMPLOYEES PROHIBITED. (a) In this section, "employee" means a person who is an employee of an institution or any other person who provides services for an institution for compensation, including a contract laborer for the institution.

(b) An employee has a cause of action against an institution, or the owner or another employee of the institution, that suspends or terminates the employment of the person or otherwise disciplines or discriminates or retaliates against the employee for reporting to the employee's supervisor, an administrator of the institution, a state regulatory agency, or a law enforcement agency a violation of law, including a violation of this chapter or a rule adopted under this chapter, or for initiating or cooperating in any investigation or proceeding of a governmental entity relating to care, services, or conditions at the institution.

(c) The petitioner may recover:
(1) the greater of $1,000 or actual damages, including damages for mental anguish even if an injury other than mental anguish is not shown and damages for lost wages if the petitioner's employment was suspended or terminated;
(2) exemplary damages;
(3) court costs; and
(4) reasonable attorney's fees.

(d) In addition to the amounts that may be recovered under Subsection (c), a person whose employment is suspended or terminated is entitled to appropriate injunctive relief, including, if applicable:

(1) reinstatement in the person's former position; and
(2) reinstatement of lost fringe benefits or seniority rights.

(e) The petitioner, not later than the 90th day after the date on which the person's employment is suspended or terminated, must bring suit or notify the Texas Workforce Commission of the petitioner's intent to sue under this section. A petitioner who notifies the Texas Workforce Commission under this subsection must bring suit not later than the 90th day after the date of the delivery of the notice to the commission. On receipt of the notice, the commission shall notify the institution of the petitioner's intent to bring suit under this section.

(f) The petitioner has the burden of proof, except that there is a rebuttable presumption that the person's employment was suspended or terminated for reporting abuse or neglect if the person is suspended or terminated within 60 days after the date on which the person reported in good faith.

(g) A suit under this section may be brought in the district court of the county in which:

(1) the plaintiff resides;
(2) the plaintiff was employed by the defendant; or
(3) the defendant conducts business.

(h) Each institution shall require each employee of the institution, as a condition of employment with the institution, to sign a statement that the employee understands the employee's rights under this section. The statement must be part of the statement required under Section 242.122. If an institution does
not require an employee to read and sign the statement, the periods under Subsection (e) do not apply, and the petitioner must bring suit not later than the second anniversary of the date on which the person's employment is suspended or terminated.


Sec. 242.1335. RETALIATION AGAINST VOLUNTEERS, RESIDENTS, OR FAMILY MEMBERS OR GUARDIANS OF RESIDENTS. (a) An institution may not retaliate or discriminate against a volunteer, a resident, or a family member or guardian of a resident because the volunteer, the resident, the resident's family member or guardian, or any other person:

(1) makes a complaint or files a grievance concerning the facility;
(2) reports a violation of law, including a violation of this chapter or a rule adopted under this chapter; or
(3) initiates or cooperates in an investigation or proceeding of a governmental entity relating to care, services, or conditions at the institution.

(b) A volunteer, a resident, or a family member or guardian of a resident who is retaliated or discriminated against in violation of Subsection (a) is entitled to sue for:

(1) injunctive relief;
(2) the greater of $1,000 or actual damages, including damages for mental anguish even if an injury other than mental anguish is not shown;
(3) exemplary damages;
(4) court costs; and
(5) reasonable attorney's fees.

(c) A volunteer, a resident, or a family member or guardian of a resident who seeks relief under this section must report the alleged violation not later than the 180th day after the date on which the alleged violation of this section occurred or was discovered by the volunteer, the resident, or the family member or
guardian of the resident through reasonable diligence.

(d) A suit under this section may be brought in the district court of the county in which the institution is located or in a district court of Travis County.


Sec. 242.134. REPORTS RELATING TO RESIDENT DEATHS. (a) An institution licensed under this chapter shall submit a report to the department concerning deaths of residents of the institution. The report must be submitted within 10 working days after the last day of each month in which a resident of the institution dies. The report must also include the death of a resident occurring within 24 hours after the resident is transferred from the institution to a hospital.

(b) The institution must make the report on a form prescribed by the department. The report must contain the name and social security number of the deceased.

(c) The department shall correlate reports under this section with death certificate information to develop data relating to the:

(1) name and age of the deceased;

(2) official cause of death listed on the death certificate;

(3) date, time, and place of death; and

(4) name and address of the institution in which the deceased resided.

(d) Except as provided by Subsection (e), a record under this section is confidential and not subject to the provisions of Chapter 552, Government Code.

(e) The department shall develop statistical information on official causes of death to determine patterns and trends of incidents of death among the elderly and in specific institutions. Information developed under this subsection is public.

(f) A licensed institution shall make available historical statistics on all required information on request of an applicant...
or applicant's representative.


Sec. 242.135. DUTIES OF LAW ENFORCEMENT; JOINT INVESTIGATION. (a) A department or designated agency shall investigate a report of abuse or neglect or other complaint described by Section 242.126(c)(1) jointly with:

(1) the municipal law enforcement agency, if the institution is located within the territorial boundaries of a municipality; or

(2) the sheriff's department of the county in which the institution is located, if the institution is not located within the territorial boundaries of a municipality.

(b) The law enforcement agency described by Subsection (a) shall acknowledge the report of abuse or neglect or other complaint and begin the joint investigation required by this section within 24 hours of receipt of the report or complaint. The law enforcement agency shall cooperate with the department or designated agency and report to the department or designated agency the results of the investigation.

(c) The requirement that the law enforcement agency and the department or designated agency conduct a joint investigation under this section does not require that a representative of each agency be physically present during all phases of the investigation or that each agency participate equally in each activity conducted in the course of the investigation.

Added by Acts 2003, 78th Leg., ch. 1210, Sec. 4, eff. Sept. 1, 2003.

SUBCHAPTER F. MEDICAL, NURSING, AND DENTAL SERVICES OTHER THAN ADMINISTRATION OF MEDICATION

Sec. 242.151. PHYSICIAN SERVICES. (a) An institution shall
have at least one medical director who is licensed as a physician in this state.

(b) The attending physician is responsible for a resident's assessment and comprehensive plan of care and shall review, revise, and sign orders relating to any medication or treatment in the plan of care. The responsibilities imposed on the attending physician by this subsection may be performed by an advanced practice nurse or a physician assistant pursuant to protocols jointly developed with the attending physician.

(c) Each resident has the right to choose a personal attending physician.

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

Sec. 242.152. PHYSICIAN SERVICES FOR RESIDENTS YOUNGER THAN 18 YEARS OF AGE. (a) An institution shall use appropriate pediatric consultative services for a resident younger than 18 years of age, in accordance with the resident's assessment and comprehensive plan of care.

(b) A pediatrician or other physician with training or expertise in the clinical care of children with complex medical needs shall participate in all aspects of the resident's medical care.

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

Sec. 242.153. DIRECTOR OF NURSING SERVICES. An institution shall have a director of nursing services who shall be a registered nurse. The director of nursing services is responsible for:

(1) coordinating each resident's comprehensive plan of care; and

(2) ensuring that only personnel with an appropriate license or permit administer medication.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.
Sec. 242.154. NURSING SERVICES. (a) An institution shall provide the nursing care required to allow each resident to achieve and maintain the highest possible degree of function and independence medically possible.

(b) The institution shall maintain sufficient staff to provide nursing and related services:

(1) in accordance with each resident's plan of care; and

(2) to obtain and maintain the physical, mental, and psychosocial functions of each resident at the highest practicable level, as determined by the resident's assessment and plan of care.

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

Sec. 242.155. PEDIATRIC NURSING SERVICES. An institution shall ensure that:

(1) nursing services for a resident younger than 18 years of age are provided by a staff member who has been instructed and has demonstrated competence in the care of children; and

(2) consultative pediatric nursing services are available to the staff if the institution has a resident younger than 18 years of age.

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

Sec. 242.156. REQUIRED MEDICAL EXAMINATION. (a) Except as required by federal law, the department shall require that each resident be given at least one medical examination each year.

(b) The department shall specify the details of the examination.

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

Sec. 242.157. DENTAL EXAMINATION. (a) The department shall require that each resident of an institution or the resident's
custodian be asked at least once each year if the resident desires a dental examination and possible treatment at the resident's own expense.

(b) Each institution shall be encouraged to use all reasonable efforts to arrange for a dental examination for each resident who desires one.

(c) The institution is not liable for any costs relating to a dental examination under this section.

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

Sec. 242.158. IDENTIFICATION OF CERTAIN NURSING HOME RESIDENTS REQUIRING MENTAL HEALTH OR MENTAL RETARDATION SERVICES.

(a) Each resident of a nursing home who is considering making a transition to a community-based care setting shall be identified to determine the presence of a mental illness or mental retardation, regardless of whether the resident is receiving treatment or services for a mental illness or mental retardation.

(b) In identifying residents having a mental illness or mental retardation, the department shall use an identification process that is at least as effective as the mental health and mental retardation identification process established by federal law. The results of the identification process may not be used to prevent a resident from remaining in the nursing home unless the nursing home is unable to provide adequate care for the resident.

(c) The department shall compile and provide to the Texas Department of Mental Health and Mental Retardation information regarding each resident identified as having a mental illness or mental retardation before the resident makes a transition from the nursing home to a community-based care setting.

(d) The Texas Department of Mental Health and Mental Retardation shall use the information provided under Subsection (c) solely for the purposes of:

(1) determining the need for and funding levels of mental health and mental retardation services for residents making a transition from a nursing home to a community-based care setting;

(2) providing mental health or mental retardation
services to an identified resident after the resident makes that transition; and

(3) referring an identified resident to a local mental health or mental retardation authority or private provider for additional mental health or mental retardation services.

(e) This section does not authorize the department to decide for a resident of a nursing home that the resident will make a transition from the nursing home to a community-based care setting.


Sec. 242.159. AUTOMATED EXTERNAL DEFIBRILLATORS. (a) An institution shall have available for use at the institution an automated external defibrillator, as defined by Section 779.001, and shall comply with the training, use, and notification requirements of Chapter 779.

(b) An institution that does not have funds available for purposes of Subsection (a) may solicit gifts, grants, or donations to purchase or maintain an automated external defibrillator for use at the institution.

(c) The use of an automated external defibrillator must be consistent with a resident's advance directive executed or issued under Subchapter C, Chapter 166.

(d) Notwithstanding Section 74.151(b), Civil Practice and Remedies Code, Section 74.151(a), Civil Practice and Remedies Code, applies to administration of emergency care using an automated external defibrillator by an employee or volunteer at an institution.

(e) An institution shall employ at least one person who is trained in the proper use of an automated external defibrillator.

(e-1) An institution is not required to comply with Subsections (a) and (e) until September 1, 2012. This subsection expires January 1, 2013.

Added by Acts 2009, 81st Leg., R.S., Ch. 257, Sec. 1, eff. September 1, 2009.

SUBCHAPTER G. RESPITE CARE
Sec. 242.181. DEFINITIONS. In this subchapter:

(1) "Handicapped person" means a person whose physical or mental functioning is impaired to the extent that the person needs medical attention, counseling, physical therapy, therapeutic or corrective equipment, or another person's attendance and supervision.

(2) "Plan of care" means a written description of the medical care or the supervision and nonmedical care needed by a person during respite care.

(3) "Respite care" means the provision by an institution to a person, for not more than two weeks for each stay in the institution, of:

(A) room and board; and
(B) care at the level ordinarily provided for permanent residents.


Sec. 242.182. RESPITE CARE. (a) An institution licensed under this chapter may provide respite care for an elderly or handicapped person according to a plan of care.

(b) The board may adopt rules for the regulation of respite care provided by an institution licensed under this chapter.


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

(b) The plan of care must be signed by:

(1) a licensed physician if the person for whom the care is arranged needs medical care or treatment; or

(2) the person arranging for the respite care if medical care or treatment is not needed.

(c) The institution may keep an agreed plan of care for a person for not longer than six months from the date on which it is...
received. During that period, the institution may admit the person as frequently as is needed and as accommodations are available.


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


Sec. 242.185. INSPECTIONS. The department, at the time of an ordinary licensing inspection or at other times determined necessary by the department, shall inspect an institution's records of respite care services, physical accommodations available for respite care, and the plan of care records to ensure that the respite care services comply with the licensing standards of this chapter and with any rules the board may adopt to regulate respite care services.


Sec. 242.186. SUSPENSION. (a) The department may require an institution to cease providing respite care if the department determines that the respite care does not meet the standards required by this chapter and that the institution cannot comply with those standards in the respite care it provides.

(b) The department may suspend the license of an institution that continues to provide respite care after receiving a written order from the department to cease.


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

Sec. 242.201. SCOPE OF SUBCHAPTER. This subchapter applies only to an institution that advertises, markets, or otherwise
promotes that the institution provides services to residents with Alzheimer's disease and related disorders.

Added by Acts 1995, 74th Leg., ch. 38, Sec. 1, eff. May 5, 1995.

Sec. 242.202. DISCLOSURE REQUIRED. (a) An institution covered by this subchapter shall provide a disclosure statement disclosing the nature of its care or treatment of residents with Alzheimer's disease and related disorders to:

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

(b) The disclosure statement must be displayed with the institution's license as it is posted under Section 242.042.

(c) The institution must file the disclosure statement with the department as part of the report filed under Section 242.033(d). The department shall verify contents of the disclosure statement as part of the license renewal process.

(d) The disclosure statement must contain the following categories of information:

(1) the institution's philosophy of care;
(2) the preadmission, admission, and discharge process;
(3) resident assessment, care planning, and implementation of the care plan;
(4) staffing patterns, such as resident-to-staff ratios, and staff training;
(5) the physical environment of the institution;
(6) resident activities;
(7) program costs;
(8) systems for evaluation of the institution's programs for residents;
(9) family involvement in resident care; and
(10) the toll-free telephone number maintained by the department for acceptance of complaints against the institution.
(e) The institution must update the disclosure statement as needed to reflect changes in the operation of the institution.

Added by Acts 1995, 74th Leg., ch. 38, Sec. 1, eff. May 5, 1995.

Sec. 242.203. VIOLATION. (a) An institution that violates this subchapter is subject to an administrative penalty under Subchapter C.

(b) The department may not revoke or suspend the license of an institution for a violation of this subchapter.

Added by Acts 1995, 74th Leg., ch. 38, Sec. 1, eff. May 5, 1995.

Sec. 242.204. RULES. The board shall adopt rules governing:

(1) the content of the disclosure statement required by this subchapter, consistent with the information categories required by Section 242.202(d); and

(2) the amount of an administrative penalty to be assessed for a violation of this subchapter.

Added by Acts 1995, 74th Leg., ch. 38, Sec. 1, eff. May 5, 1995.

SUBCHAPTER H-1. AUTOMATED MEDICAID PATIENT CARE AND REIMBURSEMENT SYSTEM

Sec. 242.221. AUTOMATED SYSTEM FOR MEDICAID PATIENT CARE AND REIMBURSEMENT. (a) The department shall acquire and develop an automated system for providing reimbursements to nursing facilities under the state Medicaid program, subject to the availability of funds appropriated for that purpose.

(b) The department shall select an automated system that will allow the addition of other components of the state Medicaid program, including components administered by other state agencies.

(c) The department and the Health and Human Services Commission shall work together to apply for all available federal funds to help pay for the automated system.

(d) To the extent possible, the department shall assist nursing facilities to make systems compatible with the automated
system selected by the department.

(e) The department shall charge a fee to nursing facilities that do not receive their Medicaid reimbursements electronically. The department shall set the fee in an amount necessary to cover the costs of manually processing and sending the reimbursements.


Sec. 242.222. DATA USED BY SYSTEM. The automated patient care and reimbursement system must use a form designed by the United States Health Care Financing Administration for nursing facility use.


Sec. 242.223. FREQUENCY OF DATA SUBMISSION. Nursing facilities must complete and electronically submit the designated form to the department at least quarterly for reimbursement.

Added by Acts 1997, 75th Leg., ch. 530, Sec. 1, eff. Sept. 1, 1997.

Sec. 242.224. ELECTRONIC CLAIMS FOR REIMBURSEMENT. The automated reimbursement system must be able to link the department electronically with nursing facilities making claims for reimbursement. When the system is operational, each nursing facility shall make claims electronically.

Sec. 242.225. DATE OF REIMBURSEMENT. The department shall pay Medicaid nursing facility reimbursement claims that are made electronically not later than the 30th day after the date the claim is made.


Sec. 242.226. RULES. The department shall adopt rules and make policy changes as necessary to improve the efficiency of the reimbursement process and to maximize the automated reimbursement system's capabilities.


SUBCHAPTER I. NURSING FACILITY ADMINISTRATION

Subchapter I, consisting of Secs. 242.301 to 242.322, was added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01.

For another Subchapter I, consisting of Secs. 242.301 to 242.327, added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01, see Sec. 242.301 et seq. post.

Text of subchapter effective until federal determination of failure to comply with federal regulations

Sec. 242.301. DEFINITIONS. In this subchapter:

1. "Nursing facility" means an institution or facility that is licensed as a nursing home, nursing facility, or skilled nursing facility by the department under this chapter.

2. "Nursing facility administrator" or "administrator" means a person who engages in the practice of nursing facility administration, without regard to whether the person has an
ownership interest in the facility or whether the functions and duties are shared with any other person.

(3) "Practice of nursing facility administration" means the performance of the acts of administering, managing, supervising, or being in general administrative charge of a nursing facility.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 242.302. POWERS AND DUTIES OF DEPARTMENT. (a) The board may adopt rules consistent with this subchapter.

(b) The department shall:

(1) adopt and publish a code of ethics for nursing facility administrators;

(2) establish the qualifications of applicants for licenses and the renewal of licenses issued under this subchapter;

(3) spend funds necessary for the proper administration of the department's assigned duties under this subchapter;

(4) establish reasonable and necessary fees for the administration and implementation of this subchapter; and

(5) establish a minimum number of hours of continuing education required to renew a license issued under this subchapter and periodically assess the continuing education needs of license holders to determine whether specific course content should be required.

(c) The department is the licensing agency for the healing arts, as provided by 42 U.S.C. Section 1396g.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 242.303. NURSING FACILITY ADMINISTRATORS ADVISORY COMMITTEE. (a) The Nursing Facility Administrators Advisory Committee is appointed by the governor.

(b) Members of the committee serve for staggered terms of six years, with the terms of three members expiring on February 1 of each odd-numbered year.
(c) The committee shall consist of:

(1) three licensed nursing facility administrators, at least one of whom shall represent a not-for-profit nursing facility;

(2) one physician with experience in geriatrics who is not employed by a nursing facility;

(3) one registered nurse with experience in geriatrics who is not employed by a nursing facility;

(4) one social worker with experience in geriatrics who is not employed by a nursing facility; and

(5) three public members with experience working with the chronically ill and infirm as provided by 42 U.S.C. Section 1396g.

(d) The committee shall advise the board on the licensing of nursing facility administrators, including the content of applications for licensure and of the examination administered to license applicants under Section 242.306. The committee shall review and recommend rules and minimum standards of conduct for the practice of nursing facility administration. The committee shall review all complaints against administrators and make recommendations to the department regarding disciplinary actions. Failure of the committee to review complaints and make recommendations in a timely manner shall not prevent the department from taking disciplinary action.

(e) Appointments to the committee shall be made without regard to the race, color, disability, sex, religion, or national origin of the person appointed.

(f) A member of the committee receives no compensation but is entitled to reimbursement for actual and necessary expenses incurred in performing the member's duties under this section.

(g) The department shall pay the expenses of the committee and shall supply necessary personnel and supplies.

(h) A vacancy in a position on the committee shall be filled in the same manner in which the position was originally filled and shall be filled by a person who meets the qualifications of the vacated position.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.
Sec. 242.304. FEES; FUNDS. (a) The board by rule shall set reasonable and necessary fees in amounts necessary to cover the cost of administering this subchapter. The board by rule may set different licensing fees for different categories of licenses.

(b) The department shall receive and account for funds received under this subchapter. The funds shall be deposited in the state treasury to the credit of the general revenue fund.

(c) The department may receive and disburse funds received from any federal source for the furtherance of the department's functions under this subchapter.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 242.305. PRACTICING WITHOUT A LICENSE. A person may not act as a nursing facility administrator or represent to others that the person is a nursing facility administrator unless the person is licensed under this subchapter.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 242.306. LICENSE APPLICATION; QUALIFICATIONS. (a) An applicant for a nursing facility administrator's license must submit a sworn application that is accompanied by the application fee.

(b) The board shall prescribe the form of the application and may by rule establish dates by which applications and fees must be received.

(c) An applicant for a nursing facility administrator's license must take a licensing examination under this subchapter. To qualify for the licensing examination, the applicant must have satisfactorily completed a course of instruction and training prescribed by the board that is conducted by or in cooperation with an accredited postsecondary educational institution and that is designed and administered to provide sufficient knowledge of:

(1) the needs served by nursing facilities;
(2) the laws governing the operation of nursing facilities and the protection of the interests of facility residents; and

(3) the elements of nursing facility administration.

(d) An applicant who has not completed the course of instruction and training described by Subsection (c) must present evidence satisfactory to the department of having completed sufficient education, training, and experience in the fields described by Subsection (c) to enable the applicant to engage in the practice of nursing facility administration.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 242.307. EXAMINATION. (a) The licensing examination shall be prepared or approved by the department and shall be administered by the department to qualified applicants at least twice each calendar year. The department shall have the written portion of the examination, if any, validated by a testing professional.

(b) Not later than the 30th day after the date on which a licensing examination is administered under this subchapter, the department shall notify each examinee of the results of the examination. If an examination is graded or reviewed by a national or state testing service, the department shall notify examinees of the results of the examination not later than two weeks after the date the department receives the results from the testing service. If the notice of the examination results will be delayed for more than 90 days after the examination date, the department shall notify the examinee of the reason for the delay before the 90th day.

(c) If requested in writing by a person who fails the licensing examination, the department shall furnish the person with an analysis of the person's performance on the examination.

(d) The board may establish by rule additional educational requirements to be met by an applicant who fails the examination three times.
Sec. 242.308. LICENSES; TEMPORARY LICENSE; INACTIVE STATUS.
(a) A person who meets the requirements for licensing under this subsection is entitled to receive a license. A nursing facility administrator's license is not transferable.
(b) A person licensed under this subsection must notify the department of the license holder's correct mailing address.
(c) A license is valid for two years. The board by rule may adopt a system under which licenses expire on various dates during the two-year period. For the year in which a license expiration date is changed, license fees payable on the original expiration date shall be prorated on a monthly basis so that each license holder shall pay only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.
(d) The board by rule may provide for the issuance of a temporary license. Rules adopted under this section shall include a time limit for a licensee to practice under a temporary license.
(e) The board by rule may provide for a license holder to be placed on inactive status.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 242.309. PROVISIONAL LICENSE. (a) The board shall issue a provisional license to an applicant currently licensed in another jurisdiction who seeks a license in this state and who:
(1) has been licensed in good standing as a nursing facility administrator for at least two years in another jurisdiction, including a foreign country, that has licensing requirements that are substantially equivalent to the requirements of this subchapter;
(2) has passed a national or other examination recognized by the board relating to the practice of nursing facility administration; and
(3) is sponsored by a person licensed by the board under this subchapter with whom the provisional license holder will practice during the time the person holds a provisional license.

(b) The board may waive the requirement of Subsection (a)(3) for an applicant if the board determines that compliance with that subsection would be a hardship to the applicant.

(c) A provisional license is valid until the date the board approves or denies the provisional license holder's application for a license. The board shall issue a license under this subchapter to the provisional license holder if:

(1) the provisional license holder is eligible to be licensed under Section 242.306; or

(2) the provisional license holder passes the part of the examination under Section 242.307 that relates to the applicant's knowledge and understanding of the laws and rules relating to the practice of nursing facility administration in this state and:

(A) the board verifies that the provisional license holder meets the academic and experience requirements for a license under this subchapter; and

(B) the provisional license holder satisfies all other license requirements under this subchapter.

(d) The board must approve or deny a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued. The board may extend the 180-day period if the results of an examination have not been received by the board before the end of that period.

(e) The board may establish a fee for provisional licenses in an amount reasonable and necessary to cover the cost of issuing the license.


Sec. 242.310. LICENSE RENEWAL. (a) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required renewal fee to the department before the expiration date of the license. A person whose license has
expired may not engage in activities that require a license until the license has been renewed.

(b) A person whose license has been expired for 90 days or less may renew the license by paying to the department a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(c) A person whose license has been expired for more than 90 days but less than one year may renew the license by paying to the department a renewal fee that is equal to two times the normally required renewal fee.

(d) A person whose license has been expired for one year or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures, including the examination requirements, for obtaining an original license.

(e) A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application may obtain a new license without reexamination. The person must pay to the department a fee that is equal to two times the normally required renewal fee for the license.

(f) Not later than the 31st day before the date a person's license is scheduled to expire, the department shall send written notice of the impending expiration to the person at the person's last known address according to the records of the department.


Sec. 242.311. MANDATORY CONTINUING EDUCATION. (a) The board by rule shall establish a minimum number of hours of continuing education required to renew a license under this subchapter. The department may assess the continuing education needs of license holders and may require license holders to attend continuing education courses specified by the board.

(b) The board shall identify the key factors for the competent performance by a license holder of the license holder's professional duties. The department shall adopt a procedure to
Sec. 242.312. COMPLAINT RECEIPT, INVESTIGATION, AND DISPOSITION. (a) The department shall keep an information file concerning each complaint filed with the department regarding a person licensed under this subchapter. The department's information file shall be kept current and shall contain a record for each complaint of:

(1) all persons contacted in relation to the complaint;
(2) a summary of findings made at each step of the complaint process;
(3) an explanation of the legal basis and reason for a complaint that is dismissed; and
(4) other relevant information.

(b) If a written complaint is filed with the department that the department has authority to resolve, the department, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

(c) The board by rule shall adopt a form to standardize information concerning complaints made to the department. The board by rule shall prescribe information to be provided to a person when the person files a complaint with the department.

(d) The department shall provide reasonable assistance to a person who wishes to file a complaint with the department.

(e) The board shall adopt rules concerning the investigation of complaints filed with the department. The rules adopted under this subsection shall:

(1) distinguish between categories of complaints;
(2) ensure that complaints are not dismissed without appropriate consideration;
(3) require that the board be advised at least quarterly of complaints that have been dismissed and require that a letter be sent to each person who has filed a complaint that is dismissed.
explaining the action taken on the complaint;

(4) ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint; and

(5) prescribe guidelines concerning the categories of complaints that may require the use of a private investigator and the procedures to be followed by the department in obtaining the services of a private investigator.

(f) The department shall dispose of all complaints in a timely manner. The board by rule shall establish a schedule for initiating a complaint investigation that is under the control of the department not later than the 30th day after the date the complaint is received by the department. The schedule shall be kept in the information file for the complaint, and all parties shall be notified of the projected time requirements for pursuing the complaint. A change in the schedule must be noted in the complaint information file and all parties to the complaint must be notified not later than the seventh day after the date the change is made.

(g) The commissioner shall notify the board at least quarterly of complaints that have extended beyond the time prescribed by the board for resolving complaints so that the department may take any necessary corrective actions on the processing of complaints.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 242.313. SANCTIONS. (a) The department may revoke, suspend, or refuse to renew a nursing facility administrator's license, assess an administrative penalty, issue a written reprimand, require participation in continuing education, or place an administrator on probation, after due notice and the opportunity for a hearing, on proof of any of the following grounds:

(1) the license holder has wilfully or repeatedly violated a provision of this subchapter or a rule adopted under this subchapter;

(2) the license holder has wilfully or repeatedly acted in a manner inconsistent with the health and safety of the
residents of a facility of which the license holder is an administrator;

(3) the license holder obtained or attempted to obtain a license through misrepresentation or deceit or by making a material misstatement of fact on a license application;

(4) the license holder's use of alcohol or drugs creates a hazard to the residents of a facility;

(5) a judgment of a court of competent jurisdiction finds that the license holder is mentally incapacitated;

(6) the license holder has been convicted in a court of competent jurisdiction of a misdemeanor or felony involving moral turpitude;

(7) the license holder has been convicted in a court of competent jurisdiction of an offense listed in Section 250.006; or

(8) the license holder has been negligent or incompetent in the license holder's duties as a nursing facility administrator.

(b) If a license sanction is probated, the department may require the license holder to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the department; or

(3) continue or review continuing professional education until the license holder attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.

(c) A license holder is entitled to a hearing in accordance with rules adopted by the executive commissioner before a sanction is imposed under this section.

(d) The executive commissioner by rule shall adopt a broad schedule of sanctions for violations under this subchapter. The department shall use the schedule for any sanction imposed in accordance with the rules.

(e) The executive commissioner shall by rule establish criteria to determine whether deficiencies from a facility's survey warrant action against an administrator. The criteria shall include a determination of whether the survey indicates substandard quality of care related to an act or failure to act by the administrator, and whether a deficiency is related to an act or
failure to act by the administrator. If a deficiency on which a
disciplinary action against an administrator is initiated or
completed is not substantiated, the disciplinary action shall be
reversed.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1,
1997.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 763, Sec. 2, eff. June 19,
2009.

Sec. 242.314. WRITTEN REPRIMAND AND CONTINUING EDUCATION AS
SANCTIONS. In addition to the other disciplinary actions
authorized under this subchapter, the department may issue a
written reprimand to a license holder who violates this subchapter
or may require that a license holder who violates this subchapter
participate in continuing education programs. The department shall
specify the continuing education programs that may be attended and
the number of hours that must be completed by a license holder to
fulfill the requirements of this section.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1,
1997.

Sec. 242.315. ADMINISTRATIVE PENALTY AS SANCTION. (a) The
department may impose an administrative penalty against a person
licensed or regulated under this subchapter who violates this subchapter or a rule adopted by the board under this subchapter.

(b) The penalty for a violation may be in an amount not to exceed $1,000. Each day a violation occurs or continues is a
separate violation for purposes of imposing a penalty.

(c) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including the
nature, circumstances, extent, and gravity of any prohibited acts,
and the hazard or potential hazard created to the health, safety,
or economic welfare of the public;

(2) the economic harm to property or the environment
caused by the violation;
(3) the history of previous violations;
(4) the amount necessary to deter future violations;
(5) efforts to correct the violations; and
(6) any other matter that justice may require.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 242.316. NOTICE AND HEARING. (a) If the department determines that a violation has occurred, the department shall give written notice of the determination to the person alleged to have committed the violation. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(b) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and the penalty recommended by the department or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(c) If the person accepts the determination and the penalty recommended by the department, or if the person fails to timely respond to the notice, the department shall impose the recommended penalty.

(d) If the person requests a hearing, the department shall set a hearing and give notice of the hearing to the person. The hearing shall be held in accordance with the rules on contested case hearings adopted by the executive commissioner.

(e) The notice of the hearing decision given to the person under Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the decision.

(f) Within 30 days after the date the department's decision is final as provided by Section 2001.144, Government Code, the person shall:

(1) pay the amount of the penalty;
(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) Within the 30-day period, a person who acts under Subsection (f)(3) may:

(1) stay enforcement of the penalty by:
   (A) paying the amount of the penalty to the court for placement in an escrow account; or
   (B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the department's decision is final; or

(2) request the court to stay enforcement of the penalty by:
   (A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and
   (B) sending a copy of the affidavit to the department by certified mail.

(h) If the department receives a copy of an affidavit under Subsection (g)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(i) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the department may refer the matter to the attorney general for collection of the amount of the penalty.
(j) Judicial review of the decision of the department:
   (1) is instituted by filing a petition as provided by
   Section 2001.176, Government Code; and
   (2) is under the substantial evidence rule.

(k) If the court sustains the occurrence of the violation,
the court may uphold or reduce the amount of the penalty and order
the person to pay the full or reduced amount of the penalty. If
the court does not sustain the occurrence of the violation, the
court shall order that no penalty is owed.

(l) When the judgment of the court becomes final, the court
shall proceed under this subsection. If the person paid the amount
of the penalty and if that amount is reduced or is not upheld by
the court, the court shall order that the appropriate amount plus
accrued interest be remitted to the person. The rate of the
interest is the rate charged on loans to depository institutions by
the New York Federal Reserve Bank, and the interest shall be paid
for the period beginning on the date the penalty was paid and
ending on the date the penalty is remitted. If the person gave a
supersedeas bond and if the amount of the penalty is not upheld by
the court, the court shall order the release of the bond. If the
person gave a supersedeas bond and if the amount of the penalty is
reduced, the court shall order the release of the bond after the
person pays the amount.

(m) A penalty collected under this section shall be remitted
to the comptroller for deposit in the general revenue fund.

(n) All proceedings under this section are subject to Chapter

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1,
1997.

Amended by:
   Acts 2009, 81st Leg., R.S., Ch. 763, Sec. 3, eff. June 19,
2009.

Sec. 242.317. INFORMAL PROCEEDINGS. (a) The department by
rule shall adopt procedures governing:
   (1) informal disposition of a contested case under
Section 2001.056, Government Code; and
(2) informal proceedings held in compliance with Section 2001.054, Government Code.

(b) Rules adopted under this section must provide the complainant and the license holder an opportunity to be heard.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 242.318. MONITORING OF LICENSE HOLDER. The department by rule shall develop a system for monitoring a license holder's compliance with the requirements of this subchapter. Rules adopted under this section shall include procedures for monitoring a license holder who is required by the department to perform certain acts to ascertain that the license holder performs the required acts and to identify and monitor license holders who represent a risk to the public.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 242.319. CIVIL PENALTY. A person who violates this subchapter is liable to the state for a civil penalty of $1,000 for each day of violation. At the request of the department, the attorney general shall bring an action to recover a civil penalty established by this section.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 242.320. ASSISTANCE OF ATTORNEY GENERAL. The attorney general shall provide legal assistance as necessary in enforcing the provisions of this subchapter. This requirement does not relieve a local prosecuting officer of any of the prosecuting officer's duties under the law.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.
Sec. 242.321. OFFENSE. (a) A person commits an offense if the person knowingly or intentionally violates Section 242.305.

(b) An offense under this section is a Class B misdemeanor.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 242.322. PROTECTION FOR REFUSAL TO ENGAGE IN CERTAIN CONDUCT. (a) A person may not suspend, terminate, or otherwise discipline or discriminate against a licensed nursing facility administrator who refuses to engage in an act or omission relating to the administrator's job duties or responsibilities that would constitute a violation of this subchapter or of a rule adopted under this subchapter, if the administrator notifies the person at the time of the refusal that the reason for refusing is that the act or omission constitutes a violation of this subchapter or of a rule adopted under this subchapter.

(b) An act by a person under Subsection (a) does not constitute a violation of this section if:

(1) the act or omission the administrator refused to commit was not conduct that constitutes a violation of this subchapter or of a rule adopted under this subchapter; or

(2) the act or omission the administrator refused to commit was conduct that constitutes a violation of this subchapter or of a rule adopted under this subchapter, and the person rescinds any disciplinary or discriminatory action taken against the administrator, compensates the administrator for lost wages, and restores any lost benefits to the administrator.

(c) A violation of this section is an unlawful employment practice, and a civil action may be brought by a licensed nursing facility administrator against a person for the violation. The relief available in a civil action shall be the same as the relief available to complainants in a civil action for violations of Chapter 21, Labor Code. In no event may any action be brought pursuant to this section more than two years after the date of the administrator's refusal to engage in an act or omission that would constitute a violation of this subchapter or of a rule adopted under this subchapter.
In this section, "person" includes an individual, organization, corporation, agency, facility, or other entity.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

SUBCHAPTER I. NURSING FACILITY ADMINISTRATION

Subchapter I, consisting of Secs. 242.301 to 242.327, was added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

For another Subchapter I, consisting of Secs. 242.301 to 242.322, added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, see Sec. 242.301 et seq. post.

Text of subchapter effective upon federal determination of failure to comply with federal regulations

Sec. 242.301. DEFINITIONS. In this subchapter:

(1) "Board" means the Texas Board of Nursing Facility Administrators.

(2) "Nursing facility" means an institution or facility that is licensed as a nursing home, nursing facility, or skilled nursing facility by the department under this chapter.

(3) "Nursing facility administrator" or "administrator" means a person who engages in the practice of nursing facility administration, without regard to whether the person has an ownership interest in the facility or whether the functions and duties are shared with any other person.

(4) "Practice of nursing facility administration" means the performance of the acts of administering, managing, supervising, or being in general administrative charge of a nursing facility.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.302. TEXAS BOARD OF NURSING FACILITY ADMINISTRATORS.

(a) The Texas Board of Nursing Facility Administrators is within the department.
(b) The board is composed of nine members appointed by the governor as follows:

(1) three licensed nursing facility administrators, at least one of whom shall represent a not-for-profit nursing facility;
(2) one physician with experience in geriatrics who is not employed by a nursing facility;
(3) one registered nurse with experience in geriatrics who is not employed by a nursing facility;
(4) one social worker with experience in geriatrics who is not employed by a nursing facility; and
(5) three public members with experience working with the chronically ill and infirm as provided by 42 U.S.C. Section 1396g.

(c) Members of the board serve staggered six-year terms, with the terms of three members expiring on February 1 of each odd-numbered year. A person appointed to fill a vacancy on the board shall serve for the unexpired portion of the term for which the person is appointed.

(d) Appointments to the board shall be made without regard to the race, color, disability, sex, religion, or national origin of the person appointed.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.303. MEMBERSHIP REQUIREMENTS. (a) A member of the board who is an administrator must:

(1) be a resident of this state and a citizen of the United States;
(2) be licensed under this subchapter and currently serving as a nursing facility administrator or have direct supervisory responsibility on a daily basis over an administrator who works in a nursing facility; and
(3) hold a degree from an accredited four-year college or university.

(b) An administrator who does not have a degree as required by Subsection (a)(3) may be qualified to serve as a member of the board if the administrator has two years of practical experience as an administrator for every year less than four that the
administrator has completed at a four-year college or university.

(c) A member or employee of the board may not:

1. be an officer, employee, or paid consultant of a trade association in the nursing facility industry; or
2. be related within the second degree by affinity or within the third degree by consanguinity to an officer, employee, or paid consultant of a trade association in the nursing facility industry.

(d) A member of the board who represents the general public may not have a financial interest, other than as a consumer, in a nursing facility as an officer, director, partner, owner, employee, attorney, or paid consultant or be related within the second degree by affinity or within the third degree by consanguinity to a person who has a financial interest, other than as a consumer, in a nursing facility as an officer, director, partner, owner, employee, attorney, or paid consultant.

(e) A person who is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board may not serve on the board.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.304. GROUNDS FOR REMOVAL. It is a ground for removal from the board if a member:

1. does not have at the time of appointment the qualifications required by Section 242.303 for appointment to the board;
2. does not maintain during service on the board the qualifications required by Section 242.303 for appointment to the board;
3. violates a prohibition established by Section 242.303;
4. cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability; or
5. is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend.
Sec. 242.305. BOARD OFFICERS; MEETINGS; QUORUM; EXPENSES. (a) The board shall elect from its members a presiding officer and assistant presiding officer who serve according to rules adopted by the board. 

(b) The board shall hold at least two regular meetings each year as provided by rules adopted by the board.

(c) A majority of the members constitutes a quorum.

(d) Each member of the board is entitled to compensation for transportation expenses as provided by the General Appropriations Act.

Sec. 242.306. APPLICATION OF OPEN MEETINGS AND ADMINISTRATIVE PROCEDURE ACT. The board is subject to Chapters 551 and 2001, Government Code.

Sec. 242.307. POWERS AND DUTIES OF THE BOARD. (a) The board may adopt rules consistent with this subchapter. 

(b) The board shall:

(1) adopt and publish a code of ethics for nursing facility administrators;

(2) establish the qualifications of applicants for licenses and the renewal of licenses issued under this subchapter;

(3) spend funds necessary for the proper administration of the department's assigned duties under this subchapter;

(4) establish reasonable and necessary fees for the administration and implementation of this subchapter; and

(5) establish a minimum number of hours of continuing education required to renew a license issued under this subchapter and periodically assess the continuing education needs of license holders to determine whether specific course content should be
required.

(c) The board is the licensing authority for the healing arts, as provided by 42 U.S.C. Section 1396g, and shall meet the requirements of a state licensing agency for nursing facility practitioners, as provided by 42 C.F.R. Part 431, Subpart N.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.308. ADMINISTRATIVE FUNCTIONS. The department shall serve as the administrator of the licensing activities under this subchapter and shall provide staff as necessary for the licensing and regulation of nursing facility administrators under this subchapter. If necessary to the administration of this subchapter, the department may secure and provide for compensation for services that the department considers necessary and may employ and compensate within available appropriations professional consultants, technical assistants, and employees on a full-time or part-time basis.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.309. FEES; FUNDS. (a) The board by rule shall set reasonable and necessary fees in amounts necessary to cover the cost of administering this subchapter. The board by rule may set different licensing fees for different categories of licenses.

(b) The department shall receive and account for funds received under this subchapter. The funds shall be deposited in the state treasury to the credit of the general revenue fund.

(c) The department may receive and disburse funds received from any federal source for the furtherance of the department's functions under this subchapter.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.310. PRACTICING WITHOUT A LICENSE. A person may not act as a nursing facility administrator or represent to others that the person is a nursing facility administrator unless the person is licensed under this subchapter.
Sec. 242.311. LICENSE APPLICATION; QUALIFICATIONS. (a) An applicant for a nursing facility administrator's license must submit a sworn application that is accompanied by the application fee.

(b) The board shall prescribe the form of the application and may by rule establish dates by which applications and fees must be received.

(c) An applicant for a nursing facility administrator's license must take a licensing examination under this subchapter. To qualify for the licensing examination, the applicant must have satisfactorily completed a course of instruction and training prescribed by the board that is conducted by or in cooperation with an accredited postsecondary educational institution and that is designed and administered to provide sufficient knowledge of:

1. the needs served by nursing facilities;
2. the laws governing the operation of nursing facilities and the protection of the interests of facility residents; and
3. the elements of nursing facility administration.

(d) An applicant who has not completed the course of instruction and training described by Subsection (c) must present evidence satisfactory to the board of having completed sufficient education, training, and experience in the fields described by Subsection (c) to enable the applicant to engage in the practice of nursing facility administration.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.312. EXAMINATION. (a) The licensing examination shall be prepared or approved by the board and shall be administered by the board to qualified applicants at least twice each calendar year. The board shall have the written portion of the examination, if any, validated by a testing professional.

(b) Not later than the 30th day after the date on which a licensing examination is administered under this subchapter, the
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(c) If requested in writing by a person who fails the licensing examination, the board shall furnish the person with an analysis of the person's performance on the examination.

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(a) A person who meets the requirements for licensing under this subchapter is entitled to receive a license. A nursing facility administrator's license is not transferable.

(b) A person licensed under this subchapter must notify the board of the license holder's correct mailing address.

(c) A license is valid for two years. The board by rule may adopt a system under which licenses expire on various dates during the two-year period. For the year in which a license expiration date is changed, license fees payable on the original expiration date shall be prorated on a monthly basis so that each license holder shall pay only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

(d) The board by rule may provide for the issuance of a temporary license. Rules adopted under this section shall include a time limit for a licensee to practice under a temporary license.

(e) The board by rule may provide for a license holder to be placed on inactive status.
Sec. 242.314. PROVISIONAL LICENSE. (a) The board shall issue a provisional license to an applicant currently licensed in another jurisdiction who seeks a license in this state and who:

(1) has been licensed in good standing as a nursing facility administrator for at least two years in another jurisdiction, including a foreign country, that has licensing requirements that are substantially equivalent to the requirements of this subchapter;

(2) has passed a national or other examination recognized by the board relating to the practice of nursing facility administration; and

(3) is sponsored by a person licensed by the board under this subchapter with whom the provisional license holder will practice during the time the person holds a provisional license.

(b) The board may waive the requirement of Subsection (a)(3) for an applicant if the board determines that compliance with that subsection would be a hardship to the applicant.

(c) A provisional license is valid until the date the board approves or denies the provisional license holder's application for a license. The board shall issue a license under this subchapter to the provisional license holder if:

(1) the provisional license holder is eligible to be licensed under Section 242.311; or

(2) the provisional license holder passes the part of the examination under Section 242.312 that relates to the applicant's knowledge and understanding of the laws and rules relating to the practice of nursing facility administration in this state and:

(A) the board verifies that the provisional license holder meets the academic and experience requirements for a license under this subchapter; and

(B) the provisional license holder satisfies any other license requirements under this subchapter.

(d) The board must approve or deny a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued. The board may extend the 180-day period if the results of an examination have not
been received by the board before the end of that period.

(e) The board may establish a fee for provisional licenses in an amount reasonable and necessary to cover the cost of issuing the license.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01. Amended by Acts 1999, 76th Leg., ch. 1505, Sec. 1.22, eff. Sept. 1, 1999.

Sec. 242.315. LICENSE RENEWAL. (a) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required renewal fee to the board before the expiration date of the license. A person whose license has expired may not engage in activities that require a license until the license has been renewed.

(b) A person whose license has been expired for 90 days or less may renew the license by paying to the board a renewal fee that is equal to 1-1/2 times the normally required fee.

(c) A person whose license has been expired for more than 90 days but less than one year may renew the license by paying to the board a renewal fee that is equal to two times the normally required renewal fee.

(d) A person whose license has been expired for one year or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures, including the examination requirements, for obtaining an original license.

(e) A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application may obtain a new license without reexamination. The person must pay to the board a fee that is equal to two times the normally required renewal fee for the license.

(f) Not later than the 31st day before the date a person's license is scheduled to expire, the board shall send written notice of the impending expiration to the person at the person's last known address according to the records of the board.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01. Amended by...
Sec. 242.316. MANDATORY CONTINUING EDUCATION. (a) The board by rule shall establish a minimum number of hours of continuing education required to renew a license under this subchapter. The board may assess the continuing education needs of license holders and may require license holders to attend continuing education courses specified by the board.

(b) The board shall identify the key factors for the competent performance by a license holder of the license holder's professional duties. The board shall adopt a procedure to assess a license holder's participation in continuing education programs.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.317. COMPLAINT RECEIPT, INVESTIGATION, AND DISPOSITION. (a) The board shall keep an information file about each complaint filed with the board regarding a person licensed under this subchapter. The board's information file shall be kept current and contain a record for each complaint of:

1. all persons contacted in relation to the complaint;
2. a summary of findings made at each step of the complaint process;
3. an explanation of the legal basis and reason for a complaint that is dismissed; and
4. other relevant information.

(b) If a written complaint is filed with the board that the board has authority to resolve, the board, at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

(c) The board by rule shall adopt a form to standardize information concerning complaints made to the board. The board by rule shall prescribe information to be provided to a person when the person files a complaint with the board.

(d) The board shall provide reasonable assistance to a person who wishes to file a complaint with the board.

(e) The board shall adopt rules concerning the investigation.
of complaints filed with the board. The rules adopted under this subsection shall:

(1) distinguish between categories of complaints;
(2) ensure that complaints are not dismissed without appropriate consideration;
(3) require that the board be advised at least quarterly of complaints that have been dismissed and require that a letter be sent to each person who has filed a complaint that is dismissed explaining the action taken on the complaint;
(4) ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint; and
(5) prescribe guidelines concerning the categories of complaints that may require the use of a private investigator and the procedures for the board to obtain the services of a private investigator.

(f) The board shall dispose of all complaints in a timely manner. The board by rule shall establish a schedule for initiating a complaint investigation that is under the control of the board not later than the 30th day after the date the complaint is received by the board. The schedule shall be kept in the information file for the complaint, and all parties shall be notified of the projected time requirements for pursuing the complaint. A change in the schedule must be noted in the complaint information file and all parties to the complaint must be notified not later than the seventh day after the date the change is made.

(g) The department shall notify the board at least quarterly of complaints that have extended beyond the time prescribed by the board for resolving complaints so that the department may take any necessary corrective actions on the processing of complaints.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.
(1) the license holder has wilfully or repeatedly violated a provision of this subchapter or a rule adopted under this subchapter;

(2) the license holder has wilfully or repeatedly acted in a manner inconsistent with the health and safety of the residents of a facility of which the license holder is an administrator;

(3) the license holder obtained or attempted to obtain a license through misrepresentation or deceit or by making a material misstatement of fact on a license application;

(4) the license holder's use of alcohol or drugs creates a hazard to the residents of a facility;

(5) a judgment of a court of competent jurisdiction finds that the license holder is mentally incapacitated;

(6) the license holder has been convicted in a court of competent jurisdiction of a misdemeanor or felony involving moral turpitude;

(7) the license holder has been convicted in a court of competent jurisdiction of an offense listed in Section 250.006; or

(8) the license holder has been negligent or incompetent in the license holder's duties as a nursing facility administrator.

(b) If a license sanction is probated, the board may require the license holder to:

(1) report regularly to the board on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the department; or

(3) continue or review continuing professional education until the license holder attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.

(c) A license holder is entitled to a hearing in accordance with rules promulgated by the board before a sanction is imposed under this section.

(d) The board by rule shall adopt a broad schedule of sanctions for violations under this subchapter. The board shall use the schedule for any sanction imposed in accordance with the rules.

(e) The department shall by rule establish criteria to
determine whether deficiencies from a facility's survey warrant action against an administrator. The criteria shall include a determination of whether the survey indicates substandard quality of care and whether a deficiency is related to an act or failure to act by the administrator. If a deficiency on which a disciplinary action against an administrator is initiated or completed is not substantiated, the disciplinary action shall be reversed.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.
Amended by:
   Acts 2009, 81st Leg., R.S., Ch. 763, Sec. 4, eff. June 19, 2009.

Sec. 242.319. WRITTEN REPRIMAND AND CONTINUING EDUCATION AS SANCTIONS. In addition to the other disciplinary actions authorized under this subchapter, the board may issue a written reprimand to a license holder who violates this subchapter or require that a license holder who violates this subchapter participate in continuing education programs. The board shall specify the continuing education programs that may be attended and the number of hours that must be completed by a license holder to fulfill the requirements of this section.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.320. ADMINISTRATIVE PENALTY AS SANCTION. (a) The department may impose an administrative penalty against a person licensed or regulated under this subchapter who violates this subchapter or a rule adopted by the board under this subchapter.

(b) The penalty for a violation may be in an amount not to exceed $1,000. Each day a violation occurs or continues is a separate violation for purposes of imposing a penalty.

(c) The amount of the penalty shall be based on:
   (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;
   (2) the economic harm to property or the environment
caused by the violation;
(3) the history of previous violations;
(4) the amount necessary to deter future violations;
(5) efforts to correct the violations; and
(6) any other matter that justice may require.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.321. NOTICE AND HEARING. (a) If the department
determines that a violation has occurred, the department shall give
written notice of the determination to the person alleged to have
committed the violation. The notice may be given by certified
mail. The notice must include a brief summary of the alleged
violation and a statement of the amount of the recommended penalty
and must inform the person that the person has a right to a hearing
on the occurrence of the violation, the amount of the penalty, or
both the occurrence of the violation and the amount of the penalty.

(b) Within 20 days after the date the person receives the
notice, the person in writing may accept the determination and the
penalty recommended by the department or may make a written request
for a hearing on the occurrence of the violation, the amount of the
penalty, or both the occurrence of the violation and the amount of the
penalty.

(c) If the person accepts the determination and the penalty
recommended by the department, or if the person fails to timely
respond to the notice, the department shall impose the recommended
penalty.

(d) If the person requests a hearing, the department shall
set a hearing and give notice of the hearing to the person. The
hearing shall be held in accordance with the rules on contested
case hearings adopted by the executive commissioner.

(e) The notice of the hearing decision given to the person
under Chapter 2001, Government Code, must include a statement of
the right of the person to judicial review of the decision.

(f) Within 30 days after the date the department's decision
is final as provided by Section 2001.144, Government Code, the
person shall:
(1) pay the amount of the penalty;
(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) Within the 30-day period, a person who acts under Subsection (f)(3) may:

(1) stay enforcement of the penalty by:
   (A) paying the amount of the penalty to the court for placement in an escrow account; or
   (B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the department's decision is final; or

(2) request the court to stay enforcement of the penalty by:
   (A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and
   (B) giving a copy of the affidavit to the department by certified mail.

(h) If the department receives a copy of an affidavit under Subsection (g)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(i) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the department may refer the matter to the attorney general for collection of the amount of the penalty.
(j) Judicial review of the decision of the department:  
(1) is instituted by filing a petition as provided by Section 2001.176, Government Code; and  
(2) is under the substantial evidence rule.  
(k) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed. 
(l) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount. 
(m) A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund. 
(n) All proceedings under this section are subject to Chapter 2001, Government Code.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.  
Amended by:  
Acts 2009, 81st Leg., R.S., Ch. 763, Sec. 5, eff. June 19, 2009.

Sec. 242.322. INFORMAL PROCEEDINGS. (a) The department by rule shall adopt procedures governing:  
(1) informal disposition of a contested case under Section 2001.056, Government Code; and  
(2) informal proceedings held in compliance with Section
(b) Rules adopted under this section must provide the complainant and the license holder an opportunity to be heard.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.323. MONITORING OF LICENSE HOLDER. The board by rule shall develop a system for monitoring a license holder's compliance with the requirements of this subchapter. Rules adopted under this section shall include procedures for monitoring a license holder who is required by the board to perform certain acts to ascertain that the license holder performs the required acts and to identify and monitor license holders who represent a risk to the public.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.324. CIVIL PENALTY. A person who violates this subchapter is liable to the state for a civil penalty of $1,000 for each day of violation. At the request of the department, the attorney general shall bring an action to recover a civil penalty established by this section.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.325. ASSISTANCE OF ATTORNEY GENERAL. The attorney general shall provide legal assistance as necessary in enforcing the provisions of this subchapter. This requirement does not relieve a local prosecuting officer of any of the prosecuting officer's duties under the law.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.326. OFFENSE. (a) A person commits an offense if the person knowingly or intentionally violates Section 242.310.

(b) An offense under this section is a Class B misdemeanor.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.
Sec. 242.327. PROTECTION FOR REFUSAL TO ENGAGE IN CERTAIN CONDUCT. (a) A person may not suspend, terminate, or otherwise discipline or discriminate against a licensed nursing facility administrator who refuses to engage in an act or omission relating to the administrator's job duties or responsibilities that would constitute a violation of this subchapter or of a rule adopted under this subchapter, if the administrator notifies the person at the time of the refusal that the reason for refusing is that the act or omission constitutes a violation of this subchapter or of a rule adopted under this subchapter.

(b) An act by a person under Subsection (a) does not constitute a violation of this section if:

(1) the act or omission the administrator refused to commit was not conduct that constitutes a violation of this subchapter or of a rule adopted under this subchapter; or

(2) the act or omission the administrator refused to commit was conduct that constitutes a violation of this subchapter or of a rule adopted under this subchapter, and the person rescinds any disciplinary or discriminatory action taken against the administrator, compensates the administrator for lost wages, and restores any lost benefits to the administrator.

(c) A violation of this section is an unlawful employment practice, and a civil action may be brought by a licensed nursing facility administrator against a person for the violation. The relief available in a civil action shall be the same as the relief available to complainants in a civil action for violations of Chapter 21, Labor Code. In no event may any action be brought pursuant to this section more than two years after the date of the administrator's refusal to engage in an act or omission that would constitute a violation of this subchapter or of a rule adopted under this subchapter.

(d) In this section, "person" includes an individual, organization, corporation, agency, facility, or other entity.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.
Sec. 242.251. SCOPE OF SUBCHAPTER. This subchapter applies to any dispute between an institution licensed under this chapter and the department relating to:

(1) renewal of a license under Section 242.033;
(2) suspension or revocation of a license under Section 242.061;
(3) assessment of a civil penalty under Section 242.065;
(4) assessment of a monetary penalty under Section 242.066; or
(5) assessment of a penalty as described by Section 32.021(k), Human Resources Code.


Sec. 242.252. ELECTION OF ARBITRATION. (a) Except as provided by Subsection (d), an affected institution may elect binding arbitration of any dispute to which this subchapter applies. Arbitration under this subchapter is an alternative to a contested case hearing or to a judicial proceeding relating to the assessment of a civil penalty.

(b) An affected institution may elect arbitration under this subchapter by filing the election with the court in which the lawsuit is pending and sending notice of the election to the department and the office of the attorney general. The election must be filed not later than the 10th day after the date on which the answer is due or the date on which the answer is filed, whichever is sooner. If a civil penalty is requested after the initial filing of a Section 242.094 lawsuit through the filing of an amended or supplemental pleading, an affected institution must elect arbitration not later than the 10th day after the date on which the amended or supplemental pleading is served on the affected institution or its counsel.

(c) The department may elect arbitration under this subchapter by filing the election with the court in which the lawsuit is pending and by notifying the institution of the election not later than the date that the institution may elect arbitration.
under Subsection (b).

(d) Arbitration may not be used to resolve a dispute related to an affected institution that has had an award levied against it in the previous five years.

(e) If arbitration is not permitted under this subchapter or the election of arbitration is not timely filed:

1. the court will dismiss the arbitration election and retain jurisdiction of the lawsuit; and

2. the State Office of Administrative Hearings shall dismiss the arbitration and has no jurisdiction over the lawsuit.

(f) An election to engage in arbitration under this subchapter is irrevocable and binding on the institution and the department.


Sec. 242.253. ARBITRATION PROCEDURES. (a) The arbitration shall be conducted by an arbitrator.

(b) The arbitration and the appointment of the arbitrator shall be conducted in accordance with rules adopted by the chief administrative law judge of the State Office of Administrative Hearings. Before adopting rules under this subsection, the chief administrative law judge shall consult with the department and shall consider appropriate rules developed by any nationally recognized association that performs arbitration services.

(c) The party that elects arbitration shall pay the cost of the arbitration. The total fees and expenses paid for an arbitrator for a day may not exceed $500.

(d) The State Office of Administrative Hearings may designate a nationally recognized association that performs arbitration services to conduct arbitrations under this subchapter and may, after consultation with the department, contract with that association for the arbitrations.

(e) On request by the department, the attorney general may represent the department in the arbitration.
Sec. 242.254. ARBITRATOR; QUALIFICATIONS. Each arbitrator must be on an approved list of a nationally recognized association that performs arbitration services or be otherwise qualified as provided in the rules adopted under Section 242.253(b).


Sec. 242.255. ARBITRATOR; SELECTION. The arbitrator shall be appointed in accordance with the rules adopted under Section 242.253(b).


Sec. 242.256. DUTIES OF ARBITRATOR. The arbitrator shall:

(1) protect the interests of the department and the institution;

(2) ensure that all relevant evidence has been disclosed to the arbitrator, department, and institution; and

(3) render an order consistent with this chapter and the rules adopted under this chapter.


Sec. 242.257. SCHEDULING OF ARBITRATION. (a) The arbitrator conducting the arbitration shall schedule arbitration to be held not later than the 90th day after the date the arbitrator is selected and shall notify the department and the institution of the scheduled date.

(b) The arbitrator may grant a continuance of the arbitration at the request of the department or institution. The arbitrator...
may not unreasonably deny a request for a continuance.


Sec. 242.258. EXCHANGE AND FILING OF INFORMATION. Not later than the seventh day before the first day of arbitration, the department and the institution shall exchange and file with the arbitrator:

(1) all documentary evidence not previously exchanged and filed that is relevant to the dispute; and

(2) information relating to a proposed resolution of the dispute.


Sec. 242.259. ATTENDANCE REQUIRED. (a) The arbitrator may proceed in the absence of any party or representative of a party who, after notice of the proceeding, fails to be present or to obtain a postponement.

(b) An arbitrator may not make an order solely on the default of a party and shall require the party who is present to submit evidence, as required by the arbitrator, before making an award.


Sec. 242.260. TESTIMONY; RECORD. (a) The arbitrator may require witnesses to testify under oath and shall require testimony under oath if requested by the department or the institution.

(b) The department shall make an electronic recording of the proceeding.

(c) An official stenographic record of the proceeding is not required, but the department or the institution may make a stenographic record. The party that makes the stenographic record shall pay the expense of having the record made.
Sec. 242.261. EVIDENCE. (a) The department or the institution may offer evidence as they desire and shall produce additional evidence as the arbitrator considers necessary to understand and resolve the dispute.

(b) The arbitrator is the judge of the relevance and materiality of the evidence offered. Strict conformity to rules applicable to judicial proceedings is not required.

Sec. 242.262. CLOSING STATEMENTS; BRIEFS. The department and the institution may present closing statements as they desire, but the record may not remain open for written briefs unless requested by the arbitrator.

Sec. 242.263. EX PARTE CONTACTS PROHIBITED. (a) Except as provided by Subsection (b), the department and the institution may not communicate with an arbitrator other than at an oral hearing unless the parties and the arbitrator agree otherwise.

(b) Any oral or written communication, other than a communication authorized under Subsection (a), from the parties to an arbitrator shall be directed to the association that is conducting the arbitration or, if there is no association conducting the arbitration, to the State Office of Administrative Hearings, for transmittal to the arbitrator.

Sec. 242.264. ORDER. (a) The arbitrator may enter any order that may be entered by the department, board, commissioner, or...
court under this chapter in relation to a dispute described by Section 242.251.

(b) The arbitrator shall enter the order not later than the 60th day after the last day of the arbitration.

(c) The arbitrator shall base the order on the facts established at arbitration, including stipulations of the parties, and on the law as properly applied to those facts.

(d) The order must:
   (1) be in writing;
   (2) be signed and dated by the arbitrator; and
   (3) include a statement of the arbitrator's decision on the contested issues and the department's and institution's stipulations on uncontested issues.

(e) The arbitrator shall file a copy of the order with the department and shall notify the department and the institution in writing of the decision.


Sec. 242.265. EFFECT OF ORDER. An order of an arbitrator under this subchapter is final and binding on all parties. Except as provided by Section 242.267, there is no right to appeal.


Sec. 242.266. CLERICAL ERROR. For the purpose of correcting a clerical error, an arbitrator retains jurisdiction of the award for 20 days after the date of the award.


Sec. 242.267. COURT VACATING ORDER. (a) On a finding described by Subsection (b), a court shall:

   (1) on application of an institution, vacate an arbitrator's order with respect to an arbitration conducted at the
election of the department; or

(2) on application of the department, vacate an arbitrator's order with respect to an arbitration conducted at the election of an institution.

(b) A court shall vacate an arbitrator's order under Subsection (a) only on a finding that:

(1) the order was procured by corruption, fraud, or misrepresentation;

(2) the decision of the arbitrator was arbitrary or capricious and against the weight of the evidence; or

(3) the order exceeded the jurisdiction of the arbitrator under Section 242.264(a).

(c) If the order is vacated, the dispute shall be remanded to the department for another arbitration proceeding.

(d) A suit to vacate an arbitrator's order must be filed not later than the 30th day after:

(1) the date of the award; or

(2) the date the institution or department knew or should have known of a basis for suit under this section, but in no event later than the first anniversary of the date of the order.

(e) Venue for a suit to vacate an arbitrator's order is in the county in which the arbitration was conducted.


Sec. 242.268. NO ARBITRATION IN CASE OF EMERGENCY ORDER OR CLOSING ORDER. This subchapter does not apply to an order issued under Section 242.062 or 242.072, and neither the department nor the institution may elect to arbitrate a dispute if the subject matter of the dispute is part of the basis for:

(1) revocation, denial, or suspension of an institution's license;

(2) issuance of a closing order under Section 242.062; or

(3) suspension of admissions under Section 242.072.
Sec. 242.269. ENFORCEMENT OF CERTAIN ARBITRATION ORDERS. (a) This section applies only to a suit for the assessment of a civil penalty under Section 242.065 in which binding arbitration has been elected under this subchapter as an alternative to the judicial proceeding.

(b) On application of a party to the suit, the district court in which the underlying suit has been filed shall enter a judgment in accordance with the arbitrator's order unless, within the time limit prescribed by Section 242.267(d)(1), a motion is made to the court to vacate the arbitrator's order in accordance with Section 242.267.

(c) A judgment filed under Subsection (b) is enforceable in the same manner as any other judgment of the court. The court may award costs for an application made under Subsection (b) and for any proceedings held after the application is made.

(d) Subsection (b) does not affect the right of a party, in accordance with Section 242.267 and within the time limit prescribed by Section 242.267(d)(2), if applicable, to make a motion to the court or initiate a proceeding in court as provided by law to vacate the arbitrator's order or to vacate a judgment of the court entered in accordance with the arbitrator's order.

Added by Acts 1999, 76th Leg., ch. 1093, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER K. QUALITY OF CARE

Sec. 242.401. QUALITY OF LIFE. (a) An institution shall care for its residents in a manner and in an environment that promotes maintenance or enhancement of each resident's quality of life and dignity. An institution that admits a resident who is younger than 18 years of age must provide care to meet the resident's unique medical and developmental needs.

(b) A resident of an institution has the right to reside and...
receive services in the institution with reasonable accommodation of individual needs, except to the extent the health or safety of the resident or other residents would be endangered.

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

Sec. 242.402. QUALITY OF CARE. An institution shall provide to each resident the necessary care or service needed to enable the resident to attain and maintain the highest practicable level of physical, emotional, and social well-being, in accordance with:

(1) each resident's individual assessment and comprehensive plan of care; and

(2) the rules and standards relating to quality of care adopted under this chapter.

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

Sec. 242.403. STANDARDS FOR QUALITY OF LIFE AND QUALITY OF CARE. (a) The department shall adopt standards to implement Sections 242.401 and 242.402. Those standards must, at a minimum, address:

(1) admission of residents;

(2) care of residents younger than 18 years of age;

(3) an initial assessment and comprehensive plan of care for residents;

(4) transfer or discharge of residents;

(5) clinical records;

(6) infection control at the institution;

(7) rehabilitative services;

(8) food services;

(9) nutrition services provided by a director of food services who is licensed by the Texas State Board of Examiners of Dietitians or, if not so licensed, who is in scheduled consultation with a person who is so licensed as frequently and for such time as the department shall determine necessary to assure each resident a diet that meets the daily nutritional and special dietary needs of
each resident;
   (10) social services and activities;
(11) prevention of pressure sores;
(12) bladder and bowel retraining programs for residents;
(13) prevention of complications from nasogastric or gastrotomy tube feedings;
(14) relocation of residents within an institution;
(15) postmortem procedures; and
(16) appropriate use of chemical and physical restraints.

(b) The department may require an institution to submit information to the department, including Minimum Data Set Resident Assessments, necessary to ensure the quality of care in institutions. Information submitted to the department that identifies a resident of an institution is confidential and not subject to disclosure under Chapter 552, Government Code.

(c) The department may adopt standards in addition to those required by Subsection (a) to implement Sections 242.401 and 242.402.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.
Amended by:
 Acts 2005, 79th Leg., Ch. 667, Sec. 1, eff. September 1, 2005.

Sec. 242.404. POLICIES, PROCEDURES, AND PRACTICES FOR QUALITY OF CARE AND QUALITY OF LIFE. (a) Each institution shall comply with the standards adopted under this subchapter and shall develop written operating policies to implement those standards.

(b) The policies and procedures must be available to each physician, staff member, resident, and resident's next of kin or guardian and to the public.

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

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.
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,
(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.

Sec. 242.505. PRESCRIPTION OF PSYCHOACTIVE MEDICATION. (a) In this section:

(1) "Medication-related emergency" means a situation in which it is immediately necessary to administer medication to a resident to prevent:

(A) imminent probable death or substantial bodily harm to the resident; or
(B) imminent physical or emotional harm to another because of threats, attempts, or other acts the resident overtly or continually makes or commits.

(2) "Psychoactive medication" means a medication that is prescribed for the treatment of symptoms of psychosis or other severe mental or emotional disorders and that is used to exercise an effect on the central nervous system to influence and modify behavior, cognition, or affective state when treating the symptoms of mental illness. The term includes the following categories when used as described by this subdivision:

(A) antipsychotics or neuroleptics;
(B) antidepressants;
(C) agents for control of mania or depression;
(D) antianxiety agents;
(E) sedatives, hypnotics, or other sleep-promoting drugs; and
(F) psychomotor stimulants.

(b) A person may not administer a psychoactive medication to a resident who does not consent to the prescription unless:

(1) the resident is having a medication-related emergency; or

(2) the person authorized by law to consent on behalf of the resident has consented to the prescription.

(c) Consent to the prescription of psychoactive medication given by a resident or by a person authorized by law to consent on behalf of the resident is valid only if:

(1) the consent is given voluntarily and without coercive or undue influence;

(2) the person prescribing the medication or that person's designee provided the following information, in a standard format approved by the department, to the resident and, if applicable, to the person authorized by law to consent on behalf of the resident:

(A) the specific condition to be treated;

(B) the beneficial effects on that condition expected from the medication;

(C) the probable clinically significant side effects and risks associated with the medication; and

(D) the proposed course of the medication;

(3) the resident and, if appropriate, the person authorized by law to consent on behalf of the resident are informed in writing that consent may be revoked; and

(4) the consent is evidenced in the resident's clinical record by a signed form prescribed by the facility or by a statement of the person prescribing the medication or that person's designee that documents that consent was given by the appropriate person and the circumstances under which the consent was obtained.

(d) A resident's refusal to consent to receive psychoactive medication shall be documented in the resident's clinical record.

(e) If a person prescribes psychoactive medication to a resident without the resident's consent because the resident is having a medication-related emergency:

(1) the person shall document in the resident's clinical record in specific medical or behavioral terms the necessity of the
order; and

(2) treatment of the resident with the psychoactive medication shall be provided in the manner, consistent with clinically appropriate medical care, least restrictive of the resident's personal liberty.

(f) A physician or a person designated by the physician is not liable for civil damages or an administrative penalty and is not subject to disciplinary action for a breach of confidentiality of medical information for a disclosure of the information provided under Subsection (c)(2) made by the resident or the person authorized by law to consent on behalf of the resident that occurs while the information is in the possession or control of the resident or the person authorized by law to consent on behalf of the resident.


SUBCHAPTER M. COMPLAINT INSPECTIONS

Sec. 242.551. COMPLAINT REQUESTING INSPECTION. (a) A person may request an inspection of an institution in accordance with this chapter by making a complaint notifying the department of an alleged violation of law and requesting an inspection.

(b) The department shall encourage a person who makes an oral complaint under Subsection (a) to submit a written, signed complaint.

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

Sec. 242.552. DISCLOSURE OF SUBSTANCE OF COMPLAINT. The department may not provide information to the institution relating to the substance of a complaint made under this subchapter before an on-site inspection is begun in accordance with this subchapter.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.
Sec. 242.553. CONFIDENTIALITY. The name of the person making the complaint is confidential and may not be released to the institution or any other person, unless the person making the complaint specifically requests that the person's name be released.

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

Sec. 242.554. PRELIMINARY REVIEW OF COMPLAINT; INSPECTION. (a) On receipt of a complaint under this subchapter, the department shall make a preliminary review of the complaint.

(b) Within a reasonable time after receipt of the complaint, the department shall make an on-site inspection or otherwise respond to the complaint unless the department determines that:

(1) the person making the complaint made the complaint to harass the institution;

(2) the complaint is without any reasonable basis; or

(3) sufficient information in the possession of the department indicates that corrective action has been taken.

(c) The department shall promptly notify the person making the complaint of the department's proposed course of action under Subsection (b) and the reasons for that action.

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

SUBCHAPTER N. ADMINISTRATION OF MEDICATION

Sec. 242.601. MEDICATION ADMINISTRATION. (a) An institution must establish medication administration procedures.

(b) The medication administration procedures must comply with this subchapter and the rules adopted by the board under Section 242.608.

Sec. 242.602. PHARMACIST SERVICES. (a) An institution shall:

(1) employ a licensed pharmacist responsible for operating the institution's pharmacy; or

(2) contract, in writing, with a licensed pharmacist to advise the institution on ordering, storage, administration, and disposal of medications and biologicals and related recordkeeping.

(b) The institution shall allow residents to choose their pharmacy provider from any pharmacy that is qualified to perform the services.

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

Sec. 242.603. STORAGE AND DISPOSAL OF MEDICATIONS. (a) An institution shall store medications under appropriate conditions of sanitation, temperature, light, moisture, ventilation, segregation, and security.

(b) The institution shall properly dispose of:

(1) any medication that is discontinued or outdated, except as provided by Subsection (c); and

(2) any medication in a container with a worn or illegible label or missing a label.

(c) A discontinued medication that has not been destroyed must be reinstated if reordered.

(d) An institution shall release the medications of a resident who is transferred directly to another institution or who is discharged to home to the new institution or to the resident or resident's next of kin or guardian, as appropriate. The institution may release a medication to a resident only on the written or verbal authorization of the attending physician.


Sec. 242.604. REPORTS OF MEDICATION ERRORS AND ADVERSE REACTIONS. An institution's nursing staff must report medication
errors and adverse reactions to the resident's physician in a timely manner, as warranted by an assessment of the resident's condition, and record the errors and reactions in the resident's clinical record.

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

Sec. 242.605. MEDICATION REFERENCE SOURCES. An institution shall maintain updated medication reference texts or sources. If the institution has a resident younger than 18 years of age, these texts or sources must include information on pediatric medications, dosages, sites, routes, techniques of administration of medications, desired effects, and possible side effects.

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

Sec. 242.606. PERMITS TO ADMINISTER MEDICATION. A person may not administer medication to a resident unless the person:

(1) holds a license under state law that authorizes the person to administer medication; or

(2) holds a permit issued under Section 242.610 and acts under the authority of a person who holds a license under state law that authorizes the person to administer medication.


Sec. 242.607. EXEMPTIONS FOR NURSING STUDENTS AND MEDICATION AIDE TRAINEES. (a) Sections 242.606 and 242.614 do not apply to:

(1) a graduate nurse holding a temporary permit issued by the Texas Board of Nursing;

(2) a student enrolled in an accredited school of nursing or program for the education of registered nurses who is administering medications as part of the student's clinical
experience;

(3) a graduate vocational nurse holding a temporary permit issued by the Texas Board of Nursing;

(4) a student enrolled in an accredited school of vocational nursing or program for the education of vocational nurses who is administering medications as part of the student's clinical experience; or

(5) a trainee in a medication aide training program approved by the department under this subchapter who is administering medications as part of the trainee's clinical experience.

(b) The administration of medications by persons exempted under Subdivisions (1) through (4) of Subsection (a) is governed by the terms of the memorandum of understanding executed by the department and the Texas Board of Nursing.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889, Sec. 69, eff. September 1, 2007.

Sec. 242.608. RULES FOR ADMINISTRATION OF MEDICATION. The board by rule shall establish:

(1) minimum requirements for the issuance, denial, renewal, suspension, emergency suspension, and revocation of a permit to administer medication to a resident;

(2) curricula to train persons to administer medication to a resident;

(3) minimum standards for the approval of programs to train persons to administer medication to a resident and for rescinding approval; and

(4) the acts and practices that are allowed or prohibited to a permit holder.
Sec. 242.609. TRAINING PROGRAMS TO ADMINISTER MEDICATION.
(a) An application for the approval of a training program must be made to the department on a form and under rules prescribed by the board.

(b) The department shall approve a training program that meets the minimum standards adopted under Section 242.608. The department may review the approval annually.

Sec. 242.610. ISSUANCE AND RENEWAL OF PERMIT TO ADMINISTER MEDICATION. (a) To be issued or to have renewed a permit to administer medication, a person shall apply to the department on a form prescribed and under rules adopted by the board.

(b) The department shall prepare and conduct, at the site of the training program, an examination for the issuance of a permit. The results of the examination shall be reported in accordance with Section 242.6101.

(c) The department shall require a permit holder to satisfactorily complete a continuing education course approved by the department for renewal of the permit.

(d) Subject to Subsections (h)-(m), the department shall issue a permit or renew a permit to an applicant who:

(1) meets the minimum requirements adopted under Section 242.608;

(2) successfully completes the examination or the continuing education requirements; and

(3) pays a nonrefundable application fee determined by the board.

(e) Except as provided by Subsection (g), a permit is valid...
for one year and is not transferable.

(f) The department may issue a permit to an employee of a state or federal agency listed in Section 242.003(a)(6)(B).

(g) The board by rule may adopt a system under which permits expire on various dates during the year. For the year in which the permit expiration date is changed, the department shall prorate permit fees on a monthly basis so that each permit holder pays only that portion of the permit fee that is allocable to the number of months during which the permit is valid. On renewal of the permit on the new expiration date, the total permit renewal fee is payable.

(h) A person who is otherwise eligible to renew a permit may renew an unexpired permit by paying the required renewal fee to the department before the expiration date of the permit. A person whose permit has expired may not engage in activities that require a permit until the permit has been renewed.

(i) A person whose permit has been expired for 90 days or less may renew the permit by paying to the department a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(j) A person whose permit has been expired for more than 90 days but less than one year may renew the permit by paying to the department a renewal fee that is equal to two times the normally required renewal fee.

(k) A person whose permit has been expired for one year or more may not renew the permit. The person may obtain a new permit by complying with the requirements and procedures, including the examination requirements, for obtaining an original permit.

(l) A person who was issued a permit in this state, moved to another state, currently holds a valid permit or license issued by the other state, and has been in practice in that state for the two years preceding the date of application may obtain a new permit without reexamination. The person must pay to the department a fee that is equal to two times the normally required renewal fee for the permit.

(m) Not later than the 30th day before the date a person's permit is scheduled to expire, the department shall send written notice of the impending expiration to the person at the person's last known address according to the records of the department.
Sec. 242.6101. RESULTS OF EXAMINATION FOR ISSUANCE OF PERMIT. (a) Not later than the 30th day after the date a person takes an examination for the issuance of a permit under this subchapter, the department shall notify the person of the results of the examination.

(b) If the examination is graded or reviewed by a testing service:

(1) the department shall notify the person of the results of the examination not later than the 14th day after the date the department receives the results from the testing service; and

(2) if notice of the examination results will be delayed for longer than 90 days after the examination date, the department shall notify the person of the reason for the delay before the 90th day.

(c) The department may require a testing service to notify a person of the results of the person's examination.

(d) If requested in writing by a person who fails an examination for the issuance of a permit administered under this subchapter, the department shall furnish the person with an analysis of the person's performance on the examination.

Added by Acts 2003, 78th Leg., ch. 1169, Sec. 16, eff. Sept. 1, 2003.

Sec. 242.611. FEES FOR ISSUANCE AND RENEWAL OF PERMIT TO ADMINISTER MEDICATION. The board shall set the fees in amounts reasonable and necessary to recover the amount projected by the department as required to administer its functions. Except as otherwise provided by Section 242.610, the fees may not exceed:

(1) $25 for a combined permit application and examination
fee; and

(2) $15 for a renewal permit application fee.


Sec. 242.612. VIOLATION OF PERMITS TO ADMINISTER MEDICATION.
(a) The board shall revoke, suspend, or refuse to renew a permit or shall reprimand a permit holder for a violation of this subchapter or a rule of the board adopted under this subchapter. In addition, the board may suspend a permit in an emergency or rescind training program approval.

(b) Except as provided by Section 242.613, the procedure by which the department takes a disciplinary action and the procedure by which a disciplinary action is appealed are governed by the department's rules for a formal hearing and by Chapter 2001, Government Code.

(c) The board may place on probation a person whose permit is suspended. If a permit suspension is probated, the board may require the person:

(1) to report regularly to the department on matters that are the basis of the probation;

(2) to limit practice to the areas prescribed by the board; or

(3) to continue or review professional education until the person attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.


Sec. 242.613. EMERGENCY SUSPENSION OF PERMITS TO ADMINISTER MEDICATION. (a) The department shall issue an order to suspend a
permit issued under this subchapter if the department has reasonable cause to believe that the conduct of the permit holder creates an imminent danger to the public health or safety.

(b) An emergency suspension is effective immediately without a hearing on notice to the permit holder.

(c) If requested in writing by a permit holder whose permit is suspended, the department shall conduct a hearing to continue, modify, or rescind the emergency suspension.

(d) The hearing must be held not earlier than the 10th day or later than the 30th day after the date on which the hearing request is received.

(e) The hearing and an appeal from a disciplinary action related to the hearing are governed by the department's rules for a formal hearing and Chapter 2001, Government Code.


Sec. 242.614. ADMINISTRATION OF MEDICATION; CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly administers medication to a resident and the person:

(1) does not hold a license under state law that authorizes the person to administer medication; or

(2) does not hold a permit issued by the department under this subchapter.

(b) An offense under this section is a Class B misdemeanor.


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.


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.


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.


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.


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.


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

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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.

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.


Sec. 242.848. REPORTING ABUSE AND NEGLECT. (a) For purposes of the duty to report abuse or neglect under Section 242.122 and the criminal penalty for the failure to report abuse or neglect under Section 242.131, a person who is conducting electronic monitoring on behalf of a resident under this subchapter 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.

(b) If a resident who has capacity to determine that the resident has been abused or neglected and who is conducting electronic monitoring under this subchapter 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 for purposes of the duty to report abuse or neglect under Section 242.122 and of the criminal penalty for the failure to report abuse or neglect under Section 242.131.

(c) 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.

(d) If abuse or neglect of the resident is reported to the institution and the institution requests a copy of any relevant tape or recording made by an electronic monitoring device, the person who possesses the tape or recording shall provide the institution with a copy at the institution's expense.


Sec. 242.849. USE OF TAPE OR RECORDING BY AGENCY OR COURT.

(a) Subject to applicable rules of evidence and procedure and the requirements of this section, a tape or recording created through the use of covert or authorized electronic monitoring described by this subchapter may be admitted into evidence in a civil or criminal court action or administrative proceeding.

(b) A court or administrative agency may not admit into evidence a tape or recording created through the use of covert or authorized electronic monitoring or take or authorize action based on the tape or recording unless:

(1) if the tape or recording is a video tape or recording, the tape or recording shows the time and date that the events acquired on the tape or recording occurred;

(2) the contents of the tape or recording have not been edited or artificially enhanced; and

(3) if the contents of the tape or recording have been transferred from the original format to another technological format, the transfer was done by a qualified professional and the contents of the tape or recording were not altered.

(c) A person who sends more than one tape or recording to the department shall identify for the department each tape or recording on which the person believes that an incident of abuse or evidence of neglect may be found. The department may adopt rules encouraging persons who send a tape or recording to the department to identify the place on the tape or recording that an incident of abuse or evidence of neglect may be found.

Added by Acts 2001, 77th Leg., ch. 1224, Sec. 1, eff. June 15,
Sec. 242.850. NOTICE AT ENTRANCE TO INSTITUTION. Each institution shall post a notice at the entrance to the institution stating that the rooms of some residents may be being monitored electronically by or on behalf of the residents and that the monitoring is not necessarily open and obvious. The department by rule shall prescribe the format and the precise content of the notice.


Sec. 242.851. ENFORCEMENT. (a) The department may impose appropriate sanctions under this chapter on an administrator of an institution who knowingly:

(1) refuses to permit a resident or the resident's guardian or legal representative to conduct authorized electronic monitoring;

(2) refuses to admit an individual to residency or allows the removal of a resident from the institution because of a request to conduct authorized electronic monitoring;

(3) allows the removal of a resident from the institution because covert electronic monitoring is being conducted by or on behalf of the resident; or

(4) violates another provision of this subchapter.

(b) The department may assess an administrative penalty under Section 242.066 against an institution that:

(1) refuses to permit a resident or the resident's guardian or legal representative to conduct authorized electronic monitoring;

(2) refuses to admit an individual to residency or allows the removal of a resident from the institution because of a request to conduct authorized electronic monitoring;

(3) allows the removal of a resident from the institution because covert electronic monitoring is being conducted by or on behalf of the resident; or

(4) violates another provision of this subchapter.
Sec. 242.852. CRIMINAL OFFENSE. (a) A person who intentionally hampers, obstructs, tampers with, or destroys an electronic monitoring device installed in a resident's room in accordance with this subchapter or a tape or recording made by the device commits an offense. An offense under this section is a Class B misdemeanor.

(b) It is a defense to prosecution under Subsection (a) 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.

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.

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.
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.
Texas Administrative Code

TITLE 40  SOCIAL SERVICES AND ASSISTANCE
PART 1    DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 19 NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION
SUBCHAPTER A BASIS AND SCOPE
RULE §19.1 Basis and Scope

(a) Basis in legislation. The Nursing Facility Requirements for Licensure and Medicaid Certification specify requirements of federal and state laws and regulations governing licensed nursing facilities and the Title XIX Nursing Facilities vendor program administered by the Texas Department of Human Services (DHS) in cooperation with other federal and state agencies. If there is a conflict between material in these requirements and the laws or regulations governing the program, the latter are controlling. It is the intent of the Texas Legislature that rules adopted under §242 of the Health and Safety Code may be more stringent than the standards imposed by federal law for certification for participation in the state Medicaid program. The rules and standards may not be less stringent than the Medicaid certification standards imposed under the Omnibus Budget Reconciliation Act of 1987.

(b) Scope. The Nursing Facility Requirements for Licensure and Medicaid Certification contain the requirements that an institution must meet in order to be licensed as a nursing facility and also to qualify to participate in the Medicaid program. The requirements serve as a basis for survey activities for licensure and certification.

1. Certain requirements are specific to Medicaid-certified facilities and are so designated. The Medicaid-specific requirements apply to all residents, including, but not limited to private pay, Medicaid applicants and recipients, VA patients, and Medicare recipients, who are admitted to and reside in a Medicaid-certified facility or a Medicaid-certified distinct part of a facility.

2. Additional Requirements for facilities or distinct parts of facilities that are certified for Medicare-only participation are in Chapter 42, Code of Federal Regulations, §§483.5-483.75.

3. These requirements do not apply to skilled nursing facilities (SNFs) licensed under the Health and Safety Code, Chapter 241, participating only in the Medicare program.

4. Additional documents that a facility may need for reference include, but are not limited to:

   (A) Medication Aide Rules (DHS);

   (B) Nurse Aide Training Rules (DHS);

   (C) Nurse Aide Training Manual (DHS);

   (D) Occupational Safety and Health Administration (OSHA) rules and guidelines;

   (E) rules and regulations for the Control of Communicable Diseases (TDH);
(F) Medical Waste Regulation in Texas (Publication RG-1, Texas Natural Resource Conservation Commission);

(G) Nurse Practice Act and Licensed Vocational Nurse Act;

(H) Food Establishment Rules (TDH);

(I) Centers for Disease Control:

(i) Handwashing Guidelines;

(ii) Prevention of Transmission of Human Immunodeficiency Virus and Hepatitis B Virus to Health-Care and Public Safety Workers;

(iii) Guidelines for Isolation Precautions in Hospitals and Infection Control in Hospital Personnel;

(iv) Recommendations for Preventing Transmission of Human Immunodeficiency Virus and Hepatitis B Virus to Patients During Exposure-Prone Invasive Procedures; and

(v) Prevention and Control of Tuberculosis in Facilities Providing Long Term Care to the Elderly;

(J) §§96.1-96.9 of this title (relating to Certification of Long Term Care Facilities);

(K) Methicillin-Resistant Staphylococcus Aureus: A Protocol for Infection Control (TDH); and


Source Note: The provisions of this §19.1 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
The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Abuse--Any act, failure to act, or incitement to act done willfully, knowingly, or recklessly through words or physical action which causes or could cause mental or physical injury or harm or death to a resident. This includes verbal, sexual, mental/psychological, or physical abuse, including corporal punishment, involuntary seclusion, or any other actions within this definition.

(A) "Involuntary seclusion"--Separation of a resident from others or from his room against the resident's will or the will of the resident's legal representative. Temporary monitored separation from other residents will not be considered involuntary seclusion and may be permitted if used as a therapeutic intervention as determined by professional staff and consistent with the resident's plan of care.

(B) "Mental/psychological abuse"--Mistreatment within the definition of "abuse" not resulting in physical harm, including, but not limited to, humiliation, harassment, threats of punishment, deprivation, or intimidation.

(C) "Physical abuse"--Physical action within the definition of "abuse," including, but not limited to, hitting, slapping, pinching, and kicking. It also includes controlling behavior through corporal punishment.

(D) "Sexual abuse"--Any touching or exposure of the anus, breast, or any part of the genitals of a resident without the voluntary, informed consent of the resident and with the intent to arouse or gratify the sexual desire of any person and includes but is not limited to sexual harassment, sexual coercion, or sexual assault.

(E) "Verbal abuse"--The use of any oral, written, or gestured language that includes disparaging or derogatory terms to a resident or within the resident's hearing distance, regardless of the resident's age, ability to comprehend, or disability.

(2) Act--Chapter 242 of the Texas Health and Safety Code.

(3) Activities assessment--See Comprehensive Assessment and Comprehensive Care Plan.

(4) Activities director--The qualified individual appointed by the facility to direct the activities program as described in §19.702 of this chapter (relating to Activities).

(5) Addition--The addition of floor space to an institution.

(6) Administrator--Licensed nursing facility administrator.
(7) Admission MDS assessment--An MDS assessment that determines a recipient's initial determination of eligibility for medical necessity for admission into the Texas Medicaid Nursing Facility Program.

(8) Affiliate--With respect to a:

   (A) partnership, each partner thereof;

   (B) corporation, each officer, director, principal stockholder, and subsidiary; and each person with a disclosable interest;

   (C) natural person, which includes each:

      (i) person's spouse;

      (ii) partnership and each partner thereof of which said person or any affiliate of said person is a partner; and

      (iii) corporation in which said person is an officer, director, principal stockholder, or person with a disclosable interest.

(9) Agent--An adult to whom authority to make health care decisions is delegated under a durable power of attorney for health care.

(10) Applicant--A person or governmental unit, as those terms are defined in the Texas Health and Safety Code, Chapter 242, applying for a license under that chapter.


(12) Attending physician--A physician, currently licensed by the Texas Medical Board, who is designated by the resident or responsible party as having primary responsibility for the treatment and care of the resident.

(13) Authorized electronic monitoring--The placement of an electronic monitoring device in a resident's room and using the device to make tapes or recordings after making a request to the facility to allow electronic monitoring.

(14) Barrier precautions--Precautions including the use of gloves, masks, gowns, resuscitation equipment, eye protectors, aprons, faceshields, and protective clothing for purposes of infection control.

(15) Care and treatment--Services required to maximize resident independence, personal choice, participation, health, self-care, psychosocial functioning and reasonable safety, all consistent with the preferences of the resident.

(16) Certification--The determination by DADS that a nursing facility meets all the requirements of the Medicaid and/or Medicare programs.


(18) CMS--Centers for Medicare & Medicaid Services, formerly the Health Care Financing Administration (HCFA).
(19) Complaint--Any allegation received by DADS other than an incident reported by the facility. Such allegations include, but are not limited to, abuse, neglect, exploitation, or violation of state or federal standards.

(20) Completion date--The date an RN assessment coordinator signs an MDS assessment as complete.

(21) Comprehensive assessment--An interdisciplinary description of a resident's needs and capabilities including daily life functions and significant impairments of functional capacity, as described in §19.801(2) of this chapter (relating to Resident Assessment).

(22) Comprehensive care plan--A plan of care prepared by an interdisciplinary team that includes measurable short-term and long-term objectives and timetables to meet the resident's needs developed for each resident after admission. The plan addresses at least the following needs: medical, nursing, rehabilitative, psychosocial, dietary, activity, and resident's rights. The plan includes strategies developed by the team, as described in §19.802(b)(2) of this chapter (relating to Comprehensive Care Plans), consistent with the physician's prescribed plan of care, to assist the resident in eliminating, managing, or alleviating health or psychosocial problems identified through assessment. Planning includes:

(A) goal setting;

(B) establishing priorities for management of care;

(C) making decisions about specific measures to be used to resolve the resident's problems; and/or

(D) assisting in the development of appropriate coping mechanisms.

(23) Controlled substance--A drug, substance, or immediate precursor as defined in the Texas Controlled Substance Act, Texas Health and Safety Code, Chapter 481, and/or the Federal Controlled Substance Act of 1970, Public Law 91-513.

(24) Controlling person--A person with the ability, acting alone or in concert with others, to directly or indirectly, influence, direct, or cause the direction of the management, expenditure of money, or policies of a nursing facility or other person. A controlling person does not include a person, such as an employee, lender, secured creditor, or landlord, who does not exercise any influence or control, whether formal or actual, over the operation of a facility. A controlling person includes:

(A) a management company, landlord, or other business entity that operates or contracts with others for the operation of a nursing facility;

(B) any person who is a controlling person of a management company or other business entity that operates a nursing facility or that contracts with another person for the operation of a nursing facility;

(C) an officer or director of a publicly traded corporation that is, or that controls, a facility, management company, or other business entity described in subparagraph (A) of this definition but does not include a shareholder or lender of the publicly traded corporation; and

(D) any other individual who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of a nursing facility, is in a position of actual control or authority with respect to the nursing facility, without regard to whether the individual is formally named as an owner, manager, director,
(25) Covert electronic monitoring--The placement and use of an electronic monitoring device that is not open and obvious, and the facility and DADS have not been informed about the device by the resident, by a person who placed the device in the room, or by a person who uses the device.

(26) DADS--The Department of Aging and Disability Services.

(27) Dangerous drugs--Any drug as defined in the Texas Health and Safety Code, Chapter 483.

(28) Dentist--A practitioner licensed by the Texas State Board of Dental Examiners.

(29) Department--Department of Aging and Disability Services.

(30) DHS--Formerly, this term referred to the Texas Department of Human Services; it now refers to DADS, unless the context concerns an administrative hearing. Administrative hearings were formerly the responsibility of DHS; they now are the responsibility of the Texas Health and Human Services Commission (HHSC).

(31) Dietitian--A qualified dietitian is one who is qualified based upon either:

   (A) registration by the Commission on Dietetic Registration of the American Dietetic Association; or

   (B) licensure, or provisional licensure, by the Texas State Board of Examiners of Dietitians. These individuals must have one year of supervisory experience in dietetic service of a health care facility.

(32) Direct care by licensed nurses--Direct care consonant with the physician's planned regimen of total resident care includes:

   (A) assessment of the resident's health care status;

   (B) planning for the resident's care;

   (C) assignment of duties to achieve the resident's care;

   (D) nursing intervention; and

   (E) evaluation and change of approaches as necessary.

(33) Distinct part--That portion of a facility certified to participate in the Medicaid Nursing Facility program.

(34) Drug (also referred to as medication)--Any of the following:

   (A) any substance recognized as a drug in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;

   (B) any substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man;

   (C) any substance (other than food) intended to affect the structure or any function of the body of man; and
(D) any substance intended for use as a component of any substance specified in subparagraphs (A) - (C) of this definition. It does not include devices or their components, parts, or accessories.

(35) Electronic monitoring device--Video surveillance cameras and audio devices installed in a resident's room, designed to acquire communications or other sounds that occur in the room. An electronic, mechanical, or other device used specifically for the nonconsensual interception of wire or electronic communication is excluded from this definition.

(36) Emergency--A sudden change in a resident's condition requiring immediate medical intervention.

(37) Exploitation--The illegal or improper act or process of a caretaker using the resources of an elderly or disabled person for monetary or personal benefit, profit, or gain.

(38) Exposure (infections)--The direct contact of blood or other potentially infectious materials of one person with the skin or mucous membranes of another person. Other potentially infectious materials include the following human body fluids: semen, vaginal secretions, cerebrospinal fluid, peritoneal fluid, amniotic fluid, saliva in dental procedures, and body fluid that is visibly contaminated with blood, and all body fluids when it is difficult or impossible to differentiate between body fluids.

(39) Facility--Unless otherwise indicated, a facility is an institution that provides organized and structured nursing care and service and is subject to licensure under Texas Health and Safety Code, Chapter 242.

(A) For Medicaid, a facility is a nursing facility which meets the requirements of §1919(a)-(d) of the Social Security Act. A facility may not include any institution that is for the care and treatment of mental diseases except for services furnished to individuals age 65 and over and who are eligible as defined in §19.2500 of this chapter (relating to Preadmission Screening and Resident Review (PASARR)).

(B) For Medicare and Medicaid purposes (including eligibility, coverage, certification, and payment), the "facility" is always the entity which participates in the program, whether that entity is comprised of all of, or a distinct part of, a larger institution.

(C) "Facility" is also referred to as a nursing home or nursing facility. Depending on context, these terms are used to represent the management, administrator, or other persons or groups involved in the provision of care of the resident; or to represent the physical building, which may consist of one or more floors or one or more units, or which may be a distinct part of a licensed hospital.

(40) Family council--A group of family members, friends, or legal guardians of residents, who organize and meet privately or openly.

Cont'd...
(41) Family representative--An individual appointed by the resident to represent the resident and other family members, by formal or informal arrangement.

(42) Fiduciary agent--An individual who holds in trust another's monies.

(43) Free choice--Unrestricted right to choose a qualified provider of services.

(44) Goals--Long-term: general statements of desired outcomes. Short-term: measurable time-limited, expected results that provide the means to evaluate the resident's progress toward achieving long-term goals.

(45) Governmental unit--A state or a political subdivision of the state, including a county or municipality.

(46) HCFA--Health Care Financing Administration, now the Centers for Medicare & Medicaid Services (CMS).

(47) Health care provider--An individual, including a physician, or facility licensed, certified, or otherwise authorized to administer health care, in the ordinary course of business or professional practice.

(48) Hearing--A contested case hearing held in accordance with the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the formal hearing procedures in 1 TAC Chapter 357, Subchapter I.

(49) HIV--Human Immunodeficiency Virus.

(50) Incident--An abnormal event, including accidents or injury to staff or residents, which is documented in facility reports. An occurrence in which a resident may have been subject to abuse, neglect, or exploitation must also be reported to DADS.

(51) Infection control--A program designed to prevent the transmission of disease and infection in order to provide a safe and sanitary environment.

(52) Inspection--Any on-site visit to or survey of an institution by DADS for the purpose of licensing, monitoring, complaint investigation, architectural review, or similar purpose.

(53) Interdisciplinary care plan--See the definition of "comprehensive care plan."

(54) IV--Intravenous.

(55) Legend drug or prescription drug--Any drug that requires a written or telephonic order of a practitioner
before it may be dispensed by a pharmacist, or that may be delivered to a particular resident by a practitioner in
the course of the practitioner's practice.

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

(57) Licensed nursing home (facility) administrator--A person currently licensed by DADS in accordance with
Chapter 18 of this title (relating to Nursing Facility Administrators).

(58) Licensed vocational nurse (LVN)--A nurse who is currently licensed by the Texas Board of Nursing as a
licensed vocational nurse.

(59) Life Safety Code (also referred to as the Code or NFPA 101)--The Code for Safety to Life from Fire in
Buildings and Structures, Standard 101, of the National Fire Protection Association (NFPA).

(60) Life safety features--Fire safety components required by the Life Safety Code, including, but not limited
to, building construction, fire alarm systems, smoke detection systems, interior finishes, sizes and thicknesses of
doors, exits, emergency electrical systems, and sprinkler systems.

(61) Life support--Use of any technique, therapy, or device to assist in sustaining life. (See §19.419 of this
chapter (relating to Advance Directives)).

(62) Local authorities--Persons, including, but not limited to, local health authority, fire marshal, and building
inspector, who may be authorized by state law, county order, or municipal ordinance to perform certain
inspections or certifications.

(63) Local health authority--The physician appointed by the governing body of a municipality or the
commissioner's court of the county to administer state and local laws relating to public health in the municipality's
or county's jurisdiction as defined in Texas Health and Safety Code, §121.021.

(64) Long-term care-regulatory--DADS' Regulatory Services Division, which is responsible for surveying
nursing facilities to determine compliance with regulations for licensure and certification for Title XIX
participation.

(65) Manager--A person, other than a licensed nursing home administrator, having a contractual relationship to
provide management services to a facility.

(66) Management services--Services provided under contract between the owner of a facility and a person to
provide for the operation of a facility, including administration, staffing, maintenance, or delivery of resident
services. Management services do not include contracts solely for maintenance, laundry, or food service.

(67) MDS--Minimum data set. See Resident Assessment Instrument (RAI).

(68) MDS nurse reviewer--A registered nurse employed by HHSC to monitor the accuracy of the MDS
assessment submitted by a Medicaid-certified nursing facility.

(69) Medicaid applicant--A person who requests the determination of eligibility to become a Medicaid
(70) Medicaid nursing facility vendor payment system—Electronic billing and payment system for reimbursement to nursing facilities for services provided to eligible Medicaid recipients.

(71) Medicaid recipient—A person who meets the eligibility requirements of the Title XIX Medicaid program, is eligible for nursing facility services, and resides in a Medicaid-participating facility.

(72) Medical director—A physician licensed by the Texas Medical Board, who is engaged by the nursing home to assist in and advise regarding the provision of nursing and health care.

(73) Medical necessity (MN)—The determination that a recipient requires the services of licensed nurses in an institutional setting to carry out the physician's planned regimen for total care. A recipient's need for custodial care in a 24-hour institutional setting does not constitute a medical need. A group of health care professionals employed or contracted by the state Medicaid claims administrator contracted with HHSC makes individual determinations of medical necessity regarding nursing facility care. These health care professionals consist of physicians and registered nurses.

(74) Medical power of attorney—The legal document that designates an agent to make treatment decisions if the individual designator becomes incapable.

(75) Medical-social care plan—See Interdisciplinary Care Plan.

(76) Medically related condition—An organic, debilitating disease or health disorder that requires services provided in a nursing facility, under the supervision of licensed nurses.

(77) Medication aide—A person who holds a current permit issued under the Medication Aide Training Program as described in Chapter 95 of this title (relating to Medication Aides—Program Requirements) and acts under the authority of a person who holds a current license under state law which authorizes the licensee to administer medication.

(78) Misappropriation of funds—The taking, secretion, misapplication, deprivation, transfer, or attempted transfer to any person not entitled to receive any property, real or personal, or anything of value belonging to or under the legal control of a resident without the effective consent of the resident or other appropriate legal authority, or the taking of any action contrary to any duty imposed by federal or state law prescribing conduct relating to the custody or disposition of property of a resident.

(79) Neglect—A deprivation of life’s necessities of food, water, or shelter, or a failure of an individual to provide services, treatment, or care to a resident which causes or could cause mental or physical injury, or harm or death to the resident.

(80) NHIC—Formerly, this term referred to the National Heritage Insurance Corporation. It now refers to the state Medicaid claims administrator.

(81) Nonnursing personnel—Persons not assigned to give direct personal care to residents; including administrators, secretaries, activities directors, bookkeepers, cooks, janitors, maids, laundry workers, and yard maintenance workers.
(82) Nurse aide--An individual who provides nursing or nursing-related services to residents in a facility under the supervision of a licensed nurse. This definition does not include an individual who is a licensed health professional, a registered dietitian, or someone who volunteers such services without pay. A nurse aide is not authorized to provide nursing and/or nursing-related services for which a license or registration is required under state law. Nurse aides do not include those individuals who furnish services to residents only as paid feeding assistants.

(83) Nurse aide trainee--An individual who is attending a program teaching nurse aide skills.

(84) Nurse practitioner--A person licensed by the Texas Board of Nursing as a registered professional nurse, authorized by the Texas Board of Nursing as an advanced practice nurse in the role of nurse practitioner.

(85) Nursing assessment--See definition of "comprehensive assessment" and "comprehensive care plan."

(86) Nursing care--Services provided by nursing personnel which include, but are not limited to, observation; promotion and maintenance of health; prevention of illness and disability; management of health care during acute and chronic phases of illness; guidance and counseling of individuals and families; and referral to physicians, other health care providers, and community resources when appropriate.

(87) Nursing facility/home--An institution that provides organized and structured nursing care and service, and is subject to licensure under Texas Health and Safety Code, Chapter 242. The nursing facility may also be certified to participate in the Medicaid Title XIX program. Depending on context, these terms are used to represent the management, administrator, or other persons or groups involved in the provision of care to the residents; or to represent the physical building, which may consist of one or more floors or one or more units, or which may be a distinct part of a licensed hospital.

(88) Nursing facility/home administrator--See the definition of "licensed nursing home (facility) administrator."

(89) Nursing personnel--Persons assigned to give direct personal and nursing services to residents, including registered nurses, licensed vocational nurses, nurse aides, orderlies, and medication aides. Unlicensed personnel function under the authority of licensed personnel.

(90) Objectives--See definition of "goals."

(91) OBRA--Omnibus Budget Reconciliation Act of 1987, which includes provisions relating to nursing home reform, as amended.

(92) Ombudsman--An advocate who is a certified representative, staff member, or volunteer of the DADS Office of the State Long Term Care Ombudsman.

(93) Optometrist--An individual with the profession of examining the eyes for defects of refraction and prescribing lenses for correction who is licensed by the Texas Optometry Board.

(94) Paid feeding assistant--An individual who meets the requirements of §19.1113 of this chapter (relating to Paid Feeding Assistants) and who is paid to feed residents by a facility or who is used under an arrangement with another agency or organization.

(95) PASARR--Preadmission Screening and Resident Review.
(96) Palliative Plan of Care--Appropriate medical and nursing care for residents with advanced and progressive diseases for whom the focus of care is controlling pain and symptoms while maintaining optimum quality of life.

(97) Patient care-related electrical appliance--An electrical appliance that is intended to be used for diagnostic, therapeutic, or monitoring purposes in a patient care area, as defined in Standard 99 of the National Fire Protection Association.

(98) Person--An individual, firm, partnership, corporation, association, joint stock company, limited partnership, limited liability company, or any other legal entity, including a legal successor of those entities.

(99) Person with a disclosable interest--A person with a disclosable interest is any person who owns at least a 5.0% interest in any corporation, partnership, or other business entity that is required to be licensed under Texas Health and Safety Code, Chapter 242. A person with a disclosable interest does not include a bank, savings and loan, savings bank, trust company, building and loan association, credit union, individual loan and thrift company, investment banking firm, or insurance company, unless these entities participate in the management of the facility.

(100) Pharmacist--An individual, licensed by the Texas State Board of Pharmacy to practice pharmacy, who prepares and dispenses medications prescribed by a physician, dentist, or podiatrist.

(101) Physical restraint--See Restraints (physical).

(102) Physician--A doctor of medicine or osteopathy currently licensed by the Texas Medical Board.

(103) Physician assistant (PA)--

(A) A graduate of a physician assistant training program who is accredited by the Committee on Allied Health Education and Accreditation of the Council on Medical Education of the American Medical Association;

Cont'd...
(B) A person who has passed the examination given by the National Commission on Certification of Physician Assistants. According to federal requirements (42 CFR §491.2) a physician assistant is a person who meets the applicable state requirements governing the qualifications for assistant to primary care physicians, and who meets at least one of the following conditions:

(i) is currently certified by the National Commission on Certification of Physician Assistants to assist primary care physicians; or

(ii) has satisfactorily completed a program for preparing physician assistants that:

(I) was at least one academic year in length;

(II) consisted of supervised clinical practice and at least four months (in the aggregate) of classroom instruction directed toward preparing students to deliver health care; and

(III) was accredited by the American Medical Association's Committee on Allied Health Education and Accreditation; or

(C) A person who has satisfactorily completed a formal educational program for preparing physician assistants who does not meet the requirements of paragraph (d)(2), 42 CFR §491.2, and has been assisting primary care physicians for a total of 12 months during the 18-month period immediately preceding July 14, 1978.

(104) Podiatrist--A practitioner whose profession encompasses the care and treatment of feet who is licensed by the Texas State Board of Podiatric Medical Examiners.

(105) Poison--Any substance that federal or state regulations require the manufacturer to label as a poison and is to be used externally by the consumer from the original manufacturer's container. Drugs to be taken internally that contain the manufacturer's poison label, but are dispensed by a pharmacist only by or on the prescription order of a physician, are not considered a poison, unless regulations specifically require poison labeling by the pharmacist.

(106) Practitioner--A physician, podiatrist, dentist, or an advanced practice nurse or physician assistant to whom a physician has delegated authority to sign a prescription order, when relating to pharmacy services.

(107) PRN (pro re nata)--As needed.
(108) Provider--The individual or legal business entity that is contractually responsible for providing Medicaid services under an agreement with DADS.

(109) Psychoactive drugs--Drugs prescribed to control mood, mental status, or behavior.

(110) Qualified surveyor--An employee of DADS who has completed state and federal training on the survey process and passed a federal standardized exam.

(111) Quality assessment and assurance committee--A group of health care professionals in a facility who develop and implement appropriate action to identify and rectify substandard care and deficient facility practice.

(112) Quality-of-care monitor--A registered nurse, pharmacist, or dietitian employed by DADS who is trained and experienced in long-term care facility regulation, standards of practice in long-term care, and evaluation of resident care, and functions independently of DADS' Regulatory Services Division.

(113) Recipient--Any individual residing in a Medicaid certified facility or a Medicaid certified distinct part of a facility whose daily vendor rate is paid by Medicaid.

(114) Registered nurse (RN)--An individual currently licensed by the Texas Board of Nursing as a Registered Nurse in the State of Texas.

(115) Reimbursement methodology--The method by which HHSC determines nursing facility per diem rates.

(116) Remodeling--The construction, removal, or relocation of walls and partitions, the construction of foundations, floors, or ceiling-roof assemblies, the expanding or altering of safety systems (including, but not limited to, sprinkler, fire alarm, and emergency systems) or the conversion of space in a facility to a different use.

(117) Renovation--The restoration to a former better state by cleaning, repairing, or rebuilding, including, but not limited to, routine maintenance, repairs, equipment replacement, painting.

(118) Representative payee--A person designated by the Social Security Administration to receive and disburse benefits, act in the best interest of the beneficiary, and ensure that benefits will be used according to the beneficiary's needs.

(119) Resident--Any individual residing in a nursing facility.

(120) Resident assessment instrument (RAI)--An assessment tool used to conduct comprehensive, accurate, standardized, and reproducible assessments of each resident's functional capacity as specified by the Secretary of the U.S. Department of Health and Human Services. At a minimum, this instrument must consist of the Minimum Data Set (MDS) core elements as specified by the Centers for Medicare & Medicaid Services (CMS); utilization guidelines; and Resident Assessment Protocols (RAPS).

(121) Resident group--A group or council of residents who meet regularly to:

(A) discuss and offer suggestions about the facility policies and procedures affecting residents' care, treatment, and quality of life;

(B) plan resident activities;
(C) participate in educational activities; or

(D) for any other purpose.

(122) Responsible party--An individual authorized by the resident to act for him as an official delegate or agent. Responsible party is usually a family member or relative, but may be a legal guardian or other individual. Authorization may be in writing or may be given orally.

(123) Restraint hold--

(A) A manual method, except for physical guidance or prompting of brief duration, used to restrict:

(i) free movement or normal functioning of all or a portion of a resident's body; or

(ii) normal access by a resident to a portion of the resident's body.

(B) Physical guidance or prompting of brief duration becomes a restraint if the resident resists the guidance or prompting.

(124) Restraints (chemical)--Psychoactive drugs administered for the purposes of discipline, or convenience, and not required to treat the resident's medical symptoms.

(125) Restraints (physical)--Any manual method, or physical or mechanical device, material or equipment attached, or adjacent to the resident's body, that the individual cannot remove easily which restricts freedom of movement or normal access to one's body. The term includes a restraint hold.

(126) RN assessment coordinator--A registered nurse who signs and certifies a comprehensive assessment of a resident's needs, using the RAI, including the MDS, as specified by DADS.

(127) RUG--Resource Utilization Group. A categorization method, consisting of 34 categories based on the MDS, that is used to determine a recipient's service and care requirements and to determine the daily rate DADS pays a nursing facility for services provided to the recipient.

(128) Seclusion--See the definition of "involuntary seclusion" in paragraph (1)(A) of this section.

(129) Secretary--Secretary of the U.S. Department of Health and Human Services.

(130) Services required on a regular basis--Services which are provided at fixed or recurring intervals and are needed so frequently that it would be impractical to provide the services in a home or family setting. Services required on a regular basis include continuous or periodic nursing observation, assessment, and intervention in all areas of resident care.

(131) SNF--A skilled nursing facility or distinct part of a facility that participates in the Medicare program. SNF requirements apply when a certified facility is billing Medicare for a resident's per diem rate.

(132) Social Security Administration--Federal agency for administration of social security benefits. Local social security administration offices take applications for Medicare, assist beneficiaries file claims, and provide information about the Medicare program.
(133) Social worker--A qualified social worker is an individual who is licensed, or provisionally licensed, by the Texas State Board of Social Work Examiners as prescribed by the Texas Occupations Code, Chapter 505, and who has at least:

(A) a bachelor's degree in social work; or

(B) similar professional qualifications, which include a minimum educational requirement of a bachelor's degree and one year experience met by employment providing social services in a health care setting.

(134) Standards--The minimum conditions, requirements, and criteria established in this chapter with which an institution must comply to be licensed under this chapter.

(135) State Medicaid claims administrator--The entity under contract with HHSC to process Medicaid claims in Texas.

(136) State plan--A formal plan for the medical assistance program, submitted to CMS, in which the State of Texas agrees to administer the program in accordance with the provisions of the State Plan, the requirements of Titles XVIII and XIX, and all applicable federal regulations and other official issuances of the U.S. Department of Health and Human Services.

(137) State survey agency--DADS is the agency, which through contractual agreement with CMS is responsible for Title XIX (Medicaid) survey and certification of nursing facilities.

(138) Supervising physician--A physician who assumes responsibility and legal liability for services rendered by a physician assistant (PA) and has been approved by the Texas Medical Board to supervise services rendered by specific PAs. A supervising physician may also be a physician who provides general supervision of a nurse practitioner providing services in a nursing facility.

(139) Supervision--General supervision, unless otherwise identified.

(140) Supervision (direct)--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his sphere of competence. If the person being supervised does not meet assistant-level qualifications specified in this chapter and in federal regulations, the supervisor must be on the premises and directly supervising.

(141) Supervision (general)--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his sphere of competence. The person being supervised must have access to the licensed and/or qualified person providing the supervision.

(142) Supervision (intermittent)--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his sphere of competence, with initial direction and periodic inspection of the actual act of accomplishing the function or activity. The person being supervised must have access to the licensed and/or qualified person providing the supervision.

(143) Texas Register--A publication of the Texas Register Publications Section of the Office of the Secretary of State that contains emergency, proposed, withdrawn, and adopted rules issued by Texas state agencies. The Texas Register was established by the Administrative Procedure and Texas Register Act of 1975.
(144) Therapeutic diet--A diet ordered by a physician as part of treatment for a disease or clinical condition, in order to eliminate, decrease, or increase certain substances in the diet or to provide food which has been altered to make it easier for the resident to eat.

(145) Therapy week--A seven-day period beginning the first day rehabilitation therapy or restorative nursing care is given. All subsequent therapy weeks for a particular individual will begin on that day of the week.

(146) Threatened violation--A situation that, unless immediate steps are taken to correct, may cause injury or harm to a resident's health and safety.

(147) Title II--Federal Old-Age, Survivors, and Disability Insurance Benefits of the Social Security Act.


(149) Title XVIII--Medicare provisions of the Social Security Act.

(150) Title XIX--Medicaid provisions of the Social Security Act.

(151) Total health status--Includes functional status, medical care, nursing care, nutritional status, rehabilitation and restorative potential, activities potential, cognitive status, oral health status, psychosocial status, and sensory and physical impairments.

(152) UAR--HHSC's Utilization and Assessment Review Section.

(153) Uniform data set--See Resident Assessment Instrument (RAI).

(154) Universal precautions--The use of barrier and other precautions by long-term care facility employees and/or contract agents to prevent the spread of blood-borne diseases.

(155) Vendor payment--Payment made by DADS on a daily-rate basis for services delivered to recipients in Medicaid-certified nursing facilities. Vendor payment is based on the nursing facility's approved-to-pay claim processed by the state Medicaid claims administrator. The Nursing Facility Billing Statement, subject to adjustments and corrections, is prepared from information submitted by the nursing facility, which is currently on file in the computer system as of the billing date. Vendor payment is made at periodic intervals, but not less than once per month for services rendered during the previous billing cycle.

(156) Working day--Any 24-hour period, Monday through Friday, excluding state and federal holidays.

Source Note: The provisions of this §19.101 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective January 15, 1997, 21 TexReg 11970; amended to be effective March 1, 1998, 23 TexReg 1314; amended to be effective August 1, 2000, 25 TexReg 6779; amended to be effective June 1, 2001, 26 TexReg 3824; amended to be effective May 1, 2002, 27 TexReg 3207; amended to be effective June 1, 2004, 29 TexReg 5416; amended to be effective June 1, 2006, 31 TexReg 4449; amended to be effective September 1, 2008, 33 TexReg 6151; amended to be effective September 1, 2008, 33 TexReg 7264; amended to be effective June 1, 2010, 35 TexReg 4465
Texas Administrative Code

TITLE 40  SOCIAL SERVICES AND ASSISTANCE
PART 1  DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 19  NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION
SUBCHAPTER C  NURSING FACILITY LICENSURE APPLICATION PROCESS
RULE §19.201  Criteria for Licensing

(a) A person or governmental unit, acting jointly or severally, must be licensed by DADS to establish, conduct, or maintain a facility.

(b) An applicant for a license must submit a complete application form and license fee to DADS.

(c) No person may apply for a probationary license, a license, change of ownership, increase in capacity, or renewal of a nursing facility license without making a disclosure of information as required in this section.

(d) An applicant for a license must affirmatively show that:

(1) the applicant or license holder has the ability to comply with:

   (A) minimum standards of medical care, nursing care and financial condition; and

   (B) any other applicable state or federal standard;

(2) the facility meets the standards of the Life Safety Code;

(3) the facility meets the construction standards in Subchapter D of this chapter (relating to Facility Construction); and

(4) the facility meets the standards for operation based on an on-site survey.

(e) Before issuing a license, DADS considers the background and qualifications of:

   (1) the applicant or license holder;

   (2) a partner, officer, director, or managing employee of the applicant or license holder;

   (3) a person who owns or who controls the owner of the physical plant of a facility in which the nursing facility operates or is to operate; and

   (4) a controlling person with respect to the nursing facility for which a license or license renewal is requested.

(f) In making the evaluation required by subsection (e) of this section, DADS requires the applicant or license holder to submit a sworn affidavit of a satisfactory compliance history and any other information required by DADS to substantiate a satisfactory compliance history relating to each state or other jurisdiction in which persons described in subsection (e) of this section operated a long-term care facility during the five-year period.
preceding the date on which the application is made. For purposes of the sworn affidavit of a satisfactory compliance history, the applicant will be considered to have complied with the submission requirement (but not necessarily be entitled to a license) if the applicant swears or affirms that all the information disclosed in the application concerning previous state and federal nursing facility sanctions and penalties and related information are true and correct. The affidavit of compliance history is contained in DADS' application form.

(g) A license is issued if, after inspection and investigation, DADS finds that the persons described in subsection (e) of this section meet all requirements of this chapter. The license is valid for two years. Each license specifies the maximum allowable number of residents. The number of residents authorized by the license must not be exceeded.

(h) In making a determination whether to grant a nursing facility license, DADS reviews:

(1) the information contained in the application;

(2) the criminal history information of the persons described in subsection (e) of this section; and

(3) other documents DADS deems relevant, including survey and complaint investigation findings in each facility the applicant or any other person named in subsection (e) of this section has been affiliated with during the last five years.

Source Note: The provisions of this §19.201 adopted to be effective May 1, 1995, 20 TexReg 2054; amended to be effective March 1, 1998, 23 TexReg 1314; amended to be effective October 15, 1998, 23 TexReg 10496; amended to be effective March 15, 1999, 24 TexReg 994; amended to be effective October 1, 1999, 24 TexReg 8314; amended to be effective August 1, 2000, 25 TexReg 6779; amended to be effective May 1, 2002, 27 TexReg 3369; amended to be effective September 1, 2007, 32 TexReg 4231; amended to be effective September 1, 2009, 34 TexReg 5138
RULE §19.202 Building Approval

All applications for license must include written approval of the local fire authority that the facility and its operation meet local fire ordinances.

(1) New facility. The sponsor of a new facility under construction or a previously unlicensed facility will provide to the Texas Department of Human Services (DHS) a copy of a dated, written notice to the local health authority that construction or modification has been or will be completed by a specific date. The local health authority may provide recommendations to DHS regarding the status of compliance with local codes, ordinances, or regulations. The sponsor must also provide a copy of a dated, written notice of the approval for occupancy by the local building code authority, if applicable.

(2) Increase in capacity. The license holder must request an application for increase in capacity from DHS. DHS provides the license holder with the application form, and DHS notifies the local fire marshal and the local health authority of the request. The license holder must arrange for the inspection of the facility by the local fire marshal. Upon completion of the inspection, the license holder must notify the local health authority and DHS in writing if the facility meets local code requirements. DHS approves the application only if the facility is found to be in compliance with the standards. Approval to occupy the increased capacity may be granted by DHS prior to the issuance of the license covering the increased capacity after inspection by DHS if standards are met.

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

(4) Renewal. DHS sends the local health authority a copy of DHS's license renewal notice specifying the expiration date of the facility's current license. The local health authority may provide recommendations to DHS regarding the status of compliance with local codes, ordinances, or regulations. The local authority may also recommend that a state license be issued or denied; however, the final decision on licensure status remains with DHS.

Source Note: The provisions of this §19.202 adopted to be effective May 1, 1995, 20 TexReg 2054; amended to be effective July 1, 1996, 21 TexReg 4408.
(a) Applications. All applications must be made on forms prescribed by and available from DADS.

(1) Each application must be completed in accordance with DADS instructions, and it must be signed and notarized.

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

(b) General information required. An applicant must file with DADS an application which contains:

(1) for initial applications and change of ownership only, evidence of the right to possession of the facility at the time the application will be granted, which may be satisfied by the submission of applicable portions of a lease agreement, deed or trust, or appropriate legal document. The names and addresses of any persons or organizations listed as owner of record in the real estate, including the buildings and grounds, must be disclosed to DADS;

(2) a certificate of good standing issued by the Comptroller of Public Accounts; and

(3) for initial applications and change of ownership only, the certificate of incorporation issued by the secretary of state for a corporation or a copy of the partnership agreement for a partnership; and

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

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

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

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

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

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

(iv) staffing patterns, such as resident to staff ratios, and staff training;
(v) the physical environment of the facility;

(vi) resident activities;

(vii) program charges;

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

(ix) family involvement in resident care; and

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

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

(c) Requested information. An applicant or license holder must provide any information DADS requests within 30 days after the request.

(d) Exemptions. The provisions of this section do not apply to a bank, trust company, financial institution, title insurer, escrow company, or underwriter title company to which a license is issued in a fiduciary capacity.

Source Note: The provisions of this §19.204 adopted to be effective May 1, 1995, 20 TexReg 2054; amended to be effective July 1, 1996, 21 TexReg 4408; amended to be effective September 1, 1996, 21 TexReg 7859; amended to be effective March 1, 1998, 23 TexReg 1314; amended to be effective August 1, 2000, 25 TexReg 6779; amended to be effective September 1, 2007, 32 TexReg 4231
The initial license issued to a license holder who has not previously held a license is a probationary license and is effective for one year. A permanent license may be issued only after DHS finds that the license holder and any other person listed in §19.201(f) of this title (relating to Criteria for Licensing) continues to meet the nursing facility requirements and submits an application requesting a permanent license with the applicable license fee. The facility must also be able to pass an inspection unless an inspection is not required as provided by §242.047, Health and Safety Code.

Source Note: The provisions of this §19.205 adopted to be effective August 1, 2000, 25 TexReg 6779
Texas Administrative Code

TITLE 40 SOCIAL SERVICES AND ASSISTANCE
PART 1 DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 19 NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION
SUBCHAPTER C NURSING FACILITY LICENSURE APPLICATION PROCESS
RULE §19.206 Increase in Capacity

(a) During the license term, a license holder may not increase capacity without approval from the Texas Department of Human Services (DHS). The license holder must submit to DHS a complete application for increase in capacity and the fee required in §19.216 of this title (relating to License Fees).

(b) Upon approval of an increase in capacity, DHS will issue a new license.

Source Note: The provisions of this §19.206 adopted to be effective May 1, 1995, 20 TexReg 2054.
(a) Each license issued under this chapter must be renewed every two years. Each license expires two years from the date issued. A license issued under this chapter is not automatically renewed.

(b) Each license holder must, no later than the 45th day before the expiration of the current license, submit an application for renewal with DADS. DADS considers that an individual has submitted a timely and sufficient application for the renewal of a license if the license holder submits:

(1) a complete application to DADS, and DADS receives the complete application no later than the 45th day before the expiration date of the current license;

(2) an incomplete application to DADS with a letter explaining the circumstances which prevented the inclusion of the missing information, and DADS receives the incomplete application and letter no later than the 45th day before the expiration date of the current license; or

(3) a complete application or an incomplete application with a letter explaining the circumstances which prevented the inclusion of the missing information to DADS, DADS receives the application during the 45-day period ending on the date the current license expires, and the license holder pays the late fee established in §19.216(a)(6) of this chapter (relating to License Fees) in addition to the basic renewal fee.

(c) If the application is postmarked by the submission deadline, the application will be considered timely if received in DADS’ Licensing and Credentialing Section, Regulatory Services Division within 15 days after the postmark.

(d) The appropriate license fee must be paid upon submission of the renewal application.

(e) The renewal of a license may be denied for the same reasons an original application for a license may be denied. See §19.214 of this subchapter (relating to Criteria for Denying a License or Renewal of a License).

Source Note: The provisions of this §19.208 adopted to be effective May 1, 1995, 20 TexReg 2054; amended to be effective April 1, 2001, 26 TexReg 1547; amended to be effective May 4, 2008, 33 TexReg 3446; amended to be effective January 15, 2009, 34 TexReg 237
(a) DADS, after providing notice and opportunity for a hearing, may exclude a person from eligibility for a license if the person or any person described in §19.201(f) of this title (relating to Criteria for Licensing) has substantially failed to comply with the rules in this chapter. Exclusion of a person must extend for at least two years, but not more than ten years. During the period of exclusion, the excluded person is not eligible to be a license holder or a controlling person of a license holder.

(b) A license holder or controlling person who operates a nursing facility or an assisted living facility for which a trustee was appointed and for which emergency assistance funds, other than funds to pay the expenses of the trustee, were used is subject to exclusion from eligibility for the:

1. issuance of an original license for a facility for which the person has not previously held a license; or

2. renewal of the license of the facility for which the trustee was appointed.

Source Note: The provisions of this §19.209 adopted to be effective March 1, 1998, 23 TexReg 1314; amended to be effective August 1, 2000, 25 TexReg 6779; amended to be effective September 1, 2007, 32 TexReg 4231
(a) A license holder may not transfer the license as part of a change of ownership. If there is a change of ownership, the license holder’s license becomes invalid on the date of the change. The new owner must obtain a change of ownership license in accordance with subsection (b) of this section. The license holder and new license applicant must notify the Department of Aging and Disability Services before a change of ownership occurs.

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

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

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

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

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

   (B) the partnership that is licensed to operate the facility is sold or otherwise transferred to an entity that is not licensed to operate the facility;

   (C) the entity that is licensed to operate the facility sells or otherwise transfers its business of operating the facility to an entity that is not licensed to operate the facility;

   (D) for any reason other than correction of an error, the federal taxpayer identification number changes; or

   (E) the entity that is licensed to operate the facility is terminated and fails or is ineligible to be reinstated, and the facility continues to operate.

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

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

   (B) ownership of the limited partnership that is licensed to operate the facility changes by 50% or more and one or more controlling person is added;

   (C) the partnership that is licensed to operate the facility is sold or otherwise transferred to an entity that is
(D) the entity that is licensed to operate the facility sells or otherwise transfers its business of operating the facility to an entity that is not licensed to operate the facility;

(E) for any reason other than correction of an error, the federal taxpayer identification number changes; or

(F) the entity that is licensed to operate the facility is terminated and fails or is ineligible to be reinstated, and the facility continues to operate.

(4) Nonprofit organization. A change of ownership occurs if:

(A) the nonprofit organization that is licensed to operate the facility is sold or otherwise transferred to an entity that is not licensed to operate the facility;

(B) the entity that is licensed to operate the facility sells or otherwise transfers its business of operating the facility to an entity that is not licensed to operate the facility;

(C) for any reason other than correction of an error, the federal taxpayer identification number changes; or

(D) the entity that is licensed to operate the facility is terminated and fails or is ineligible to be reinstated, and the facility continues to operate.

(5) For-profit corporation or limited liability company. A change of ownership occurs if:

(A) ownership of the business entity that is licensed to operate the facility changes by 50% or more and one or more controlling person is added;

(B) the business entity that is licensed to operate the facility is sold or otherwise transferred to an entity that is not licensed to operate the facility;

(C) the entity that is licensed to operate the facility sells or otherwise transfers its business of operating the facility to an entity that is not licensed to operate the facility;

(D) for any reason other than correction of an error, the federal taxpayer identification number changes; or

(E) the entity that is licensed to operate the facility is terminated and fails or is ineligible to be reinstated, and the facility continues to operate.

(6) City, county, state or federal government authority, hospital district, or hospital authority. A change of ownership occurs if:

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

(B) the entity that is licensed to operate the facility is terminated and the facility continues to operate.

(7) Trust, living trust, estate or any other entity type not included in paragraphs (1) - (6) of this subsection. A change of ownership occurs if:
(A) the entity that is licensed to operate the facility is sold or otherwise transferred to an entity that is not licensed to operate the facility;

(B) the entity that is licensed to operate the facility sells or otherwise transfers its business of operating the facility to an entity that is not licensed to operate the facility;

(C) for any reason other than correction of an error, the federal taxpayer identification number changes; or

(D) the entity that is licensed to operate the facility is terminated and the facility continues to operate.

(8) For license holders that have multiple-level ownership structures, a change of ownership also occurs if any action described in paragraphs (1) - (7) of this subsection occurs at any level of the license holder's entire ownership structure.

(9) For paragraphs (3)(B) and (5)(A) of this subsection, the substitution of the executor of a decedent's estate for a decedent is not the addition of a controlling person.

(10) A conversion as described in Subchapter C of Chapter 10 of the Texas Business Organization Code is not a change of ownership if no controlling person is added.

(b) The prospective new owner must submit to DADS:

(1) a complete application for a change of ownership license under §19.201 of this subchapter (relating to Criteria for Licensing) or an incomplete application with a letter explaining the circumstances that prevented the inclusion of the missing information;

(2) the application fee, in accordance with §19.216 of this subchapter (relating to License Fees); and

(3) signed, written notice from the facility's existing license holder of his intent to transfer operation of the facility to the applicant beginning on a date specified by the applicant.

(c) To avoid a facility operating while unlicensed, an applicant must submit all items in subsection (b) of this section at least 30 days before the anticipated date of the sale or other transfer to the new owner. DADS considers an application as submitted timely if the application is postmarked at least 30 days before the anticipated date of the sale or other transfer to the new owner and received in DADS' Licensing and Credentialing Section, Regulatory Services Division within 15 days after the date of the postmark.

(d) The 30-day notification from the applicant or the 30-day notification from the existing license holder or both may be waived if DADS determines that the applicant presented evidence showing that circumstances prevented the submission of the 30-day notice and if DADS determines that not waiving the 30-day notification would create a threat to resident welfare or health and safety. If the applicant submits a timely and sufficient application for a change of ownership license and meets all requirements for a license, DADS issues a change of ownership license effective on the date requested by the applicant.

(e) A change of ownership license is a 90-day temporary license issued to an applicant who proposes to become the new operator of a nursing facility that exists on the date the application is submitted. Upon receipt of a complete application, fee, and signed, written notice from the facility's existing license holder of the intent to transfer the operation of the facility to the applicant beginning on a date specified by the applicant, DADS issues
a change of ownership license to the prospective new owner if DADS finds that the prospective new owner and any other persons listed in §19.201(e) of this subchapter meet the requirements in §19.201(d)(1) and (f) of this subchapter.

(1) All applications must be made on forms prescribed by and available from DADS. Each application must be completed in accordance with DADS' instructions, signed, and notarized, and must contain all forms required by DADS.

(2) DADS approves or denies an application for a change of ownership license not later than the 31st day after the date of receipt of the complete application, fee, and signed, written notice from the facility's existing license holder of his intent to transfer the operation of the facility to the applicant beginning on a date specified by the applicant. The effective date of the license is the later of the date requested in the application or the 31st day after the date DADS receives the application, fee, and signed, written notice from the existing license holder, unless waived in accordance with subsection (d) of this section. The effective date of the change of ownership license cannot precede the date the application is received in DADS' Licensing and Credentialing Section, Regulatory Services Division.

(3) If the applicant meets the requirements of §19.201 of this subchapter and passes an initial inspection, desk review, or a subsequent inspection before the change of ownership license expires, a regular two-year license is issued. The effective date of the regular two-year license is the same date as the effective date of the change of ownership and cannot precede the date the application is received by DADS' Licensing and Credentialing Section, Regulatory Services Division.

(4) When an applicant has not previously held a license in Texas, a probationary license is issued following the change of ownership license. The effective date of the probationary one-year license is the same date as the change of ownership license and cannot precede the date the application is received in DADS' Licensing and Credentialing Section, Regulatory Services Division.

(5) A change of ownership license expires on the 90th day after its effective date.

(6) DADS conducts an on-site inspection to verify compliance with the requirements after issuing a change of ownership license.

(7) DADS may allow a desk review in lieu of an on-site inspection or survey if:

   (A) the facility specifically requests a desk review and submits evidence during the application process that no new controlling person is added;

   (B) DADS determines the change does not involve a new controlling person; and

   (C) the facility meets the standards for operation based on the most recent on-site inspection.

(f) A nursing facility license holder may be eligible to acquire, on an expedited basis, a license to operate another existing nursing facility. A license holder that appears on the expedited change of ownership list may be granted expedited approval in obtaining a change of ownership license to operate another existing nursing facility in Texas.

(1) DADS maintains and keeps current a list of nursing facility license holders that operate an institution in
Texas and that have met the criteria to qualify for an expedited change of ownership according to the information available to DADS.

(2) In order to establish and maintain the expedited change of ownership list, DADS uses the criteria found in §19.2322(e) of this chapter (relating to Medicaid Bed Allocation Requirements). A nursing facility license holder meeting these criteria appears on the list and is eligible to be issued, on an expedited basis, a change of ownership license to operate another existing institution in Texas.

(3) A nursing facility license holder appearing on the list must submit an affidavit that demonstrates the license holder continues to meet the criteria established for being listed on the expedited change of ownership list, and continues to meet the requirements in §19.201(d)(1) and (f) of this subchapter.

(4) DADS processes a change of ownership license application on an expedited basis for a nursing facility license holder on the list if DADS finds that the license holder and any other persons listed in §19.201(e) of this subchapter meet the requirements in §19.201(d)(1) and (f) of this subchapter.

(5) If the nursing facility license holder requesting a change of ownership license on an expedited basis complies with subsections (b) - (e) of this section, DADS approves or denies the application for a change of ownership license not later than the 15th day after the date of receipt of the complete application, fee, and signed, written notice from the facility's existing license holder of the intent to transfer the operation of the facility to the applicant beginning on a date requested in the application. The effective date of the license is the later of the date requested in the application or the 31st day after the date DADS receives the application fee, and signed, written notice from the existing license holder, unless waived in accordance with subsection (d) of this section. The effective date of the change of ownership license cannot precede the date the application is received in DADS' Licensing and Credentialing Section, Regulatory Services Division.

(6) An applicant for a change of ownership license on an expedited basis must meet all applicable requirements that an applicant for renewal of a license must meet. Any requirement relating to inspections or to an accreditation review applies only to institutions operated by the license holder at the time the application is made for the change of ownership license.

(g) If a license holder changes its name, but does not undergo a change of ownership, the license holder must notify DADS and submit a copy of a certificate of amendment from the Secretary of State's office. On receipt of the certificate of amendment, the current license will be re-issued in the license holder's new name.

Source Note: The provisions of this §19.210 adopted to be effective December 1, 2008, 33 TexReg 9713; amended to be effective September 1, 2009, 34 TexReg 5138
Texas Administrative Code

TITLE 40  
SOCIAL SERVICES AND ASSISTANCE

PART 1  
DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 19  
NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

SUBCHAPTER C  
NURSING FACILITY LICENSURE APPLICATION PROCESS

RULE §19.211  
Relocation

(a) A license holder may not relocate a facility to another location without approval from the Texas Department of Human Services (DHS). The license holder must submit a complete application and the fee required under §19.216 of this title (relating to License Fees) to DHS before the relocation.

(b) Residents may not be relocated until the new building has been inspected and approved as meeting the standards of the Life Safety Code as applicable to nursing facilities.

(c) Following Life Safety Code approval by DHS, the license holder must notify DHS of the date residents will be relocated. If the new facility meets the standards for operation based on an on-site survey, a license will be issued.

(d) The effective date of the license will be the date all residents are relocated.

(e) The license holder must continue to maintain the license at the current location and must continue to meet all requirements for operation of the facility until the date of the relocation.

(f) This section applies to relocation of a currently licensed facility, and does not govern the relocation of Medicaid-certified beds. See §19.2322 of this title (relating to Medicaid Bed Allocation Requirements) for guidelines on relocation of Medicaid-certified beds.

Source Note: The provisions of this §19.211 adopted to be effective May 1, 2002, 27 TexReg 3369; amended to be effective November 1, 2002, 27 TexReg 9154
(a) The Texas Department of Human Services (DHS) will process only applications received within 60 days prior to the requested date of the issuance of the license.

(b) An application is complete when all requirements for licensing have been met, including compliance with standards. If an inspection for compliance is required, the application is not complete until the inspection has occurred, reports have been reviewed, and the applicant complies with the standards.

(c) If the application is postmarked by the filing deadline, the application will be considered to be timely filed if received in the Licensing Section of the state office of Long-Term Care-Regulatory, Texas Department of Human Services, within 15 days of the postmark.

(d) Long-Term Care-Regulatory will notify facilities within 30 days of receipt of the application if any of the following applications are incomplete:

   (1) initial application;

   (2) change of ownership;

   (3) renewal; and

   (4) increase in capacity.

(e) Except as provided in the following sentence, a license will be issued or denied within 30 days of the receipt of a complete application or within 30 days prior to the expiration date of the license. However, DHS may pend action on an application for renewal of a license for up to six months if the facility is subject to a proposed or pending licensure termination action on or within 30 days prior to the expiration date of the license. The issuance of the license constitutes DHS's official written notice to the facility of the acceptance and filing of the application.

(f) Criteria for reimbursement of fees are as follows.

   (1) In the event the application is not processed in the time periods as stated, the applicant has a right to request of the program director full reimbursement of all filing fees paid in that particular application process. If the program director does not agree that the established periods have been violated or finds that good cause existed for exceeding the established periods, the request will be denied. Good cause for exceeding the period established is considered to exist if:
(A) the number of applications to be processed exceeds by 15% or more the number processed in the same
calendar quarter of the preceding year;

(B) another public or private entity used in the application process caused the delay; or

(C) other conditions existed giving good cause for exceeding the established periods.

(2) If the request for full reimbursement is denied, the applicant may appeal directly to the DHS commissioner
for resolution of the dispute. The applicant must send a written statement to the commissioner describing the
request for reimbursement and the reasons for it. The program also may send a written statement to the
commissioner describing the program's reasons for denying reimbursement. The commissioner makes a timely
decision concerning the appeal and notifies the applicant and the program in writing of the decision.

Source Note: The provisions of this §19.212 adopted to be effective May 1, 1995, 20 TexReg 2054;
amended to be effective March 1, 1998, 23 TexReg 1314.
(a) DADS may deny an initial license or refuse to renew a license if any person described in §19.201(e) of this subchapter (relating to Criteria for Licensing):

(1) has been convicted of an offense described in Chapter 99 of this title (relating to Criminal Convictions Barring Facility Licensure) during the time frames described in that chapter;

(2) does not have a satisfactory history of compliance with state and federal nursing home regulations. In determining whether there is a history of satisfactory compliance with federal or state regulations, DADS at a minimum may consider:

(A) whether any violation resulted in significant harm or a serious and immediate threat to the health, safety, or welfare of any resident;

(B) whether the person promptly investigated the circumstances surrounding any violation and took steps to correct and prevent a recurrence of a violation;

(C) the history of surveys and complaint investigation findings and any resulting enforcement actions;

(D) a repeated failure to comply with regulation;

(E) an inability to attain compliance with cited deficiencies within an acceptable period of time as specified in the plan of correction or credible allegation of compliance, whichever is appropriate;

(F) the number of violations relative to the number of facilities the applicant or any other person named in §19.201(e) of this subchapter has been affiliated with during the last five years; and

(G) any exculpatory information deemed relevant by DADS;

(3) has committed any act described in §19.2112(a)(2) - (7) of this chapter (relating to Administrative Penalties);

(4) violated Chapter 242 of the Texas Health and Safety Code in either a repeated or substantial manner;

(5) aids, abets, or permits a substantial violation described in paragraph (4) of this subsection about which the person had or should have had knowledge;

(6) fails to provide the required information and facts and/or references;
(7) fails to pay the following fees, taxes, and assessments when due:

(A) licensing fees as described in §19.216 of this subchapter (relating to License Fees);

(B) reimbursement of emergency assistance funds within one year after the date on which the funds were received by the trustee in accordance with the provisions of §19.2116(e) and (f) of this chapter (relating to Involuntary Appointment of a Trustee); or

(C) franchise taxes;

(8) has a history of any of the following actions during the five-year period preceding the date of the application:

(A) operation of a facility that has been decertified or had its contract canceled under the Medicare or Medicaid program in any state or both;

(B) federal or state nursing facility sanctions or penalties, including, but not limited to, monetary penalties, downgrading the status of a facility license, proposals to decertify, directed plans of correction or the denial of payment for new Medicaid admissions;

(C) unsatisfied final judgments;

(D) eviction involving any property or space used as a facility in any state;

(E) suspension of a license to operate a health care facility, long-term care facility, assisted living facility, or a similar facility in any state;

(F) revocation of a license to operate a health care facility, long-term care facility, assisted living facility, or similar facility in any state;

(G) surrender of a license in lieu of revocation or while a revocation hearing is pending; or

(H) expiration of a license while a revocation action is pending and the license is surrendered without an appeal of the revocation or an appeal is withdrawn;

(9) fails to meet minimum standards of financial condition as described in §19.201(d)(1)(A) of this subchapter and §19.1925(a) of this chapter (relating to Financial Condition); or

(10) fails to notify DADS of a significant adverse change in financial condition as required under §19.1925 of this chapter.

(b) DADS does not issue a license to an applicant to operate a new facility if the applicant has a history of any of the following actions during the five-year period preceding the date of the application:

(1) revocation of a license to operate a health care facility, long-term care facility, assisted living facility, or similar facility in any state;

(2) surrender of a license in lieu of revocation or while a revocation hearing is pending;
(3) expiration of a license while a revocation action is pending and the license is surrendered without an appeal of the revocation or an appeal is withdrawn;

(4) debarment or exclusion from the Medicare or Medicaid programs by the federal government or a state; or

(5) a court injunction prohibiting the applicant or manager from operating a facility.

c) Only final actions are considered for purposes of subsections (a)(8) and (b) of this section. An action is final when routine administrative and judicial remedies are exhausted. All actions, whether pending or final, must be disclosed.

d) If an applicant for a new license owns multiple facilities, DADS examines the overall record of compliance in all of the applicant's facilities. Denial of an application for a new license will not preclude the renewal of licenses for the applicant's other facilities with satisfactory records.

e) If DADS denies a license or refuses to issue a renewal of a license, the applicant or license holder may request an administrative hearing. Administrative hearings are held under the Health and Human Services Commission's hearing procedures in 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act).

Source Note: The provisions of this §19.214 adopted to be effective May 1, 1995, 20 TexReg 2054; amended to be effective March 1, 1998, 23 TexReg 1314; amended to be effective October 1, 1999, 24 TexReg 8314; amended to be effective April 1, 2001, 26 TexReg 1547; amended to be effective September 1, 2007, 32 TexReg 4231; amended to be effective May 4, 2008, 33 TexReg 3446; amended to be effective September 1, 2009, 34 TexReg 5138
Rule §19.215  
**Opportunity to Show Compliance**

(a) Before the institution of proceedings to revoke or suspend a license or deny an application for the renewal of a license, the Texas Department of Human Services (DHS) gives the license holder:

1. notice by personal service or by registered or certified mail of the facts or conduct alleged to warrant the proposed action, with a copy being sent to the facility; and

2. an opportunity to show compliance with all requirements of law for the retention of the license by sending the director of Long Term Care-Regulatory a written request. The request must:

   A. be postmarked within 10 days of the date of DHS’s notice and be received in the state office of the director of Long-Term Care-Regulatory within 10 days of the date of the postmark; and

   B. contain specific documentation refuting DHS’s allegations.

(b) DHS’s review will be limited to a review of documentation submitted by the license holder and information DHS used as the basis for its proposed action and will not be conducted as an adversary hearing. DHS will give the license holder a written affirmation or reversal of the proposed action.

**Source Note:** The provisions of this §19.215 adopted to be effective May 1, 1995, 20 TexReg 2054; amended to be effective July 1, 2001, 26 TexReg 3824; amended to be effective May 1, 2003, 28 TexReg 2619.
(a) Basic fees.

(1) Probationary license. The license fee is $125 plus $5 for each unit of capacity or bed space for which a license is sought.

(2) Initial and renewal license. The license fee is $250 plus $10 for each unit of capacity or bed space for which a license is sought. The fee must be paid with each initial and renewal of license application.

(3) Increase in bed space. An approved increase in bed space is subject to an additional fee of $10 for each unit of capacity or bed space.

(4) Change of administrator. A facility must report a change of administrator within 30 days of the effective date of the change by submitting a change of administrator notice and a $20 fee to DADS’ Licensing and Credentialing Section, Regulatory Services Division. If DADS’ Licensing and Credentialing Section, Regulatory Services Division does not receive the notice within 30 days of the effective date of the change, DADS may impose a $500 administrative penalty. If the notice is postmarked within the 30-day period, 15 days will be added to the time period to receive the notice.

(5) Background information fee. The background information fee is $50.

(6) Late renewal fee. An applicant for license renewal that submits an application during the 45-day period ending on the date the current license expires must pay a late fee of an amount equal to one-half of the total basic renewal fee in §19.216(a)(2) of this section.

(b) Trust fund fee.

(1) In addition to the basic license fee described in subsection (a) of this section, DADS has established a trust fund for the use of a court-appointed trustee as described in the Health and Safety Code, Chapter 242, Subchapter D.

(2) DADS charges and collects an annual fee from each facility licensed under the Texas Health and Safety Code, Chapter 242 each calendar year if the amount of the nursing and convalescent trust fund is less than $10,000,000. The fee is based on a monetary amount specified for each licensed unit of capacity or bed space, not to exceed $20 annually, and is in an amount sufficient to provide not more than $10,000,000 in the trust fund. In calculating the fee, the amount will be rounded to the next whole cent.

(3) Veterans homes (as defined in the Natural Resources Code, §164.002) are exempt from paying a trust
(4) DADS may charge and collect a fee more than once a year only if necessary to ensure that the amount in the nursing and convalescent trust fund is sufficient to allow required disbursements.

(c) Alzheimer's certification. In addition to the basic license fee described in subsection (a) of this section, a facility that applies for certification to provide specialized services to persons with Alzheimer's disease or related conditions under Subchapter W of this chapter (relating to Certification of Facilities for Care of Persons with Alzheimer's Disease and Related Disorders) must pay an annual fee of $100.

Source Note: The provisions of this §19.216 adopted to be effective May 1, 1995, 20 TexReg 2054; amended to be effective March 1, 1998, 23 TexReg 1314; amended to be effective January 1, 2000, 24 TexReg 11781; amended to be effective August 1, 2000, 25 TexReg 6779; amended to be effective April 1, 2001, 26 TexReg 1547; amended to be effective September 1, 2003, 28 TexReg 6939; amended to be effective January 15, 2009, 34 TexReg 237
Payment of fees must be by check or money order made payable to the Texas Department of Human Services. All fees are nonrefundable except as provided by the Government Code, Chapter 2005.

Source Note: The provisions of this §19.218 adopted to be effective May 1, 1995, 20 TexReg 2054.
Texas Administrative Code

TITLE 40
SOCIAL SERVICES AND ASSISTANCE

PART 1
DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 19
NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

SUBCHAPTER C
NURSING FACILITY LICENSURE APPLICATION PROCESS

RULE §19.219
Plan Review Fees

(a) The Texas Department of Human Services (DHS) charges a fee to review plans for new buildings, additions, conversion of buildings not licensed by DHS, or remodeling of existing licensed facilities.

(b) The fee schedule follows:

   (1) Facilities--new construction:

       (A) single-story facilities--$20 per bed, $2,000 minimum; and

       (B) multiple-story facilities--$24 per bed, $2,500 minimum.

   (2) Additions or remodeling of existing licensed facilities--2% of construction cost with $500 minimum fee and a maximum not to exceed $2,000.

   (3) Alzheimer's certification--$550 in addition to the fees specified in paragraphs (1) - (2) of this subsection.

Source Note: The provisions of this §19.219 adopted to be effective April 1, 2002, 27 TexReg 2249
(a) DADS charges a fee for expedited Life Safety Code and physical plant inspections for new buildings, additions, conversion of buildings not licensed by DADS, or remodeling of existing licensed facilities.

(b) Table of Expedited Life Safety Code and Physical Plant Inspection Fees.

Source Note: The provisions of this §19.220 adopted to be effective June 1, 2010, 35 TexReg 4465
(a) The facility must be designed, constructed, equipped, and maintained to protect the health and ensure the safety of residents, personnel, and the public. If children are admitted to the facility, accommodations, furnishings, and equipment appropriate to children must be provided.

(b) The requirements of this subchapter are applicable to new and existing nursing facilities unless otherwise stated. Refer to §§19.330-19.343 of this title (relating to Facility Construction) for additional requirements for new construction, conversions of existing unlicensed buildings, remodeling, and additions. An existing unlicensed building is defined as any building (or portion thereof) which is not presently licensed as a nursing home.

Source Note: The provisions of this §19.300 adopted to be effective July 1, 1996, 21 TexReg 4408.
(a) The facility must meet the applicable provisions of the 2000 edition of the Life Safety Code of the National Fire Protection Association (NFPA). The Life Safety Code is available for inspection at the Office of the Federal Register Information Center, Washington, D.C. Copies may be obtained from the NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02169. The New Health Care Occupancies chapter of the Life Safety Code is applicable to new construction, conversions of existing unlicensed buildings, remodeling, and additions. The Existing Health Care Occupancies chapter of the Life Safety Code is applicable to existing nursing homes. Life safety features and equipment that have been installed in existing buildings which are now in excess of that required by the Life Safety Code must continue to be maintained or may be completely removed if prior approval is obtained from the Texas Department of Human Services (DHS).

(b) In addition to the Life Safety Code, facilities must meet any other codes and standards of the NFPA referenced by the Life Safety Code and those listed in this chapter, except as may be otherwise approved or required by DHS.

(c) The following codes, standards, or guidelines generally govern their subject areas for existing construction:

1. If the municipality has a building code and a plumbing code, those codes govern.

2. In the absence of municipal codes, nationally recognized codes must be used. To assure continuity, all nationally recognized codes, when used, must be publications of the same group or organization.

3. Heating, ventilating, and air-conditioning systems must be designed and installed in accordance with NFPA 90A and the Heating, Ventilating, and Air-Conditioning Guide of the American Society of Heating, Refrigeration, and Air-Conditioning Engineers (ASHRAE), except as may be modified in this subchapter.

4. Electrical and illumination systems must be designed and installed in accordance with NFPA 70 and the Lighting Handbook of the Illuminating Engineering Society (IES) of North America, except as may be modified in this subchapter.

5. Accessibility for individuals with disabilities must be designed and installed in accordance with the following laws: the Americans with Disabilities Act of 1990 (Public Law 101-336; Title 42, United States Code, Chapter 126); Title 28, Code of Federal Regulations, Part 35; Texas Civil Statutes, Article 9102; and Title 16, Texas Administrative Code, Chapter 68. Plans for new construction, substantial renovations, modifications, and alterations must be submitted to the Texas Department of Licensing and Regulation (Attn: Elimination of Architectural Barriers Program) for accessibility approval under Texas Civil Statutes, Article 9102.

6. Every building and portion thereof must be capable of sustaining all dead and live loads in accordance with...
accepted engineering practices and standards.

(7) Each building must be classified as to building construction type for fire resistance rating purposes in accordance with NFPA 220 and the Life Safety Code.

(8) Building insulation materials, unless sealed on all sides and edges in an approved manner with noncombustible material, must have a flame-spread rating of 25 or less when tested in accordance with NFPA 255 and NFPA 258.

(9) All boilers not exempted by the Texas Health and Safety Code, §755.022, must be inspected and certified for operation by the Texas Department of Licensing and Regulation.

Source Note: The provisions of this §19.301 adopted to be effective July 1, 1996, 21 TexReg 4408; amended to be effective August 1, 2000, 25 TexReg 6779; amended to be effective May 1, 2004, 29 TexReg 3235
Texas Administrative Code

TITLE 40  SOCIAL SERVICES AND ASSISTANCE
PART 1  DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 19  NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION
SUBCHAPTER D  FACILITY CONSTRUCTION
RULE §19.302  Waivers

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

Source Note: The provisions of this §19.302 adopted to be effective July 1, 1996, 21 TexReg 4408.
§19.303 Emergency Power

(a) An emergency electrical power system must supply power adequate at least for lighting all entrances and exits, equipment to maintain the fire detection, alarm, and extinguishing systems, and life-support systems if the normal electrical supply is interrupted. Emergency electrical services by generator or battery must be provided to comply with the provisions of the National Fire Protection Association (NFPA) 70. Battery systems must be capable of sustaining power for a duration of at least one and one-half hours.

(1) Life safety systems must include:

(A) illumination for means of egress, nurse stations, medication rooms, dining and living rooms, and areas immediately outside of exit doors;

(B) exit signs and exit directional signs required by the Life Safety Code;

(C) alarm systems, including fire alarms activated by manual stations, water flow alarm devices of sprinkler systems, fire and smoke detecting systems, and alarms required for nonflammable medical gas systems if installed (where hospital-type functions are included in the nursing home facility, applicable standards apply);

(D) task illumination and selected receptacles at any required or provided generator set location;

(E) selected duplex receptacles, including receptacles in resident corridors, each resident-bed location where life-support electrical appliances are utilized, nurse stations, medication rooms, including biological refrigerator, if a generator is required or provided;

(F) nurse calling systems;

(G) resident room night lights where required;

(H) elevator cab lighting, control, and communication systems;

(I) all facility telephone equipment; and

(J) those paging or speaker systems that are necessary for the communication plan for an emergency. Radio transceivers that are necessary for emergency use must be capable of operating for at least one hour upon total failure of both normal and emergency power.

(2) Where critical systems are provided, there must be a delayed automatic connection.

(3) The emergency lighting must be automatically in operation within 10 seconds after the interruption of
normal electric power supply. Emergency service to receptacles and equipment may be a delayed automatic connection. Receptacles connected to emergency power must be of a uniform and distinctive color. Stored fuel capacity must be sufficient for not less than four-hour operation of required generator.

(4) Emergency motor generator, if required or provided, must meet the following standards:

(A) any emergency generator must be installed in accordance with NFPA 37 and NFPA 99;

(B) generators located on the exterior of the building must be provided with a noncombustible protective cover or be protected as per manufacturer's recommendations; and

(C) motor generators fueled by public utility natural gas must have the capacity to be manually or automatically switched to an alternate fuel source, as specified in NFPA 70.

(5) Wiring for the emergency system must be in accordance with NFPA 70.

(b) When life support systems are used, the facility must provide emergency electrical power with an emergency generator (as defined in NFPA 99, Health Care Facilities) located on the premises.

Source Note: The provisions of this §19.303 adopted to be effective July 1, 1996, 21 TexReg 4408; amended to be effective March 1, 2001, 26 TexReg 1171
(a) The facility must:

(1) provide sufficient space and equipment in dining, health services, recreation, and program areas to enable staff to provide residents with needed services as required by these standards and as identified in each resident's plan of care; and

(2) maintain all essential mechanical, electrical, and patient care equipment in safe operating condition.

(b) A wing or area which is separated from the rest of the facility by locked doors for the purpose of securing residents must meet the requirements of §19.2208(a)(6) and (c)(1)-(10) of this title (relating to Standards for Certified Alzheimer's Facilities).

(c) If children are residents of the facility, the facility must provide:

(1) indoor and outdoor recreation areas designed to encourage exploration within the children's capabilities; and

(2) pediatric equipment and supplies in appropriate size for the age and development level of the children. Pediatric emergency supplies and equipment must be readily available for use.

Source Note: The provisions of this §19.304 adopted to be effective July 1, 1996, 21 TexReg 4408.
Resident rooms must be designed and equipped for adequate nursing care, comfort, and privacy of residents.

(1) Bedrooms must:

(A) accommodate no more than four residents. The total number of beds in ward rooms with three or more beds must not exceed 50% of the total facility capacity in existing facilities unless approved by the Texas Department of Human Services (DHS).

(B) measure at least 80 square feet per resident in multiple resident bedrooms and at least 100 square feet in single resident rooms.

(C) have direct access to an exit corridor.

(D) be designed or equipped to assure full visual privacy for each resident. Appropriate measures must be taken through the use of cubicle curtains, screens, or procedures to protect the privacy and dignity of the residents. Curtains and screens must be rendered and maintained flame-retardant.

(E) in facilities initially certified after March 31, 1992, except in private rooms, have ceiling-suspended curtains for each bed, which extend around the bed to provide total visual privacy, in combination with adjacent walls and curtain (see paragraph (4) of this section).

(F) have at least one operable window to the outside which can readily be opened from the inside without the use of tools. The height of the window sill (opening) must not exceed 36 inches above the floor. The minimum area of windows in each bedroom must equal at least 8.0% of the room area. Operable window sections may be restricted to not more than six nor less than four inches for security or safety reasons if approved in writing by DHS. Each window must be provided with a flame-retardant shade, curtain, or blind.

(G) have a floor at or above grade level.

(2) The facility must provide each resident with:

(A) a separate bed of proper size and height for the convenience of the resident. The bed will be a minimum of 36 inches wide with a headboard of sturdy construction. Each bed must be provided with suitable bedspreads and blankets to assure the comfort and warmth of each resident, and must not be passed from resident to resident without first being laundered. The bed of each resident with physician's orders for bedrails must have bedrails affixed to both sides of the bed;
(B) a clean, comfortable mattress with a moisture-proof cover, and a comfortable pillow;

(C) bedding appropriate to the weather and climate; and

(D) functional furniture appropriate to the resident's needs including a comfortable chair, bedside cabinet, and individual closet space in the resident bedroom with at least 16 inches of hanging space, shelves for personal belongings accessible to the resident, and closeable door(s). Each bedroom must be provided with at least one noncombustible wastebasket.

(3) DHS may permit variations in requirements specified in paragraph (1)(A) and (B) of this section relating to rooms in individual cases when the facility demonstrates in writing that the variations:

(A) are required by the special needs of the residents; and

(B) will not adversely affect residents' health and safety.

(4) The width and length of bedrooms and the arrangement of furniture must assure appropriate resident circulation, especially in relation to emergency evacuation and to usual wheelchair movement. Bedrooms should not be less than 10 feet in the smallest dimension. There must be at least 36 inches between beds and should be at least 18 inches between any bed and the adjacent parallel wall that restricts access by the resident (that is, bed sides should not have to be placed against a wall to meet other spacing requirements). Beds must not extend into the bedroom door opening, nor must any other piece of furnishing or equipment be located where it might preclude or inhibit the removal of any bed or closing and latching of the bedroom door in an emergency.

(5) Each bed must have access to a nurse-call device that is part of an electrical nurse-call system.

(6) Each bed must be provided with an appropriate, safe, durable, nonglare, permanently bed-mounted or wall-mounted reading-light fixture. The fixture must be wired in accordance with National Fire Protection Association (NFPA) 70. These fixtures should be mounted at least five feet, six inches above the floor. The switch must be within reach of a resident in the bed.

(7) At least one duplex receptacle must be provided for each bed. Other duplex receptacles must be provided as needed and/or as required by NFPA 70.

(8) Each bedroom must be assured of having general lighting, either by means of appropriate combination reading light or by means of separate fixture.

(9) For emergency separation from fire and smoke, bedroom doors must be maintained to close completely without dragging or binding, to latch securely, and to fit reasonably tight in the frame. The gap between the floor and the bottom of the closed door must not exceed 3/4 inch.

(10) Vacant bedrooms may not be used for hazardous activities or hazardous storage, unless specifically approved by DHS in writing.

(11) Bedrooms must be identified with a raised or recessed unique number placed on or near the door. Refer to §19.319(c) of this title (relating to Provisions for Persons with Disabilities) and §19.301(c)(5) of this title (relating to Applicable Codes and Standards).
(12) Residents must be permitted and encouraged to have personal possessions in their rooms that do not interfere with their care, treatment, or well-being, or that of other residents. Pediatric resident's rooms should be decorated and furnished in accordance with the age and developmental level of the children and as an expression of their individual preferences.

(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;

(B) residents for whom the attending physician wants bedroom door locks to enhance their sense of security; and

(C) residents for whom restraint through confinement to their own rooms is necessary for their own and/or other persons' safety.

(14) In situations such as those listed in paragraph (13) of this section, the following guidelines must be met:

(A) bedroom door locks for other than restraining purposes must be of the type which the occupant can unlock at will from inside the room;

(B) all bedroom door locks must be of the type which can be unlocked from the corridor side;

(C) attendants must carry keys which will permit ready accessibility to the locked bedrooms when entrance becomes necessary;

(D) bedroom doors which are locked for resident restraining purposes must be dutch-doors, with only the lower section locked. The upper part of the doorway must be open to permit visual supervision of the residents from the corridor. The dutch door should be easily unlocked by nurses and attendants. Resident restraints of any nature cannot be applied without orders from the attending physician. See §19.601 of this title (relating to Resident Behavior and Facility Practice).

(E) locking of bedroom doors by residents for privacy or security or by nursing facility staff for restraint (dutch door) will not be permitted except when specifically included in the attending physician's written orders or authorized by the nursing facility administrator.

Source Note: The provisions of this §19.305 adopted to be effective July 1, 1996, 21 TexReg 4408.
Texas Administrative Code

TITLE 40  SOCIAL SERVICES AND ASSISTANCE
PART 1  DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 19  NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION
SUBCHAPTER D  FACILITY CONSTRUCTION
RULE §19.306  Toilet Facilities

Each resident room must be equipped with or located near toilet and bathing facilities.

(1) Bedrooms not provided with their own (or shared) direct-access toilets and baths must have general-use baths and toilets conveniently located for each sex.

(2) Bathtubs or showers must be provided at minimum rate of one for each 20 beds which are not otherwise served by bathing facilities directly accessible from resident bedrooms.

(3) In toilet facilities designed for multi-resident use, water closets must be separated in such a manner that they can be used independently and afford privacy. Toilet paper in a suitable dispenser must be provided within reach of each toilet.

(4) Water closets and lavatories must be provided at a minimum rate of one for each eight beds which are not otherwise served by fixtures directly accessible from resident bedrooms. A lavatory must be provided in or adjacent to each area having a water closet.

(5) Lavatories must be equipped with a mixer faucet and hot and cold water. Resident-use hot water must be provided within the temperature guidelines specified in §19.322(g) of this title (relating to Plumbing).

(6) There must be a sufficient number of toilet rooms and bathing areas designed to accommodate residents in wheelchairs, including sufficient space in or around fixtures. Proper heights, locations, and installations must be made for grab bars, and any mirrors and accessories provided.

(7) Grab bars and lavatories must be substantially anchored to withstand sustained and repeated downward and outward pressure. Grab bars must be provided at all resident water closets and bathing fixtures. New grab bar installations must meet the requirements of the Texas Department of Licensing and Regulation, Elimination of Architectural Barriers Section.

(8) Floors, walls, and ceilings must have a nonabsorbent, cleanable surface. Floors and tub or shower standing surfaces must be slip resistant.

(9) Doors to bathing and toilet facilities must be wide enough for safe and easy passage of residents in wheelchairs. Folding or sliding doors must not be used unless it can be established that no safety hazard exists.

(10) Keys to resident baths or toilets with privacy locks must be kept readily available to staff.

(11) Provision must be made for sanitary hand washing and drying by staff, visitors, or residents at each
lavatory.

(12) Bathrooms and toilets rooms must have a negative air pressure in relation to adjacent areas with air exhausted through ducts to the exterior.

(13) Bathing areas must be provided with safe heating.

(14) Bathtubs, showers, and lavatories must be kept clean and in proper working order. They must not be used for laundering or for storage of soiled materials or for the cleaning of mops or brooms.

(15) Nurse-call devices must be provided at resident-use baths and toilets and be within easy reach of residents.

(16) Electrical outlets in wet areas must be provided with ground fault interrupters, excluding toilet rooms where there are no bathing units.

Source Note: The provisions of this §19.306 adopted to be effective July 1, 1996, 21 TexReg 4408.
(a) The nurse's station must be equipped to receive resident calls through a communication system from:

(1) resident rooms; and

(2) toilet and bathing facilities.

(b) The call cord does not have to be accessible in all parts of the room, but must be accessible to the resident. The system must be connected to on and off switches operable at each bed, toilet unit, and bathing unit.

(c) Each call entered into the system must activate a corridor dome light above the bedroom, bathroom, or toilet corridor door that opens onto a corridor.

(d) A visual signal at the nurses station must indicate the room from which the call was placed with an audible signal of sufficient amplitude to be clearly heard by nursing staff. The amplitude or pitch of the audible signal must not be irritating to residents or visitors.

(e) The system must be designed so calls entered into the system may be canceled only at the calling station. Intercom-type systems which meet this requirement are acceptable.

Source Note: The provisions of this §19.307 adopted to be effective July 1, 1996, 21 TexReg 4408.
Texas Administrative Code

TITLE 40  SOCIAL SERVICES AND ASSISTANCE
PART 1  DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 19  NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION
SUBCHAPTER D  FACILITY CONSTRUCTION
RULE §19.308  Dining and Resident Activities

(a) Requirements. The facility must provide one or more rooms designated for resident dining and activities. These rooms must be:

(1) well-lighted;

(2) well ventilated, with nonsmoking areas identified;

(3) adequately furnished; and

(4) sufficiently spacious to accommodate all activities.

(b) Resident living areas.

(1) Resident living areas such as living rooms, dayrooms, lounges, recreation rooms, and sunrooms must be provided to meet the needs of the residents' comfort. Combined living and dining areas should be not less than 19 square feet per bed, but must not be less than ten square feet per bed.

(2) No single room less than 100 square feet will be included as part of the acceptable total area required.

(3) At least one living area must have an outside window.

(4) Living areas must be provided with comfortable furniture of substantial construction and be appropriately decorated to provide a pleasant and comfortable environment for residents and visitors. Furnishings and decorations must not obstruct exits or ways of egress.

(5) Nonsmoking areas must be provided and identified.

(c) Dining areas. Dining space must be provided to adequately serve needs of the residents and provide an efficient, sanitary, and pleasant environment for dining.

Source Note: The provisions of this §19.308 adopted to be effective July 1, 1996, 21 TexReg 4408.
The facility must provide a safe, functional, sanitary, and comfortable environment for residents, staff, and the public.

(1) The facility must:

   (A) establish procedures to ensure that water is available to essential areas when there is a loss of normal water supply;

   (B) have adequate outside ventilation by means of windows, mechanical ventilation, or a combination of the two;

   (C) maintain an effective pest control program so that the facility is free of pests and rodents; and

   (D) equip corridors with firmly secured handrails on each side on all walls 18 inches or greater. These rails must be substantially anchored to withstand downward force and must be mounted 33 to 36 inches from the floor.

(2) No occupancies or activities undesirable to the health, safety, or well-being of residents will be located in the facility.

(3) For pediatric residents, the environment must be the least restrictive allowable while remaining within the parameters of safety. All areas of the facility accessible to children must be "child proof" for safety hazards. This type of safety proofing is above the normal level of hazard control maintained for adult residents and includes the addition of safety covers on electrical outlets not in use which are accessible to children.

(4) In operations where there is a chance of cross-contamination, clean and soiled operations must be separated to lessen the chance of cross-contamination by facility employees, residents, and others. This separation must be in relation to traffic flow, air currents, air exhaust, water flow, vapors, and other conditions.

(5) An electric water cooler or water fountain must be accessible to residents. When new drinking fountains are provided, at least one must be installed to be accessible to persons in wheelchairs.

(6) Public toilet(s) with sanitary handwashing and drying provisions must be provided or designated.

(7) If deodorant is used for air-freshening purposes, the following procedures must apply:

   (A) deodorants or air fresheners are permitted provided the dispensing device is located where it is inaccessible to residents and patients;
(B) these products are not used to cover odors resulting from poor housekeeping practices or unsanitary conditions;

(C) these products are not used in excess;

(D) there is no contra-indication on the label of the product indicating that the product should not be used in the presence of aged or ill persons; and

(E) devices, such as ozone generators, ultra-violet generators, and smoke eliminators, must be approved by the Texas Department of Human Services.

Source Note: The provisions of this §19.309 adopted to be effective July 1, 1996, 21 TexReg 4408.
Rule §19.310

Site and Grounds

(a) Site grades must provide for positive surface water drainage so that there will be no ponding or standing water at or near the building that would present a hazard to health or provide a breeding site or harborage for carriers of disease.

(b) Outdoor activity, recreational, and sitting spaces must be provided for residents as space permits.

(c) Each facility must have parking spaces to satisfy the needs of residents, employees, staff, and visitors. Provisions must be made for handicapped parking and access into the building.

(d) Protection must be provided for resident safety from traffic or other site hazards by the use of appropriate methods, such as fences, hedges, retaining walls, railings, or other landscaping. This protection must not inhibit the free emergency egress to a safe distance away from the building.

(e) Auxiliary buildings located on the site within 20 feet of the main licensed structure and which contain hazardous operations or contents, such as laundries or storage buildings, must meet the same code requirements for safety as the main licensed structure.

(f) Other buildings on the site must meet the appropriate occupancy section or separation requirements of the Life Safety Code.

(g) All outside areas, grounds, and adjacent buildings on the site must be maintained in good condition and kept free of rubbish, garbage, and untended growth that may constitute a fire or health hazard.

(h) Enclosed exterior spaces, such as fenced areas, that are in a means of egress to a public way must meet the requirements of §19.2208(a)(6) of this title (relating to Standards for Certified Alzheimer's Facilities).

Source Note: The provisions of this §19.310 adopted to be effective July 1, 1996, 21 TexReg 4408.
(a) The facility must be served by a paid or volunteer fire department.

(1) The fire department must provide written assurance to the licensing agency that the fire department can respond to an emergency at the facility within an appropriately prompt time for the travel conditions involved.

(2) The facility must have an annual inspection by the local fire marshal and maintain documentation of such an inspection at the facility.

(b) The facility must be served by an adequate water supply that is satisfactory and accessible for fire department use as determined by the fire department serving the facility and by the Texas Department of Human Services (DHS).

(c) There must be at least one approved, readily accessible fire hydrant located within 300 feet of the building. The hydrant must be on a minimum six-inch service line, or else there must be an approved equivalent, such as a storage tank. The hydrant, its location, and service line, or equivalent must be approved by the local fire department and DHS.

(d) The building must have suitable fire lanes for access as required by local fire authorities and DHS.

Source Note: The provisions of this §19.311 adopted to be effective July 1, 1996, 21 TexReg 4408; amended to be effective August 1, 2000, 25 TexReg 6779
(a) Corridors and other means of egress must be kept clear of obstructions and must not be used for any purpose which would interfere with its use as an exit, such as for storage, vending machines, seating, or similar purposes. The corridor width must be maintained at all times.

(b) Ways of egress and exit signs must be illuminated at all times.

c) In addition to the required normal and emergency illumination, the facility must keep on hand and readily available to night staff no less than one working flashlight per nurses station.

d) Doors within the means of egress must not be equipped with a latch or lock which requires the use of a key or tool to open from the inside of the building. A latch or other fastening device on a door must be provided with a knob, handle, panic bar, or other simple type of releasing device with an obvious method of operation, even in darkness.

e) A hold-open device must be installed on each exit door.

Source Note: The provisions of this §19.312 adopted to be effective July 1, 1996, 21 TexReg 4408.
(a) Interior finishes of walls and ceilings must have limited flame-spread rating as required by the Life Safety Code. Where new interior finishes of walls, ceilings, or floors are applied to existing facilities, the new finishes must meet the requirements for flame-spread ratings for new construction. Fire retardant paints or solutions must not be applied to new materials in an effort to meet flame-spread requirements for new construction. This description of interior finishes does not apply to furniture or accessories.

(b) Floors of the facility must be level, smooth, and free of any irregularities which might affect safety.

(c) Walls and ceilings not specifically described elsewhere in this chapter must be cleanable, maintained attractively, and in good repair.

(d) Walls and floors must be kept free of cracks. The joint between the walls and floors is to be maintained so as to be free of spaces which might harbor insects, rodents, or vermin.

Source Note: The provisions of this §19.313 adopted to be effective July 1, 1996, 21 TexReg 4408.
Fire alarms, detection systems, and sprinkler systems must be as required by the Life Safety Code, the National Fire Protection Association (NFPA) 72, and NFPA 13.

(1) Components must be compatible and laboratory listed for the use intended.

(2) Wiring and circuitry for alarm systems must meet the applicable requirements for NFPA standards, including NFPA 70, for these systems.

(3) Fire alarm systems must be installed, maintained, and repaired by an agent having a current certificate of registration with the State Fire Marshal's Office of the Texas Commission on Fire Protection, in accordance with state law. A fire alarm installation certificate must be provided as required by the Office of the State Fire Marshal.

(4) Smoke detector sensitivity must be checked within one year after installation and every alternate year thereafter in accordance with NFPA 72. Documentation, including as-built installation drawings, operation and maintenance manuals, and a written sequence of operation for systems installed after July 1, 2000, must be available for examination by the Texas Department of Human Services (DHS).

(5) The fire alarm system must be designed so that whenever the general alarm is sounded by activation of any device (such as manual pull, smoke sensor, sprinkler, or kitchen range hood extinguisher) the following will occur automatically:

   (A) smoke and fire doors which are held open by an approved device must be released to close;

   (B) air handlers (air conditioning/heating distribution fans) serving three or more rooms or any means of egress must shut down immediately;

   (C) smoke dampers must close; and

   (D) the alarm-initiating location must be clearly indicated on the fire alarm control panel(s) and all auxiliary panels.

(6) Consistent fire alarm bells or horns must be located throughout the building for audible coverage. Flashing alarm lights (visual alarms) must be installed to be visible in corridors and public areas including dining rooms and living rooms.

(7) A master control panel which indicates location of alarm and trouble conditions (by zone or device) must
be visible at the main nurse station. All control panels must be listed in accordance with the provisions of the Underwriters Laboratories, Inc. (UL) for intended use, such as manual, automatic, and water-flow activation. Alarm and trouble zoning must be by smoke compartments and by floors in multi-story facilities.

(8) Remote annunciator panels, indicating location of alarm initiation by zone or device and common trouble signals, must be located at auxiliary or secondary nurses stations on each floor or major subdivision of single story facilities and indicate the alarm condition of adjacent zones and the alarm conditions at all other nurse stations.

(9) Manual pull stations must be provided at all exits, living rooms, dining rooms, and at or near the nurse stations.

(10) The NFPA 13 sprinkler system must be monitored for flow and tamper conditions by the fire alarm system.

(11) The kitchen range hood extinguisher must be interconnected with the fire alarm system. This interconnection may be a separate zone on the panel or combined with other initiating devices located in the same zone as the range hood is located.

(12) Partial sprinkler systems provided only for hazardous areas must be interconnected to the fire alarm system and comply with the Life Safety Code. Each partial system must have a valve with a supervisory switch to sound a supervisory signal, water-flow switch to activate the fire alarm, and an end-of-line test drain.

**Source Note:** The provisions of this §19.314 adopted to be effective July 1, 1996, 21 TexReg 4408; amended to be effective August 1, 2000, 25 TexReg 6779
Portable fire extinguishers must be provided and maintained to comply with the provisions of the National Fire Protection Association (NFPA) 10. This includes type of extinguishers (A, B, or C), location and spacing, mounting heights, monthly inspections by staff, yearly inspections by a licensed agent, any necessary servicing, and hydrostatic testing as recommended by the manufacturer.

1. Extinguishers in resident corridors must be spaced so that travel distance is not more than 75 feet. The minimum size of extinguishers must be either 2 1/2 gallon for water type or five pound for ABC type.

2. Extinguishers must be installed on supplied hangers or brackets or be mounted in cabinets approved by the Texas Department of Human Services (DHS).

3. Extinguishers must be surface wall-mounted or recessed in cabinets where they are not subject to physical damage or dislodgement.

4. Extinguishers having a gross weight not exceeding 40 pounds must be installed so that the top of the extinguisher is not more than five feet above the floor. Extinguishers with a gross weight greater than 40 pounds must be installed so the top of the extinguisher is not more than 3-1/2 feet above the floor. The clearance between the bottom of the extinguisher and the floor must not be less than four inches.

5. Portable extinguishers provided in hazardous rooms must be located as close as possible to the exit door opening and on the latch (knob) side.

6. Staff must be appropriately trained in the use of each type of extinguisher in the facility.

Source Note: The provisions of this §19.315 adopted to be effective July 1, 1996, 21 TexReg 4408.
(a) Subdivision of building spaces must be as required by the Life Safety Code.

(b) The facility must maintain the integrity of smoke barrier walls, including those parts of walls in attics and other concealed spaces.

(c) The facility must maintain the integrity of smoke dampers in air ducts.

(d) Ducts with smoke dampers must have maintenance panels for inspection. The maintenance panels must be removable without tools. Means of access must also be provided in the ceiling or side wall to facilitate smoke damper inspection readily and without obstruction. Location of dampers must be identified on the wall or ceiling of the occupied area below.

Source Note: The provisions of this §19.316 adopted to be effective July 1, 1996, 21 TexReg 4408.
Elevators must comply with the provisions of the Life Safety Code and American National Standard Institute Safety Code for Elevators and Escalators (ANSI/ASME A17.1). Elevators are required for buildings having residents' facilities, such as bedrooms, dining, or recreation areas; or services, such as diagnostic or therapy, located on other than the main entrance floor. Passenger elevators and escalators must be inspected by a qualified agent at least every six months. Freight elevators must be inspected every 12 months.

Source Note: The provisions of this §19.317 adopted to be effective July 1, 1996, 21 TexReg 4408.
(a) Nurses station. A nurses station is an area designated as the focal point on all shifts for the administration and supervision of resident-care activities for a designated number of resident bedrooms.

(1) All resident bedroom corridors must be observable by direct line of sight or by mechanical means from a designated nurses station or auxiliary station. There must be at least one nurses station per floor in multi-storied buildings.

(2) If all resident bedroom corridors are observable by direct line of sight from inside the nurses station or from within 24 inches of the counter or hall of the nurses station, no auxiliary stations are required, even if resident bedrooms are more than 150 feet from the nurses station.

(3) When resident bedrooms are more than 150 feet from the nurses station and the adjacent corridors are not observable from the station by direct line of sight, an auxiliary station must be established and used.

(4) All corridors adjacent to resident bedrooms that are more than 150 feet from a designated nurses station or auxiliary station must be observable by direct line of sight from the designated nurses station or auxiliary station. Corridors located in the service area of an auxiliary station must be observable, as described in paragraphs (2) and (3) of this subsection, at the auxiliary station.

(5) The 150-foot limitation described paragraphs (2)-(4) of this subsection may be increased to 165 feet in facilities or additions to facilities completed before August 10, 1983.

(b) Auxiliary station. Each auxiliary station must include a work area in which nursing personnel can document and maintain resident data, even if the facility’s initial decision is to maintain clinical records at the nurses station.

(1) Auxiliary stations must be staffed by nursing personnel during all shifts.

(2) More than one auxiliary station may be assigned to a designated nurses station, regardless of the distance between stations. More than one corridor may be observed by mechanical means from a designated nurses station or auxiliary station.

(3) A nurse call system, located in the service area or a designated auxiliary station, must register calls at the nurses station to which it is assigned.

(4) Each auxiliary station must have an emergency electrical source adequate to power lights at the station.

(5) Medications and clinical records may be maintained at an auxiliary station.
(6) If a required auxiliary station does not already exist and the facility must establish a new auxiliary station, all applicable standards, particularly those pertaining to the physical plan and the Life Safety Code, must be observed. All renovations and structural changes require prior approval from the Texas Department of Human Services (DHS).

(7) All new construction completed after August 10, 1983, must allow direct line-of-sight observation of all resident bedroom corridors from the nurses station or auxiliary station.

(c) Mechanical means for resident observation.

(1) The nursing facility may use mechanical means, such as closed-circuit television and mirrors, to observe residents in the facility.

(2) Closed-circuit television monitoring systems must meet the following criteria:

(A) The camera(s) must be placed to view the entire corridor length, without any "blind spots."

(B) The camera(s) must be capable of providing recognizable images, in minimum and maximum light levels, for the complete viewing area.

(C) The monitor(s) must be installed and be clearly visible to persons in the nurses station or auxiliary station who are assigned to the area monitored by the camera.

(D) The system must be supplied with emergency power that enables the system to function during electrical service failures.

(E) Each camera must have its own separate monitor.

(F) If they perform the minimum basic functions specified in subparagraphs (A)-(D) of this paragraph, television monitoring systems installed before March 1984 may remain in service until the equipment is replaced or the system is expanded. Replacement systems or new component equipment must satisfy subparagraphs (A)-(E) of this paragraph.

(3) Mirrors must meet the following criteria:

(A) The mounting height of the mirror must be no less than six feet and eight inches from the floor to the bottom of the mirror.

(B) The mirror(s) must not extend more than 3-1/2 inches from the face of the corridor wall, unless the bottom of the mirror is more than seven feet and six inches above the floor.

(C) The mirror image must be clear enough that individuals can be recognized, in minimum and maximum light levels, throughout the viewing area.

(4) The monitoring systems described in this section must not be used to deny privacy to staff or residents.

(d) Resident call system. Each nurses station must be equipped to register residents' calls through a communication system from resident areas. See §19.307 of this title (relating to Resident Call System) for specific requirements.
(e) Medication storage area. There must be sufficient, lockable, enclosed medicine storage spaces, medicine room, or medication cart. The medication storage area must be furnished with a refrigerator. There must be sufficient space available for a medication preparation area equipped with a sink having hot and cold water. When not in use, the medication cart must be secured in a designated area. Only authorized personnel must have access to the medication storage area and the medication cart. Medication storage and preparation areas must be adequately ventilated and temperature controlled. See §19.1501 of this title (relating to Pharmacy Services).

(f) Clean utility room. A clean utility room must be provided and must contain a sink with hot and cold water. It must be part of a system for storage and distribution of clean and sterile supply materials and equipment.

(g) Soiled utility room. A soiled utility room must be provided and contain a flushing fixture and a sink with hot and cold water. It must be part of a system for collection and cleaning or disposal of soiled utensils or materials.

(h) Soiled linen room. Soiled linen rooms must be provided as needed commensurate with the type of laundry system used. In relation to adjacent areas, a negative air pressure must be provided with air exhausted through ducts to the exterior. Air must be exhausted continually whenever there are soiled linens in the room. A soiled linen room may be combined with a soiled utility room.

(i) Clean linen storage. Clean linen storage must be provided, conveniently located to resident bedroom areas.

(j) Kitchens.

(1) Nursing facility kitchens will be evaluated on the basis of their performance in the sanitary and efficient preparation and serving of meals. Consideration will be given to planning for the type of meals served, the overall building design, the food service equipment, arrangement, and the work flow involved in the preparation and delivery of food. Evaluation will be based on the number of meals served.

(2) Kitchen temperature, at peak load, must not exceed a temperature of 85 degrees Fahrenheit measured over the room at the five foot level. Sufficient heating must be provided to maintain an average temperature of not less than 70 degrees Fahrenheit in winter (with exhausts operating) at the five-foot level.

(3) The kitchen must have operational equipment for preparing and serving meals and for refrigerating and freezing of perishable foods, as well as equipment in, and/or adjacent to, the kitchen or dining area for producing ice.

(4) The kitchen must have facilities for washing and sanitizing dishes and cooking utensils. These facilities must be adequate for the number of meals served and the method of serving (such as use of permanent or disposable dishes). The kitchen must contain a multi-compartment sink large enough to immerse pots and pans. In all facilities, a mechanical dishwasher is required for sanitizing dishes. Separation of soiled and clean dish areas must be maintained, including air flow and traffic flow.

(5) The kitchen must have an adequate supply of hot and cold water. Hot water for sanitizing purposes must be 180 degrees Fahrenheit or the manufacturer's suggested temperature for chemical sanitizers, as specified for the system in use. For mechanical dishwashers, the temperature measurement is at the manifold. Hot water for general kitchen use must be 140 degrees Fahrenheit.

(6) A kitchen must have at least one handwashing lavatory in the food-preparation area. The dish washing area...
must have ready access to a handwashing lavatory or hand sanitizing device. Handwashing lavatories must be provided with hot and cold running water, a sanitary soap dispenser, and paper towel dispenser (or hot air dryer).

(7) Nonabsorbent smooth finishes or surfaces must be used on kitchen floors, walls, and ceilings. These surfaces must be capable of being routinely sanitized to maintain a healthful environment.

(8) A janitor's closet with service sink must be easily and readily accessible to the kitchen.

(9) Kitchen exhaust hood at cooking equipment and its attached automatic chemical extinguisher must comply with National Fire Prevention Association (NFPA) 96. DHS may waive certain details of NFPA 96 for existing kitchen exhausts at cooking equipment provided that basic function and safety are not compromised.

(k) Food storage areas.

(1) Food storage areas must provide for storage of a seven-day minimum supply of nonperishable staple foods and a two-day supply of perishable foods at all times.

(2) Shelves and pallets must be moveable wire, metal, or sealed lumber, and walls must be finished with a nonabsorbent finish to provide a cleanable surface.

(3) Dry food storage must have a venting system to provide for reliable positive air circulation.

(4) The maximum room temperature for food storage must not exceed 85 degrees Fahrenheit at all times. The measurement must be taken at the five-foot level.

(5) Foods must not be stored on the floor. Dunnage carts or pallets may be used to elevate foods not stored on shelving.

(6) Sealed containers must be provided for storing dry foods after the package seal has been broken.

(7) Food storage areas may be located apart from the food preparation area as long as there is space adjacent to the kitchen for necessary daily usage.

(l) Auxiliary serving kitchens (those not contiguous to food preparation and serving areas).

(1) Where service areas other than the kitchen are used to dispense foods, these must be designated as food service areas and must have equipment for maintaining required food temperatures while serving.

(2) Separate food service areas must have handwashing facilities as a part of the food service area.

(3) Finishes of all surfaces except ceilings must be the same as those required for dietary kitchens.

(m) Administrative and public areas. Facilities must have administrative area(s) for normal business transactions and maintenance of records.

(n) Laundry.

(1) Laundry facilities must be located in areas separate from resident rooms. The laundry must be designed,
constructed, and equipped and appropriate procedures must be utilized to assure that laundry is handled, cleaned, and stored in a sanitary manner.

(2) Laundry for general linen and clothing must be arranged so as to separate soiled and clean operations as they relate to traffic, handling, and air currents. Suitable exhaust and ventilation must be provided to prevent air flow from soiled to clean areas.

(3) Floors, walls, and ceilings must be nonabsorbing and easily cleanable.

(4) Soiled linen must be stored and/or transported in closed or covered containers. Soiled linen storage or holding rooms must have a negative air pressure in relation to adjacent areas with air exhausted through ducts to the exterior.

(5) Laundry areas must have air supply and ventilation to minimize mildew and odors. Doors must not remain open, for sanitation and safety reasons.

(6) Room size, and number and type of appliances must provide efficient, sanitary, and timely laundry processing to meet the needs of the facility.

(7) The laundry, if located in the facility, must meet Life Safety Code requirements for separation and construction for hazardous areas.

(o) Resident-use laundry. This service, if provided, must be limited to not more than one residential type washer and dryer per laundry room. This room must be classified as a hazardous area according to the Life Safety Code.

(p) Personal grooming area. Space and equipment must be provided for the hair care and grooming needs of the residents. Hair care and grooming service will be provided in resident bedrooms or in designated areas which are not in a way of egress.

(q) Storage rooms. General and/or specific storage areas must be provided as needed and required for safe and efficient operation of the facility. Items must not be stored in inappropriate places such as corridors or rooms which are not equipped for special hazard protection.

(r) Janitor closets. In addition to the janitors' closet called for in certain departments, other janitors' closets must be provided throughout the facility to maintain a clean and sanitary environment. All janitor closets must have a negative air pressure in relation to adjacent areas with air exhausted through ducts to the exterior.

Cont'd...
New facilities and additions must meet the requirements of the Texas Department of Licensing and Regulation, Elimination of Architectural Barriers Section. Existing facilities must meet the requirements of the Americans with Disabilities Act and must, at a minimum, comply with the following:

(1) The facility must provide and mark at least one parking space for persons with disabilities.

(2) The facility must provide wheelchair access into the building by use of ramps and curb breaks. Ramps must not slope more than 1:12 (one unit of rise to 12 units of run).

(3) Room identification signs or letters must be installed four feet six inches to five feet above finished floor and located on the corridor walls adjacent to the latch side of the door jamb. Letters or numbers on signs must be raised or recessed at least 1/32 inch minimum. Characters must be at least 5/8 inch in height and no higher than two inches.

(4) Grab bars at toilet and bathing units must be 1-1/4 inch to 1-1/2 inch in diameter.

(5) Toilet facilities must be available and of sufficient size to accommodate wheelchairs. There must be at least one public wheelchair-accessible restroom.

(6) Water closet seat height in toilet facilities for persons with disabilities must be 17 to 19 inches from floor.

(7) Mirrors and dispensers for persons with disabilities must be no higher than 40 inches above the floor.

(8) Drinking fountains or coolers must meet American National Standards Institute (ANSI) A117.1 (that is, up front spout and controls no more than 36 inches from floor maximum). Fountains existing at the time of this publication do not have to be altered.

(9) Public telephones, if provided, must meet ANSI A117.1. Mounting height must not exceed 48 inches to coin slot.

Source Note: The provisions of this §19.319 adopted to be effective July 1, 1996, 21 TexReg 4408.
Current recommendations of the Illumination Engineering Society of North America must be followed to achieve proper illumination characteristics and lighting levels throughout the facility. Minimum illumination must be ten foot candles in resident rooms and 20 foot candles in corridors, nurses stations, dining rooms, lobbies, toilets, bathing facilities, laundries, stairways, and elevators. Illumination requirements for these areas apply to lighting throughout the space and should be measured at approximately 30 inches above the floor anywhere in the room. Minimum illumination for overbed reading lamps, medication preparation or storage areas, kitchens, and nurse's station desks must be 50 foot candles. Illumination requirements for these areas apply to the task performed and should be measured on the task.

Source Note: The provisions of this §19.320 adopted to be effective July 1, 1996, 21 TexReg 4408.
(a) The heating system must be capable of maintaining a temperature of not less than 71 degrees Fahrenheit at the resident level in all resident-use areas.

(1) Auxiliary heating devices permanently installed, such as heat strips in ducts, electric ceiling-mounted heating units, and electric baseboards, may be used to augment a central heating system as approved by the Texas Department of Human Services (DHS). See §19.705 of this title (relating to Environment).

(2) All gas heating systems must be checked annually for proper operation and safety by persons who are licensed or approved by the State of Texas to inspect such equipment. A record of this service must be maintained by the facility. Any unsatisfactory condition must be corrected promptly.

(b) The cooling system must be capable of maintaining a temperature suitable for the comfort of the residents in resident-use areas.

(c) Air flow must be directed or adjusted so that a resident is not in direct drafts that could be harmful to the health and comfort of the resident.

(d) Unvented heating units and portable heaters are prohibited.

(e) The facility must be well ventilated through the use of windows, mechanical ventilation, or a combination of both. Rooms and areas which do not have outside windows and which are used by residents or personnel must be provided with functioning mechanical ventilation to change the air on a basis commensurate with the room usage. Air systems must provide for the induction and mixing of at least 10% outside fresh air into the facility unless otherwise approved by DHS; that is, 100% continuous recirculation of interior air in most areas is not acceptable. When certain rooms or areas are dependent on a central air system for proper ventilation, including exhaust, that central air system fan must run continuously.

(f) Operable outside windows must be provided with insect screens. Outside doors must be self-closing to control entry of insects. All exterior doors must be effectively weather stripped.

(g) Heating and air conditioning systems must be provided with clean and effective air filters.

(h) Ducts and piping subject to surface condensation must be insulated to prevent condensation at least in areas which may affect sanitation or cause building deterioration.

(i) A comfortable temperature for residents when bathing must be provided.
(j) Heating, ventilating, and air conditioning systems must comply with the provisions of applicable National Fire Prevention Association (NFPA) standards. Ducts are to be of a Class A material (noncombustible). Combustion air for gas-fired equipment must be ducted from the exterior.

(k) Air flow must be designed to prevent cross contamination within any area where applicable, such as laundries and kitchens, as well as the system or facility as a whole.

(l) In relation to adjacent areas, a positive air pressure must be provided for clean utility rooms, clean linen rooms, and medication rooms. Conditioned supply air must be introduced into these rooms.

(m) In relation to adjacent areas, a negative air pressure must be provided for soiled utility rooms, soiled laundry rooms, bathrooms, toilets, and other odor-producing rooms. Air from these rooms must not be recirculated, but instead must be exhausted through ducts to the exterior by effective means.

(n) Facility temperature must be maintained for the comfort of residents.

Source Note: The provisions of this §19.321 adopted to be effective July 1, 1996, 21 TexReg 4408; amended to be effective August 1, 2000, 25 TexReg 6779
(a) If the municipality has a plumbing code, that code must be used as a basis for determining the correctness of plumbing installation. In the absence of a municipal code, a nationally recognized plumbing code must be used.

(b) The water supply must be of safe, sanitary quality, suitable for use, and adequate in quantity and pressure. The water must be obtained from a water supply system, the location, construction, and operation of which are approved by the Texas Natural Resource Conservation Commission.

(c) Sewage must be discharged into a state-approved sewerage system or the sewage must be collected, treated, and disposed of in accordance with applicable Texas Natural Resource Conservation Commission rules and regulations.

(d) The wastewater drainage and sewage system must assure that sanitation is maintained for residents. Wastewater or sewage must not be discharged on the surface of the ground. Traps must not be allowed to lose their seal. Appliances must have air gaps as required for connections to the sewerage system. Venting must assure a rapid flow of wastewater in the sewage system.

(e) The interior cold water supply system and piping must be so placed or so insulated as to prevent condensation drip in habitable areas and in storage areas.

(f) Backflow preventers or vacuum breakers must be installed with any water supply fixture where the outlet or attachments may be submerged.

(g) Resident-use hot water must be reliably controlled, such as by thermostatic or mixing valves, to not exceed 110 degrees Fahrenheit and not less than 100 degrees Fahrenheit at each fixture.

(h) Hot water for other usages must be provided at the temperatures required for the appliance or fixture or for the operation involved, such as dishwashing and laundry.

(i) The supply quantity of hot water must be adequate for normal peak load usage. Facilities which continue to experience a shortage of hot water must remedy the situation by such means as adding storage tanks, adding or increasing the size of water heaters, or other approved means.

(j) Water heaters must be equipped with pressure temperature relief valves.

Source Note: The provisions of this §19.322 adopted to be effective July 1, 1996, 21 TexReg 4408.
(a) The facility must provide sufficient housekeeping and maintenance personnel, equipment, and supplies to maintain the interior, exterior, and grounds of the facility in a safe, clean, orderly, and attractive manner. In a nursing facility, an employee must be designated as responsible for housekeeping services.

(b) Occupied resident rooms must be cleaned and put in order at least daily.

(c) Storage areas must be kept safe and free from accumulations of extraneous materials such as refuse, discarded furniture, and newspapers. Combustibles, such as cleaning rags and compounds, must be kept in closed metal containers and labeled.

(d) Attics, mechanical rooms, boiler rooms, and other similar areas must not be used for storage purposes.

(e) All bleaches, detergents, disinfectants, insecticides, and other poisonous substances must be kept in a safe place accessible only to employees. They must not be kept in containers previously containing food or medicine. Containers must be labeled.

Source Note: The provisions of this §19.323 adopted to be effective July 1, 1996, 21 TexReg 4408.
(a) An effective, safe, and continuing pest control system against insects, rodents, and vermin must be in operation in the facility. Pest control services must be provided by nursing facility personnel or by contract with a licensed pest control company. Care must be taken to use the least toxic and least flammable effective insecticides and rodenticides. These compounds must be stored in nonfood preparation and storage areas. Poisons must be under lock.

(b) The facility must protect against harborages and entrances for insects, rodents, and vermin. Outside doors must be self-closing to control entry of pests.

(c) Garbage and trash must be stored in enclosed containers, protected against leakage, contact with disease carriers, and access to animals. It must be stored in areas separate from those used for the preparation and storage of food and must be removed from the premises in conformity with state and local practices. Garbage and trash containers must be maintained free of accumulations and coatings of garbage. Garbage storage areas must be kept clean and in a state of good repair.

Source Note: The provisions of this §19.324 adopted to be effective July 1, 1996, 21 TexReg 4408.
(a) The nursing facility must have available at all times a quantity of linen essential for the proper care and comfort of residents. Linens must be handled, stored, and processed so as to control the spread of infection.

(b) Linen will be maintained in good repair.

(c) Linen must be washed, dried, stored, and transported in a manner which will produce hygienically clean linen. The washing process must have a mechanism for soil removal and bacteria kill.

(d) Clean linen must be stored in a clean linen area easily accessible to the personnel.

(e) Clean towels and washcloths must be provided to each resident as needed or desired. Towels and washcloths must be stored in a sanitary manner between uses by the resident and must not be used by more than one resident between launderings.

(f) Soiled linen and clothing must be stored separately from clean linen and clothing. Soiled linen and clothing must be stored in well ventilated areas, and must not be permitted to accumulate in the facility. Soiled linen and clothing must be transported in accordance with procedures consistent with universal precautions. Bags or containers must not be reused to transport or store clean items.

(g) Soiled linen must not be sorted, laundered, rinsed, or stored in bathrooms, resident rooms, corridors, kitchens, or food storage areas, except soiled linen and clothing which is not contaminated with blood may be rinsed in a resident's bathroom water closet.

(h) Resident's personal clothing that is not soiled with body wastes may be stored in a closed container in the resident's closet. The clothing must be collected and cleaned at least weekly.

(i) Facility staff must wash their hands both after handling soiled linen and before handling clean linen.

Source Note: The provisions of this §19.325 adopted to be effective July 1, 1996, 21 TexReg 4408.
(a) The facility must have a written emergency preparedness and response plan. Procedures to be followed in an internal or external disaster should be attached to the plan. The plan must address, at a minimum, the eight core functions of emergency management, which are: direction and control; warning (how the facility will be notified of emergencies and who they will notify); communication (with whom and by what mechanism); sheltering arrangements; evacuation (destinations, routes); transportation; health and medical needs; and resource management (supplies, staffing, emergency equipment, records). Plans should address those natural, technological, and man-made emergencies that could affect the facility and must be coordinated with the local emergency management coordinator. Information about the local emergency management coordinator may be obtained from the office of the local mayor or county judge.

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

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

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

(4) In smaller, simple, one story buildings where all exits are obvious, the Texas Department of Human Services (DHS) may not require the posting of evacuation routes.

(5) The facility must have an emergency contingency plan to ensure the residents' comfort and safety, including the provision of potable water.

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

(b) The facility must report all fires to DHS on the Fire Report for Long Term Care Facilities Form within 15 days after the fire. The facility must immediately notify DHS by phone of disasters or any fires which caused death or serious injury. Telephone reports must be followed by written reports. Failure of the fire alarm,
emergency power, or sprinkler system will require that all facility staff be informed of conditions, and the facility must take special precautions such as establishing a fire watch, appropriate to the situation. These situations must be reported to the local fire authority.

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

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

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

(f) Emergency generators, if required or provided, must be maintained in operating condition at all times.

   (1) Generators must be inspected and run, under load, for at least 30 minutes each week. A signed or initialed record or log must be kept on file by the facility. The log should document maintenance performed, time taken to transfer load, and length of run times.

   (2) The condition and proper operation of the emergency egress lighting also should be checked at this time.

   (3) If duplex receptacles are not available at resident bed locations where patient-care-related electrical appliances are in use, a facility must demonstrate that it can provide the diagnostic, therapeutic, or monitoring benefits of the patient-care-related electrical appliances through alternative means in the event of a power outage.

(g) A functional test must be conducted on every required battery emergency lighting system at 30-day intervals for a minimum of 1/2 hour. An annual test must be conducted for a one and 1/2 hour duration. Equipment must be fully operational for the duration of the test. Written records of testing must be kept in the facility for inspection by the authority having jurisdiction.

(h) Automatic, fixed, dry-chemical extinguishers mounted in kitchen range hoods must be inspected and serviced by a licensed agent (type A license with the State Fire Marshal's office) at least once every six months. A written, signed report must be left on file with the facility. The hood, exhaust ducts, and filters must be kept clean and free of accumulated grease.

(i) Portable fire extinguishers must be visually inspected monthly by facility staff and must have maintenance provided annually by a licensed agent in accordance with National Fire Prevention Association (NFPA) 10. A record of the annual maintenance must be kept in the facility. Portable extinguishers must be protected from damage and must be kept on their mounting brackets or in cabinets at all times.

(j) Facilities using gas must have the gas piping lines from the meter and appliances tested for leaks annually by a...
A written, signed report must be made of these tests and kept on file. Any unsatisfactory conditions must be noted and corrected promptly.

(k) Smoking policies must be adopted and enforced by the facility. The policies must comply with all applicable codes, regulations, and standards, including local ordinances. The facility is responsible for informing residents, staff, visitors, and other affected parties of smoking policies through distribution and/or posting. The facility is responsible for enforcement of smoking policies. Smoking must be prohibited in any room, ward, or compartment where flammable liquids, combustible gas, or oxygen are used or stored and in any other hazardous locations. These areas must be posted with "No Smoking" signs.

(l) No storage is permitted in rooms with gas-fired equipment. Bulk storage of volatile or flammable liquids or materials is not allowed anywhere within the building.

(m) Medical equipment, carts, wheelchairs, tables, furniture, dispensing machines, and similar physical objects, must not be stored in corridors or other ways of egress.

(n) Smoke doors, fire doors, and doors to hazardous rooms must be kept closed and must not be propped or wedged open. Only approved devices such as alarm-activated electromagnetic hold-open devices may be used to hold these doors open, except doors to rooms classified as severe hazard.

(o) Electrical extension cords must not be used on a permanent or semi-permanent basis as a substitute for approved wiring methods. Approved electrical receptacles must be provided in quantity and location for the normal use of appliances.

(p) All abandoned utilities such as electrical wiring, ducts, and pipes, must be removed from the facility when no longer usable.

Source Note: The provisions of this §19.326 adopted to be effective July 1, 1996, 21 TexReg 4408; amended to be effective March 1, 1998, 23 TexReg 1314; amended to be effective August 1, 2000, 25 TexReg 6779; amended to be effective March 1, 2001, 26 TexReg 1171.
(a) Construction phase.

(1) DADS Regulatory Services Division in Austin, Texas, must be notified in writing of construction start.

(2) All construction must be done in accordance with minimum licensing requirements. It is the sponsor's responsibility to employ qualified personnel to prepare the contract documents for construction of a new facility or remodeling of an existing facility. Contract documents for additions and remodeling and for the construction of an entirely new facility must be prepared by an architect licensed by the Texas State Board of Architectural Examiners. Drawings must bear the seal of the architect. Certain parts of contract documents (including final plans, designs, and specifications) must bear the seal of a licensed professional engineer approved by the Texas Board of Professional Engineers to operate in Texas or, as permitted by subsections (b)(12) and (15) of this section, signed by a Responsible Managing Employee or Alarm Planning Superintendent licensed by the State Fire Marshal's Office. These certain parts include sheets and sections covering structural, electrical, mechanical, sanitary, and civil engineering.

   (A) Remodeling is the construction, removal, or relocation of walls and partitions, the construction of foundations, floors, or ceiling-roof assemblies, the expanding or altering of safety systems (including, but not limited to, sprinkler, fire alarm, and emergency systems), or the conversion of space in a facility to a different use.

   (B) General maintenance and repairs of existing material and equipment, repainting, applications of new floor, wall, or ceiling finishes, or similar projects are not included as remodeling, unless as a part of new construction. DADS must be provided flame spread documentation for new materials applied as finishes.

(b) Contract documents.

(1) Site plan documents must include grade contours; streets (with names); north arrow; fire hydrants; fire lanes; utilities, public or private; fences; unusual site conditions, such as ditches, low water levels, other buildings on-site; and indications of buildings five feet or less beyond site property lines. Site plan documents for nursing facilities may include the developed landscaping plan for resident use as called for in §19.332(f) of this chapter (relating to Location and Site).

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

(3) Floor plan documents must include room names, numbers, and usages; resident care areas; doors (numbered) including swing; windows; legend or clarification of wall types; dimensions; fixed equipment; plumbing fixtures; and kitchen basic layout; and identification of all smoke barrier walls (outside wall to outside wall)
wall) or fire walls.

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

(5) Schedules must include door materials, widths, types; window materials, sizes, types; room finishes; and special hardware.

(6) Elevations and roof plan must include, but is not limited to, exterior elevations, including material note indications and any roof top equipment, roof slopes, drains, and gas piping, and interior elevations where needed for special conditions.

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

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

(9) Electrical documents must include electrical layout, including lights, convenience outlets, equipment outlets, switches, and other electrical outlets and devices; service, circuiting, distribution, and panel diagrams; exit light system (exit signs and emergency egress lighting); emergency electrical provisions (such as generators and panels); and similar systems (such as control panel, devices, and alarms); a nurse call system; and sizes and details sufficient to assure safe and properly operating systems.

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

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

(12) Fire sprinkler system plans and hydraulic calculations, must be designed in accordance with the applicable sections of the National Fire Protection Association (NFPA) 13, and signed by a Responsible Managing Employee, licensed by the State Fire Marshal's Office, or sealed by a licensed professional engineer.

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

(14) Specifications must include installation techniques, quality standards and/or manufacturers, references to specific codes and standards, design criteria, special equipment, hardware, painting, and any others as needed to amplify drawings and notes.
(15) Fire detection and alarm system working plans must be designed in accordance with the applicable sections of the National Fire Alarm and Signaling Code, NFPA 72, and the National Electric Code, NFPA 70, and signed by an Alarm Planning Superintendent licensed by the State Fire Marshal's Office or sealed by a licensed professional engineer.

(c) Initial survey of completed construction.

(1) Upon completion of construction, including grounds and basic equipment and furnishings, a final construction inspection (initial survey) of the facility, including additions or remodeled areas, is required to be performed by DADS' architectural inspecting surveyor prior to occupancy. The completed construction must have the written approval of the local authorities having jurisdiction, including the fire marshal and building inspector.

(2) The inspection described in paragraph (1) may be obtained on an expedited basis. An applicant may obtain a Life Safety Code inspection within 15 business days after DADS receives a written request if the applicant submits:

(A) a complete application as required in §19.201(b) of this chapter (relating to Criteria for Licensing) and §19.204 of this chapter (relating to Application Requirements); and

(B) the appropriate Life Safety Code fee listed in §19.220 of this chapter (relating to Expedited Life Safety Code and Physical Plant Inspection Fees).

(3) After the completed construction has been surveyed by a representative of DADS' architectural section and found acceptable, this information will be conveyed to the licensing officer as part of the information needed to issue a license to the facility. In the case of additions or remodeling of existing facilities, a revision or modification to an existing license may be necessary. Note that the building, grades, drives, parking, and grounds must be essentially 100% complete at the time of this initial survey visit for occupancy approval and licensing, including basic furnishings and operational needs.

(4) A copy of the following documents must be provided to DADS' architectural inspecting surveyor at the time of the survey of the completed building:

(A) written approval of local authorities as called for in paragraph (1) of this subsection;

(B) record drawings of the fire detection and alarm system as installed, signed by an Alarm Planning Superintendent licensed by the State Fire Marshal's Office or sealed by a licensed professional engineer, including a sequence of operation, the owner's manuals and the manufacturer's published instructions covering all system equipment, a signed copy of the State Fire Marshal's Office Fire Alarm Installation Certificate, and, for software-based systems, a record copy of the site-specific software (excluding the system executive software or external programmer software) in a non-volatile, non-erasable, non-rewritable memory;

(C) documentation of materials used in the building which are required to have a specific limited fire or flame spread rating including, but not limited to, special wall finishes or floor coverings, flame retardant curtains (including cubicle curtains), and rated ceilings. This must include a signed letter from the installer verifying that the material installed, such as carpeting, is the same material named in the laboratory test document;

(D) record drawings of the fire sprinkler system as installed, signed by a Responsible Managing Employee...
licensed by the State Fire Marshal's Office or sealed by a licensed professional engineer, including the hydraulic calculations, alarm configuration, aboveground and underground Contractor's Material and Test Certificate, all literature and instructions provided by the manufacturer describing the proper operation and maintenance of all equipment and devices in accordance with Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems, NFPA 25;

(E) service contracts for maintenance and testing of systems, including, but not limited to, alarm systems and sprinkler systems;

(F) a copy of gas test results of the facility's gas lines from the meter;

(G) a written statement from an architect and/or engineer stating that he certifies that the building was constructed to meet NFPA 101, Life Safety Code, and all locally applicable codes, and that the facility is in substantial conformance with minimum licensing requirements; and

(H) the contract documents specified in subsection (b) of this section.

(d) Nonapproval of new construction.

(1) If, during the survey of completed construction, the surveyor finds certain basic requirements not met, DADS will not license the facility or approve it for occupancy. Such basic items may include the following:

(A) construction which does not meet minimum code or licensure standards for basic requirements such as corridor widths being less than eight feet clear width, ceilings installed at less than the minimum seven feet six inches height, resident bedroom dimensions less than required width, and other similar features which would disrupt or otherwise adversely affect the residents and staff if corrected after occupancy;

(B) no written approval by local authorities;

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

(D) required exits are not all usable according to Life Safety Code requirements;

(E) telephone not installed or not properly working;

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

(G) any other basic operational or safety feature which the surveyor, as the authority having jurisdiction, encounters which in his judgment would preclude safe and normal occupancy by residents on that day.

(2) If the surveyor encounters deficiencies that do not affect the health and safety of the residents, licensure may be recommended based on an approved written plan of correction by the facility's administrator.

(3) Copies of reduced size floor plan on an 8 1/2 inch by 11 inch sheet must be submitted in duplicate to DADS for record and/or file use and for the facility to use in evacuation planning and fire alarm zone identification. The plan must contain basic legible information such as overall dimensions, room usage names, actual bedroom numbers, doors, windows, and any other pertinent information.
Source Note: The provisions of this §19.330 adopted to be effective July 1, 1996, 21 TexReg 4408; amended to be effective June 1, 2010, 35 TexReg 4465
(a) This subchapter is written for, and applies to, new construction, including conversions, additions, and remodelings. The requirements of the Life Safety Code, Standard 101 of the National Fire Protection Association (NFPA), as required under Health and Safety Code, §242.039, and other applicable NFPA codes and standards referenced in NFPA 101 will apply unless otherwise noted or modified in this subchapter. The provisions of the chapter or subchapter and the provisions of the New Health Care Occupancies of the Life Safety Code are applicable.


(2) The definitions listed in §19.101 of this title (relating to Definitions) also apply to this subchapter.

(3) In addition to the Life Safety Code and the standards referenced therein, this subchapter is subject to the codes, standards, and requirements established by the following: Underwriters Laboratories, Inc.; the American National Standards Institute, Inc. (ANSI); the National Electrical Code (NFPA 7O); the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE); and the American Society for Testing Materials (ASTM). Various references to these entities will be made throughout these sections.

(b) All applicable local, state, or national codes and ordinances must be met as determined by the authority having jurisdiction for those codes and ordinances and by the Texas Department of Human Services (DHS). Any conflicts must be made known to DHS Long Term Care-Regulatory office for appropriate resolution.

(c) The design of structural systems must be done by or under the direction of a professional engineer who is currently registered by the Texas State Board of Registration for Professional Engineers.

(d) If an existing licensed facility plans building additions or remodeling which includes construction of additional resident beds, then the ratio of bathing units must be reevaluated to meet minimum standards and the square footage of dining and living areas must be reevaluated by DHS at a minimum of 19 square feet per bed. Conversion of existing living, dining, or activity areas to resident bedrooms must not reduce these functions to a total area of less than 19 square feet per bed. The dietary department must be evaluated by the facility's registered or licensed dietitian or architect having knowledge in the design of food service operations. This evaluation must be provided to DHS.

(e) No building may be occupied by residents prior to inspection and approval to occupy by DHS.

(f) The words "shall" or "must" are requirements. The word "should" is a recommendation which is expected to
be followed unless there is valid reason not to do so.

(g) Nothing in §§19.332-19.343 of this title ((relating to Location and Site, General Considerations, Architectural Space Planning and Utilization, Exit Provisions, Smoke Compartmentation (Subdivision of Building Spaces), Fire Protection Systems, Hazardous Areas, Structural Requirements, Mechanical Requirements, Electrical Requirements, Miscellaneous Details, and Elevators)) may be construed as prohibiting a better type of building or construction, more space, services, features, or greater degree of safety than the minimum requirements.

Source Note: The provisions of this §19.331 adopted to be effective July 1, 1996, 21 TexReg 4408.
(a) Site approval is normally required of the local building department and fire marshal having jurisdiction. Any conditions considered to be a fire, safety, or health hazard will be grounds for disapproval of the site by the Texas Department of Human Services (DHS). New facilities may not be built in an area designated as a floodplain of 100 years or less.

(b) Site grades must provide for positive surface water drainage so that there will be no ponding or standing water on the designated site. This does not apply to local government requirements for engineered controlled run-off holding ponds.

(c) A new building (or addition) must be set back at least ten feet from the property lines except as otherwise approved by DHS.

(d) Exit doors from the building must not open directly onto a drive for vehicular traffic, but must be set back at least six feet from the edge of the drive (measured from the end of the building wall in the case of a recessed door) to prevent accidents due to lack of visual warning.

(e) Walks must be provided as required from all exits and must be of non-slip surfaces free of hazards. Walks must be at least 48 inches wide except as otherwise approved. Ramps should be used in lieu of steps where possible for the handicapped and to facilitate bed or wheelchair removal in an emergency.

(f) Outdoor activity, recreational, and sitting spaces must be provided and appropriately designed, landscaped, and equipped. Some shaded and/or covered outside areas are needed. These areas must be designed to accommodate residents in wheelchairs.

(g) Each facility must have parking space to satisfy the needs of residents, employees, staff, and visitors. In the absence of a formal parking study, each facility must provide for a ratio of at least one parking space for every four beds in the facility. This ratio may be reduced slightly in areas convenient to public parking facilities. Space must be provided for emergency and delivery vehicles. No parking space may block or inhibit egress from the outside exit doors. Parking spaces and drives must be at least ten feet away from windows in bedrooms, dining, and living areas.

(h) Barriers must be provided for resident safety from traffic or other site hazards by the use of appropriate methods such as fences, hedges, retaining walls, railings, or other landscaping. These barriers must not inhibit the free emergency egress to a safe distance away from the building.

(i) Open or enclosed courts with resident rooms or living areas opening upon them must not be less than 20 feet in the smallest dimension unless otherwise approved by DHS. Exceptions would be as follows:
(1) Nonparallel wings forming an acute angle may have a maximum of two windows each side less than 20 feet but not less than ten feet.

(2) Windows may be separated by a distance equal to the depth of the court but not less than ten feet.

(3) For unusual or unique site conditions, courts with resident rooms opening upon them on one side only must be not less than ten feet in the smallest dimension, provided that the opposite wing does not contain a hazardous area, and the wall has no openings which could permit fire to reach the resident room side.

(j) Auxiliary buildings located within 20 feet of the main building and which contain hazardous areas such as laundry and storage buildings must meet the applicable Life Safety Code requirements for separation and construction.

(k) Other buildings on the site must meet the appropriate occupancy section or separation requirements of the Life Safety Code.

(l) Fire service and access must be as follows:

(1) The facility must be served by a paid or volunteer fire department. The fire department must provide written assurance to DHS that the fire department can respond to an emergency at the facility within an appropriately prompt time for the travel conditions involved.

(2) The facility must be served by an adequate water supply that is satisfactory and accessible for fire department use as determined by the fire department serving the facility and by DHS.

(3) There must be at least one readily accessible fire hydrant located within 300 feet of the building. The hydrant must be on a minimum six inch service line, or else there must be an approved equivalent, such as a storage tank. The hydrant, its location, and service line, or equivalent must be as approved by the local fire department and DHS.

(4) The building must have suitable all-weather fire lanes for access as required by local fire authorities and DHS. As a minimum, there must be access to two sides of the building by an all-weather lane at least ten feet wide. Fire lanes must have at least 14 feet in clearance width above grade (two feet each side of the ten-foot roadbed) and be kept free of obstructions at all times. All-weather access lanes must be no less than a properly constructed gravel lane.

Source Note: The provisions of this §19.332 adopted to be effective July 1, 1996, 21 TexReg 4408.
(a) Services. Nursing facilities must either contain the elements described in this section or the provider must indicate the manner in which the needed services are to be made available. Each element provided in the facility must comply with the requirements of this subchapter. Appropriate modifications or deletions in space requirements may be made when services are shared or purchased.

(b) Sizes. The sizes of the various departments will depend upon program requirements and organization of services within the facility. Some functions requiring separate spaces or rooms in these minimum requirements may be combined provided that the resulting plan will not compromise the best standards of safety and of medical and nursing practices.

(c) Shared or combined services. Nursing facilities may be operated together with hospitals and may share administration, food service, recreation, janitor service, and physical therapy facilities, but must otherwise have clearly identifiable physical separations such as a separate wing or floor. Nursing facilities with different levels of care will require identifiable physical separations. Combined attendant or nurse stations and medication room areas will require some separating construction features.

(d) Exterior finishes. Unless otherwise approved by the Texas Department of Human Services (DHS), the exterior finish material of buildings classified (per the National Fire Protection Association (NFPA 220)) as fire resistive or protected noncombustible must be Class A in the Life Safety Code. All others must be Class A or B in the Life Safety Code. Items of trim may be of combustible material subject to approval by DHS. Roofing must be Underwriter Laboratories listed as Class A or B.

(e) Interior finishes.

(1) Interior finish of walls, ceilings, and floors must meet the Life Safety Code requirements for new construction.

(2) Documentation of finishes, including, but not limited to, copies of lab test reports and material labels is required.

(f) Corridor travel distance. Corridor travel from the nurse station to the farthest resident room must assure prompt service to the resident. The normal travel for nursing efficiency is considered to be not over 85 feet and must not exceed 150 feet.

(g) Accessibility for individuals with disabilities. The facility must meet the provisions and requirements concerning accessibility for individuals with disabilities in the following laws: the Americans with Disabilities Act of 1990 (Public Law 101-336; Title 42, United States Code, Chapter 126); Title 28, Code of Federal...
Regulations, Part 35; Texas Civil Statutes, Article 9102; and Title 16, Texas Administrative Code, Chapter 68. Plans for new construction, substantial renovations, modifications, and alterations must be submitted to the Texas Department of Licensing and Regulation (Attention: Elimination of Architectural Barriers Program) for accessibility approval under Article 9102.

(h) Handrails. Handrails must be provided on each side of all resident-use corridors. Handrails for other areas should be provided as needed to facilitate resident movement or egress. Design of handrails must be in accordance with the American National Standards Institute (ANSI) A117.1. These handrails may extend into the minimum required corridor width without widening the corridor (that is, in an eight-foot-wide corridor, handrails may project up to 3 1/2 inches on each side). Reference §19.342(a)(8) and (9) of this title (relating to Miscellaneous Details) for handrail details.

Source Note: The provisions of this §19.333 adopted to be effective July 1, 1996, 21 TexReg 4408.
(a) Resident bedrooms. Each resident bedroom must meet the following requirements:

(1) The maximum room capacity must be four residents.

(2) No more than 25% of the total licensed beds may be in bedrooms with more than two beds each.

(3) Minimum bedroom area, excluding toilet rooms, closets, lockers, wardrobes, alcoves, or vestibules, must be 100 square feet in single occupancy rooms and 80 square feet per bed in multi-bed rooms.

(4) The minimum allowable room dimension is ten feet. The room must be designed to provide at least 36 inches between beds and 24 inches between any bed and the adjacent (parallel) wall.

(5) Each room must have at least one operable outside window arranged and located so that it can be easily opened from the inside without the use of tools or keys. The maximum allowable sill height (to opening) must not exceed 36 inches above the floor. All operative windows must have insect screens. The minimum area of window(s) in each bedroom must equal at least 16 square feet or 8.0% of the room area, whichever is larger.

(6) Each room must have general lighting, bed reading lights, and night lighting. The night light must be switched just inside the entrance to each resident room with a silent type switch unless otherwise approved by the Texas Department of Human Services (DHS). The light providing general illumination must be switchable at the door of the resident room for use of staff and residents. A durable nonglare (opaque front panel) reading light securely anchored to the wall, integrally wired, must be provided for each resident bed. The switch must be within reach of a resident in the bed.

(7) Two duplex or a fourplex grounding type receptacles must be provided beside the head of each bed. Other walls must have duplex receptacles as needed for TV, radio, razors, hairdryers, clocks, and/or as required by the National Electrical Code, National Fire Protection Association (NFPA 70), which is a registered trademark of the National Fire Protection Association, Inc., Quincy, Massachusetts 02269.

(8) Each resident must have access to a toilet room without entering the general corridor area. One toilet room must serve no more than two resident rooms. The toilet room must contain a water closet and a lavatory. The lavatory may be omitted from a toilet room which serves two bedrooms if each resident room contains a lavatory. See subsection (c)(1) of this section for baths and other toilet facility requirements.

(9) Each resident must have a bed with a comfortable mattress, a bedside stand with at least two enclosed storage spaces, a dresser, and closet or wardrobe space providing privacy for clothing and personal belongings. Clothes storage space must provide at least 22 inches of lineal hanging space per bed and have closable doors.
Chairs and space must be provided for use by residents and/or visitors.

(10) Each room must open onto an exit corridor and must be arranged for convenient resident access to dining, living, and bathing areas.

(11) Visual privacy (such as cubicle curtains) must be available for each resident in multi-bed rooms. Design for privacy must not restrict resident access to entry, lavatory, or toilet, nor may it restrict bed evacuation or obstruct sprinkler flow coverage.

(12) At least one noncombustible wastebasket must be provided in each bedroom.

(13) See the requirements in §19.341(d)(4) of this title (relating to Electrical Requirements) for nurse call systems.

(b) Nursing service areas. The service areas described in this subsection must be located in or readily available to each nursing unit. The size and disposition of each service area will depend upon the number and types of beds to be served. Each service area may be arranged and located to serve more than one nursing unit, but at least one service area must be provided on each nursing floor. The maximum allowable distance from a resident room door to a nurse station is 150 feet. The following requirements are applicable to services areas:

(1) Nurse stations must be provided with space for nurses' charting, doctors' charting, and storage for administrative supplies. Nurses stations must be located to provide a direct view of resident corridors. A direct view of resident corridors is acceptable if a person can see down the corridors from a point within 24 inches of the outside of the nurse station counter or wall.

(2) Lounge and toilet room(s) must be provided for nursing staff.

(3) Lockers and/or security compartments must be provided for the safekeeping of personal effects of staff. These must be located convenient to the duty station of personnel or in a central location.

(4) Clean utility room(s) must contain a work counter, sink with high-neck faucet with lever controls, and storage facilities and must be part of a system for storage and distribution of clean and sterile supply materials.

(5) Soiled utility room(s) must contain a water closet or equivalent flushing rim fixture, a sink large enough to submerge a bedpan with spray hose and high-neck faucet with lever controls, work counter, waste receptacle, and linen receptacle. These utility rooms must be part of a system for collection and cleaning or disposal of soiled utensils or materials. A separate handwash sink must be provided if the bedpan disinfecting sink cannot normally be used for handwashing.

(6) Provision must be made for convenient and prompt 24-hour distribution of medication to residents. The medication preparation room must be under the nursing staff's visual control and contain a work counter, refrigerator, sink with hot and cold water, and locked storage for biologicals and drugs and must have a minimum area of 50 square feet. The minimum dimension allowed is five feet six inches. An appropriate air supply must be provided to maintain adequate temperature and ventilation for safe storage of medications. For purposes of storage of unrefrigerated medications, the room temperature must be maintained between 59 degrees and 86 degrees F.

(7) Provision must be made for separate closets or room for clean linens. Corridors must not be used for
folding or cart storage. Storage rooms must be located and distributed in the building for efficient access to bedrooms.

(8) Soiled linen rooms must be provided as required in subsection (l) of this section.

(9) A nourishment station(s) is usually required in all but the smaller facilities and must contain a sink equipped for handwashing, equipment for serving nourishment between scheduled meals, refrigerator, and storage cabinets. Ice for residents' service and treatment must be provided only by icemaker units. This station may be furnished in a clean utility room.

(10) An equipment storage room must be provided for equipment such as intravenous stands, inhalators, air mattresses, and walkers.

(11) Parking spaces for stretchers and wheelchairs must be located out of the path of normal traffic.

c) Residents' bathing and toilet facilities. The following requirements are applicable to bathing and toilet facilities:

(1) Bathtubs or showers must be provided at the rate of one for each 20 beds which are not otherwise served by bathing facilities within residents' rooms. At least one bathing unit must be provided in each nursing unit. Each tub or shower must be in an individual room or enclosure which provides space for the private use of the bathing fixture, for drying and dressing, and for a wheelchair and an attendant. Each general-use bathing room (those not directly serving adjoining bedrooms) must be provided with at least one water closet (in a stall, room, or area for privacy) and one lavatory. These bathing room(s) must be located conveniently to the bedroom area it serves and must not be more than 100 feet from the farthest bedroom. See requirements in subsection (a)(8) of this section for resident toilets at bedrooms. Each facility must provide at least one whirlpool tub unit as one of the required bathing units.

(2) At least 50% of bathrooms and toilet rooms, fixtures, and accessories must be designed and provided to meet criteria under the Americans with Disabilities Act of 1990 for individuals with disabilities unless otherwise approved by DHS.

(3) All rooms containing bathtubs, sitz baths, showers, and water closets, subject to occupancy by residents, must be equipped with swinging doors and hardware which will permit access from the outside in any emergency.

(4) Bathing areas must be provided with safe and effective auxiliary or supplementary heating. Bathing areas must be free of drafts and must have adequate exhaust ducted to the outside to minimize excess moisture retention and resulting mold and mildew problems.

(5) Tubs and showers must be provided with slip-proof bottoms.

(6) Lavatories and handwashing facilities must be securely anchored to withstand an applied downward load of not less than 250 pounds on the front of the fixtures.

(7) Provision must be made for sanitary hand drying and toothbrush storage at lavatories. There must be paper towel dispensers or separate towel racks and separate toothbrush holders.
(8) Mirrors must be arranged for convenient use by residents in wheelchairs as well as by residents in a standing position, and the minimum size must be 15 inches in width by 30 inches in height, or tilt type.

(9) Rooms with toilets must be provided with effective forced air exhaust ducted to the exterior to help remove odors. Ducted manifold systems are recommended for some multiple-type installations.

(10) Floors, walls, and ceilings must have nonabsorbent surfaces, be smooth, and easily cleanable.

(d) Disposal facilities. Space and facilities must be provided for the sanitary storage of waste by incineration, mechanical destruction, compaction, containerization, removal, or by a combination of these techniques.

(e) Resident living areas. The following requirements are applicable to resident living areas:

(1) Social-diversional spaces such as living rooms, dayrooms, lounges, sunrooms, must be provided on a sliding scale as follows:

Attached Graphic

(2) Where a required way of exit (or a service way) is through a living (or dining) area, a pathway equal to the corridor width will normally be deducted for calculation purposes and discounted from that area. These exit pathways must be kept clear of obstructions.

(3) Each resident living room and dining room must have at least one outside window. The window area must be equal to at least 8.0% of the total room floor area. Skylighting may be used to fulfill one-half of the 8.0% minimum area.

(4) See §19.331(d) of this title (relating to Construction Standards for Additions, Remodeling, and New Nursing Facilities) for capacity increases to existing facilities.

(5) Open or enclosed seating space must be provided within view of the main nurse station that will allow furniture or wheelchair parking that does not obstruct the corridor way of egress.

(f) Dining space. Dining space must be adequate for the number of residents served, but no less than ten square feet per resident bed. See §19.331(d) of this title (relating to Construction Standards for Additions, Remodeling, and New Nursing Facilities) for bed capacity increases to existing facilities.

(g) Dietary facilities. The following requirements are applicable to dietary facilities:

(1) Kitchens (main/dietary) must be as follows:

(A) Kitchens will be evaluated on the basis of their performance in the sanitary and efficient preparation and serving of meals to residents. Consideration will be given to planning for the type of meals served, the overall building design, the food service equipment, arrangement, and the work flow involved in the preparation and delivery of food. Plans must include a large-scale detailed kitchen layout designed by a registered or licensed dietitian or architect having knowledge in the design of food service operations.

(B) Kitchens must be designed so that room temperature at peak load (summertime) will not exceed a temperature of 85 degrees Fahrenheit measured over the room at the five-foot level. The amount of supply air...
must take into account the large quantities of air that may be exhausted at the range hood and dishwashing area.

(C) Operational equipment must be provided as planned and scheduled by the facility consultants for preparing and serving meals and for refrigerating and freezing of perishable foods, as well as equipment in, and/or adjacent to, the kitchen or dining area for producing ice.

(D) Facilities for washing and sanitizing dishes and cooking utensils must be provided. These facilities must be designed based on the number of meals served and the method of serving, that is, use of permanent or disposable dishes. As a minimum, the kitchen must contain a multi-compartment sink large enough to immerse pots and pans. In all facilities, a mechanical dishwasher is required for washing and sanitizing dishes. Separation of soiled and clean dish areas must be maintained, including air flow.

(E) A vegetable preparation sink must be provided, and it must be separate from the pot sinks.

(F) A supply of hot and cold water must be provided. Hot water for sanitizing purposes must be 180 degrees Fahrenheit or the manufacturer's suggested temperature for chemical sanitizers. For mechanical dishwashers the temperature measurement is at the manifold.

Cont'd...
(G) A kitchen must be provided with a hand-washing lavatory in the food preparation area with hot and cold water, soap, paper towel dispenser, and waste receptacle. The dish room area must have ready access to a handwashing lavatory.

(H) Staff rest room facilities with lavatory must be directly accessible to kitchen staff without traversing resident use areas. The rest room door must not open directly into the kitchen (that is, provide a vestibule).

(I) Janitorial facilities must be provided exclusively for the kitchen and must be located in the kitchen area.

(J) Nonabsorbent smooth finishes or surfaces must be used on kitchen floors, walls, and ceilings. These surfaces must be capable of being routinely cleaned and sanitized to maintain a healthful environment. Counter and cabinet surfaces, inside and outside, must also have smooth, cleanable, relatively nonporous finishes.

(K) Operable windows must have insect screens provided.

(L) Doors between kitchen and dining or serving areas must have a safety glass view panel.

(M) A garbage can or cart washing area with drain and hot water must be provided.

(N) Floor drains must be provided in the kitchen and dishwashing areas.

(O) Vapor removal from cooking equipment must be designed and installed in accordance with NFPA 96.

(P) Grease traps must be provided in compliance with local plumbing code or other nationally recognized plumbing code.

(Q) See §19.331(d) of this title (relating to Construction Standards for Additions, Remodeling, and New Nursing Facilities) for bed capacity increases to existing facilities.

(2) Food storage areas must be as follows:

(A) Food storage areas must provide for storage of a seven-day minimum supply of nonperishable foods at all times.

(B) Shelves must be adjustable wire type. Walls and floors must have a nonabsorbent finish to provide a cleanable surface. No foods may be stored on the floor; dollies, racks, or pallets may be used to elevate foods not stored on shelving.
(C) Dry foods storage must have an effective venting system to provide for positive air circulation.

(D) The maximum room temperature for food storage must not exceed 85 degrees F at any time. The measurement must be taken at the highest food storage level but not less than five feet from the floor.

(E) Food storage areas may be located apart from the food preparation area as long as there is space adjacent to the kitchen for necessary daily usage.

(3) Auxiliary serving kitchens (not contiguous to food preparation/serving area) must be as follows:

(A) Where service areas other than the kitchen are used to dispense foods, these must be designated as food service areas and must have equipment for maintaining required food temperatures while serving.

(B) Separate food service areas must have hand-washing facilities as a part of the food service area.

(C) Finishes of all surfaces, except ceilings, must be the same as those required for dietary kitchens or comparable areas. See paragraph (1)(J) of this subsection.

(h) Administrative and public areas.

(1) The following elements must be provided in the public area:

(A) The entrance must be at grade level, sheltered from the weather, and able to accommodate wheelchairs. A drive-under canopy must be provided for the protection of residents or visitors entering or leaving a vehicle. The latter may be a secondary entrance.

(B) The lobby must include:

(i) storage space for wheelchairs (if more than one is kept available);

(ii) a reception and/or information area (may be obviously adjacent to lobby);

(iii) waiting space(s);

(iv) public toilet facilities for individuals with disabilities (may be adjacent to lobby);

(v) at least one public access telephone(s), installed to meet standards under the Americans with Disabilities Act; and

(vi) drinking fountain(s). These may be provided in a common public area and at least one must be installed to meet standards under the Americans with Disabilities Act; and

(C) A lobby may also be use-designed to satisfy a portion of the minimum area required for resident living room space.

(2) The following must be provided in the administrative area:

(A) General or individual offices(s) for business transactions, medical and financial records, administrative and professional staff, and for private interviews relating to social service, credit, and admissions.
(B) A multipurpose room for conferences, meetings, and health education purposes including facilities for showing visual aids.

(C) Storage and work area for office equipment and supplies must be provided and accessible to the staff using such items.

(3) Toilet facilities for the disabled must be available in the building.

(i) Physical therapy facilities.

(1) Physical therapy facilities must be provided if required by the treatment program. The facilities stated in subparagraph (B) of this paragraph and paragraph (2)(C)-(E) of this subsection may be planned and arranged for shared use by occupational therapy residents and staff if the treatment program reflects this sharing concept. Physical therapy facilities must include the following:

(A) Provision for cubicle curtains around each individual treatment area; handwashing facility(ies) (one lavatory or sink may serve more than one cubicle); and facilities for the collection of soiled linen and other material that may be used in the therapy.

(B) Residents' dressing areas, showers, lockers, and toilet rooms if the therapy is such that these would be needed at the area.

(2) Physical therapy facilities may also include the following:

(A) treatment area(s) with space and equipment for thermotherapy, diathermy, ultrasonics, and hydrotherapy;

(B) an exercise area;

(C) storage for clean linen, supplies, and equipment used in therapy;

(D) service sink located near therapy area; and

(E) wheelchair and stretcher storage.

(j) Occupational therapy. Occupational therapy facilities must be provided if required by the treatment program.

(1) An activities area with a sink or lavatory and facilities for collection of waste products prior to disposal must be provided.

(2) Storage for supplies and equipment used in the therapy must be provided.

(k) Personal grooming area (barber/beauty shop). A separate room with appropriate equipment must be provided for hair care and grooming needs of residents in facilities with over 60 beds.

(l) Laundry and linen services.

(1) On-site processing must be as follows:

(A) Because of the high incidence of fires in laundries, it is highly recommended that the laundry be in a
separate building 20 feet or more from the main building. If the laundry is located within the main building it must be separated by minimum one-hour fire construction to structure above, and sprinklered, and must be located in a remote area away from resident sleeping areas. Access doors must be from the exterior or interior nonresident use area such as a service corridor (not required exit) which is separated from the resident area.

(B) If linen is to be processed on the site, the following must be provided:

(i) A soiled linen receiving, holding, and sorting room with a rinse sink. This area must have a floor drain and forced exhaust to the exterior which must operate at all times there is soiled linen being held in the area.

(ii) A laundry processing room with equipment which can process seven days needs within a regularly scheduled work week. Hand-washing facilities must be provided. The washer area must have

(I) a floor drain;

(II) storage for laundry supplies;

(III) a clean linen inspection and mending room or area and a folding area;

(IV) a clean linen storage, issuing, or holding room or area;

(V) a janitors' closet containing a floor receptor or service sink and storage space for housekeeping equipment and supplies; and

(VI) sanitizing (washing) facilities and a storage area for carts.

(C) Soiled and clean operations must be planned to maintain sanitary flow of functions as well as air flow. If carts containing soiled linens from resident rooms are not taken directly to the laundry area, intermediate holding rooms must be provided and located convenient to resident bedroom areas.

(D) Laundry areas must have adequate air supply and ventilation for staff comfort without having to rely on opening a door that is part of the fire wall separation.

(E) Provisions must be made to exhaust heat from dryers and to separate dryer make-up air from the habitable work areas of the laundry.

(2) For off-site linen processing, the following must be provided on the premises:

(A) a soiled linen holding room (provided with adequate forced exhaust ducted to the exterior);

(B) clean linen receiving, holding, inspection, sorting or folding, and storage room(s); and

(C) sanitizing facilities and storage area for carts.

(3) Resident-use laundry, if provided, must be limited to not more than one residential type washer and dryer per laundry room. This room must be classified as a hazardous area as in accordance with the Life Safety Code.

(m) General storage. The following requirements are applicable to general storage facilities:
(1) A general storage room(s) must be provided as needed to accommodate the facility's needs. It is recommended that a general storage area provide at least two square feet per resident bed. This area would be for items such as extra beds, mattresses, appliances, and other furnishing and supplies.

(2) Storage space with provisions for locking and security control should be provided for residents' personal effects which are not kept in their rooms.

(n) Janitors' closet. In addition to the janitors' closet called for in certain departments, a sufficient number of janitors' closets must be provided throughout the facility to maintain a clean and sanitary environment. These must contain a floor receptor or service sink and storage space for housekeeping equipment and supplies.

(o) Maintenance, engineering service, and equipment areas. Space and facilities for adequate preventive maintenance and repair service must be provided. The following spaces are needed and it is suggested that these be part of a separate laundry building or area:

(1) A storage area for building and equipment maintenance supplies, tools, and parts must be provided.

(2) A space for storage of yard maintenance equipment and supplies, including flammable liquids bulk storage, must be provided separate from the resident-occupied facility.

(3) A maintenance and/or repair workshop of at least 120 square feet and equipment to support usual functions is recommended.

(4) A suitable office or desk space for the maintenance person(s) is recommended (possibly located within the repair shop area) with space for catalogs, files, and records.

(p) Oxygen. The storage and use of oxygen and equipment must meet applicable NFPA standards for oxygen, including NFPA 99.

Source Note: The provisions of this §19.334 adopted to be effective July 1, 1996, 21 TexReg 4408; amended to be effective May 1, 2004, 29 TexReg 3235
Exit provisions, including doors, corridors, stairways, and other exitways, locks, and other applicable items must conform to the requirements of the Life Safety Code concerning means of egress and of this section in order to assure that residents can be rapidly and easily evacuated from the building at all times, or from one part of the building to a safe area of refuge in another part of the building. Exit provisions are as follows:

1. Bedroom space arrangement and doors and corridors must be designed for evacuation of bedfast residents by means of rolling the bed to a safe place in the building or to the outside.

2. Public assembly, common living rooms, dining rooms, and other rooms with a capacity of 50 or more persons or greater than 1,000 square feet must have two means of exit remote from each other. Outswinging doors with panic hardware must be provided for these exits.

3. Exit doors and ways of egress must be maintained clear and free for use at all times. Furnishings, equipment, carts, and other obstacles must not be left to block egress at any time.

4. Steps in interior ways of egress are prohibited. If changes of elevation are necessary within ways of egress, approved ramps with maximum slope of 1:12 (one unit of rise to 12 units of run) must be used.

5. Any remodeling of, construction on, and/or additions to occupied buildings which involve exitways and exit doors must be accomplished without compromising the exits or creating a dead end situation at any time. Acceptable alternate temporary exits may be approved, or resident(s) in the area involved may have to be relocated until construction blocking the exit is completed. Other basic safety features such as fire alarms, sprinkler systems, and emergency power must also remain operational.

6. Doors in means of egress must be as follows:

   A. Locking hardware or devices which are capable of preventing or inhibiting immediate egress must not be used in any room or area that can be occupied.

   B. A latch or other fastening device on an exit door must be provided with a knob, handle, panic bar, or similar releasing device. The method of operation must be obvious in the dark, without use of a key, and operable by a well known one-action operation that will easily operate with normal pressure applied to the door or to the device toward the exterior. Locking hardware which prevents unauthorized entry from the outside (only) is permissible. Permanently mounted hold-open devices to expedite emergency egress and prevent accidental lock-out must be provided for exterior exit doors as well as self-closing devices.

   C. No screen or storm door may swing against the direction of exit travel where main doors are required to
(D) To aid in control of wandering residents, buzzers or other sounding devices may be used to announce the unauthorized use of an exit door. Other methods include approved emergency exit door locks or fencing with a gate outside of exit doors which enclose a space large enough to allow the space to be an exterior area of egress and refuge away from the building.

(E) Inactive leaves of double doors may have easily accessible and easily operable bolts if the active leaf is 44 inches wide. Center mullions are prohibited.

(F) Resident baths or toilets having privacy locks will require that keys or devices for opening the doors are kept readily available to the staff.

(G) Folding or sliding doors must not be used in exit corridors or exitways. Sliding glass doors may be used as secondary doors from residents' bedrooms to grade or to a balcony, or as secondary doors in certain other areas where the primary designated exit door requirements are met. Doors to bathroom and other resident-use areas must be the side-hinged swinging type. Corridor doors to rooms must swing into the room or be recessed so as not to extend into the corridor when open; however, doors ordinarily kept closed may be excepted. Corridor door frames must be steel in accordance with the Life Safety Code.

(7) Horizontal exits, if provided, must be according to the Life Safety Code.

(8) Areas outside of exterior exit doors (exit discharge) must be as follows:

(A) Provision must be made to accommodate and facilitate continuation of emergency egress away from a building for a reasonable distance beyond the outside exit door, especially for movement of nonambulatory residents in wheelchairs and beds. Any condition which may retard or halt free movement and progress outside the exit doors will not be allowed. Ramps must be used outside the exit doors in lieu of steps whenever possible.

(B) The landing outside of each exit door must be essentially the same elevation as the interior floor and level for a distance equal to the door width plus at least four feet. Generally, the difference in floor elevation at an exterior door must not be over 1/2 inch with the outside slope not to exceed 1/4 inch per foot sloping away from the door for drainage on the exterior. In locations north of the +20 Fahrenheit Isothermal Line as defined in the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Handbook of Fundamentals, the landing outside of all exit doors must be protected from ice build-up which would prohibit the door from opening and be a slip hazard.

(C) Emergency egress lighting immediately outside of exit doors is required as a part of the building emergency lighting system. Photocell devices may be used to turn lights off during daylight hours.

(9) The requirements of an emergency lighting system must be in accordance with §19.341 of this title (relating to Electrical Requirements).

(10) Requirements for interior finishes of ways of egress (flame spread of floor, walls, and ceiling finishes) must be in accordance with the Life Safety Code. The interior finishes of other areas must be in accordance with §19.333(e) of this title (relating to General Considerations).
Source Note: The provisions of this §19.335 adopted to be effective July 1, 1996, 21 TexReg 4408.
(a) Smoke compartmentation must be as described in the Life Safety Code and in this section.

(b) An exit sign must be provided on each side of corridor smoke doors unless otherwise directed by the Texas Department of Human Services (DHS).

(c) The metal frames for the wire glass view panels in smoke doors must be steel, unless otherwise approved by DHS. The bottom of the view panel must not be higher than 54 inches above the floor. Pairs of opposite (double egress) swinging smoke doors in corridors must have push/pull hardware. The door leaves must align in the closed position.

(d) Smoke barrier walls in concealed spaces such as attics, must have prominent signs on each side that read: "Warning: Smoke/fire barrier. Properly seal all openings."

(e) Provisions must be made for reasonable access to concealed smoke barrier walls for maintaining smoke dampers and so that walls and dampers can be visually checked periodically for conformance by facility staff, service persons, and inspectors. Access must provide for visual inspection of both sides of the wall, and of all parts (end-to-end and top-to-bottom). Ceiling access panels must be prefabricated metal panel, or its equivalent, and be at least 20 inches by 20 inches with no obstructions above (such as ducts) to hamper entrance, and it must be fire rated if required to maintain ceiling-roof or ceiling-floor fire rating. Access must be provided for both sides of the wall.

(f) Air systems should be designed to avoid having ducts which penetrate smoke barrier walls, thus eliminating the need for smoke dampers which are often a problem to maintain in proper working condition.

Source Note: The provisions of this §19.336 adopted to be effective July 1, 1996, 21 TexReg 4408.
(a) Fire protection systems include detection, alarm, and communication systems; fixed automatic extinguishment systems; and portable extinguishers. These systems must meet the requirements of the Life Safety Code, and of this section. Components must be compatible and laboratory listed for the use intended.

(b) Fire protection systems must meet the requirements of all applicable National Fire Protection Association (NFPA) standards, such as NFPA 72 for alarm systems, as referenced in the Life Safety Code. Wiring and circuitry for alarm systems must meet the applicable requirements of NFPA standards including the NFPA 70 for these systems.

(c) Requirements of emergency electrical systems must be in accordance with §19.341 of this title (relating to Electrical Requirements). Requirements for sprinkler systems must be in accordance with §19.340(4) of this title (relating to Mechanical Requirements).

(d) Partial sprinkler systems (those provided only for hazardous areas) must be interconnected with the fire alarm and comply with the Life Safety Code. Each partial system must have a valve with a supervisory switch to sound a trouble signal, water flow switch to activate the fire alarm, and an end-of-line test drain.

(e) Fire alarm systems must be installed, maintained, and repaired by an agent having a current certificate of registration with the State Fire Marshal's office of the Texas Commission on Fire Protection, in accordance with state law. A fire alarm installation certificate must be provided as required by the Office of the State Fire Marshal.

(f) The fire alarm system must be designed so that whenever the general alarm is sounded by activation of any device (such as manual pull, smoke sensor, sprinkler, or kitchen range hood extinguisher), the following must occur automatically:

(1) smoke and fire doors which are held open by approved devices must be released to close;

(2) air handlers (air conditioning and/or heating distribution fans) serving three or more rooms or any means of egress must shut down immediately;

(3) smoke dampers must close; and

(4) the alarm-initiating-device location must be clearly indicated on the fire alarm control panel(s) and all auxiliary panels.

(g) Fire alarm bells or horns must be located throughout the building for audible coverage. Flashing alarm lights
(visual alarms) must be installed to be visible in corridors and public areas including dining rooms and living rooms in a manner that will identify exit routes.

(h) A master control panel indicating the location of all alarm, trouble, and supervisory signals, by zone or device, must be visible at the main nurse station. Fire alarm system components must be laboratory-listed as compatible. Alarm and trouble zoning must be by smoke compartments and by floors in multi-story facilities.

(i) Remote annunciator panels, indicating location of alarm initiation, by zone or device, and trouble indication, must be located at auxiliary or secondary nurse stations on each floor, and will indicate the alarm condition of adjacent zones and the alarm conditions at all other nurse stations.

(j) Manual pull stations must be provided at all exits, living rooms, dining rooms, and at or near the nurse stations.

(k) The sprinkler system must be monitored for flow and tamper conditions by the fire alarm system.

(l) The kitchen range hood extinguisher must be interconnected with the fire alarm system. This interconnection may be a separate zone on the panel or combined with other initiating devices located in the same zone as the range hood is located.

(m) Portable fire extinguishers must be provided throughout the facility as required by NFPA Standard 10 and as determined by the local fire department and the Texas Department of Human Services. The following requirements are applicable to fire extinguishers:

1. Extinguishers in resident corridors must be spaced so that travel distance is not more than 75 feet. The minimum size of extinguishers must be either 2 1/2 gallon for water type or 5 pound for ABC type.

2. Extinguishers must be installed on hangers or brackets supplied or mounted in approved cabinets. Recessed cabinets are required for extinguishers located in corridors.

3. Extinguishers installed under conditions where they are subject to physical damage must be protected from impact or dislodgement.

4. Extinguishers having a gross weight not exceeding 40 pounds must be installed so that the top of the extinguisher is not more than five feet above the floor. Extinguishers having a gross weight greater than 40 pounds must be installed so that the top of the extinguisher is not more than 3-1/2 feet above the floor. In no case may the clearance between the bottom of the extinguisher and the floor be less than four inches.

5. Portable extinguishers provided in hazardous rooms should be located as close as possible to the exit door opening and nearest the latch (knob) side.

Source Note: The provisions of this §19.337 adopted to be effective July 1, 1996, 21 TexReg 4408; amended to be effective July 1, 2002, 27 TexReg 5245
Hazardous Areas

(a) Protection from hazardous areas must be as required in the Life Safety Code, except as required or modified in this section. Gas fired equipment must not be located in attic spaces, except under the following conditions:

(1) the area around the units must be constructed to be one-hour fire rated;

(2) the enclosure must have sprinkler protection; and

(3) combustion and venting air must be ducted from the exterior in properly sized metal ducts.

(b) Laboratories must be protected in accordance with the National Fire Protection Association (NFPA) 99.

(c) Cooking equipment must have exhaust systems designed and installed in accordance with NFPA 96.

(d) Doors to hazardous areas must have closers and be kept closed unless provided with an approved hold-open device such as an alarm activated magnetic hold-open device. Doors must be single-swing type with positive latching hardware. View panels at laundry entrances must be provided and be of materials adequate to maintain the integrity of the door as allowed by the Life Safety Code.

Source Note: The provisions of this §19.338 adopted to be effective July 1, 1996, 21 TexReg 4408.
(a) Every building and every portion thereof must be designed and constructed to sustain all dead and live loads in accordance with accepted engineering practices and standards.

(b) Special provisions must be made in the design of buildings in regions where local experience shows loss of life or extensive damage to buildings resulting from hurricanes, tornados, earthquakes, or floods.

(c) The sponsor is responsible for employing qualified personnel in the preparation of plan designs and engineering and in the construction of the facility to assure that all structural components are adequate, safe, and meet the applicable construction requirements.

(d) The design of the structural system must be done by or under the direction of a professional structural engineer who is currently registered by the Texas State Board of Registration for Professional Engineers in accordance with state law.

(e) The parts of the plans, details, and specifications covering the structural design must bear the legible seal of the engineer on the original drawings from which the prints are made.

(f) If the municipality has a building code, that code must govern the building requirements for the construction involved. The Life Safety Code must be used for fire safety requirements. Should discrepancies between the codes arise, they must be called to the attention of the Texas Department of Human Services for resolution.

(g) In the absence of a local building code, a nationally recognized building code must be used with regard to the construction integrity of the building. The Life Safety Code must be used for fire safety requirements.

(h) Each building must be classified as to building construction type for fire resistance rating purposes in accordance with the National Fire Protection Association (NFPA) 220 and the Life Safety Code.

(i) Enclosures of vertical openings between floors must meet the Life Safety Code.

(j) All interior walls, partitions, and roof structure in buildings of fire resistive and noncombustible construction must be of noncombustible or limited combustible materials.

(k) Building insulation materials, unless sealed on all sides and edges in an approved manner, must have a flame spread rating of 25 or less when tested in accordance with NFPA 255 and NFPA 258.

Source Note: The provisions of this §19.339 adopted to be effective July 1, 1996, 21 TexReg 4408.
The design of the mechanical systems must be done by or under the direction of a registered professional (mechanical) engineer approved by the Texas State Board of Registration for Professional Engineers to operate in Texas, and the parts of the plans and specifications covering mechanical design must bear the legible seal of the engineer. Building services pertaining to utilities; heating, ventilating, and air-conditioning systems; vertical conveyors; and chutes must be in accordance with the Life Safety Code. Required plumbing fixtures must be in accordance with the Life Safety Code and §19.334 of this title (relating to Architectural Space Planning and Utilization) in specific use areas.

(1) Plumbing.

(A) All plumbing systems must be designed and installed in accordance with the requirements of the plumbing code of the municipality. In the absence of a municipal code, a nationally recognized plumbing code must be used. Any discrepancy between an applicable code and these requirements must be called to the attention of the Texas Department of Human Services (DHS) for resolution.

(B) Supply systems must assure an adequacy of hot and cold water. An average rule-of-thumb design for hot water for resident usage (at 110 degrees Fahrenheit) is to provide 6-1/2 gallons per hour per resident in addition to kitchen and laundry use.

(C) Water supply must be from a system approved by the Water Utility Division, Texas Natural Resources Conservation Commission, or from a system regulated by an entity responsible for water quality in that jurisdiction as approved by the Water Utility Division, Texas Natural Resources Conservation Commission.

(D) The sewage system must connect to a system permitted by the Watershed Management Division, Texas Natural Resources Conservation Commission, or to a system regulated by an entity responsible for water quality in that jurisdiction as approved by the Water Utility Division, Texas Natural Resources Conservation Commission.

(E) The minimum ratio of fixtures to residents shall be as required in §19.334(c) of this title (relating to Architectural Space Planning and Utilization).

(F) For design calculation purposes, resident-use hot water must not exceed 110 degrees Fahrenheit at the fixture. For purposes of conforming to licensure requirements, an operating system providing water from 100 degrees Fahrenheit to 115 degrees Fahrenheit is acceptable. Hot water for laundry and kitchen use must be normally 140 degrees Fahrenheit except that dish sanitizing, if done by hot water, must be 180 degrees Fahrenheit.
(G) Water closets raised to provide a seat height 17 inches to 19 inches from the floor is required for persons with disabilities.

(H) Showers for wheelchair residents must not have curbs. Tub and shower bottoms must have a slip-resistant surface. Shower and tub enclosures, other than curtains, must be of tempered glass, plastic, and other safe materials.

(I) Drinking fountains must not extend into exit corridors.

(J) Fixture controls easily operable by residents must be provided (such as lever type).

(K) Plumbing fixtures for residents must be vitreous china or porcelain finished cast iron or steel unless otherwise approved by DHS. Bathing units constructed of class B fire rated fiberglass are acceptable for use.

(L) Hand-washing sinks for staff use are required in many areas throughout the facility in accordance with §19.334 of this title (relating to Architectural Space Planning and Utilization). Lavatories are required to be provided adjacent to water closets in each area.

(M) The soiled utility room must be provided with a flushing device such as a water closet with bedpan lugs, a spray hose with a siphon breaker or similar device, such as a high neck faucet with lever controls and a deep sink that is large enough to submerge a bedpan. A sterilizer for sanitizing may be used in place of a deep sink.

(N) Siphon breakers or back-flow preventers must be installed with any water supply fixture where the outlet or attachments may be submerged.

(O) Clean-outs for waste piping lines must be provided and located so that there is the least physical and sanitary hazard to residents. Where possible, clean-outs must open to the exterior or areas which would not spread contamination during clean-out procedures.

(P) All boilers not exempted by the Texas Health and Safety Code §755.022 must be inspected and certified for operation by the Texas Department of Licensing and Regulation.

(2) Heating, ventilating, and air-conditioning systems.

(A) Heating, ventilating, and air-conditioning systems must be designed and installed in accordance with the Heating, Ventilating, and Air-Conditioning Guide of the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE), except as may be modified by this section.

(B) Heating, ventilating, and air-conditioning systems must meet the requirements of the Life Safety Code and the National Fire Protection Association (NFPA) 90A. The plans must have a statement verifying that the systems are designed to conform to NFPA 90A. Requirements for conditions related to smoke compartmentation must be in accordance with §19.336 of this title (relating to Smoke Compartmentation (Subdivision of Building Spaces)).

(C) Systems using liquefied petroleum gas fuel must meet the requirements of the Railroad Commission of Texas and NFPA 58 Liquefied Petroleum Gases.

(D) The heating system must be designed, installed, and functioning to be able to maintain a temperature of at
least 75 degrees Fahrenheit for all areas occupied by residents. For all other occupied areas, the indoor design
temperature must be at least 72 degrees Fahrenheit. The cooling system must be designed, installed, and
functioning to be able to maintain a temperature of not more than 78 degrees Fahrenheit. A facility constructed
or licensed after January 1, 2004, must have a central air conditioning system, or a substantially similar air
conditioning system, that is capable of maintaining a temperature suitable for resident comfort within areas used
by residents. Occupied areas generating high heat, such as kitchens, must be provided with a sufficient cool air
supply to maintain a temperature not exceeding 85 degrees Fahrenheit at the five-foot level. Supply air volume
must be approximately equal to the air volume exhausted to the exterior for these areas.

(E) Air systems must provide for mixing at least 10% outside air for the supply distribution. Blowers for
central heating and cooling systems must be designed so that they may run continuously.

(F) Floor furnaces, unvented space heaters, and portable heating units must not be used. Heating devices or
appliances must not be a burn hazard (to touch) to residents.

(G) A combustion fresh air inlet must be provided to all gas or fossil fuel operated equipment in steel ducts or
passages from outside the building in accordance with NFPA 54. Rooms must also be vented to the exterior to
exhaust heated ambient air in the room. Combustion air will require one vent within 12 inches of the floor and
one vent within 12 inches of the ceiling.

(H) The location and design of air diffusers, registers, and return air grilles, must ensure that residents are not
in harmful or excessive drafts in their normal usage of the room.

(I) In areas requiring control of sanitation, the air flow must be from the clean area to the dirty area. Air
supply to food preparation areas must not be from air which has circulated places such as resident bedrooms
and baths.

(J) Air from unsanitary areas such as janitors closets, soiled linen areas, utility areas, and soiled area of
laundry rooms, must not be returned and recirculated to other areas.

(K) Intakes for fresh outside air must be located sufficiently distant from exhaust outlets or other areas or
conditions which may contaminate or otherwise pollute the incoming fresh air. Fresh air inlets must be
appropriately screened to prevent entry of debris, rodents, and animals. Provision must be made for access to
such screens for periodic inspection and cleaning to eliminate clogging or air stoppage (see paragraph (3)(C)(i)
of this subsection).

(L) Systems must be designed as much as possible to avoid having ducts passing through fire walls or smoke
barrier walls. All openings or duct penetrations in these walls must be provided with approved automatic
dampers. Smoke dampers at smoke partitions must close automatically upon activation of the fire alarm system
to prevent the flow of air or smoke in either direction.

(M) Ducts with smoke dampers must have maintenance panels for inspections. The maintenance panels must
be removable without tools. Means of access must also be provided in the ceiling or side wall to facilitate smoke
damper inspection readily and without obstruction. Location of dampers must be identified on the wall or ceiling
of the occupied area below.

(N) Fusible links are not approved for smoke dampers.
(O) Central air supply systems and/or systems serving means of egress must automatically and immediately shut down upon activation of the fire alarm system. (An exception must be approved, engineered smoke-removal systems.)

(P) Ducts must be of metal or other approved noncombustible material. Cooling ducts must be insulated against condensation drip.

(3) Ventilating and exhaust.

(A) General ventilating systems must be in accordance with paragraph (2) of this subsection.

(B) Provisions for natural ventilation using windows or louvers must be incorporated into the building design where possible and practical. These windows or louvers must have insect screens.

(C) All air-supply and air-exhaust systems must be mechanically-operated. The ventilation rates shown in the table in clause (xi) of this subparagraph must be considered as minimum acceptable rates and must not be construed as precluding the use of higher ventilation rates.

(i) Outdoor air intakes must be located as far as practical (but normally not less than 10 feet) from exhaust outlets or ventilating systems, combustion equipment stacks, medical vacuum systems, plumbing vent stacks, or from areas which may collect vehicular exhaust and other noxious fumes.

(ii) The ventilation systems must be designed and balanced to provide the pressure relationship as shown in the table in clause (xi) of this subparagraph. A final engineered system air balance report will be required for the completed system to be furnished and certified by the installer.

(iii) The bottoms of ventilation openings must be not less than three inches above the floor of any room.

(iv) Doors protecting corridors or ways of egress must not have air transfer grilles or louvers. Corridors must not be used to supply air to or exhaust air from any room except that air from corridors may be used as make-up air to ventilate small toilet rooms, janitor's closets, and small electrical or telephone closets opening directly on corridors, provided that the ventilation can be accomplished by door undercuts not exceeding 3/4 inches.

(v) All exhausts must be continuously ducted to the exterior. Exhausting air into attics or other spaces is not permitted. Duct material must be metal.

(vi) All central ventilation or air-conditioning systems must be equipped with filters of sufficient efficiency to minimize dust and lint accumulations throughout the system and building including supply and return plenums and ductwork. Filters with efficiency rating of 80% or greater (based on ASHRAE) are recommended. Filters for individual room units must be as recommended by the equipment manufacturer. Filters must be easily accessible for routine changing or cleaning.

(vii) Static pressures of systems must be within limits recommended by ASHRAE and the equipment manufacturer (upstream and downstream).

(viii) In geographic locations or interior room areas where extreme humidity levels are likely to occur for extended periods of time, apparatus for controlling humidity levels (preferably between 40-60%) are
recommended to be installed as a part of central systems and with automatic humidistat controls.

(ix) Exhaust hoods, ducts, and automatic extinguishers for kitchen cooking equipment must be in accordance with NFPA 96.

(x) Forced air exhaust must be provided in laundries, kitchens, and dishwashing areas to remove excess heat and moisture and to maintain air flow in the direction of clean to soiled areas.

(xi) Ventilation requirements for nursing areas must be according to the following table:

Attached Graphic

(xii) With relationship to adjacent areas, a positive air pressure must be provided for clean utility rooms, clean linen rooms, and medication rooms. Conditioned supply air must be introduced into these rooms.

(4) Sprinkler systems. The following requirements are applicable to sprinkler systems:

(A) Sprinkler systems must be in accordance with NFPA 13 and this subchapter.

(B) The design and installation of sprinkler systems must meet any applicable state laws pertaining to these systems and one of the following criteria:

(i) The sprinkler system must be designed by a qualified registered professional engineer approved by the Texas State Board of Registration for Professional Engineers to operate in Texas. The engineer must supervise the installation and provide written approval of the completed installation.

(ii) The sprinkler system must be planned and installed in accordance with NFPA 13 by firms with certificates of registration issued by the office of the state fire marshal that have at least one full-time licensed responsible managing employee (RME). The RME’s license number and signature must be included on the prepared sprinkler drawings.

(C) The approved sprinkler plans must be submitted to DHS, Architectural Section, Austin, Texas.

(D) Particular attention should be paid to adequate, safe, and reasonable freeze protection for all piping. The design of freeze protection should minimize the need for dependence on staff action or intervention to provide protection.

Source Note: The provisions of this §19.340 adopted to be effective July 1, 1996, 21 TexReg 4408; amended to be effective August 1, 2000, 25 TexReg 6779; amended to be effective May 1, 2004, 29 TexReg 3235
Texas Administrative Code

TITLE 40  SOCIAL SERVICES AND ASSISTANCE
PART 1   DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 19 NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION
SUBCHAPTER D  FACILITY CONSTRUCTION
RULE §19.341  Electrical Requirements

(a) The design of the electrical systems must be done by or under the direction of a registered professional electrical engineer approved by the Texas State Board of Registration for Professional Engineers to operate in Texas, and the parts of the plans and specifications covering electrical design must bear the legible seal of the engineer. Requirements pertaining to utilities, heating, ventilating, and air-conditioning systems, vertical conveyors, and chutes must be in accordance with the Life Safety Code, Chapter 9, Building Service and Fire Protection Equipment.

(b) Requirements for fire protection systems must be in accordance with §19.337 of this title (relating to Fire Protection Systems).

(c) Electrical systems must meet the requirements of the NFPA 70.

(d) Specific requirements for lighting and outlets at resident bedrooms must be in accordance with §19.334 of this title (relating to Architectural Space Planning and Utilization).

   (1) Emergency electrical service.

      (A) To provide electricity during an interruption of the normal electric supply, an emergency source of electricity must be provided and connected to certain circuits for lighting and power.

      (B) Emergency electrical connection service must be provided to the distribution systems as required by the Life Safety Code and NFPA 99.

         (i) Emergency systems must include the following:

            (I) illumination for means of egress, nurse stations, medication rooms, dining and living rooms, group bathing rooms (those not directly connected to resident bedrooms), and areas immediately outside of exit door (egress lighting must not be switched);

            (II) exit signs and exit directional signs as required by the Life Safety Code;

            (III) alarm systems including fire alarms activated by manual stations, water flow alarm devices of sprinkler systems, fire and smoke detecting systems, and alarms required for nonflammable medical gas systems if installed (where hospital-type functions are included in the nursing home facility, applicable standards will apply);

            (IV) task illumination and selected receptacles at the generator set location;

            (V) selected duplex receptacles including such areas as resident corridors, each bed location where patient
care-related electrical appliances are utilized, nurse stations, and medication rooms including biologicals refrigerator;

(VI) nurse calling systems;

(VII) resident room night lights;

(VIII) a light and receptacle in the electrical and/or boiler room;

(IX) elevator cab lighting, control, and communication systems;

(X) all facility telephone equipment; and

(XI) paging or speaker systems if intended for communication during emergency. Radio transceivers where installed for emergency use must be capable of operating for at least one hour upon total failure of both normal and emergency power.

(ii) Critical systems (delayed automatic or manual connections to critical systems) must include the following:

(I) Heating equipment must provide heating for general resident rooms. This will not be required if:

(-a-) the outside design temperature is higher than 20 degrees Fahrenheit (-6 degrees Celsius);

(-b-) the outside design temperature is lower than 20 degrees Fahrenheit (-6 degrees Celsius) and where selected rooms are provided for the needs of all confined residents, then only those rooms need to be heated; or

(-c-) the facility is served by a dual source of normal power; and

(II) In instances when interruptions of power would result in elevators stopping between floors, throw-over facilities must be provided to allow the temporary operation of any elevator for the release of passengers.

(C) The emergency lighting must be automatically in operation within ten seconds after the interruption of normal electric power supply. Emergency service to receptacles and equipment may be delayed automatic or manually connected. Receptacles connected to emergency power must have red face plates. Stored fuel capacity must be sufficient for not less than four-hour operation of required generator.

(D) The design and installation of emergency motor generators must be in accordance with NFPA 37, NFPA 99, and NFPA 110.

(i) Generators must be a minimum of three feet from the combustible exterior building finish and a minimum of five feet from a building opening if located on the exterior of the building.

(ii) Generators located on the exterior of the building must be provided with a noncombustible protective cover or be protected as per manufacturer’s recommendations.

(iii) Motor generators fueled by public utility natural gas must have the capability to be switched to an alternate fuel source in accordance with NFPA 70.

(E) The normal wiring circuit(s) for the emergency system must be kept entirely independent of all other
(2) General Lighting Requirements. General lighting requirements are as follows:

(A) All spaces occupied by people, machinery, equipment, approaches to buildings, and parking lots must have lighting.

(B) All quality, intensity, and type of lighting must be adequate and appropriate to the space and all functions within the space.

(C) Minimum lighting levels can be found in the Illuminating Engineering Society (IES) Lighting Handbook, latest edition. Minimum illumination must be 20-foot candles in resident rooms, corridors, nurses' stations, dining rooms, lobbies, toilets, bathing facilities, laundries, stairways, and elevators. Illumination requirements for these areas apply to lighting throughout the space and should be measured at approximately 30 inches above the floor anywhere in the room. Minimum illumination for overbed reading lamps, medication-preparation or storage area, kitchens, and nurse's station desks must be 50 foot candles. Illumination requirements for these areas apply to the task performed and should be measured on the task.

(D) Nursing unit corridors must have general illumination with provisions for reduction of light levels at night.

(E) Exposed incandescent light bulbs (or other high heat generating lamps) in closets or other similar spaces must be provided with basket wire guards or other suitable shield to prevent contact of combustible materials with the hot bulb and to help prevent breakage.

(F) Exposed incandescent or fluorescent bulbs will not be permitted in food service or other areas where glass fragments from breakage may get into food, medications, linens, or utensils. All fluorescent bulbs will be protected with a shield or catcher to prevent bulb drop-out.

(3) Receptacles (convenience outlets).

(A) Receptacles at bedrooms must be in accordance with §19.334(a)(7) of this title (relating to Architectural Space Planning and Utilization).

(B) Duplex receptacles for general use must be installed in corridors spaced not more than 50 feet apart and within 25 feet of ends of corridors.

(C) Receptacles must be provided for essential needs such as medication refrigerators and life support systems or equipment. At least one outlet in each resident corridor must be provided with emergency electrical service. All receptacles on emergency circuits must be clearly, distinctly, and permanently identified, such as using a red face plate and/or a small label that says "Emergency."

(D) Receptacles in the remainder of the building must be sufficient to serve the present and future needs of the residents and equipment.

(E) Location of receptacles (horizontally and vertically) should be carefully planned and coordinated with the expected designed use of furnishings and equipment to maximize their accessibility and to minimize conditions such as beds or chests being jammed against plugs used in the outlets.
(F) Exterior receptacles must be approved waterproof type.

(G) Ground fault interruption protection must be provided at appropriate locations such as at whirlpools and other wet areas in accordance with the National Electrical Code.

(4) Nurse call systems.

(A) A nurse call system consists of power units, annunciator control units, corridor dome stations, emergency call stations, bedside call stations, and activating devices. The units must be compatible and laboratory listed for the system and use intended.

(B) Each resident bedroom must be served by at least one calling station and each bed must be provided with a call switch. Two call switches serving adjacent beds may be served by one calling station. Each call entered into the system must activate a corridor dome light above the bedroom, bathroom, or toilet corridor door, a visual signal at the nurses station which indicates the room from which the call was placed, and a continuous or intermittent continuous audible signal of sufficient amplitude to be clearly heard by nursing staff. The amplitude or pitch of the audible signal must not be such that it is irritating to residents or visitors. The system must be designed so that calls entered into the system may be canceled only at the calling station. Intercom-type systems which meet this requirement are acceptable.

(C) Nurse calling systems which provide two-way voice communication must be equipped with an indicating light at each calling station which lights and remains lighted as long as the voice circuit is operating.

(D) A nurse call emergency switch(es) must be provided for resident use at each resident's toilet, bath, and shower. These switches must be usable by residents using the fixtures and by a collapsed resident lying on the floor.

Source Note: The provisions of this §19.341 adopted to be effective July 1, 1996, 21 TexReg 4408; amended to be effective May 1, 2004, 29 TexReg 3235
(a) Safety related details. A high degree of safety for the occupants is needed to minimize accidents more apt to occur with the elderly and/or infirm residents in a nursing facility. Consideration must be given to the fact that many have impaired vision, hearing, spatial perception, and ambulation.

(1) Hazards such as sharp corners and edges and unexpected steps must be avoided.

(2) Items such as drinking fountains, telephone booths, vending machines, and portable equipment must be located so as not to restrict corridor traffic or reduce corridor width.

(3) Windows must be designed to prevent residents from accidentally falling through the windows.

(4) Doors that normally stay open or are frequently used must not swing out into the corridor unless otherwise needed or required. Alcoves may be provided for doors that must swing outward toward a corridor or way of egress.

(5) The proper use of safety glass must be adhered to in applicable locations and conditions.

(6) Thresholds and expansion joint covers must be made essentially flush with the floor surface to facilitate use of wheelchairs and carts. See §19.340(a)(8) of this title (relating to Mechanical Requirements) for requirements for such items as shower curbs, surfaces, and doors.

(7) Grab bars must be provided at all residents' toilets, showers, tubs, and sitz baths. The bars must be 1-1/4 to 1-1/2 inches in diameter and must have 1-1/2 inch clearance to walls. Bars must have sufficient strength and anchorage to sustain a concentrated load of 250 pounds. Grab bar standards must comply with standards adopted under the Americans with Disabilities Act of 1990.

(8) Handrails must be provided on both sides of corridors used by residents. A clear distance of 1-1/2 inches must be provided between the handrail and the wall. Handrails must be securely mounted to withstand downward forces of 250 pounds. Handrails may be omitted on wall segments less than 18 inches. Handrails must be mounted 33 inches to 36 inches above the floor, and must comply with standards adopted under the Americans with Disabilities Act and the Texas Accessibility Standards.

(9) Ends of handrails and grab bars must be constructed to prevent snagging the clothes of residents (that is, return ends to wall).

(10) Ceiling fan blades must be at least seven feet above the floor and be located so as not to interfere with the operation of any ceiling-mounted smoke detectors.
(b) General details.

(1) Concrete floors, whether finished by sealant, or similar product, must not be used as the finished floor unless specifically approved in writing by the Texas Department of Human Services. An exception is mechanical equipment rooms and maintenance or similar areas.

(2) Sound separation must be provided in corridor walls and resident room party walls; Minimum Sound Transmission Coefficient 30 per American Society for Testing Material E-90.

(3) Illumination and a safe platform in the attic must be provided at all attic access panels.

(4) Attic access must be provided for building maintenance. Access panels must be prime coated steel flush panels where required to maintain fire rating of ceiling-roof/ceiling-floor assemblies.

Source Note: The provisions of this §19.342 adopted to be effective July 1, 1996, 21 TexReg 4408; amended to be effective August 1, 2000, 25 TexReg 6779; amended to be effective July 1, 2002, 27 TexReg 5245
All buildings having residents' facilities (such as bedrooms, dining rooms, or recreation areas) or resident services (such as diagnostic or therapy) located on other than the main entrance floor must have at least one electric or electrohydraulic elevator and must comply with standards adopted under the American National Standards Institute (ANSI) Code, §A17.1.

(1) Number of elevators.

(A) At least one hospital-type elevator must be installed where one to 60 resident beds are located on any floor other than the main entrance floor.

(B) At least two (one of which must be hospital-type) elevators must be installed where 61 to 200 resident beds are located on floors other than the main entrance floor, or where the major inpatient services are located on a floor other than those containing resident beds. Elevator service may be reduced for those floors which provide only partial inpatient services.

(C) At least three (one of which must be hospital-type) elevators must be installed where 201 to 350 resident beds are located on floors other than the main entrance floor or where the major inpatient services are located on a floor other than those containing resident beds. Elevator service may be reduced for those floors which provide only partial inpatient services.

(D) For facilities with more than 350 resident beds, the number of elevators must be determined from a study of the facility plan and the estimated vertical transportation requirements.

(2) Cars and platforms. Cars of hospital-type elevators must have inside dimensions that will accommodate a resident bed and attendants and must be at least five feet wide by seven feet six inches deep. The car door must have a clear opening of not less than three feet eight inches.

(3) Leveling. Elevators must be equipped with an automatic leveling device of the two-way automatic maintaining type with an accuracy of 1/2 inch.

(4) Operation. Elevators, except freight elevators, must be equipped with a two-way special service switch to permit cars to bypass all landing button calls and be dispatched directly to any floor.

(5) Accessibility provisions. Elevator controls, alarm buttons, and telephones, must be accessible to and usable by individuals with disabilities as required under the Americans with Disabilities Act of 1990.

(6) Protection from fire. Elevator call buttons, controls, and door safety stops must be of a type that will not be
activated by heat or smoke. Door openings must meet the requirements of the Life Safety Code for protection of vertical openings.

(7) Field inspection and tests. Inspections and tests must be made and the owner must be furnished written certification that the installation meets the requirements set forth in this section and all applicable safety regulations and codes.

**Source Note:** The provisions of this §19.343 adopted to be effective July 1, 1996, 21 TexReg 4408.
Rule §19.344  Plans, Approvals, and Construction Procedures

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

(1) Submittal of plans.

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

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

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

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

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

(F) The review of plans and specifications by DHS is based on general utility, the minimum licensing standards, and conformance of the Life Safety Code, and is not to be construed as all-inclusive approval of the...
(G) Fees for plan review will be required in accordance with §19.219 of this title (relating to Plan Review Fees).

(2) Contract documents.

(A) Site plan documents must include:

(i) grade contours;

(ii) streets (with names);

(iii) north arrow;

(iv) fire hydrants;

(v) fire lanes;

(vi) utilities, public or private;

(vii) fences; and

(viii) unusual site conditions, such as

(I) ditches;

(II) low water levels;

(III) other buildings on-site; and

(IV) indications of buildings five feet or less beyond site property lines.

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

(C) Floor plan documents must include:

(i) room names, numbers, and usages;

(ii) doors (numbered), including swing;

(iii) windows;

(iv) legend or clarification of wall types;

(v) dimensions;

(vi) fixed equipment;
(vii) plumbing fixtures;
(viii) kitchen basic layout; and
(ix) identification of all smoke barrier walls (outside wall to outside wall) or fire walls.

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

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

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

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

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

(I) Electrical documents must include:

(i) electrical layout, including lights, convenience outlets, equipment outlets, switches, and other electrical outlets and devices;

(ii) service, circuiting, distribution, and panel diagrams;

(iii) exit light system (exit signs and emergency egress lighting);

(iv) emergency electrical provisions (such as generators and panels);

(v) staff communication system;

(vi) fire alarm and similar systems (such as control panel, devices, and alarms); and

(vii) sizes and details sufficient to assure safe and properly operating systems.

(J) Plumbing documents must include:

(i) plumbing layout with pipe sizes and details sufficient to assure safe and properly operating systems;

(ii) water systems;

(iii) sanitary systems;

(iv) gas systems; and

(v) other systems normally considered under the scope of plumbing, fixtures, and provisions for combustion air supply.

(K) Heating, ventilating, and air-conditioning systems (HVAC) documents must include:

(i) sufficient details of HVAC systems and components to assure a safe and properly operating installation, including, but not limited to, heating, ventilating, and air-conditioning layout, ducts, protection of duct inlets and outlets, combustion air, piping, exhausts, and duct smoke and/or fire dampers; and

(ii) equipment types, sizes, and locations.

(L) Sprinkler system documents must include:

(i) plans and details of National Fire Protection Association (NFPA) designed systems;

(ii) plans and details of partial systems provided only for hazardous areas; and

(iii) electrical devices interconnected to the alarm system.

(M) Specifications must include:
(i) installation techniques;

(ii) quality standards and/or manufacturers;

(iii) references to specific codes and standards;

(iv) design criteria;

(v) special equipment;

(vi) hardware;

(vii) finishes; and

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

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

(3) Construction phase.

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

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

(4) Initial survey of completed construction.

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

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

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

(i) written approval of local authorities as required in subparagraph (A) of this paragraph;
(i) written certification of the fire alarm system by the installing agency (the Texas State Fire Marshal’s Fire Alarm Installation Certificate);

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

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

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

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

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

(viii) any other such documentation as needed.

(5) Nonapproval of new construction.

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

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

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

(iii) no written approval by local authorities;

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

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

(vi) telephone not installed or not properly working;

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

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

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

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

**Source Note:** The provisions of this §19.344 adopted to be effective April 1, 2002, 27 TexReg 2249
Texas Administrative Code

TITLE 40  SOCIAL SERVICES AND ASSISTANCE
PART 1  DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 19  NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION
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.

Attached Graphic

(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
(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.
(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:

   A. the drug testing of employees who have direct contact with residents; and

   B. 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
(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 shall 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 shall 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.
(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.
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).

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

Cont'd...
Texas Administrative Code

TITLE 40  SOCIAL SERVICES AND ASSISTANCE
PART 1  DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 19  NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION
SUBCHAPTER E  RESIDENT RIGHTS
RULE §19.405  Additional Requirements for Trust Funds in Medicaid-certified Facilities

(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
(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.
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.
(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:

(1) makes a complaint or files a grievance concerning the facility;

(2) 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
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.
(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.
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.
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.
(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
(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.
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.
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.
Texas Administrative Code

TITLE 40  SOCIAL SERVICES AND ASSISTANCE
PART 1  DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 19  NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION
SUBCHAPTER E  RESIDENT RIGHTS
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.
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.
(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;

       (B) 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

       (C) 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:

(A) the resident's legal guardian;

(B) a person responsible for the resident's health care decisions;

(C) the resident's spouse;

(D) the resident's adult child;

(E) the resident's parents; or

(F) 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, 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:

(A) the resident's legal guardian;

(B) a person responsible for the resident's health care decisions;

(C) the resident's spouse;

(D) the resident's adult child;

(E) the resident's parents; or

(F) the person admitting the resident.

(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
(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.
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.
(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.

(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
(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
The Texas Department of Human Services (DHS) is required to provide a model drug testing policy to nursing facilities under the Health and Safety Code, §242.050. A nursing facility is not required to perform drug testing on its employees or applicants for employment. Although this policy only covers drugs, coverage of alcohol may be added. Before implementing any drug testing policy, including the following model policy, DHS recommends that a facility discuss the policy with its attorney.

1. Policy.

   (A) (NURSING FACILITY NAME) has a vital interest in maintaining a safe, healthy, and efficient working environment. Being under the influence of a drug on the job poses serious safety and health risks to the user, co-workers, and residents. The use, sale, purchase, transfer, or possession of an illegal drug in the workplace poses unacceptable risks for safe, healthy, and efficient operations.

   (B) (NURSING FACILITY NAME) has the obligation to maintain a safe, healthy and efficient workplace for all of its employees and residents, and to protect the facility’s property, information, equipment, operations, and reputation.

   (C) (NURSING FACILITY NAME) recognizes its obligation to its residents to provide services that are free of the influence of illegal drugs and endeavors through this policy to provide drug-free services.

   (D) (NURSING FACILITY NAME) complies with federal and state rules, regulations, or laws that relate to the maintenance of a workplace free from illegal drugs.

   (E) All employees are required to abide by the terms of this policy and to notify management of any criminal drug statute conviction for a violation that occurred in the workplace no later than five days after such conviction.

2. Purpose. This policy outlines the goals and objectives of (NURSING FACILITY NAME’S) drug testing program and provides guidance to supervisors and employees concerning their responsibilities for carrying out the program.

3. Scope. This policy applies to all departments, all employees, and all job applicants. The term employee includes contracted employees.

4. Definitions. The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.
(A) Facility premises—All property of (NURSING FACILITY NAME) including, but not limited to, the offices, facilities, and surrounding areas on (NURSING FACILITY NAME)-owned or -leased property, parking lots, and storage areas. The term also includes (NURSING FACILITY NAME)-owned or -leased vehicles and equipment.

(B) Drug testing—The scientific analysis of urine, blood, breath, saliva, hair, tissue, and other specimens for detecting a drug.

(C) Illegal drug—Any drug that is not legally obtainable. Examples of illegal drugs are marijuana, cocaine, heroin, methamphetamines, and phencyclidine (PCP).

(D) Legal drug—Any prescribed drug or over-the-counter drug that has been legally obtained and is being used for the purpose for which it was prescribed or manufactured.

(E) Reasonable belief—A belief based on facts sufficient to lead a prudent person to conclude that a particular employee is unable to perform his or her job duties due to drug impairment. Such inability to perform may include, but not be limited to, decreases in the quality or quantity of the employee's productivity, judgment, reasoning, concentration and psychomotor control, and marked changes in behavior. Accidents, deviations from safe working practices, and erratic conduct indicative of impairment are examples of "reasonable belief" situations.

(F) Under the influence—A condition in which a person is affected by a drug in any detectable manner. The symptoms of influence are not confined to those consistent with misbehavior or to obvious impairment of physical or mental ability, such as slurred speech or difficulty in maintaining balance. A determination of being under the influence can be established by a professional opinion; a scientifically valid test, such as urinalysis or blood analysis; and in some cases by the opinion of a layperson.

(5) Education.

(A) Management personnel are to be trained to:

(i) detect the signs and behavior of employees who may be using drugs in violation of this policy; and

(ii) intervene in situations that may involve violations of this policy.

(B) Employees are to be informed of the provisions of this policy.

(6) Prohibited activities.

(A) Legal drugs. (NURSING FACILITY NAME) reserves the right at all times to judge the effect that a legal drug may have on an employee's job performance and to restrict the employee's work activity or presence at the workplace accordingly.

(B) Illegal drugs. The use, sale, purchase, transfer, or possession of an illegal drug by any employee while on (NURSING FACILITY NAME) premises or while performing (NURSING FACILITY NAME) business is prohibited.

(7) Discipline.
(A) Any employee who possesses, distributes, sells, attempts to sell, or transfers illegal drugs on (NURSING FACILITY NAME) premises or while on (NURSING FACILITY NAME) business will be subject to immediate discharge.

(B) Any employee found through drug testing to have in his or her body a detectable amount of an illegal drug will be subject to discipline up to and including discharge. An employee may be offered a one-time opportunity to enter and successfully complete a rehabilitation program, approved by (NURSING FACILITY NAME), at the employee's expense. During rehabilitation, the employee will be subject to unannounced drug testing. Upon return to work from rehabilitation, the employee may be subject to unannounced drug testing at (NURSING FACILITY NAME) expense for a period of 12 months. Any employee whose test is confirmed as positive during or following rehabilitation will be subjected to immediate discharge.

(8) Drug testing for job applicants.

(A) All applicants for employment, including applicants for part-time and seasonal positions and applicants who are former employees, are subject to drug testing.

(B) If an applicant refuses to take a drug test, or if evidence of the use of illegal drugs by an applicant is discovered, either through testing or other means, the pre-employment process will be terminated.

(C) An applicant must pass the drug test to be considered for employment.

(D) An applicant will be provided written notice of this policy and, by signature, will be required to acknowledge receipt and understanding of the policy before being tested.

(9) Drug testing of employees.

(A) (NURSING FACILITY NAME) will notify employees of this policy by:

(i) providing them with a copy of the policy and obtaining written acknowledgement that the policy has been received and read.

(ii) announcing the policy in written communications and making presentations at employee meetings.

(B) (NURSING FACILITY NAME) will perform drug testing:

(i) of any employee who exhibits "reasonable belief" behavior;

(ii) of each employee who has direct contact with residents annually;

(iii) of any employee who is subject to drug testing pursuant to federal or state rules, regulations, or laws;

(iv) on a random basis of any employee.

(C) An employee's consent to submit to drug testing is required as a condition of employment and the employee's refusal to consent may result in disciplinary action, including discharge, for a first refusal or any subsequent refusal.

(D) An employee who is tested in a "reasonable belief" situation may be suspended pending receipt of written
test results and inquiries that may be required.

(10) Appeal of a drug test result.

(A) An applicant or employee whose drug test was positive will have an opportunity to explain why the positive finding could have resulted from a cause other than drug use. (NURSING FACILITY NAME) will judge whether the employee's explanation merits further inquiry.

(B) An applicant or employee whose drug test is reported positive will be offered the opportunity to:

(i) obtain and independently test, at their expense, the remaining portion of the urine specimen that yielded the positive result; and

(ii) obtain the written test result and submit it to an independent medical review, at their expense.

(C) During an appeal and any resulting inquiries, the pre-employment selection process for an applicant will be placed on hold, and the employment status of an employee may be suspended. An employee who is suspended pending appeal may use any available annual leave to remain in an active pay status. If the employee has no annual leave or chooses not to use it, the suspension will be without pay.

(11) Confidentiality. All information related to drug testing or the identification of persons as users of drugs will be protected by (NURSING FACILITY NAME) as confidential unless otherwise required by law or overriding public health and safety concerns, or authorized in writing by the persons in question.

Source Note: The provisions of this §19.423 adopted to be effective August 1, 2002, 27 TexReg 6052
Texas Administrative Code

TITLE 40
SOCIAL SERVICES AND ASSISTANCE

PART 1
DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 19
NURSING FACILITY REQUIREMENTS FOR LICENSURE
AND MEDICAID CERTIFICATION

SUBCHAPTER F
ADMISSION, TRANSFER, AND DISCHARGE RIGHTS IN
MEDICAID-CERTIFIED FACILITIES

RULE §19.501
Admissions Policy for Medicaid-certified Facilities

(a) The facility must not require:

(1) residents or potential residents to waive their rights to Medicare or Medicaid; and

(2) oral or written assurance that residents or potential residents are not eligible for, or will not apply for, Medicare or Medicaid benefits.

(b) The facility must not require a third-party guarantee of payment to the facility as a condition of admission or expedited admission, or continued stay in the facility. However, the facility may require an individual who has legal access to a resident's income or resources available to pay for facility care to sign a contract, without incurring personal financial liability, to provide facility payment from the resident's income or resources.

(c) In the case of a person eligible for Medicaid, a nursing facility must not charge, solicit, accept, or receive, in addition to any amount otherwise required to be paid under the State Plan, any gift, money, donation, or other consideration as a precondition of admission, expedited admission, or continued stay in the facility. However, a nursing facility may:

(1) charge a resident who is eligible for Medicaid for items and services the resident has requested and received, and that are not specified in the State Plan as included in the term "nursing facility services" so long as the facility gives proper notice of the availability and cost of these services to residents and does not condition the resident's admission or continued stay on the request for and receipt of these additional services; and

(2) solicit, accept, or receive a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to a Medicaid-eligible resident or potential resident, but only to the extent that the contribution is not a condition of admission, expedited admission, or continued stay in the facility for a Medicaid-eligible resident.

Source Note: The provisions of this §19.501 adopted to be effective May 1, 1995, 20 TexReg 2393.
Transfer and discharge includes movement of a resident to a bed outside the certified facility, whether that bed is in the same physical plant or not. Transfer and discharge does not refer to movement within the same certified facility.

Transfer and discharge requirements. The facility must permit each resident to remain in the facility and must not transfer or discharge the resident from the facility unless:

1. the transfer or discharge is necessary for the resident's welfare, and the resident's needs cannot be met in the facility;

2. the transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;

3. the safety of individuals in the facility is endangered;

4. the health of other individuals in the facility would otherwise be endangered;

5. the resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid;

6. the resident, responsible party, or family or legal representative requests a voluntary transfer or discharge; or

7. the facility ceases to operate or participate in the program which pays for the resident's care. See §19.2310 of this title (relating to Nursing Facility Ceases to Participate). If the facility voluntarily withdraws from participation in Medicaid, but continues to provide nursing facility services:

   A. the facility's voluntary withdrawal from Medicaid is not an acceptable basis for the transfer or discharge of residents who were residing in the facility on the day before the effective date of the withdrawal (including those residents who were not entitled to Medicaid assistance as of such day);

   B. for individuals who begin residence in the facility after the effective date of the withdrawal, the facility must provide notice orally and in a prominent manner in writing on a separate page of the admission agreement at the time the resident begins residence and document receipt in writing, signed by the individual, and separate from other documents signed by the individual of the following information:
(i) The facility is not participating in the Medicaid program with respect to these residents.

(ii) The facility may transfer or discharge these residents if they are unable to pay the charges of the facility, even though the resident may have become eligible for Medicaid nursing facility services.

c) Documentation. When the facility transfers or discharges a resident under any of the circumstances specified in subsection (b)(1)-(5) of this section, the resident's clinical record must be documented. The documentation must be made by:

(1) the resident's physician when transfer or discharge is necessary under subsection (b)(1) or (2) of this section; and

(2) a physician when transfer or discharge is necessary under subsection (b)(4) of this section.

d) Notice before transfer. Before a facility transfers or discharges a resident, the facility must:

(1) notify the resident and, if known, a responsible party or family or legal representative of the resident about the transfer or discharge and the reasons for the move in writing and in a language and manner they will understand;

(2) record the reasons in the resident's clinical record; and

(3) include in the notice the items described in subsection (f) of this section.

ewc) Timing of the notice.

(1) Except when specified in paragraph (3) of this subsection, the notice of transfer or discharge required under subsection (d) of this section must be made by the facility at least 30 days before the resident is transferred or discharged.

(2) The requirements described in paragraph (1) of this subsection and subsection (g) of this section do not have to be met if the resident, responsible party, or family or legal representative requests the transfer or discharge.

(3) Notice may be made as soon as practicable before transfer or discharge when:

(A) the safety of individuals in the facility would be endangered, as specified in subsection (b)(3) of this section;

(B) the health of individuals in the facility would be endangered, as specified in subsection (b)(4) of this section;

(C) the resident's health improves sufficiently to allow a more immediate transfer or discharge, as specified in subsection (b)(2) of this section;

(D) the transfer and discharge is necessary for the resident's welfare because the resident's needs cannot be met in the facility, as specified in subsection (b)(1) of this section, and the resident's urgent medical needs require an immediate transfer or discharge; or
a resident has not resided in the facility for 30 days.

When an immediate involuntary transfer or discharge as specified in subsection (b)(3) or (4) of this section, is contemplated, unless the discharge is to a hospital, the facility must:

(A) immediately call the staff of the state office LTC-R Customer Service Section of the Texas Department of Human Services (DHS) to report their intention to discharge; and

(B) submit the required physician documentation regarding the discharge.

Contents of the notice. For nursing facilities, the written notice specified in subsection (d) of this section must include the following:

1. the reason for transfer or discharge;

2. the effective date of transfer or discharge;

3. the location to which the resident is transferred or discharged;

4. a statement that the resident has the right to appeal the action as outlined in DHS's Fair Hearings, Fraud, and Civil Rights Handbook by requesting a hearing through the Medicaid eligibility worker at the local DHS office within 10 days;

5. the name, address, and telephone number of the regional representative of the Office of the State Long Term Care Ombudsman, Texas Department on Aging, and of the toll-free number of the Texas Long Term Care Ombudsman, 1-800-252-2412;

6. in the case of a resident with mental illness or mental retardation, the address and phone number of the state mental health/mental retardation authority, which is: Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, 1-800-252-8154; and the phone number of the agency responsible for the protection and advocacy of persons with mental illness or mental retardation and/or related conditions, which is: Advocacy Incorporated, 7800 Shoal Creek Boulevard, Suite 175-E, Austin, Texas 78757, 1-800-252-9108.

Orientation for transfer or discharge. A facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

Notice of relocation to another room. Except in an emergency, the facility must notify the resident and either the responsible party or the family or legal representative at least five days before relocation of the resident to another room within the facility. The facility must prepare a written notice which contains:

1. the reasons for the relocation;

2. the effective date of the relocation; and

3. the room to which the facility is relocating the resident.
(1) Individuals who receive a discharge notice from a facility have 10 days to appeal. If the recipient appeals, he may remain in the facility, except in the circumstances described in subsections (b)(5) and (e)(3) of this section, until the hearing officer makes a final determination. Vendor payments and eligibility will continue until the hearing officer makes a final determination. If the recipient has left the facility, Medicaid eligibility will remain in effect until the hearing officer makes a final determination.

(2) When the hearing officer determines that the discharge was inappropriate, the facility, upon written notification by the hearing officer, must readmit the resident immediately, or to the next available bed. If the discharge has not yet taken place, and the hearing officer finds that the discharge will be inappropriate, the facility, upon written notification by the hearing officer, must allow the resident to remain in the facility. The hearing officer will also report the findings to Long Term Care-Regulatory for investigation of possible noncompliance.

(3) When the hearing officer determines that the discharge is appropriate, the resident is notified in writing of this decision. Any payments made on behalf of the recipient past the date of discharge or decision, whichever is later, must be recouped.

(j) Discharge of married residents. If two residents in a facility are married and the facility proposes to discharge one spouse to another facility, the facility must give the other spouse notice of his right to be discharged to the same facility. If the spouse notifies a facility, in writing, that he wishes to be discharged to another facility, the facility must discharge both spouses on the same day, pending availability of accommodations.

Source Note: The provisions of this §19.502 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective March 1, 1998, 23 TexReg 1314; amended to be effective January 1, 2000, 24 TexReg 11781; amended to be effective August 1, 2000, 25 TexReg 6779
(a) Notice before transfer. Before a nursing facility transfers a resident to a hospital or allows a resident to go on therapeutic leave, the nursing facility must provide written information to the resident and a family member or legal representative that specifies:

(1) the duration of the bed-hold policy under the Medicaid State Plan (see §19.2603 of this title (relating to Therapeutic Home Visits Away from the Facility) if any, during which the resident is permitted to return and resume residence in the facility; and

(2) the facility's policies regarding bed-hold periods, which must be consistent with subsection (c) of this section, permitting a resident to return.

(b) Bed-hold notice upon transfer. At the time of transfer of a resident to a hospital or for therapeutic leave, a nursing facility must provide to the resident and a family member or legal representative, written notice which specifies the duration of the bed-hold policy described in subsection (a) of this section.

(c) Permitting resident to return to facility. A nursing facility must establish and follow a written policy under which a resident whose hospitalization or therapeutic leave exceeds the bed-hold period under the State Plan, is readmitted to the facility immediately upon the first availability of a bed in a semi-private room if the resident:

(1) requires the services provided by the facility; and

(2) is eligible for Medicaid nursing facility services.

(d) Bed-hold charges. The facility may enter into a written agreement with the recipient or responsible party to reserve a bed.

(1) The facility may charge the recipient an amount not to exceed the DHS daily vendor rate according to the recipient's classification at the time the individual leaves the facility.

(2) The facility must document all bed-hold charges in the recipient's financial record at the time the bed-hold reservation services were provided.

(3) The facility may not charge a bed-hold fee if the Texas Department of Human Services (DHS) is paying for the same period of time, as in a three-day therapeutic home visit.
Source Note: The provisions of this §19.503 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective March 1, 1998, 23 TexReg 1314.
(a) A facility must establish and maintain identical policies and practices regarding transfer, discharge, and the provision of services under the Medicaid State Plan for all individuals regardless of source of payment.

(b) The facility may charge any amount for services furnished to non-Medicaid residents consistent with the notice requirement in §19.403(h) and (i) of this title (relating to Notice of Rights and Services).

(c) The Texas Department of Human Services is not required to offer additional services on behalf of a recipient other than services provided in the State Plan.

Source Note: The provisions of this §19.504 adopted to be effective May 1, 1995, 20 TexReg 2393.
Discharge planning must be done by appropriate facility staff in accordance with the provisions outlined in §19.803 of this title (relating to Discharge Summary (Discharge Plan of Care)).

**Source Note:** The provisions of this §19.505 adopted to be effective May 1, 1995, 20 TexReg 2393.
(a) Restraints. The resident has the right to be free from any physical or chemical restraints imposed for purposes of discipline or convenience, and not required to treat the resident's medical symptoms.

(1) If physical restraints are used because they are required to treat the resident's medical condition, the restraints must be released and the resident repositioned as needed to prevent deterioration in the resident's condition. Residents must be monitored hourly and, at a minimum, restraints must be released every two hours for a minimum of ten minutes, and the resident repositioned.

(2) A facility must not administer to a resident a restraint that:

   (A) obstructs the resident's airway, including a procedure that places anything in, on, or over the resident's mouth or nose;

   (B) impairs the resident's breathing by putting pressure on the resident's torso;

   (C) interferes with the resident's ability to communicate; or

   (D) places the resident in a prone or supine hold.

(3) A behavioral emergency is a situation in which severely aggressive, destructive, violent, or self-injurious behavior exhibited by a resident:

   (A) poses a substantial risk of imminent probable death of, or substantial bodily harm to, the resident or others;

   (B) has not abated in response to attempted preventive de-escalatory or redirection techniques;

   (C) could not reasonably have been anticipated; and

   (D) is not addressed in the resident's comprehensive care plan.

(4) If restraint is used in a behavioral emergency, the facility must use only an acceptable restraint hold. An acceptable restraint hold is a hold in which the resident's limbs are held close to the body to limit or prevent movement and that does not violate the provisions of paragraph (2) of this subsection.

(5) A staff person may use a restraint hold only for the shortest period of time necessary to ensure the protection of the resident or others in a behavioral emergency.
(6) A facility may adopt policies that allow less use of restraint than allowed by the rules of this chapter.

(7) Use of restraints and their release must be documented in the clinical record.

(b) Abuse. The resident has the right to be free from verbal, sexual, physical and mental abuse, corporal punishment, and involuntary seclusion.

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

(1) The facility must:

(A) not use verbal, mental, sexual, or physical abuse, corporal punishment, or involuntary seclusion; and

(B) not employ individuals who have:

(i) been found guilty of abusing, neglecting, or mistreating residents by a court of law, or

(ii) had a finding entered into the state nurse aide registry concerning abuse, neglect, mistreatment of residents, or misappropriation of their property; or

(iii) been convicted of any crime contained in §250.006, Health and Safety Code; and

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

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

(3) The facility must have evidence that all alleged violations are thoroughly investigated and must prevent further potential abuse while the investigation is in progress.

(4) The results of all investigations must be reported to the administrator or his designated representative and to other officials in accordance with Texas law (including to the state survey and certification agency) within five workdays of the incident, and if the alleged violation is verified, appropriate corrective action must be taken.

Source Note: The provisions of this §19.601 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective March 1, 1998, 23 TexReg 1314; amended to be effective June 1, 2006, 31 TexReg 4449
Texas Administrative Code

TITLE 40  SOCIAL SERVICES AND ASSISTANCE
PART 1  DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 19  NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION
SUBCHAPTER G  RESIDENT BEHAVIOR AND FACILITY PRACTICE
RULE §19.602  Incidents of Abuse and Neglect Reportable to the Texas Department of Human Services (DHS) and Law Enforcement Agencies by Facilities

(a) A facility owner or employee who has cause to believe that the physical or mental health or welfare of a resident has been or may be adversely affected by abuse, neglect, or exploitation caused by another person must report the abuse, neglect, or exploitation.

(b) Reports described in subsection (a) of this section are to be made to the DHS state office, Austin, Texas, at 1-800-458-9858.

   (1) The person reporting must make the telephone report immediately on learning of the alleged abuse, neglect, exploitation, conduct, or conditions.

   (2) The facility must conduct an investigation of the reported act(s). A written report of the investigation must be sent no later than the fifth working day after the oral report.

(c) Each employee of a facility must sign a statement which states:

   (1) the employee may be criminally liable for failure to report abuses; and

   (2) under the Health and Safety Code, Title 4, §242.133, the employee has a cause of action against a facility, its owner(s) or employee(s) if he is suspended, terminated, disciplined, or discriminated or retaliated against as a result of:

      (A) reporting to the employee's supervisor, the administrator, DHS, or a law enforcement agency a violation of law, including a violation of laws or regulations regarding nursing facilities; or

      (B) for initiating or cooperating in any investigation or proceeding of a governmental entity relating to care, services, or conditions at the nursing facility.

(d) The statements described in subsection (c) of this section must be available for inspection by DHS.

(e) A local or state law enforcement agency must be notified of reports described in subsection (a) of this section, which allege that:

   (1) a resident's health or safety is in imminent danger;

   (2) a resident has recently died because of conduct alleged in the report of abuse or neglect or other complaint;
(3) a resident has been hospitalized or treated in an emergency room because of conduct alleged in the report of abuse or neglect or other complaint;

(4) a resident has been a victim of any act or attempted act described in the Penal Code, §§21.11, 22.011, or 22.021; or

(5) a resident has suffered bodily injury, as that term is defined in the Penal Code, §1.07, because of conduct alleged in the report of abuse or neglect or other complaint.

Source Note: The provisions of this §19.602 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective March 1, 1998, 23 TexReg 1314; amended to be effective October 15, 1998, 23 TexReg 10496; amended to be effective August 1, 2000, 25 TexReg 6779; amended to be effective September 1, 2003, 28 TexReg 6939; amended to be effective May 1, 2004, 29 TexReg 3235
(a) A complaint is any allegation received by the Texas Department of Human Services (DHS) other than an incident reported by facility staff. These allegations include, but are not limited to, abuse, neglect, exploitation, or violation of state or federal standards.

(b) DHS will furnish the facility with a notification of the complaint received and a summary of the complaint, without identifying the source of the complaint.

Source Note: The provisions of this §19.604 adopted to be effective May 1, 1995, 20 TexReg 2393.
Texas Administrative Code

TITLE 40
SOCIAL SERVICES AND ASSISTANCE

PART 1
DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 19
NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

SUBCHAPTER G
RESIDENT BEHAVIOR AND FACILITY PRACTICE

RULE §19.606
Reporting of Resident Death Information

(a) All licensed facilities must submit to the Texas Department of Human Services (DHS) a report of deaths of any persons residing in the facility and those persons transferred from the facility to a hospital who expire within 24 hours after transfer.

(b) The facility must submit to DHS a standard DHS form within ten workdays after the last day of the month in which a resident death occurs. The form must include:

(1) name of deceased;
(2) social security number of the deceased;
(3) date of death; and
(4) name and address of the institution.

(c) These reports are confidential under the Health and Safety Code, §242.134; however, licensed facilities must make available historical statistics provided to them by DHS and must provide the statistics, if requested, to the applicants for admission or their representative.

(d) DHS produces statistical information of official causes of death to determine patterns and trends of incidents of death among the elderly and in specific facilities and makes this information available to the public upon request.

Source Note: The provisions of this §19.606 adopted to be effective May 1, 1995, 20 TexReg 2393.
A facility must care for its residents in a manner and in an environment that promotes maintenance or enhancement of each resident's quality of life. If children are admitted to a facility, care must be provided to meet their unique medical and developmental needs.

(1) Dignity. The facility must promote care for residents in a manner and in an environment that maintains or enhances each resident's dignity and respect in full recognition of the resident's individuality.

(2) Self-determination and participation. The resident has the right to:

(A) choose activities, schedules, and health care consistent with the resident's interests, assessments, and plans of care;

(B) interact with members of the community both inside and outside of the facility; and

(C) make choices about aspects of the resident's life in the facility that are significant to the resident.

(3) Participation in other activities. A resident has the right to participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility.

(4) Accommodation of needs. A resident has the right to:

(A) reside and receive services in the facility with reasonable accommodation of individual needs and preferences, except when the health or safety of the individual or other residents would be endangered; and

(B) receive notice before the resident's room or roommate in the facility is changed.

(5) Accommodations for children. Pediatric residents should be matched with roommates of similar age and developmental levels.

Source Note: The provisions of this §19.701 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective September 1, 2008, 33 TexReg 6151
(a) The facility must provide for an ongoing program of activities designed to meet, in accordance with the comprehensive assessment, the interest and the physical, mental, and psychosocial well-being of each resident.

(b) The activities program must be directed by a qualified professional who:

(1) is a qualified therapeutic recreation specialist or an activities professional who is:

   (A) licensed or registered, if applicable, by the state in which practicing; and

   (B) eligible for certification as a therapeutic recreation specialist, therapeutic recreation assistant, or an activities professional by a recognized accrediting body, such as the National Council for Therapeutic Recreation Certification, on October 1, 1990; or

   (2) has two years of experience in a social or recreational program within the last five years, one of which was full-time in a patient activities program in a health care setting; or

   (3) is a qualified occupational therapist or occupational therapy assistant; or

   (4) has completed an activity director training course approved by any state. The Texas Department of Human Services (DHS) does not review or approve any courses. DHS accepts training courses approved by a recognized credentialing body, such as the National Certification Council for Activity Professionals, the National Therapeutic Recreation Society, or the Consortium for Therapeutic Recreation/Activities Certification, Inc.

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

(d) The facility must ensure that activities assessment and care planning are completed and reviewed or updated as provided in §19.801 and §19.802 of this title (relating to Resident Assessment and Comprehensive Care Plans). If indicated by the Resident Assessment Instrument (RAI) and/or the resident's need, an in-depth activities assessment is required.

(e) Toys and recreational equipment for pediatric residents must be appropriate for the size, age, and developmental level of the residents.

Source Note: The provisions of this §19.702 adopted to be effective May 1, 1995, 20 TexReg 2393;
amended to be effective April 1, 2001, 26 TexReg 2407
(a) The facility must provide medically-related social services to attain the highest practicable physical, mental, or psychosocial well-being of each resident. See also §19.901 of this title (relating to Quality of Care) for information concerning psychosocial functioning.

(1) A facility with more than 120 beds must employ a qualified social worker on a full-time basis.

(2) A facility of 120 beds or less must employ or contract with a qualified social worker (or in lieu thereof, a social worker who is licensed by the Texas State Board of Social Work Examiners, and who meets the requirements of subsection (b)(2) of this section) to provide social services a sufficient amount of time to meet the needs of the residents.

(b) A qualified social worker is an individual who is licensed, including a temporary or provisional license, by the Texas State Board of Social Work Examiners as prescribed by Chapter 50 of the Human Resources Code, and who has at least:

(1) a bachelor's degree in social work, or a bachelor's degree in a human services field, including, but not limited to, sociology, special education, rehabilitation counseling, and psychology; and

(2) one year of supervised social work experience in a health care setting working directly with individuals.

Source Note: The provisions of this §19.703 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective August 1, 2000, 25 TexReg 6779
(a) The facility must ensure that psychosocial assessment and care planning are completed and reviewed or updated as provided in §19.801 and §19.802 of this title (relating to Resident Assessment and Comprehensive Care Plans).

(b) If indicated by the Resident Assessment Instrument (RAI) and/or the resident's need, an in-depth psychosocial assessment is required. The social service needs of each resident must be identified and addressed by the direct provision of services or by arranging access to services.

Source Note: The provisions of this §19.704 adopted to be effective May 1, 1995, 20 TexReg 2393.
The facility must provide:

(1) a safe, clean, comfortable, and homelike environment, allowing the resident to use his personal belongings to the extent possible;

(2) housekeeping and maintenance services necessary to maintain a sanitary, orderly and comfortable interior;

(3) clean bed and bath linen that are in good condition;

(4) private closet space in each resident room;

(5) adequate and comfortable lighting levels in all areas (see §19.1721 of this title (relating to Lighting and Illumination));

(6) comfortable and safe temperature levels. Facilities initially licensed or certified after October 1, 1990, must maintain temperature ranges of 71-81 degrees Fahrenheit; and

(7) for the maintenance of comfortable sound levels.

Source Note: The provisions of this §19.705 adopted to be effective May 1, 1995, 20 TexReg 2393.
(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;

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

(4) 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:

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

(2) 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 §19.802 Comprehensive Care Plans

(a) A facility must develop a comprehensive care plan for each resident that includes measurable short-term and long-term objectives and timetables to meet a resident's medical, nursing, mental, and psychosocial needs that are identified in the comprehensive assessment. If a child is admitted to the facility, the comprehensive care plan must be based on the child's individual needs. The comprehensive care plan must describe the following:

1. the services that are to be furnished to attain or maintain the resident's highest practicable physical, mental, and psychosocial well-being as required under §19.901 of this title (relating to Quality of Care); and

2. any services that would otherwise be required under §19.901 of this title but are not provided due to the resident's exercise of rights, including the right to refuse treatment under §19.402(g) of this title (relating to Exercise of Rights).

(b) The comprehensive care plan must be:

1. developed within seven days after completion of the comprehensive assessment;

2. prepared by an interdisciplinary team that includes the attending physician, a registered nurse with responsibility for the resident, and other appropriate staff in disciplines as determined by the resident's needs, and, to the extent practicable, with the participation of the resident, the resident's family or legal representative;

3. periodically reviewed and revised by a team of qualified persons after each assessment; and

4. for a resident under 22 years of age, annually reviewed at a comprehensive care plan meeting between the facility and the resident's LAR as defined in §19.805(a)(5) of this title (relating to Permanency Planning for a Resident Under 22 Years of Age), which includes a review of:

   A. the LAR's contact information as required by §19.805(b)(5)(F) of this title;

   B. the resident's comprehensive assessment;

   C. the resident's educational status; and

   D. the resident's permanency plan.

(c) A comprehensive care plan must include:

1. for a resident under 18 years of age, the activities, supports, and services that, when provided or facilitated by the facility, will enable the resident to live with a family; or
(2) for a resident 18-22 years of age, the activities, supports, and services that, when provided or facilitated by
the facility, will result in the resident having a consistent and nurturing environment in the least restrictive setting,
as defined by the resident and LAR as defined in §19.805(a)(5) of this title.

(d) A comprehensive care plan may include a palliative plan of care. This plan may be developed only at the
request of the resident, surrogate decision maker or legal representative for residents with terminal conditions,
end stage diseases or other conditions for which curative medical interventions are not appropriate. The plan of
care must have goals that focus on maintaining a safe, comfortable and supportive environment in providing care
to a resident at the end of life.

(e) For a resident under 22 years of age, the facility must provide written notice to the LAR, as defined in
§19.805(a)(5) of this title, of a meeting to conduct an annual review of the resident's comprehensive care plan
no later than 21 days before the meeting date and request a response from the LAR.

(f) The services provided or arranged by the facility must:

(1) meet professional standards of quality; and

(2) be provided by qualified persons in accordance with each resident's written plan of care.

(g) The comprehensive care plan must be made available to all direct care staff.

Source Note: The provisions of this §19.802 adopted to be effective May 1, 1995, 20 TexReg 2393;
amended to be effective June 1, 2001, 26 TexReg 3824; amended to be effective September 1, 2006, 31
TexReg 6800
(a) When the facility anticipates discharge, the resident must have a discharge summary that includes:

(1) a recapitulation of the overall course of the resident's stay;

(2) a final summary of the resident's status, including items in §19.801(2)(B) of this title (relating to Resident Assessment), must be available for release to authorized persons and agencies with the consent of the resident or legal representative; and

(3) a post-discharge plan of care, developed with the participation of the resident, a family representative, responsible party, and/or legal guardian, which will, after discharge, assist the resident to adjust to his new living environment.

(b) The facility discharge summary must be available at the time of discharge when a resident is being discharged to a private residence, another nursing facility, a Medicare skilled nursing facility, another residential facility such as a board and care home, or an intermediate care facility for the mentally retarded.

Source Note: The provisions of this §19.803 adopted to be effective May 1, 1995, 20 TexReg 2393.
(a) A facility will perform a Capacity Assessment for Self Care and Financial Management for persons who will be referred to a court for guardianship if the person:

(1) is elderly, which is defined as a person 60 years of age or older; or

(2) has mental retardation or a developmental disability; or

(3) is suspected of being a person with mental retardation or a developmental disability.

(b) The assessment will be completed when:

(1) a facility determines that a guardian of the estate, or the person, or both, may be appropriate and a referral to a court for guardianship is anticipated; or

(2) requested to do so by a court.

(c) The facility will use the Capacity Assessment for Self Care and Financial Management instrument developed by the Texas Department of Mental Health and Mental Retardation.

(d) The Capacity Assessment for Self Care and Financial Management will be performed by the facility social worker, with assistance from other professionals as requested by the social worker.

Source Note: The provisions of this §19.804 adopted to be effective March 15, 2000, 25 TexReg 1395
Texas Administrative Code

TITLE 40  SOCIAL SERVICES AND ASSISTANCE
PART 1    DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 19 NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION
SUBCHAPTER I RESIDENT ASSESSMENT
RULE §19.805 Permanency Planning for a Resident Under 22 Years of Age

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

(1) Permanency planning--A philosophy and planning process that focuses on the outcome of family support by facilitating a permanent living arrangement, with the primary feature of an enduring and nurturing parental relationship. Family-directed planning empowers the family of a child under the age of 18 to direct the development of supports and services that meet the child and family's personal outcomes as related to that child. Person-directed planning empowers the child who is between 18 and 22 years of age to direct the development of a plan of supports and services that meets the needs for self-determination.

(2) Child--A person with a developmental disability who is under 22 years of age.

(3) CRCG (Community resource coordination group)--A local interagency group composed of public and private agencies that develops service plans for individuals whose needs can be met only through interagency coordination and cooperation. The group's role and responsibilities are described in the Memorandum of Understanding on Coordinated Services to Persons Needing Services from More Than One Agency, available on the Health and Human Services Commission website at www.hhsc.state.tx.us/crcg/crcg.htm.

(4) Emergency situation--An unexpected situation involving a child's health, safety, or welfare, of which a person of ordinary prudence would determine that the LAR should be informed, such as:

   (A) a child needing emergency medical care;

   (B) a child being removed from his residence by law enforcement;

   (C) a child leaving his residence without notifying staff and not being located; and

   (D) a child being moved from his residence to protect the child (for example, because of a hurricane, fire, or flood).

(5) LAR (legally authorized representative)--A person authorized by law to act on behalf of a resident with regard to a matter described in this subchapter, which may include a parent, guardian, managing conservator of a minor individual, a guardian of an adult individual, or legal representative of a deceased individual.

(6) Permanency planner--A person assigned by DADS to conduct permanency planning activities for a child who resides in a facility.
(b) Facility responsibilities regarding permanency planning.

(1) A facility must request a Preadmission Screening and Resident Review (PASARR) on every child who is a potential admission to a facility, as well as on all children currently residing in a facility who have not had a previous PASARR completed. Documentation regarding the request for or completion of a PASARR must be kept in the chart.

(2) A facility must notify the following entities of the child's admission not later than the third day after a child is initially placed in a facility:

(A) the DADS pediatric nurse specialist via fax. Information must include the child's full name, date of birth, date of admission, social security number, Medicaid number (if available), the facility name and address, and the name, address, and telephone number of the child's LAR;

(B) the CRCG in the county where the LAR resides (see www.hhsc.state.tx.us/crcg/crcg.htm for a listing of CRCG chairpersons by county); and

(C) the local office of the Early Childhood Intervention (ECI) Program, if a child is less than three years of age (see www.dars.state.tx.us/ecis/index.shtml or call 1-800-250-2246 for a listing of ECI programs by county), or the local school district, if a child is at least three years of age, with which the facility must coordinate educational opportunities (See §19.1934 of this title (relating to Educational Requirements for Persons under Age 22)).

(3) A facility must notify the DADS pediatric nurse specialist within 14 days if there is a significant change of condition in a child residing in the facility.

(4) A facility must keep documentation regarding the notifications required in paragraphs (2) and (3) of this subsection and a copy of the current permanency plan in a separate section in the front of each child's records.

(5) A facility must:

(A) cooperate with the permanency planner by:

(i) allowing access to a child's records or providing other information in a timely manner as requested by the permanency planner or the Health and Human Services Commission;

(ii) participating in meetings to review the child's permanency plan; and

(iii) identifying, in coordination with the permanency planner, activities, supports, and services that can be provided by the family, LAR, facility, or the permanency planner to prepare the child for an alternative living arrangement;

(B) encourage regular contact between the child and LAR and, if desired by the child and LAR, between the child and advocates and friends in the community to continue supportive and nurturing relationships;

(C) encourage participation in the comprehensive care plan meetings by the LAR, and, if desired by the child or LAR, by family members, advocates, and friends in the community;
(D) make reasonable accommodations to promote the participation of the LAR in all planning and decision-making regarding the child's care, including participating in:

(i) the initial development and annual review of the child's comprehensive care plan;

(ii) decision-making regarding the child's medical care;

(iii) routine interdisciplinary team meetings; and

(iv) decision-making and other activities involving the child's health and safety;

(E) ensure that reasonable accommodations include:

(i) conducting a meeting in person or by telephone, as mutually agreed upon by the facility and the LAR;

(ii) conducting a meeting at a time and, if the meeting is in person, at a location that is mutually agreed upon by the facility and the LAR;

(iii) if the LAR has a disability, providing reasonable accommodations in accordance with the Americans with Disabilities Act, including providing an accessible meeting location or a sign language interpreter, if appropriate; and

(iv) providing a language interpreter, if appropriate;

(F) upon admission and annually thereafter:

(i) request from and encourage an LAR to provide the following information for a child during the annual comprehensive care plan meeting and, for an applicant, upon admission:

(I) the LAR's:

(-a-) name;

(-b-) address;

(-c-) telephone number;

(-d-) driver license number and state of issuance or personal identification card number issued by the Department of Public Safety; and

(-e-) place of employment and the employer's address and telephone number;

(II) the name, address, and telephone number of a relative of the child or other person whom DADS or the facility may contact in an emergency situation, a statement indicating the relation between that person and the child, and at the LAR's option:

(-a-) that person's driver license number and state of issuance or personal identification card number issued by the Department of Public Safety; and
(-b-) the name, address, and telephone number of that person's employer; and

(III) a signed acknowledgement of responsibility stating that the LAR agrees to:

(-a-) notify the facility of any changes to the contact information submitted; and

(-b-) make reasonable efforts to participate in the child's life and in planning activities for the child; and

(ii) inform the LAR that if the information described in clause (i) of this subparagraph is not provided or is not accurate and the facility and DADS are unable to locate the LAR as described in subparagraph (J) of this paragraph, DADS refers the case to the Department of Family and Protective Services, in accordance with subsection (c) of this section;

(G) refrain from providing the LAR with inaccurate or misleading information regarding the risks of moving the child to another facility or community setting;

(H) if an emergency situation occurs, attempt to notify the LAR as soon as the emergency situation allows and request a response from the LAR;

(I) if an LAR does not respond to a notice of the child's annual comprehensive care plan meeting, a request for the LAR's consent, or an emergency situation, attempt to locate the LAR by contacting a person identified by the LAR in the contact information described in subparagraph (F) if this paragraph;

(J) no later than 30 days after the date the facility determines that it is unable to locate the LAR, notify DADS of that determination and request that DADS initiate a search for the LAR;

(K) before a child who is under 18 years of age, or who is 18-22 years of age and for whom an LAR has been appointed, is transferred to another facility operated by the transferring facility, attempt to obtain consent for the transfer from the LAR, unless the transfer is made because of a serious risk to the health and safety of the child or another person; and

(L) document compliance with the requirements of this paragraph in the child's records.

(6) The facility administrator must ensure that the social worker or other appropriate staff, as needed, will contribute to the development of the permanency plan.

(7) Paragraphs (3) - (6) of this subsection do not apply to short-stay care of less than 14 days; however, the facility must notify the DADS pediatric nurse specialist, the CRCG, and ECI or the local school district as required in paragraph (2)(A) - (C) of this subsection.

(c) If, within one year of the date DADS receives the notification described in subsection (b)(5)(J) of this section, DADS is unable to locate the LAR, DADS refers the case to:

(1) the Child Protective Services Division of the Department of Family and Protective Services if the child is under 18 years of age; or

(2) the Adult Protective Services Division of the Department of Family and Protective Services if the child is 18-22 years of age.
Source Note: The provisions of this §19.805 adopted to be effective May 1, 2002, 27 TexReg 2834; amended to be effective September 1, 2006, 31 TexReg 6800
Each resident must receive and the facility must provide the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, as defined by and in accordance with the comprehensive assessment and plan of care. If children are admitted to the facility, care and services must be provided to meet their unique medical and developmental needs.

(1) Activities of daily living. Based on the comprehensive assessment of the resident, the facility must ensure that:

   (A) a resident's abilities in activities of daily living do not diminish unless the circumstances of the individual's clinical condition demonstrate that diminution is unavoidable. This includes the resident's abilities to:

   (i) bathe, dress, and groom;

   (ii) transfer and ambulate;

   (iii) toilet;

   (iv) eat; and

   (v) use speech, language, or other functional communication systems;

   (B) the resident is given the appropriate treatment and services to maintain or improve his abilities specified in paragraph (1) of this section;

   (C) a resident who is unable to carry out activities of daily living receives the necessary services to maintain good nutrition, grooming, and personal and oral hygiene.

(2) Vision and hearing. To ensure that residents receive proper treatment and assistive devices to maintain vision and hearing abilities, the facility must, if necessary, assist the resident:

   (A) in making appointments; and

   (B) by arranging for transportation to and from the office of a practitioner specializing in the treatment of vision or hearing impairment or the office of a professional specializing in the provision of vision or hearing assistive devices.

(3) Pressure sores. Based on the comprehensive assessment of the resident, the facility must ensure that:
(A) a resident who enters the facility without pressure sores does not develop pressure sores unless his clinical condition demonstrates that they are unavoidable; and

(B) a resident having pressure sores receives necessary treatment and services to promote healing, prevent infection, and prevent new sores from developing.

(4) Urinary incontinence. Based on the comprehensive assessment of the resident, the facility must ensure that:

(A) a resident who enters the facility without an indwelling catheter is not catheterized unless his clinical condition demonstrates that catheterization is necessary; and

(B) a resident who is incontinent of bladder receives appropriate treatment and services to prevent urinary tract infections and to restore as much normal bladder function as possible.

(5) Range of motion. Based on the comprehensive assessment of the resident, the facility must ensure that:

(A) a resident who enters the facility without a limited range of motion does not experience reduction in range of motion unless the resident's clinical condition demonstrates that a reduction in range of motion is unavoidable; and

(B) a resident with a limited range of motion receives appropriate treatment and services to increase range of motion and/or to prevent further decrease in range of motion.

(6) Mental and psychosocial functioning. Based on the comprehensive assessment of the resident, the facility must ensure that:

(A) a resident who displays mental or psychosocial adjustment difficulty receives appropriate treatment and services to correct the assessed problem; and

(B) a resident whose assessment does not reveal a mental or psychosocial adjustment difficulty does not display a pattern of decreased social interaction and/or increased withdrawn, angry, or depressive behaviors, unless his clinical condition demonstrates that such a pattern is unavoidable.

(7) Naso-gastric tube. Based on the comprehensive assessment of the resident, the facility must ensure that:

(A) a resident who has been able to eat enough alone or with assistance is not fed by naso-gastric tube unless his clinical condition demonstrates that use of a naso-gastric tube is unavoidable; and

(B) a resident who is fed by a naso-gastric or gastrostomy tube receives the appropriate treatment and services to prevent aspiration pneumonia, diarrhea, vomiting, dehydration, metabolic abnormalities, and nasopharyngeal ulcers, and to restore, if possible, normal eating skills.

(8) Accidents. The facility must ensure that:

(A) the resident environment remains as free of accident hazards as possible; and

(B) each resident receives adequate supervision and assistive devices to prevent accidents.

(9) Nutrition. Based on the comprehensive assessment of the resident, the facility must ensure that a resident:
(A) maintains acceptable parameters of nutritional status, such as body weight and protein levels, unless his clinical condition demonstrates that this is not possible; and

(B) receives a therapeutic diet when there is a nutritional problem.

(10) Hydration. The facility must ensure that the resident is provided with sufficient fluid intake to maintain proper hydration and health.

(11) Special needs. The facility must ensure that residents receive proper treatment and care for the following special services:

(A) injections;

(B) parenteral or enteral fluids;

(C) colostomy, ureterostomy, or ileostomy care;

(D) tracheostomy care;

(E) tracheal suctioning;

(F) respiratory care;

(G) foot care; and

(H) prostheses.

(12) Unnecessary drugs.

(A) General. Each resident's drug regimen must be free from unnecessary drugs. An unnecessary drug is any drug when used:

(i) in excessive dose (including duplicate drug therapy); or

(ii) for excessive duration; or

(iii) without adequate monitoring; or

(iv) without adequate indications for its use; or

(v) in the presence of adverse consequences which indicate the dose should be reduced or discontinued; or

(vi) any combination of the circumstances in clauses (i)-(v) of this subparagraph.

(B) Antipsychotic drugs. Based on the comprehensive assessment of the resident, the facility must ensure that:

(i) residents who have not used antipsychotic drugs are not given these drugs unless antipsychotic drug therapy is necessary to treat a specific condition as diagnosed and documented in the clinical record; and

(ii) residents who use antipsychotic drugs receive gradual dose reductions, and behavioral interventions,
unless clinically contraindicated, in an effort to discontinue use of these drugs.

(13) Medication errors. The facility must ensure that:

(A) it is free of medication error rates of 5.0% or greater; and

(B) residents are free of significant medication errors.

(14) Pediatric care.

(A) Licensed nursing care of children. A facility caring for children must have 24 hour a day on-site licensed nursing staff in numbers sufficient to provide safe care. For any facility with five or more children under 26 pounds, at least one nurse must be assigned solely to the care of those children.

(B) Fewer than five pediatric residents. Facilities with fewer than five pediatric residents must assure that the children's rooms are in close proximity to the nurses' station.

(C) Respiratory care of children.

(i) To facilitate the care of ventilator-dependent children or children with tracheostomies, a facility must group those children in rooms contiguous or in close proximity to each other. An exception to this rule is children who are able to be schooled off-site.

(ii) Facilities must assure that alarms on ventilators, apnea monitors, and any other such equipment uniquely identify the child or the child's room.

(iii) A facility caring for children with tracheostomies requiring daily care (including ventilator-dependent children with tracheostomies) must have 24 hour a day on-site respiratory therapy staff in numbers sufficient to provide a safe ratio of respiratory therapist per these residents. For the purposes of this rule, respiratory therapy staff is defined as a registered respiratory therapist (RRT), a certified respiratory therapy technician (CRT), or a licensed nurse whose primary function is respiratory care.

(I) If the facility cares for nine or more children with tracheostomies requiring daily care (including ventilator-dependent children with tracheostomies), the facility must maintain a ratio of no less than one respiratory therapy staff per nine tracheostomy residents 24 hours a day.

(II) If the facility cares for six or more ventilator dependent children, the facility must:

(-a-) designate a respiratory therapy supervisor, either on staff or contracted who must be credentialed by the National Board for Respiratory Care (either CRT or RRT).

(-b-) provide and document that all respiratory therapy staff is trained in the care of children who are ventilator dependent. This training must be reviewed annually.

(-c-) assure that appropriate care, maintenance, and disinfection of all ventilator equipment and accessories occurs.

Source Note: The provisions of this §19.901 adopted to be effective May 1, 1995, 20 TexReg 2393;
amended to be effective May 15, 1998, 23 TexReg 4572.
The Department of Aging and Disability Services (DADS) uses an early warning system to detect conditions that could be detrimental to the health, safety, and welfare of residents.

(1) Quality-of-care monitors are based in regional offices and monitor long-term care (LTC) facilities on visits that may be announced or unannounced and may occur on any day and at any time, including nights, weekends, and holidays.

(2) Priority for monitoring visits is given to LTC facilities with a history of resident care deficiencies.

(3) Quality-of-care monitors assess:

(A) the overall quality of life in the facility; and

(B) specific conditions in the facility directly related to resident care.

(4) The quality-of-care monitor assessment visits include:

(A) observation of the care and services rendered to residents; and

(B) formal and informal interviews with residents, family members, facility staff, resident guests, volunteers, other regular staff, and resident representatives and advocates.

(5) The identity of a resident or a family member of a resident interviewed by a quality-of-care monitor is confidential and may not be disclosed.

(6) The findings of a monitoring visit, both positive and negative, will be provided orally and in writing to the facility administrator or, in the absence of the facility administrator, to the administrator on duty or the director of nursing.

(7) The quality-of-care monitor may recommend to the facility administrator procedural and policy changes and staff training to improve the care or quality of life of residents.

(8) Conditions observed by the quality-of-care monitor that may constitute an immediate threat to the health or safety of a resident will be immediately reported to the regional office supervisor for appropriate action and, as appropriate or as required by law, to law enforcement, adult protective services, other divisions of DADS, or other responsible agencies.
Source Note: The provisions of this §19.910 adopted to be effective May 1, 2002, 27 TexReg 3207; amended to be effective June 1, 2006, 31 TexReg 4458
Rapid response teams are comprised of one or more quality-of-care monitors who can visit long-term care (LTC) facilities identified through the Department of Aging and Disability Services' (DADS') early warning system.

Rapid response teams may visit facilities that request DADS' assistance. A visit under this subsection may not occur before the 60th day after the date of an exit interview following an annual or follow-up survey or inspection.

Rapid response teams may not be deployed for the purpose of helping an LTC facility prepare for a regular inspection or survey conducted under the Health and Safety Code, Chapters 242, 247, or 252, or in accordance with the Human Resources Code, Chapter 32.

Source Note: The provisions of this §19.911 adopted to be effective May 1, 2002, 27 TexReg 3207; amended to be effective June 1, 2006, 31 TexReg 4458.
The facility must have sufficient staff to provide nursing and related services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care. Nursing services to children must be provided by staff who have been instructed and have demonstrated competence in the care of children. Care and services are to be provided as specified in §19.901 of this title (relating to Quality of Care).

(1) Sufficient staff:

(A) The facility must provide services by sufficient numbers of each of the following types of personnel on a 24-hour basis to provide nursing care to all residents in accordance with resident care plans:

(i) except when waived under paragraph (3) of this section, licensed nurses; and

(ii) other nursing personnel.

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

(2) Registered nurse.

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

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

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

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

(A) To the extent that a facility is unable to meet the requirements of paragraphs (1)(B) and (2)(A) of this section, the state may waive these requirements with respect to the facility, if:

(i) the facility demonstrates to the satisfaction of the Texas Department of Human Services (DHS) that the facility has been unable, despite diligent efforts (including offering wages at the community prevailing rate for nursing facilities), to recruit appropriate personnel;
(ii) DHS determines that a waiver of the requirement will not endanger the health or safety of individuals staying in the facility;

(iii) the state finds that, for any periods in which licensed nursing services are not available, a registered nurse or a physician is obligated to respond immediately to telephone calls from the facility; and

(iv) the waivered facility has a full-time registered or licensed vocational nurse on the day shift seven days a week. For purposes of this requirement, the starting time for the day shift must be between 6 a.m. and 9 a.m. The facility must specify in writing the schedule that it follows.

(B) A waiver granted under the conditions listed in this paragraph is subject to annual state review.

(C) In granting or renewing a waiver, a facility may be required by the state to use other qualified, licensed personnel.

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

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

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

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

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

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

(iii) the facility either has:

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

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

(B) The secretary provides notice of the waiver to the state long term care ombudsman (established under §307(a)(12) of the Older Americans Act of 1965) and the protection and advocacy system in the state for the mentally ill and mentally retarded.
(C) The SNF that is granted a waiver by the state notifies residents of the facility (or, when appropriate, the guardians or legal representatives of the residents) and members of their immediate families of the waiver.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) modification of the physical environment relating to nursing services.

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

(A) requirements for a waiver are not met on a continuing basis;

(B) the quality of resident care is not acceptable; or

(C) justified complaints are found in areas affecting resident care.

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

Source Note: The provisions of this §19.1001 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective March 1, 1998, 23 TexReg 1314.
Texas Administrative Code

TITLE 40  SOCIAL SERVICES AND ASSISTANCE
PART 1  DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 19  NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION
SUBCHAPTER K  NURSING SERVICES
RULE §19.1002  Additional Nursing Services Staffing Requirements

(a) The ratio of licensed nurses to residents must be sufficient to meet the needs of the residents.

(1) At a minimum, the facility must maintain a ratio (for every 24-hour period) of one licensed nursing staff person for each 20 residents or a minimum of .4 licensed-care hours per resident day. To determine licensed-care hours per resident day, multiply the number of licensed nurses by the number of hours they work in a single day and divide the product by the number of residents in the facility. Three nurses working eight-hour shifts is 24 hours, divided by 60 residents, equals .4 licensed-care hours per resident day.

(2) Licensed nurses who may be counted in the ratio include, but are not limited to, director of nursing, assistant directors of nursing, staff development coordinators, charge nurses, and medication/treatment nurses. These licensed nurses may be counted subject to the limitations of paragraphs (3) and (4) of this subsection.

(3) Staff, who also have administrative duties not related to nursing, may be counted in the ratio only to the degree of hours spent in nursing-related duties.

(4) If a multi-level facility (nursing facility or Medicare SNF) has one director of nursing over the entire facility, he may not be counted in the nursing ratio. A director of nursing for a single distinct part may be counted in the ratio for the distinct part.

(b) The facility must maintain continuous time schedules showing the number and classification of nursing personnel, including relief personnel, who are scheduled or who worked in each unit during each tour of duty. The time schedules must be maintained for the period of time specified by facility policy or for at least two years following the last day in the schedule.

(c) A graduate vocational nurse who has a temporary work permit must work under the direction of a licensed vocational nurse, registered nurse, or licensed physician who is physically present in the facility. The graduate (registered) nurse who has a temporary work permit must work under the direction of a registered nurse until registration has been achieved.

(d) If the facility uses licensed temporary nursing personnel, the temporary personnel must have the same qualifications that permanent facility employees do. If temporary personnel are used for afternoon or night shifts, a full-time, licensed nurse must be on call and immediately available by telephone. The on-call nurse must be a registered nurse unless the facility has a current waiver from DHS and is not required to provide daily RN coverage.

(e) Consultative pediatric nursing services must be available to facility staff if the facility has a pediatric resident.
Source Note: The provisions of this §19.1002 adopted to be effective May 1, 1995, 20 TexReg 2393.
The director of nursing services must serve only one facility in this capacity.

(1) If the director of nursing services has other institutional responsibilities, a qualified registered nurse must serve as an assistant so that there is the equivalent of a full-time director of nursing services on duty.

(2) If a nursing facility, as a result of waivered status, employs a licensed vocational nurse to supervise and direct nursing services, the facility must have an agreement with a registered nurse who must provide the vocational nurse at least four hours of consultation in the facility per week. The registered nurse must not assume director of nursing duties, but must act as a consultant to solve problems involving resident care, conduct in-service training, and maintain proper clinical records.

Source Note: The provisions of this §19.1004 adopted to be effective May 1, 1995, 20 TexReg 2393.
Texas Administrative Code

TITLE 40  
SOCIAL SERVICES AND ASSISTANCE

PART 1  
DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 19  
NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

SUBCHAPTER K  
NURSING SERVICES

RULE §19.1006  
Nursing Facility Restorative Nursing Care

The facility must have a program of restorative nursing care that is an integral part of nursing service and is directed toward helping each resident to achieve and maintain an optimal level of self-care and independence, as defined by the Comprehensive Assessment and Comprehensive Care Plan. Nursing personnel must be trained in restorative nursing and must provide restorative services daily for residents who require them. Nursing personnel must routinely record these services in the resident's clinical record.

Source Note: The provisions of this §19.1006 adopted to be effective May 1, 1995, 20 TexReg 2393.
(a) Licensed nurses must practice within the constraints of applicable state laws and regulations governing their practice and must follow the guidelines contained in the facility's written policies and procedures. Registered nurses may delegate nursing tasks to unlicensed personnel, according to the rules found in §218 of the Nurse Practice Act.

(b) Regarding the administration of intravenous fluids or medications, extracting blood for laboratory tests, or the insertion of a nasogastric tube, the licensed vocational nurse (LVN) must have been instructed and have demonstrated competence in the technique.

(c) LVNs whose formal training has not included venipuncture or nasogastric tube insertion procedures may perform these procedures if the registered nurse (RN) director of nursing or RN consultant document that each LVN (by name) has received instruction in the performance of these procedures and is qualified to perform them.

(d) When a licensed nurse takes a verbal or telephone order from a physician, podiatrist, or dentist, the nurse must sign the order. The facility must obtain the physician's, podiatrist's, or dentist's signature on the order and return it to the clinical record in a timely manner.

(1) A licensed nurse may accept a physician's, dentist's, or podiatrist's order for the administration of medications or treatments when that order originates with one of the licensed practitioners and is merely communicated to the RN or LVN through another person.

(2) Licensed physical therapists, licensed occupational therapists, respiratory care practitioners, qualified dietitians, and licensed speech-language pathologists may accept physician orders only within their standards of practice and when they relate directly to their field of practice.

(e) Nurses must enter, or approve and sign, nurses' notes in the following instances:

(1) at least monthly. Routine charting for residents must reflect the recipient's ability as assessed on the way he performs his activities of daily living at least 60% of the time; and

(2) at the time of any physical complaints, accidents, incidents, change in condition or diagnosis, and progress. All of these situations must be promptly recorded as exceptions and included in the clinical record.

(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. The
facility’s nursing staff and the medical staff or consultant must have jointly developed and approved these policies. The policy must include the following points:

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

(2) the body of a deceased resident must not be removed from the facility without a physician's or registered nurse's authorization. Telephone authorization is acceptable, if not in conflict with local regulations. Authorization by a justice of the peace, acting as a coroner, is sufficient when the attending or consulting physician or registered nurse is not available; and

(3) any death which involves trauma, or unusual or suspicious circumstances, must be reported immediately to the authorities, in accordance with local regulations, and to the Texas Department of Human Services (DHS), in accordance with §19.1921(m) of this title (relating to General Requirements for a Nursing Facility). Deaths must also be reported to DHS monthly, as specified in §19.606 of this title (relating to Reporting of Resident Death Information).

Source Note: The provisions of this §19.1010 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective March 1, 1998, 23 TexReg 1314.
If the facility has a contract or agreement with an accredited school of nursing to use their facility for a portion of the student nurses' clinical experience, those student nurses may provide care under the following conditions.

(1) Student nurses may be used in nursing facilities, provided the instructor gives class supervision and assumes responsibility for all student nursing activities occurring within the facility. These students cannot be counted in the nurse-to-resident ratio required in the standards.

(2) The student nurse may administer medications only when in the facility on assignment as a student of their school of nursing.

Source Note: The provisions of this §19.1011 adopted to be effective May 1, 1995, 20 TexReg 2393.
(a) Facilities may develop their own policies regarding private duty aides and sitters.

(b) The nursing facility is responsible for meeting the needs of the residents regardless of the presence of special nurses or sitters.

(c) In Medicaid-certified facilities, the following apply.

(1) The facility is not responsible for payment for a special nurse (registered nurse or licensed vocational nurse) or sitter requested by the resident's physician or family.

(2) The special nurse or sitter must be hired as a separate agreement between the nurse or sitter and resident, or the resident's family or legal representative, and paid directly by them.

(3) The facility may assist in the hiring of a special nurse or sitter but may not in any way enter into the billing, collection, or fee-setting for the special duty nurse or sitter. If it is determined by the auditing staff that the facility received monetary benefits from an arrangement for special duty nurses or sitters, a financial exception will be made and the facility will be asked to reimburse the resident or the responsible party who paid the special duty nurses or sitters. If the resident or family hires an individual to do the special duty nursing, who was already on the facility's staff and a replacement for this person was not hired, the facility will be determined to have received a monetary benefit. See §19.2606 of this title (relating to Supplementation of Vendor Payments).

**Source Note:** The provisions of this §19.1012 adopted to be effective May 1, 1995, 20 TexReg 2393.
The facility must provide each resident with a nourishing, palatable, well-balanced diet that meets daily nutritional and special dietary needs of each resident.

**Source Note:** The provisions of this §19.1101 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective March 1, 1998, 23 TexReg 1314.
The facility must employ a qualified dietitian either full-time, part-time, or on a consultant basis.

(1) A qualified dietitian is one who is qualified based upon either:

   (A) registration by the Commission on Dietetic Registration of the American Dietetic Association; or

   (B) licensure, or provisional licensure, by the Texas State Board of Examiners of Dietitians. These individuals must have one year of supervisory experience in dietetic service of a health care facility.

(2) If a qualified dietitian is not employed full-time, the facility must designate a person to serve as the director of food service who receives frequently scheduled consultation from a qualified dietitian.

(3) The designated director of food service is responsible for the overall operation of the dietary service. If the director is not a qualified dietitian, he must receive consultation from a qualified dietitian. The director of food service must participate in regular conferences with the administrator and with the registered nurse who has responsibility for the resident and the resident's plan of care. In conferences concerning the resident's plan of care, the director of food service must provide information about approaches to identified nutritional problems. The director of food service should make recommendations and assist in developing personnel policies.

(4) The director of food service must be at least:

   (A) a qualified dietitian;

   (B) an associate-in-arts graduate in nutrition and food management (such as Dietetics, Home Economics, or Restaurant Management);

   (C) a graduate of a dietetic technician or dietetic assistant training program approved by the American Dietetic Association, or the Dietary Manager's Association, whether conducted by correspondence or in a classroom;

   (D) a person who has completed a state-agency-approved 90-hour course in food service supervision; or

   (E) a person who has training and experience in food service supervision and management in a military service equivalent in content to the programs in subparagraphs (A)-(D) of this paragraph and has had his training credentials evaluated and approved by the nutrition program specialist of the Texas Department of Human Services' Long Term Care-Regulatory.
Source Note: The provisions of this §19.1102 adopted to be effective May 1, 1995, 20 TexReg 2393.
The facility must employ sufficient dietary support personnel who are competent to carry out the functions of the dietary service.

Source Note: The provisions of this §19.1103 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective May 1, 2004, 29 TexReg 3235
(a) The facility must ensure a qualified dietitian is available as frequently and for such time as is necessary to assure each resident a diet that meets the daily nutritional and special dietary needs of each resident, based upon the acuity and clinical needs of the resident. The facility must ensure that monthly dietary consultant hours are provided, at a minimum, as follows:

(1) facility population: 60 residents or under - eight hours;

(2) facility population: each additional 30 residents or fraction thereof - four hours.

(b) To meet the consultant-hour requirement, time is accrued and counted exactly as rendered.

(c) The qualified dietitian must be a part of the interdisciplinary team conducting assessment and care planning where indicated by the individual resident's needs.

(d) The facility must outline consultant services in a signed contract. This requirement does not apply to facilities which employ a qualified dietitian on their staff.

Source Note: The provisions of this §19.1104 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective March 1, 1998, 23 TexReg 1314; amended to be effective December 1, 2000, 25 TexReg 11665
(a) Menus must:

1. Meet the nutritional needs of residents in accordance with the recommended dietary allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences;

2. Be prepared at least one week in advance;

3. Be written for each type of diet ordered in the facility, in accordance with the facility’s diet manual;

4. Be written or completely evaluated by the facility’s dietitian or consultant dietitian;

5. Vary from week to week, taking the general age-group of residents into consideration; and

6. Be followed. Any substitutions must be documented as required in subsection (d) of this section.

(b) A qualified dietitian may accept diet orders and changes from the physician.

(c) The facility must ensure that a current diet manual, approved by the facility dietitian or the consultant dietitian, is readily available to dietary service personnel and the supervisor of nursing service. To be current, the diet manual must be no more than five years old.

(d) The facility must retain records of menus served and food purchased for 30 days. A list of residents receiving special diets and a record of their diets must be kept in the dietary area for at least 30 days.

(e) The facility must post the current week’s menu:

1. In the dietary department, including therapeutic diet menus, so employees responsible for purchasing, preparing, and serving foods can use it; and

2. In a convenient location so the residents may see it.

(f) The dietary department must keep a seven-day supply of staple foods and a two-day supply of perishable foods at all times. The facility is allowed the flexibility to use food on hand to make substitutions at any interval as long as comparable nutritional value is maintained. Any substitution of menu items must be recorded on the day of use. See also §19.1719(o)(1) of this title (relating to Other Rooms and Areas) for information concerning storage areas.

(g) Accommodation of resident needs. The facility must provide:
(1) table service for all who can and will eat at the table, including wheelchair residents;

(2) firm supports, such as over-bed tables, for serving trays to bedfast residents;

(3) sturdy tray stands of proper height to residents able to be out of bed for their meals;

(4) special eating equipment and utensils for residents who need them; and

(5) prompt assistance for residents who need help eating.

(h) An identification system, such as tray cards, must be available to ensure that all diets are served in accordance with physician’s orders.

**Source Note:** The provisions of this §19.1107 adopted to be effective May 1, 1995, 20 TexReg 2393.
Each resident must receive and the facility must provide:

(1) food prepared in accordance with established professional food preparation practices and by methods that conserve nutritive value, flavor, and appearance;

(2) adequate amounts of food that is palatable, attractive, and at the proper temperature;

(3) food prepared in a form designed to meet individual needs;

(4) substitutes of similar nutritive value to residents who refuse food served; and

(5) food that is prepared and served on schedule.

Source Note: The provisions of this §19.1108 adopted to be effective May 1, 1995, 20 TexReg 2393.
Food intake of residents must be monitored and recorded as follows.

(1) Deviations from normal food and fluid intake must be recorded in the clinical records. See also §19.1911(12)(B)(vi) of this title (relating to Contents of the Clinical Record) for information concerning dietary intake and clinical records.

(2) In-between meals and bedtime snacks, and supplementary feedings, either as a part of the overall care plan or as ordered by a physician, including caloric-restricted diets, must be documented using the point, percentage, or other system consistently facility-wide. See also §19.1911(12)(B)(vi) of this title (relating to Contents of the Clinical Record) for information concerning dietary intake and clinical records.

Source Note: The provisions of this §19.1109 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective August 1, 2000, 25 TexReg 6779
RULE §19.1110  Frequency of Meals

(a) Each resident receives and the facility provides at least three meals daily, at regular times comparable to normal mealtimes in the community.

(b) There must be not more than 14 hours between a substantial evening meal and breakfast the following day, except as provided in subsection (d) of this section.

(c) The facility must offer snacks at bedtime daily. Routine snacks that are not ordered by the physician and are not part of the plan of care do not need to be documented as accepted or rejected.

(d) When a nourishing snack is provided at bedtime, up to 16 hours may elapse between a substantial evening meal and breakfast the following day, if a resident group agrees to this meal span and a nourishing snack is served.

Source Note: The provisions of this §19.1110 adopted to be effective May 1, 1995, 20 TexReg 2393.
Texas Administrative Code

TITLE 40  SOCIAL SERVICES AND ASSISTANCE
PART 1  DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 19  NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

SUBCHAPTER L  DIETARY SERVICES

RULE §19.1111  Sanitary Conditions

(a) The facility must:

(1) procure food from sources approved or considered satisfactory by federal, state, and local authorities;

(2) store, prepare, and serve food under sanitary conditions, as required by the Texas Department of Health food service sanitation requirements; and

(3) dispose of garbage and refuse properly. See also §19.318(j)-(l) of this title (relating to Other Rooms and Areas) for information concerning dietary physical plant.

(b) Dietary service personnel must be in good health and practice hygienic food-handling techniques. Persons with symptoms of communicable diseases or open, infected wounds may not work.

(c) Dietary service personnel must wear clean, washable garments, wear hair coverings or clean caps, and have clean hands and fingernails.

(d) Routine health examinations must meet all local, state, and federal codes for food service personnel.

Source Note: The provisions of this §19.1111 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective July 1, 2002, 27 TexReg 5245
TITLE 40  
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nursing facility requirements for licensure and medicaid certification  
SUBCHAPTER L  
DIETARY SERVICES  
RULE §19.1113  
Paid Feeding Assistants

(a) State-approved training course. The facility may use a paid feeding assistant, if the paid feeding assistant has successfully completed a state-approved training course that meets the requirements of §19.1115 of this chapter (relating to Requirements for Training of Paid Feeding Assistants) before feeding residents. The facility must not use any individual working in the facility as a paid feeding assistant unless that individual has successfully completed the state-approved training course for paid feeding assistants.

(b) Supervision. A paid feeding assistant must work under the supervision of a registered nurse or a licensed vocational nurse. In an emergency, a paid feeding assistant must call a supervisory nurse for help. A paid feeding assistant can only feed residents in the dining room.

(c) Resident selection criteria.

(1) The facility must ensure that a paid feeding assistant only feed residents who have no complicated feeding problems, which include difficulty swallowing, recurrent lung aspirations, and tube or parenteral/IV feedings.

(2) The facility must base resident selection on the charge nurse's assessment and the resident's latest assessment and plan of care.

Source Note: The provisions of this §19.1113 adopted to be effective June 1, 2004, 29 TexReg 5416
(a) Minimum training course contents. A state-approved training course for paid feeding assistants must include, at a minimum, 16 hours of training in the following:

   (1) feeding techniques;

   (2) assistance with feeding and hydration;

   (3) communication and interpersonal skills;

   (4) appropriate response to resident behavior;

   (5) safety and emergency procedures, including the Heimlich maneuver;

   (6) infection control;

   (7) resident rights; and

   (8) recognizing changes in residents that are inconsistent with their normal behavior and the importance of reporting those changes to the supervisory nurse.

(b) Maintenance of records. The facility must maintain a record of all individuals used by the facility as paid feeding assistants who have successfully completed the state-approved training course for paid feeding assistants. At a minimum, documentation must include the date and location of the course, the name of the trainer, and a statement that the course was successfully completed.

(c) Repeat training. If paid feeding assistants seek employment at a facility other than the facility at which they were trained, they will not be required to repeat the state-approved training course if documentation of successful course completion, as outlined in subsection (b) of this section, is given to the hiring facility.

Source Note: The provisions of this §19.1115 adopted to be effective June 1, 2004, 29 TexReg 5416
A physician must personally approve in writing a recommendation that an individual be admitted to a facility. Each resident must remain under the care of a physician. The facility must ensure that:

(1) the medical care and other health care of each resident is supervised by an attending physician. Any consultations must be ordered by the attending physician;

(2) another physician supervises the medical care and other health care of residents when their attending physician is unavailable; and

(3) if children are admitted to the facility:

   (A) appropriate pediatric consultative services are utilized, in accordance with the comprehensive assessment and plan of care; and

   (B) a pediatrician or other physician with training or expertise in the clinical care of children with complex medical needs participates in all aspects of the medical care.

Source Note: The provisions of this §19.1201 adopted to be effective May 1, 1995, 20 TexReg 2393.
The physician must:

1. review and/or revise and sign orders relating to the resident's total program of care, including medications and treatments, according to the visit schedule required by §19.1203(2) of this title (relating to Frequency of Physician Visits);

2. write, sign, and date progress notes at each visit;

3. sign and date all orders;

4. write, sign, and date a physician's discharge summary within 20 workdays of being notified by the facility of the discharge, except as specified in §19.1912(e) of this title (relating to Additional Clinical Record Service Requirements), if the resident has been temporarily discharged for 30 days or less, and readmitted to the same facility; and

5. provide documentation in the clinical record as specified in §19.1911 and §19.1912 of this title (relating to Contents of the Clinical Record and Additional Clinical Record Service Requirements).

Source Note: The provisions of this §19.1202 adopted to be effective May 1, 1995, 20 TexReg 2393.
Physician visits must conform to the following schedule:

1. Licensed-only facility. Each resident must have a medical examination at least annually by his physician and as necessary to meet the needs of the resident. Physician orders must be reviewed and revised as necessary at least once every 60 days, unless the resident’s physician specifies, in writing in the resident's clinical record, a different schedule for each review and revision.

2. Medicaid-certified facilities and Medicare skilled nursing facilities.
   
   (A) The resident must be seen by a physician at least once every 30 days for the first 90 days after admission, and at least once every 60 days thereafter.
   
   (B) A physician visit is considered timely if it occurs not later than ten days after the date the visit was required.
   
   (C) Except as provided in paragraph (3) of this section and §19.1205(c) of this title (relating to Physician Delegation of Tasks), all required visits must be made by the physician personally.

3. Medicare skilled nursing facilities. At the option of the physician, required visits in Medicare skilled nursing facilities after the initial visit may alternate between personal visits by the physician and visits by a physician assistant, nurse practitioner, or clinical nurse specialist in accordance with §19.1205 of this title (relating to Physician Delegation of Tasks).

Source Note: The provisions of this §19.1203 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective October 15, 1998, 23 TexReg 10496.
The facility must provide or arrange for the provision of physician services 24 hours a day, in case of an emergency.

Source Note: The provisions of this §19.1204 adopted to be effective May 1, 1995, 20 TexReg 2393.
(a) In a Medicare skilled nursing facility (SNF), except as specified in subsection (b) of this section, a physician may delegate tasks to a physician assistant, nurse practitioner, or clinical nurse specialist who:

(1) meets the applicable definition in 42 Code of Federal Regulations §491.2 (see §19.101 of this title (relating to Definitions)) or in the case of a clinical nurse specialist, is licensed as such by the state;

(2) is acting within the scope of practice as defined by state law; and

(3) is under the supervision of the physician.

(b) In a Medicare SNF, a physician may not delegate a task when the regulations specify that the physician must perform it personally, or when the delegation is prohibited under state law or by the facility's own policies.

(c) In a Medicaid nursing facility, any required physician task may also be satisfied when performed by a nurse practitioner, clinical nurse specialist, or physician assistant who is not an employee of the facility but who is working in collaboration with a physician. Services must be provided in the context of applicable state laws, rules, and regulations governing the practice of nurse practitioners, clinical nurse specialists, and physician assistants.

(d) The physician extender providing care to a pediatric resident must have training and expertise in the care of children with complex medical needs.

Source Note: The provisions of this §19.1205 adopted to be effective May 1, 1995, 20 TexReg 2393.
Texas Administrative Code

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SUBCHAPTER M  PHYSICIAN SERVICES
RULE §19.1206  Physician Signatures

Signature stamps and faxed signed documents are acceptable if used as described in §19.1912(f)(2) of this title (relating to Additional Clinical Record Service Requirements).

Source Note: The provisions of this §19.1206 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective August 1, 2000, 25 TexReg 6779
(a) In this section, the following words and terms have the following meanings, unless the context clearly indicates otherwise:

1. Medication-related emergency--A situation in which it is immediately necessary to administer medication to a resident to prevent:
   
   (A) imminent probable death or substantial bodily harm (emotional or physical) to the resident; or
   
   (B) imminent physical or emotional harm to another because of threats, attempts, or other acts the resident overtly or continually makes or commits.

2. Psychoactive medication--A medication prescribed for the treatment of symptoms of psychosis or other severe mental or emotional disorders and used to exercise an effect on the central nervous system to influence and modify behavior, cognition, or affective state when treating the symptoms of mental illness. The term includes the following categories when used as described by this subdivision:
   
   (A) anti-psychotics or neuroleptics;
   
   (B) antidepressants;
   
   (C) agents for control of mania or depression;
   
   (D) anti-anxiety agents;
   
   (E) sedatives, hypnotics, or other sleep-promoting drugs; and
   
   (F) psychomotor stimulants.

(b) A person may not administer a psychoactive medication to a resident who does not consent to the prescription unless:

1. the resident is having a medication-related emergency; or

2. the person authorized by law to consent on behalf of the resident has consented to the prescription.

(c) Consent to the prescription of psychoactive medication given by a resident, or by a person authorized by law to consent on behalf of the resident, is valid only if:
(1) the consent is given voluntarily and without coercive or undue influence;

(2) the person who prescribes the medication, or that person's designee, provides the resident and, if applicable, the person authorized by law to consent on behalf of the resident, with the following information in a single document identified as being for the purpose of consent to treatment with psychoactive medication:

   (A) the specific condition to be treated;

   (B) the beneficial effects on that condition expected from the medication;

   (C) the probable clinically significant side effects and risks associated with the medication, as reported in widely available pharmacy databases or the manufacturer's package insert; and

   (D) the proposed course of the medication;

(3) the resident and, if appropriate, the person authorized by law to consent on behalf of the resident, are informed in writing that consent may be revoked; and

(4) the consent is evidenced in the resident's clinical record by a signed form prescribed by the facility, or by a statement of the person who prescribes the medication or that person's designee, that documents consent was given by the appropriate person and the circumstances under which the consent was obtained.

   (A) Consent is valid until:

       (i) consent is withdrawn; or

       (ii) the practitioner has discontinued the medication.

   (B) For purposes of this rule, a medication will be considered to be discontinued if therapy has been suspended for more than 70 days. If the suspended therapy is resumed within the 70-day period, an oral explanation of side effects should be documented in the clinical record.

(d) The Health and Safety Code, Chapter 313, Consent to Medical Treatment, provides guidance on treatment decisions when a resident is comatose, incapacitated, or otherwise mentally or physically incapable of communication. An ethics committee also may prove helpful in such situations.

(e) A resident's refusal to consent to receive psychoactive medication must be documented in the resident's clinical record.

(f) If a person prescribes psychoactive medication to a resident without the resident's consent because the resident is having a medication-related emergency:

   (1) the person must document the necessity of the order in the resident's clinical record in specific medical or behavioral terms; and

   (2) treatment of the resident with the psychoactive medication must be provided in the manner, consistent with clinically appropriate medical care, least restrictive of the resident's personal liberty.

(g) A physician, or a person designated by the physician, is not liable for civil damages or an administrative
penalty and is not subject to disciplinary action for a breach of confidentiality of medical information for a disclosure of the information provided under subsection (c)(2) made by the resident, or the person authorized by law to consent on behalf of the resident, that occurs while the information is in the possession or control of the resident or the person authorized by law to consent on behalf of the resident.

Source Note: The provisions of this §19.1207 adopted to be effective July 1, 2002, 27 TexReg 4362
The physician must report all reportable communicable diseases immediately according to the requirements specified in §19.1601(2)(D) of this title (relating to Infection Control).

**Source Note:** The provisions of this §19.1208 adopted to be effective May 1, 1995, 20 TexReg 2393.
(a) A recipient's physician must certify and recertify the recipient's need for nursing facility care in accordance with this section.

(b) A recipient's physician must certify the recipient's need for nursing facility care no later than 20 days after the recipient's admission to the facility.

(c) A recipient's physician must recertify the recipient's need for nursing facility care every 180 days that the recipient remains in the nursing facility after the first certification.

(d) A nursing facility must:

   (1) ensure that each certification and recertification statement states: "I hereby certify that this resident requires/continues to require nursing facility care for 180 days"; and

   (2) keep the physician's certification and recertification statements in the recipient's clinical record.

Source Note: The provisions of this §19.1210 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective July 1, 1996, 21 TexReg 4408; amended to be effective September 1, 2008, 33 TexReg 7264
(a) Provision of services. If rehabilitative services, such as, but not limited to, physical therapy, speech/language pathology, occupational therapy, mental health rehabilitative services for mental illness and mental retardation are required in the resident's comprehensive plan of care, the facility must:

(1) provide the required services; or

(2) obtain the required services from an outside resource, in accordance with §19.1906 of this title (relating to Use of Outside Resources), from a provider of specialized rehabilitative services.

(b) Rehabilitative services. The facility must ensure that rehabilitative services are provided under a written plan of treatment based on the physician's diagnosis and orders, and that services are documented in the resident's clinical record.

Source Note: The provisions of this §19.1301 adopted to be effective May 1, 1995, 20 TexReg 2393.
Rehabilitative services must be provided under the written order of a physician by qualified personnel.

(1) A qualified therapist is:

   (A) a speech-language pathologist who:

       (i) is a Texas licensed speech-language pathologist; or

       (ii) meets the educational requirements for license and has accumulated, or is in the process of accumulating, the supervised professional experience (the internship) required for license;

   (B) an audiologist who:

       (i) is a Texas-licensed audiologist; or

       (ii) meets the educational requirements for license and has accumulated, or is in the process of accumulating, the supervised professional experience (the internship) required for license;

   (C) an occupational therapist (a qualified consultant) who is currently licensed by the Texas Board of Occupational Therapy Examiners;

   (D) an occupational therapy assistant who is currently licensed by the Texas State Board of Occupational Therapy Examiners;

   (E) a physical therapist who is currently licensed as a physical therapist by the Texas State Board of Physical Therapy Examiners; or

   (F) a physical therapist assistant who is licensed as a physical therapist assistant by the Texas State Board of Physical Therapy Examiners.

(2) A physical therapy aide is a person who assists in the practice of physical therapy and whose activities require on-the-job training and on-site supervision by a physical therapist or physical therapist assistant. A physical therapy aide is not a certified corrective therapist or an adaptive or corrective physical education specialist.

Source Note: The provisions of this §19.1302 adopted to be effective May 1, 1995, 20 TexReg 2393.
Specialized Services are physical, occupational, and speech therapy evaluations and services provided to eligible Medicaid recipients identified by the Preadmission Screening and Resident Review (PASARR) team.

Source Note: The provisions of this §19.1303 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective November 1, 2002, 27 TexReg 9387.
(a) Rehabilitative Services are physical therapy, occupational therapy, and speech therapy services for Medicaid nursing facility residents who are not eligible for Medicare or other insurance. The cost of therapy services for residents with Medicare or other insurance coverage or both must be billed to Medicare or other insurance or both.

(b) Coverage for physical therapy, occupational therapy, or speech therapy services includes evaluation and treatment of functions that have been impaired by illness. Rehabilitative services must be provided with the expectation that the resident's functioning will improve measurably in 30 days.

Source Note: The provisions of this §19.1304 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective November 1, 2002, 27 TexReg 9387
(a) DADS reimburses a nursing facility for specialized and rehabilitative services based on fees determined by the Health and Human Services Commission in accordance with 1 TAC §355.313 (relating to Reimbursement Methodology for Specialized and Rehabilitative Services).

(b) The services must:

(1) be ordered by the attending physician; and

(2) except as provided in subsection (c)(1) of this section, be pre-certified by DADS.

(c) A session is one physical, occupational, or speech therapy service performed for one resident. An evaluation is reimbursed at the same rate as a session.

(1) One evaluation is reimbursed without being pre-certified by DADS.

(2) An additional evaluation must be supported by the attending physician's documentation that indicates a new illness or injury, or a substantive change in a pre-existing condition.

(d) A complete and accurate claim for services must be received by DADS within 12 months after the last day services are provided in accordance with a single pre-certification by DADS.

(e) A claim rejected during the 12-month period through no fault of the provider may be reimbursed upon approval by DADS.

(f) A resident whose request for pre-certification of Medicaid rehabilitative or specialized services is denied is entitled to a fair hearing in accordance with rules of HHSC regarding Medicaid fair hearings. A request for a fair hearing must be made to: Texas Department of Aging and Disability Services, Attn: Rehabilitative Services, P.O. Box 149030 (MC W-400), Austin, Texas 78714-9030. The request must be received by DADS within 90 days after the date the notice of action is mailed to the resident.

Source Note: The provisions of this §19.1306 adopted to be effective November 1, 2002, 27 TexReg 9387; amended to be effective February 1, 2008, 33 TexReg 761
(a) The facility must assist residents in obtaining routine and 24-hour emergency dental care.

(1) At the time of admission, the facility must obtain the name of the resident's preferred dentist and record the name in the clinical record.

(2) At least annually, the facility must ask each resident and/or responsible party if they desire a dental examination at the resident's expense.

(3) The facility must make all reasonable efforts to arrange for a dental examination for each resident who desires one.

(4) The facility is not liable for the cost of the resident's dental care.

(5) Licensed-only facilities must maintain a list of local dentists for residents who require one.

(b) Medicaid-certified facilities also must provide or obtain from an outside resource, in accordance with §19.1906 of this title (relating to Use of Outside Resources), the following dental services to meet the needs of each resident:

(1) emergency dental services, which are limited to procedures necessary to control bleeding, relieve pain, and eliminate acute infection; operative procedures which are required to prevent the imminent loss of teeth; treatment of injuries to the teeth or supporting structures.

(A) Covered emergency dental procedures include, but are not limited to:

(i) alleviation of extreme pain in oral cavity associated with serious infection or swelling;

(ii) repair of damage from loss of tooth due to trauma (acute care only, no restoration);

(iii) open or closed reduction of fracture of the maxilla or mandible;

(iv) repair of laceration in or around oral cavity;

(v) excision of neoplasms, including benign, malignant and premalignant lesions, tumors and cysts;

(vi) incision and drainage of cellulitis;

(vii) root canal therapy. Payment is subject to dental necessity review and pre- and post-operative x-rays
are required; and

(viii) extractions: single tooth, permanent; single tooth, primary; supernumerary teeth; soft tissue impaction; partial bony impaction; complete bony impaction; surgical extraction of erupted tooth or residual root tip.

(B) Routine restorative procedures are not considered emergency procedures. Dental services not covered include, but are not limited to:

(i) cleaning;

(ii) filling teeth with amalgam composite, glass ionomer, or any other restorative material;

(iii) cast or preformed crowns (capping);

(iv) restoration of carious or noncarious permanent or primary teeth, including those requiring root canal therapy;

(v) replacement or repositioning of teeth;

(vi) services to the alveolar ridges or periodontium of the maxilla and the mandible, except for procedures covered under subparagraph (A) of this paragraph; and

(vii) complete or partial dentures.

(2) assistance to the resident, if necessary:

(A) in making appointments; and

(B) by arranging for transportation to and from the dentist's office.

(3) prompt referral of residents with lost or damaged dentures to a dentist.

(4) coordination of dental services for pediatric residents age 12 months to 21 years, in accordance with Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) guidelines.

(c) Medicaid-certified facilities are not required to provide routine dental services.

(d) Payment for services provided on the teeth, gums, alveolar ridges, and supporting structures are not a benefit of the Texas Medicaid Program; however, recipients with applied income may use incurred medical expenses to pay for routine dental services and appliances.

Source Note: The provisions of this §19.1401 adopted to be effective May 1, 1995, 20 TexReg 2393.
(a) Emergency dental services. The Texas Department of Human Services (DHS) will reimburse nursing facilities the cost of emergency dental services provided to eligible Medicaid residents residing in Medicaid-contracted facilities or distinct parts.

(1) Recipients must be 21 years of age or older.

(2) Dental care for recipients under the age of 21 is covered under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program.

(3) Services reimbursed are subject to the limitations specified in §19.1401(b) of this title (relating to Dental Services).

(4) Emergency dental services may be provided only if the attending physician orders a dental consultation. See §19.1201 of this title (relating to Physician Services).

(b) Dental providers. Emergency dental services must be provided by a dentist licensed by the Texas State Board of Dental Examiners who, if not employed by the facility, contracts with the facility according to the specifications outlined in §19.1906 of this title (relating to Use of Outside Resources).

(c) Reimbursement for Emergency Dental Services. The cost of emergency dental services provided to eligible Medicaid residents residing in nursing facilities will be reimbursed to facilities, provided that the services are not reimbursable by the Medicaid claims processor or the EPSDT program.

(d) Payment of Claims.

(1) The facility must accept payment by DHS as payment in full for services. Neither the dentist nor the facility may charge an additional fee to the recipient, his family, or his trust fund, except that the dentist may charge the recipient for services that:

   (A) the recipient requests; and

   (B) are not reimbursable by the Texas Medical Assistance Program.

(2) Payments for emergency dental services are the lower of the:

   (A) dentist's usual fee; or
(B) maximum fee as determined by the Texas Health and Human Services Commission (HHSC).

(3) DHS reimburses facilities for services properly rendered in accordance with applicable laws, regulations, and operational instructions. DHS may withhold or suspend payment for services that are not properly rendered.

(4) Nursing Facility Emergency Dental Services makes no payment for services that are available under any other Texas Medical Assistance Program.

(5) Complete and accurate claims for services must be received within 12 months from the date of service.

(6) Claims for services delivered before the effective date of this section must be submitted within 12 months of the effective date of this section.

(7) Adjustments to claims must be received by DHS's claims processor during the applicable 12-month period. Claims and adjustments rejected or denied during the 12-month period through no fault of the dentist may be paid upon approval by DHS.

Source Note: The provisions of this §19.1402 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective November 1, 2002, 27 TexReg 9387
A licensed-only facility must assist the resident in obtaining routine drugs and biologicals and make emergency drugs readily available, or obtain them under an agreement described in §19.1906 of this title (relating to Use of Outside Resources). A Medicaid-certified facility must provide routine and emergency drugs and biologicals to its residents, or obtain them under an agreement described in §19.1906 of this title (relating to Use of Outside Resources). See also §19.901(12) and (13) of this title (relating to Quality of Care) for information concerning drug therapy and medication errors.

(1) Methods and procedures. The facility may permit unlicensed personnel to administer drugs, but only under the general supervision of a licensed nurse. The unlicensed individual must be a nursing student, a medication aide student, or a medication aide with a current permit issued by the Texas Department of Human Services.

(2) Accuracy in service delivery. A facility must provide pharmaceutical services (including procedures that assure the accurate acquiring, receiving, dispensing, and administering of all drugs and biologicals) to meet the needs of each resident.

(3) Service consultation. The facility must employ or obtain the services of a pharmacist, currently licensed by the Texas State Board of Pharmacy and in good standing, who:

(A) provides consultation on all aspects of the provision of pharmacy services in the facility;

(B) establishes a system of records of receipt and disposition of all controlled drugs in sufficient detail to enable an accurate reconciliation;

(C) determines that drug records are in order and that an account of all controlled drugs is maintained and periodically reconciled; and

(D) adheres to requirements in §19.1503 of this title (relating to Additional Supervision and Consultation Requirements).

(4) Drug regimen review.

(A) The drug regimen of each resident must be reviewed at least once a month by a licensed pharmacist. The consultant pharmacist’s drug regimen review must be maintained in the resident's clinical record.

(B) The pharmacist must report any irregularities to the attending physician and the director of nursing, and these reports must be acted upon.
(5) Labeling of drugs and biologicals. Drugs and biologicals used in the facility must be labeled in accordance with currently accepted professional principals and in compliance with the Texas State Board of Pharmacy Laws and Regulations, §291, including the appropriate accessory and cautionary instructions and the expiration date when applicable.

(6) Storage of drugs and biologicals.

(A) In accordance with state and federal laws, the facility must store all drugs and biologicals in locked compartments under proper temperature controls and permit only authorized personnel to have access to the keys.

(B) The facility must provide separately locked, permanently affixed compartments for storage of controlled drugs, listed in Schedule II of the Comprehensive Drug Abuse Prevention and Control Act of 1976, and of other drugs subject to abuse, except when the facility uses single-unit-package drug distribution systems in which the quantity stored is minimal and a missing dose can be readily detected (see §19.1509 of this title (relating to Controlled Substances)).

Source Note: The provisions of this §19.1501 adopted to be effective May 1, 1995, 20 TexReg 2054; amended to be effective July 1, 2002, 27 TexReg 5524
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SUBCHAPTER P  PHARMACY SERVICES
RULE §19.1502  Choice of Pharmacy Provider

(a) Unless the facility is paying for the drugs and biologicals, the resident's choice of pharmacy provider and any changes in his choice must be recorded on appropriate forms maintained by the facility.

(b) A Medicaid-certified facility must have written agreements with its provider pharmacies that define required services. These agreements will not be considered to abridge the resident's freedom of choice of pharmacy services when they require labeling, packaging, and a drug-distribution system according to facility policy. The drug-distribution system must be accessible to all pharmacies willing to meet the distribution system requirements. The agreements must require the following:

   (1) that the resident's pharmacy services be provided by a pharmacy on a 24-hour basis for emergency medications; and

   (2) that the resident's medications be delivered to the facility on a timely and reasonable basis.

(c) The resident's choice of pharmacy provider must be in accordance with §19.406(c) of this title (relating to Free Choice).

Source Note: The provisions of this §19.1502 adopted to be effective May 1, 1995, 20 TexReg 2054.
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SUBCHAPTER P  PHARMACY SERVICES
RULE §19.1503  Additional Supervision and Consultation Requirements

(a) The facility must provide pharmaceutical services under the responsibility and direction of the consultant pharmacist and the director of nursing.

(b) The facility must ensure that notes on the monthly visits by the consulting pharmacist are entered in the resident’s clinical record.

(c) The number of hours per month the consultant pharmacist devotes to the pharmaceutical services for ordering, storage, administration, disposal, recordkeeping (documentation) of drugs and medications, and drug regimen review must be sufficient to meet the needs of the residents.

(d) A record of consultant pharmacist services, consultations, and recommendations for pharmacy procedure must be maintained at the facility.

Source Note: The provisions of this §19.1503 adopted to be effective May 1, 1995, 20 TexReg 2054.
(a) The facility must establish procedures for storing and disposing of drugs and biologicals in accordance with federal, state, and local laws.

(b) When not in use, a medication cart must be secured in a designated area.

(c) Small multiple-dose drug containers which are placed into another container must be labeled in a manner so that, if the two containers become separated, the small drug container still has a strip label attached containing the name of the resident and the prescription number.

(d) Self-administered medications may be kept in a locked cabinet in the resident's room. When medications are self-administered, the facility remains responsible for medication security, accurate information, and medication compliance.

(e) The facility must store each resident's drugs in their original containers.

(f) The facility must store medications under appropriate conditions of sanitation, temperature, light, moisture, ventilation, segregation, and security.

(g) Medications of deceased residents, medications that have passed the expiration date, and medications that have been discontinued must be securely stored and reconciled. These medications must be disposed of according to federal and state laws or rules on a quarterly basis. Discontinued drugs may be reinstated if reordered prior to destruction. These medications cannot be given to a family member or representative.

(h) When the directions for administration of a resident's medication have changed, but the existing supply of medication can still be administered accurately, the medication must not be destroyed. The facility must affix a change-of-direction ancillary sticker or similar system and use the remaining medication. The medication label must be updated at the time of next dispensing.

Source Note: The provisions of this §19.1504 adopted to be effective May 1, 1995, 20 TexReg 2054; amended to be effective September 1, 2003, 28 TexReg 6939
(a) All drugs must be prescribed by the resident's physician or consulting physician, dentist, podiatrist, or other individual allowed by law to prescribe. If drug orders are verbal, they must be taken by a licensed nurse, pharmacist, physician assistant or a physician, and immediately recorded and signed by the person receiving the order. All drug orders must be counter-signed by the prescriber and returned to the chart in a timely manner.

(b) The facility may permit verbal orders for Schedule II drugs only in an emergency.

(c) Medications must be ordered and reordered on a timely basis so that no resident misses a dose.

(d) The facility must have written policies and procedures for stopping the administration of drugs.

Source Note: The provisions of this §19.1506 adopted to be effective May 1, 1995, 20 TexReg 2054.
(a) Medications must be released to residents only on the written or verbal authorization of the attending physician. When a resident is transferred directly to another nursing facility or discharged to home, the resident's medications must be released to the new facility or to the resident or his family, respectively.

(b) If a resident is leaving the facility on a furlough, enough prescription drugs to last throughout the furlough must be released. The facility must inventory Schedule II, III, and IV drugs in and out. Nonschedule drugs should be listed by name. The pharmacist must handle any division of the prescription, and all information on the original prescription label must appear on the furlough medication supply.

Source Note: The provisions of this §19.1507 adopted to be effective May 1, 1995, 20 TexReg 2054.
(a) The facility must establish drug administration procedures to ensure that:

(1) drugs to be administered are checked against the physician's orders;

(2) the resident is identified before the administration of a drug;

(3) each resident has an individual medication record, where the dose of drug administered is properly recorded by the person who administered the drug;

(4) drugs and biologicals are prepared and administered by the same person, except under unit-of-use package distribution systems and as outlined in §19.418 of this title (relating to Self-Administration of Drugs); and

(5) drugs prescribed for one resident must not be administered to any other person.

(b) The facility nursing staff must report drug errors and adverse drug reactions to the resident's physician in a timely manner, as warranted by an assessment of the resident's condition, and record them in the resident's record. An incident report must be completed in accordance with §19.1923 of this title (relating to Incident or Accident Reporting). Medication errors include, but are not limited to, administering the wrong medication, administering at the wrong time, administering the wrong dosage strength, administering by the wrong route, omitting a medication, and/or administering to the wrong resident.

(c) Nursing facilities must have current medication reference texts or sources, including information on pediatric medications, dosages, sites, routes, techniques of drug administration, desired effects, and possible side effects, if facilities have pediatric residents.

(d) A licensed nurse may exercise professional judgment in the crushing of a medication, providing that the medication is not a time-released or enteric coated medication.

(1) If there is any question about crushing a medication for a resident, the licensed nurse must check with the treating physician, dispensing pharmacist, or consultant pharmacist.

(2) The crushed medication should be administered as soon as feasible once it has been added to another substance.

Source Note: The provisions of this §19.1508 adopted to be effective May 1, 1995, 20 TexReg 2054.
The facility must adhere to the following procedures governing the use of drugs covered by the Controlled Substances Act:

(1) a separate record must be maintained for each drug covered by Schedules II, III, and IV of the Controlled Substances Act, Health and Safety Code, Chapter 481;

(2) the record for each drug must contain the prescription number, name, and strength of drug, date received by the facility, date and time administered, name of resident, dose, physician's name, signature of person administering dose, and original amount dispensed with the balance verifiable by drug inventory at every shift change; and

(3) Schedule V drugs are exempt from the requirements in paragraphs (1) and (2) of this section.

Source Note: The provisions of this §19.1509 adopted to be effective May 1, 1995, 20 TexReg 2054.
Stocks of inventoried emergency medications may be kept in facilities.

(1) Emergency medication kits must be maintained in compliance with 22 TAC §291.20(b) (relating to Remote Pharmacy Services), with the exception of emergency medication kits in veterans homes, as defined by Natural Resources Code, §164.002. In veterans homes, a United States Department of Veterans Affairs pharmacy or another federally operated pharmacy may maintain emergency medication kits.

(2) Facilities must have contracts with the pharmacy that provides the emergency medication kit. The contract must outline the services to be provided by the pharmacy and the responsibilities and accountabilities of each party in fulfilling the terms of the contract in compliance with federal and state laws and regulations.

Source Note: The provisions of this §19.1510 adopted to be effective May 1, 1995, 20 TexReg 2054; amended to be effective October 15, 1998, 23 TexReg 10496; amended to be effective May 1, 2002, 27 TexReg 1534; amended to be effective September 1, 2003, 28 TexReg 6939
The facility must establish and maintain an infection control program designed to provide a safe, sanitary, and comfortable environment and to help prevent the development and transmission of disease and infection.

(1) Infection control program. The facility must establish an infection control program under which it:

(A) investigates, controls, and prevents infections in the facility;

(B) decides what procedures, such as isolation, should be applied to an individual resident; and

(C) maintains a record of incidents and corrective actions related to infections.

(2) Preventing spread of infection.

(A) When the infection control program determines that a resident needs isolation to prevent the spread of infection, the facility must isolate the resident. Residents with communicable disease must be provided acceptable accommodations according to current practices and policies for infection control. See §19.1(b)(4)(I) of this title (relating to Basis and Scope) for information concerning the Centers for Disease Control Guidelines publications.

(B) The facility must prohibit employees with a communicable disease or infected skin lesions from direct contact with residents or their food, if direct contact will transmit the disease.

(C) The facility must require staff to wash their hands after each direct resident contact for which handwashing is indicated by accepted professional practice.

(D) The name of any resident with a reportable disease as specified in 25 Texas Administrative Code §§97.1-97.11 (relating to Control of Communicable Diseases) must be reported immediately to the city health officer, county health officer, or health unit director having jurisdiction, and appropriate infection control procedures must be implemented as directed by the local health authority.

(E) The facility must have written policies for the control of communicable diseases in employees and residents and must maintain evidence of compliance with local and/or state health codes or ordinances regarding employee and resident health status.

(i) Tuberculosis.

(I) The facility must screen all employees for tuberculosis within two weeks of employment and annually, according to Center for Disease Control (CDC) guidelines. All persons providing services under an outside
resource contract must, upon request of the nursing facility, provide evidence of compliance with this requirement.

(II) All residents should be screened upon admission and after exposure to tuberculosis, in accordance with the attending physician's recommendations and CDC guidelines.

(ii) Hepatitis B.

(I) The facility's policy regarding hepatitis B vaccinations must address all circumstances warranting these vaccinations and identify employees at risk of directly contacting blood or potentially infectious materials.

(II) All these employees must be offered hepatitis B vaccinations within 10 days of employment. If the employee initially declines hepatitis B vaccination but at a later date, while still at risk of directly contacting blood or potentially infectious materials, decides to accept the vaccination, the facility must make the vaccination available at that time.

(3) Vaccinations. Facilities are required to offer vaccinations in accordance with an immunization schedule adopted by the Texas Department of Health.

(A) Pneumococcal vaccine for residents. The facility must offer pneumococcal vaccination to all residents 65 years of age or older who have not received this immunization and to residents younger than 65 years of age, who have not received this vaccine, but are candidates for vaccination because of chronic illness. Pneumococcal vaccine must be offered both to residents who currently reside in the facility and to new residents upon admission. Vaccination must be completed unless the vaccine is medically contraindicated by a physician or the resident refuses the vaccine. Vaccine administration must be in accordance with the recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention at the time of the vaccination.

(B) Influenza vaccinations for residents and employees. The facility must offer influenza vaccine to residents and employees in contact with residents, unless the vaccine is medically contraindicated by a physician or the employee or resident has refused the vaccine.

(i) Influenza vaccinations for all residents and employees in contact with residents must be completed by November 30 of each year. Employees hired or residents admitted after this date and during the influenza season (through February of each year) must receive influenza vaccinations, unless medically contraindicated by a physician or the employee or resident refuses the vaccine.

(ii) Vaccine administration must be in accordance with the recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention at the time of the most recent vaccination.

(C) Documentation of receipt or refusal of vaccination. Immunization records must be maintained for each employee in contact with residents and must show the date of the receipt or refusal of each annual influenza vaccination. The medical record for each resident must show the date of the receipt or refusal of the annual influenza vaccination and the pneumococcal vaccine.

(4) Linens. Personnel must handle, store, process, and transport linens so as to prevent the spread of infection.
(5) The Quality Assessment and Assurance Committee as described in §19.1917 of this title (relating to Quality Assessment and Assurance) will monitor the infection control program.

**Source Note:** The provisions of this §19.1601 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective August 1, 2000, 25 TexReg 6779
Universal precautions must be used in the care of all residents. Facilities are responsible for complying with Occupational Safety Hazards Administration (OSHA) regulations found at 29 Code of Federal Regulations §1910.1030 (relating to Bloodborne Pathogens).

Source Note: The provisions of this §19.1602 adopted to be effective May 1, 1995, 20 TexReg 2393.
The facility must be designed, constructed, equipped, and maintained to protect the health and ensure the safety of residents, personnel, and the public.

(1) Life safety from fire.

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

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

(2) Emergency power.

(A) An emergency electrical power system must supply power adequate at least for lighting all entrances and exits; equipment to maintain the fire detection, alarm, and extinguishing systems; and life-support systems if the normal electrical supply is interrupted.

(B) When life support systems are used, the facility must provide emergency electrical power with an emergency generator (as defined in NFPA 99, Health Care Facilities) located on the premises.

(3) Space and equipment. The facility must:

(A) provide sufficient space and equipment in dining, health services, recreation, and program areas to enable staff to provide residents with needed services as required by these standards and as identified in each resident's plan of care; and

(B) maintain all essential mechanical, electrical, and patient care equipment in safe operating condition.

(4) Resident rooms. Resident rooms must be designed and equipped for adequate nursing care, comfort, and privacy of residents.
(A) Bedrooms must:

(i) accommodate no more than four residents;

(ii) measure at least 80 square feet per resident in multiple resident bedrooms and at least 100 square feet in single resident rooms;

(iii) have direct access to an exit corridor;

(iv) be designed or equipped to assure full visual privacy for each resident;

(v) in facilities initially certified after March 31, 1992, except in private rooms, have ceiling-suspended curtains for each bed, which extend around the bed to provide total visual privacy, in combination with adjacent walls and curtain;

(vi) have at least one window to the outside; and

(vii) have a floor at or above grade level.

(B) The facility must provide each resident with:

(i) a separate bed of proper size and height for the convenience of the resident;

(ii) a clean, comfortable mattress;

(iii) bedding appropriate to the weather and climate; and

(iv) functional furniture appropriate to the resident's needs and individual closet space in the resident's bedroom with clothes racks and shelves accessible to the resident.

(C) DHS may permit variations in requirements specified in paragraph (1)(A) and (B) of this section relating to rooms in individual cases when the facility demonstrates in writing that the variations:

(i) are required by the special needs of the residents; and

(ii) will not adversely affect residents' health and safety.

(5) Toilet facilities. Each resident room must be equipped with or located near toilet and bathing facilities.

(6) Resident call system. The nurse's station must be equipped to receive resident calls through a communication system from:

(A) resident rooms; and

(B) toilet and bathing facilities.

(7) Dining and resident activities. The facility must provide one or more rooms designated for resident dining and activities. These rooms must be:

(A) well-lighted;
(B) well ventilated, with nonsmoking areas identified;
(C) adequately furnished; and
(D) sufficiently spacious to accommodate all activities.

(8) Other environmental conditions. The facility must provide a safe, functional, sanitary, and comfortable environment for residents, staff, and the public. The facility must:

(A) establish procedures to ensure that water is available to essential areas when there is a loss of normal water supply;
(B) have adequate outside ventilation by means of windows, mechanical ventilation, or a combination of the two;
(C) equip corridors with firmly secured handrails on each side; and
(D) maintain an effective pest control program so that the facility is free of pests and rodents.

Source Note: The provisions of this §19.1701 adopted to be effective July 1, 1996, 21 TexReg 4408.
A nursing facility must be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident.

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

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

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

Source Note: The provisions of this §19.1901 adopted to be effective May 1, 1995, 20 TexReg 2393.
(a) The facility must have a governing body, or designated persons functioning as a governing body that is legally responsible for establishing and implementing policies regarding the management and operation of the facility. The governing body must have periodically updated written policies and procedures that are formally adopted and dated, specifying and governing all services. The policies and procedures must be available to all of the facility's governing body's members, staff, residents, family or legal representatives of residents, and the public. The governing body must:

(1) designate a person to exercise the administrator's authority when the facility does not have an administrator. The facility must secure a licensed nursing home administrator within 30 days; and

(2) ensure that a person designated as being in authority notifies the Texas Department of Human Services immediately when the facility does not have an administrator.

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

(1) licensed by the Texas Board of Nursing Facility Administrators;

(2) responsible for management of the facility; and

(3) required to work at least 40 hours per week on administrative duties.

(c) The administrator must be accountable to the governing body for overall management of the nursing facility.

Source Note: The provisions of this §19.1902 adopted to be effective May 1, 1995, 20 TexReg 2393.
See also §19.1929 of this title (relating to Staff Development).

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

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

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

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

(A) that individual is competent to provide nursing and nursing related services; and

(B) that individual:

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

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

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

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

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

(B) has demonstrated competence through satisfactory participation in a state-approved nurse aide training and competency evaluation program, or competency evaluation program; or
(C) has been deemed or determined competent as provided in 42 Code of Federal Regulations §483.150(a) and (b).

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

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

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

(6) Multi-state registry verification. Before allowing an individual to serve as a nurse aide, a facility must seek information from every state registry, established under §1819(e)(2)(A) or §1919(e)(2)(A) of the Social Security Act, that the facility believes will include information about the individual.

(7) Required retraining. If, since an individual's most recent completion of a training and competency evaluation program, there has been a continuous period of 24 consecutive months during none of which the individual provided nursing or nursing-related services for monetary compensation, the individual must complete a new training and competency evaluation program or a new competency evaluation program.

(8) Regular in-service education. The facility must complete a performance review of every nurse aide at least once every 12 months, and must provide regular in-service education based on the outcome of these reviews. The in-service training must:

(A) be sufficient to ensure the continuing competence of nurse aides, but must be no less than 12 hours per year;

(B) address areas of weakness as determined in nurse aides' performance reviews and may address the special needs of residents as determined by the facility staff; and

(C) for nurse aides providing services to individuals with cognitive impairments, also address the care of the cognitively impaired.

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

Source Note: The provisions of this §19.1903 adopted to be effective May 1, 1995, 20 TexReg 2393.
The facility must ensure that nurse aides are able to demonstrate competency in skills and techniques necessary to care for residents' needs, as identified through resident assessments, and described in the plan of care.

Source Note: The provisions of this §19.1904 adopted to be effective May 1, 1995, 20 TexReg 2393.
(a) The facility must employ on a full-time, part-time, or consultant basis those professionals necessary to carry out the provisions of these requirements of participation.

(b) Professional staff must be licensed, certified or registered in accordance with applicable state laws.

Source Note: The provisions of this §19.1905 adopted to be effective May 1, 1995, 20 TexReg 2393.
Use of Outside Resources

(a) If the facility does not employ a qualified professional to furnish a specific service to be provided by the facility, the facility must have that service furnished to residents by a person or agency outside the facility under an agreement described in subsection (b) of this section.

(b) Agreements pertaining to services furnished by outside resources must specify in writing that the facility assumes responsibility for:

(1) obtaining services that meet professional standards and principles; and

(2) the timeliness of the services.

(c) Except for those members of the comprehensive assessment team, the facility allows outside resources access to the clinical records of only those residents who have orders for the service(s) to be provided.

Source Note: The provisions of this §19.1906 adopted to be effective May 1, 1995, 20 TexReg 2393.
(a) The nursing facility must designate a physician to serve as medical director.

(b) The medical director is responsible for:

1. implementation of resident care policies (see §19.1922 of this title (relating to Resident Care Policies)); and

2. the coordination of medical care in the facility.

Source Note: The provisions of this §19.1907 adopted to be effective May 1, 1995, 20 TexReg 2393.
(a) The facility must provide or obtain clinical laboratory services to meet the needs of its residents. The facility is responsible for the quality and timeliness of the services.

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

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

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

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

(b) The facility must:

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

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

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

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

Source Note: The provisions of this §19.1908 adopted to be effective May 1, 1995, 20 TexReg 2393.
(a) The nursing facility must provide or obtain radiology and other diagnostic services to meet the needs of its residents. The facility is responsible for the quality and timeliness of the services.

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

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

(b) The facility must:

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

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

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

(4) file in the resident's clinical record signed and dated reports of x-ray and other diagnostic services.

Source Note: The provisions of this §19.1909 adopted to be effective May 1, 1995, 20 TexReg 2393.
(a) The facility must maintain clinical records on each resident, in accordance with accepted professional health information management standards and practices, that are:

(1) complete;

(2) accurately documented;

(3) readily accessible;

(4) systematically organized; and

(5) protected from unauthorized release.

(b) Clinical records must be retained for:

(1) five years after medical services end; or

(2) for a minor, three years after a resident reaches legal age under Texas law.

(c) The facility must safeguard clinical record information against loss, destruction, or unauthorized use;

(d) The facility must keep confidential all information contained in the resident's records, regardless of the form or storage method of the records, except when release is required by:

(1) transfer to another health care institution;

(2) law or this chapter;

(3) third party payment contract; or

(4) the resident.

Source Note: The provisions of this §19.1910 adopted to be effective May 1, 1995, 20 TexReg 2393.
Texas Administrative Code

TITLE 40
SOCIAL SERVICES AND ASSISTANCE

PART 1
DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 19
NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

SUBCHAPTER T
ADMINISTRATION

RULE §19.1911
Contents of the Clinical Record

(a) A resident's clinical record must meet all documentation requirements in the Texas Health and Human Services Commission rule at 1 TAC §371.214 (relating to Resource Utilization Group Classification System).

(b) The clinical record of each resident must contain:

(1) a face sheet that contains the attending physician's current mailing address and telephone numbers;

(2) sufficient information to identify and care for the resident, to include at a minimum:

   (A) full name of resident;

   (B) full home/mailing address;

   (C) social security number;

   (D) health insurance claim numbers, if applicable;

   (E) date of birth; and

   (F) clinical record number, if applicable;

(3) a record of the resident's assessments;

(4) the comprehensive, interdisciplinary plan of care and services provided (see also §19.802 of this chapter relating to Comprehensive Care Plans), and the permanency plan for pediatric residents younger than 22 years of age;

(5) the results of any Preadmission Screening and Resident Review conducted by DADS;

(6) signed and dated clinical documentation from all health care practitioners involved in the resident's care, with each page identifying the name of the resident for whom the clinical care is intended;

(7) any directives or medical powers of attorney as described in §19.419 of this chapter (relating to Advance Directives);

(8) discharge information in accordance with §19.803 of this chapter (relating to Discharge Summary (Discharge Plan of Care)) and a physician discharge summary, to include, at least, dates of admission and discharge, admitting and discharge diagnoses, condition on discharge, and prognosis, if applicable;
(9) at admission or within 14 days after admission, documentation of an initial medical evaluation, including history, physical examination, diagnoses and an estimate of discharge potential and rehabilitation potential, and documentation of a previous annual medical examination;

(10) authentication of a hospital diagnosis, which may be in the form of a signed hospital discharge summary, a signed report from the resident's hospital or attending physician, or a transfer form signed by the physician;

(11) the physician's signed and dated orders, including medication, treatment, diet, restorative and special medical procedures, and routine care to maintain or improve the resident's functional abilities (required for the safety and well-being of the resident), which must not be changed either on a handwritten or computerized physician's order sheet after the orders have been signed by the physician unless space allows for additional orders below the physician's signature, including space for the physician to sign and date again;

(12) arrangements for the emergency care of the resident in accordance with §19.1204 of this chapter (relating to Availability of Physician for Emergency Care);

(13) observations made by nursing personnel according to the time frames specified in §19.1010 of this chapter (relating to Nursing Practices) and which facility staff must ensure show at least the following:

(A) items as specified on the MDS assessment; and

(B) current information, including:

(i) PRN medications and results;

(ii) treatments and any notable results;

(iii) physical complaints, changes in clinical signs and behavior, mental and behavioral status, and all incidents or accidents;

(iv) flow sheets which may include bathing, restraint observation and/or release documentation, elimination, fluid intake, vital signs, ambulation status, positioning, continency status and care, and weight;

(v) the resident's ability to participate in activities of daily living as defined in §19.1010(e)(1) of this chapter; and

(vi) dietary intake to include deviations from normal diet, rejection of substitutions, and physician's ordered snacks and/or supplemental feedings;

(14) the date and hour all drugs and treatments are administered; and

(15) documentation of special procedures performed for the safety and well-being of the resident.

Source Note: The provisions of this §19.1911 adopted to be effective August 1, 2000, 25 TexReg 6779; amended to be effective May 1, 2002, 27 TexReg 2834; amended to be effective September 1, 2008, 33 TexReg 7264
RULE §19.1912 Additional Clinical Record Service Requirements

(a) Index of admissions and discharges. The facility must maintain a permanent, master index of all residents admitted to and discharged from the facility. This index must contain at least the following information concerning each resident:

(1) name of resident (first, middle, and last);

(2) date of birth;

(3) date of admission;

(4) date of discharge; and

(5) social security, Medicare, or Medicaid number.

(b) Facility closure. In the event of closure of a facility, change of ownership or change of administrative authority, the new management must maintain documented proof of the medical information required for the continuity of care of all residents. This documentation may be in the form of copies of the resident's clinical record or the original clinical record. In a change of ownership, the two parties will agree and designate in writing who will be responsible for the retention and protection of the inactive and closed clinical records.

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

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

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

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

(1) current history and physical;

(2) current physician's orders and progress notes;

(3) current resident assessment instrument (RAI) and subsequent quarterly reviews; in Medicaid-certified facilities, all RAIs and Quarterly Reviews for the prior 15-month period;
(4) current care plan;

(5) most recent hospital discharge summary or transfer form;

(6) current nursing and therapy notes;

(7) current medication and treatment records;

(8) current lab and x-ray reports;

(9) the admission record; and

(10) the current permanency plan.

(e) Readmissions.

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

   (A) obtain current, signed physician's orders;

   (B) record a descriptive nurse note, giving a complete assessment of the resident's condition;

   (C) include any changes in diagnoses, etc.;

   (D) obtain signed copies of the hospital or transferring facility history and physical and discharge summary. A transfer summary containing this information is acceptable;

   (E) complete a new RAI and update the comprehensive care plan if evaluation of the resident indicates a significant change, which appears to be permanent. If no such change has occurred, then update only the resident comprehensive care plan; and

   (F) comply with §19.805 of this title (regarding Permanency Planning for Pediatric Residents).

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

(f) Signatures.

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

   (A) The facility must implement safeguards to assure that faxed documents are directed to the correct location to protect confidential health information.

   (B) All faxed documents must be signed by the author before transmission.

(2) Stamped signatures are acceptable for all health care documents requiring a physician's signature, if the
person using the stamp sends a letter of intent which specifies that he will be the only one using the stamp, and then signs the letter with the same signature as the stamp.

(3) The facility must maintain all letters of intent on file and make them available to representatives of the Texas Department of Human Services (DHS) upon request.

(4) Use of a master signature legend in lieu of the legend on each form for nursing staff signatures of medication, treatment, or flow sheet entries is acceptable under the following circumstances.

(A) Each nursing employee documenting on medication, treatment, or flow sheets signs his full name, title, and initials on the legend.

(B) The original master legend is kept in the clinical records office or director of nurses' office.

(C) A current copy of the legend is filed at each nurses' station.

(D) When a nursing employee leaves employment with the facility, his name is deleted from the list by lining through it and writing the current date by the name.

(E) The facility updates the master legend as needed for newly hired and terminated employees.

(F) The master signature legend must be retained permanently as a reference to entries made in clinical records.

(g) Destruction of Records. When resident records are destroyed after the retention period is complete, the facility must shred or incinerate the records in a manner which protects confidentiality. At the time of destruction, the facility must document the following for each record destroyed:

(1) resident name;

(2) medical record number, if used;

(3) social security number, Medicare/Medicaid number, or the date of birth; and

(4) date and signature of person carrying out disposal.

(h) Confidentiality. The facility must develop and implement policies and procedures to safeguard the confidentiality of medical record information from unauthorized access.

(1) Except as provided in paragraph (2) of this subsection, the facility must not allow access to a resident's clinical record unless a physician's order exists for supplies, equipment, or services provided by the entity seeking access to the record.

(2) The facility must allow access and/or release confidential medical information under court order or by written authorization of the resident or his or her legal representative (see §19.407 of this title (relating to Privacy and Confidentiality)).
amended to be effective March 1, 1998, 23 TexReg 1314; amended to be effective October 15, 1998, 23 TexReg 10496; amended to be effective May 1, 2002, 27 TexReg 2834
The facility must designate in writing a clinical records supervisor who has the authority, responsibility, and accountability for the functions of the clinical records service. The clinical records supervisor must be:

1. A registered health information administrator (RHIA) or registered health information technician (RHIT); or

2. An individual with experience appropriate to the scope and complexity of services performed as determined by the Texas Department of Human Services, and who receives consultation at a minimum of every 180 days from an (RHIA) or (RHIT).

**Source Note**: The provisions of this §19.1913 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective May 1, 2002, 27 TexReg 3207
Texas Administrative Code

TITLE 40
SOCIAL SERVICES AND ASSISTANCE

PART 1
DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 19
NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

SUBCHAPTER T
ADMINISTRATION

RULE §19.1914
Disaster and Emergency Preparedness

(a) The facility must have detailed written plans and procedures to meet all potential emergencies and disasters such as fire, severe weather, and missing residents.

(b) The facility must train all employees in emergency procedures when they begin to work in the facility, periodically review the procedures with existing staff, and carry out unannounced staff drills using those procedures.

Source Note: The provisions of this §19.1914 adopted to be effective May 1, 1995, 20 TexReg 2393.
(a) The facility must have in effect a written transfer agreement with one or more hospitals that reasonably assures that:

1. Residents will be transferred from the facility to the hospital and ensured of timely admission to the hospital when transfer is medically appropriate as determined by the attending physician.

2. Medical and other information needed for care and treatment of residents, and when the transferring facility deems it appropriate, for determining whether such residents can be adequately cared for in a less expensive setting than either the facility or the hospital, will be exchanged between the institutions.

3. For Medicaid-certified facilities, the hospitals must be approved for participation under the Medicare and Medicaid programs.

(b) In addition, to ensure continuity of care, the transfer agreement should:

1. provide for prompt diagnostic and other medical services;

2. ensure accountability for a resident's personal effects at the time of transfer;

3. specify the steps needed to transfer a resident in a prompt, safe and efficient manner; and

4. provide for supplying, at the time of transfer, a summary of administrative, social, medical, and nursing information to the facility to which the resident is transferred.

(c) If the board and/or governing body for a long-term care facility and a hospital are the same, the controlling entity must have written procedures outlining how transfers will occur.

(d) The facility is considered to have a transfer agreement in effect if DHS determines that the facility attempted in good faith to enter into an agreement with a hospital sufficiently close to the facility to make transfer feasible but could not, and it is in the public interest not to enforce this requirement. The facility must document in writing its good faith effort to enter into an agreement.

Source Note: The provisions of this §19.1915 adopted to be effective May 1, 1995, 20 TexReg 2393.
Facilities offering respite care must meet the requirements of this chapter, except as provided in paragraph (4) of this section.

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

(A) Plan of care--A written description of the medical care or the supervision and nonmedical care needed by an individual during respite care.

(B) Respite care--The provision by a facility to an individual, for not more than two weeks for each stay in the facility, of room, board, and care at the level ordinarily provided for permanent residents.

(2) Plan of care. The facility and the individual arranging respite care must agree on the plan of care, and the plan must be filed at the facility before the facility admits the individual.

(A) The plan of care must be signed by:

(i) a licensed physician if the individual needing care requires medical care or treatment; or

(ii) the individual arranging the care if medical care or treatment is not required.

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

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

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

(A) The clinical record of each respite care resident must contain:

(i) general identifying information necessary to care for the individual and maintain his clinical record;

(ii) resident assessment and care plan according to facility policy;
(iii) progress notes and/or flow sheets which document care and services;

(iv) reports of diagnostic or lab studies;

(v) physician's orders; and

(vi) discharge and readmission information as required by facility policy for respite care services.

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

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

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

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

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

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

Source Note: The provisions of this §19.1916 adopted to be effective May 1, 1995, 20 TexReg 2393.
(a) The facility must maintain a Quality Assessment and Assurance Committee consisting of:

(1) the director of nursing services;

(2) a physician designated by the facility; and

(3) at least three other members of the facility's staff.

(b) The Quality Assessment and Assurance Committee:

(1) meets at least quarterly to identify issues with respect to which quality assessment and assurance activities are necessary; and

(2) develops and implements appropriate plans of action to correct identified quality deficiencies.

(c) Texas or the Secretary of Health and Human Services may not require disclosure of the records of the Quality Assessment and Assurance Committee except insofar as such disclosure is related to the compliance of the committee with the requirements of subsection (b) of this section.

(d) Good faith attempts by the committee to identify and correct quality deficiencies may not be used as a basis for sanctions.

(e) The Quality Assessment and Assurance Committee must adopt and ensure implementation of a policy to identify, assess, and develop strategies to control risk of injury to residents and nurses associated with the lifting, transferring, repositioning, or moving of a resident. The policy must establish a process that includes:

(1) analysis of the risk of injury to both residents and nurses posed by the resident handling needs of the resident populations served by the nursing facility and the physical environment in which resident handling and moving occurs;

(2) annual in-service education of nurses in the identification, assessment, and control of risk of injury to residents and nurses during resident handling;

(3) evaluation of alternative ways to reduce risks associated with resident handling, including evaluation of equipment and the environment;

(4) restriction, to the extent feasible with existing equipment and aids, of manual resident handling or moving of all or most of a resident's weight to emergency, life-threatening, or otherwise exceptional circumstances;
(5) collaboration with and an annual report to the nurse staffing committee;

(6) specific procedures for nurses to refuse to perform or be involved in resident handling or moving that the nurse believes in good faith will expose a resident or a nurse to an unacceptable risk of injury;

(7) submission of an annual report by the nursing staff to the Quality Assessment and Assurance Committee on activities related to the identification, assessment, and development of strategies to control risk of injury to residents and nurses associated with the lifting, transferring, repositioning, or moving of a resident; and

(8) in developing architectural plans for constructing or remodeling a nursing facility or a unit of a nursing facility in which resident handling and moving occurs, consideration of the feasibility of incorporating resident handling equipment or the physical space and construction design needed to incorporate that equipment at a later date.

Source Note: The provisions of this §19.1917 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective June 1, 2006, 31 TexReg 4458.
(a) The facility must comply with the disclosure requirements of 42 Code of Federal Regulations, §420.206 and §455.104.

(b) The facility must provide written notice to Facility Enrollment, Long-Term Care-Regulatory, Texas Department of Human Services (DHS) at the time of change if a change occurs in:

(1) persons with an ownership or control interest, as defined in 42 Code of Federal Regulations, §420.201 and §455.101;

(2) the officers, directors, agents or managing employees;

(3) the corporation, association, or other company responsible for the management of the facility;

(4) the facility's administrator or director of nursing; or

(5) the controlling person.

(c) The notice specified in subsection (b) of this section must include the identity of each new individual or company.

(d) Failure to notify Facility Enrollment within 30 days of a change specified in subsection (b) will result in a $500 administrative penalty. If the notice is postmarked within the 30-day period, 15 days will be added to the time period to receive the notice.

Source Note: The provisions of this §19.1918 adopted to be effective October 1, 1990, 15 TexReg 5220; amended to be effective April 1, 1992, 17 TexReg 1915; amended to be effective May 1, 1995, 20 TexReg 2868; amended to be effective July 1, 1996, 21 TexReg 4408; amended to be effective March 1, 1998, 23 TexReg 1314; amended to be effective July 1, 2002, 27 TexReg 5245
Right to Possession

(a) As a condition of continued licensure, a license holder must maintain the right to possession of the facility as described in §19.204(b)(1) of this title (relating to Application Requirements).

(b) The license holder must notify DADS in writing within 72 hours after the license holder becomes aware of or should have become aware of the loss and imminent loss of the right to possession of the facility, such as notice of eviction, foreclosure, termination of lease, or similar proposed action. The notification must:

(1) include a description of the specific situation that resulted in loss of possession of the facility;

(2) be faxed to (512) 438-2730 or (512) 438-2728; and

(3) be kept on file with a copy of the fax confirmation.

Source Note: The provisions of this §19.1919 adopted to be effective September 1, 2007, 32 TexReg 4231
(a) The facility must have an administrative policy and procedure manual that outlines the general operating policies and procedures of the facility. The manual must include policies and procedures related to admission and admission agreements, resident care services, refunds, transfers and discharges, receiving and responding to complaints and recommendations, and protection of residents' personal property and civil rights. A copy of this manual must be made available for review upon request to each physician, staff member, resident, and resident's next of kin or guardian and to the public.

(b) The facility must have written personnel policies and procedures that are explained to employees during initial orientation and are readily available to them after that time.

(c) The facility must ensure that personnel records are correct and contain sufficient information to support placement in the assigned position (including a resume of training and experience). When appropriate, a current copy of the person's license or permit must be in the file.

(d) Upon request of the Texas Department of Human Services (DHS), the facility must make available financial records to demonstrate the facility's compliance with applicable state laws and standards relating to licensing.

Source Note: The provisions of this §19.1920 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective March 1, 1998, 23 TexReg 1314; amended to be effective October 15, 1998, 23 TexReg 10496.
(a) The facility must admit and retain only residents whose needs can be met through service from the facility staff, or in cooperation with community resources or other providers under contract.

(1) In any circumstance in which a facility refuses to admit a resident being transferred due to the emergency closure of another facility, the facility must provide the DADS regional director or program manager for the area in which the facility is located with a written statement of the reasons for the refusal within 10 working days after the refusal.

(2) Failure to submit the written statement timely or including false or misleading information in the statement will result in an administrative penalty.

(b) Individuals who have met the requirements of §19.2500 of this chapter (relating to Preadmission Screening and Annual Resident Review (PASARR)) and have mental or physical diseases, or both, that endanger other residents may be admitted or retained if adequate rooms and care are provided to protect the other residents.

(c) The term "hospital" may not be used as part of the name of a nursing facility unless it has been classified and duly licensed as a hospital by the appropriate state agency.

(d) In the event any facility ceases operation, temporarily or permanently, voluntarily or involuntarily, notice must be provided to the residents and residents' relatives or responsible parties of closure.

(1) If the closure is voluntary, notice to residents' relatives or responsible parties must be in writing, not later than one week after the date on which the decision to close is made, giving at least 30 days notice for relocation after receipt of notice.

(2) If the closure is involuntary, the facility must make the notification, whether orally or in writing, immediately on receiving notice of the closure.

(e) Each licensed facility must conspicuously and prominently post the information listed in paragraphs (1) - (12) of this subsection in an area of the facility that is readily available to residents, employees, and visitors. The posting must be in a manner that each item of information is directly visible at a single time. In the case of a licensed section that is part of a larger building or complex, the posting must be in the licensed section or public way leading to it. Any exceptions must be approved by DADS. The following items must be posted:

(1) the facility license;

(2) a complaint sign provided by DADS giving the toll-free telephone number;
(3) a notice in a form prescribed by DADS that inspection and related reports are available at the facility for public inspection;

(4) a concise summary prepared by DADS of the most recent inspection report;

(5) a notice of DADS' toll-free telephone number 1-800-458-9858 to request summary reports relating to the quality of care, recent investigations, litigation or other aspects of the operation of the facility that are available to the public;

(6) a notice that DADS can provide information about the nursing facility administrator at 512-438-2015;

(7) if a facility has been ordered to suspend admissions, a notice of the suspension, which must be posted also on all doors providing public ingress to and egress from the facility;

(8) a statement of resident rights using a form DADS provides;

(9) a notice that employees, other staff, residents, volunteers, and family members and guardians of residents are protected from discrimination or retaliation as provided by the Health and Safety Code, §242.133 and §242.1335; and that the facility has available for public inspection a copy of the Health and Safety Code, Chapter 242, Subchapter E;

(10) for a facility that advertises, markets, or otherwise promotes that it provides services to residents with Alzheimer's disease and related disorders, a disclosure statement describing the nature of its care or treatment of residents with Alzheimer's disease and related disorders in accordance with §19.204(b)(4) of this chapter (relating to Application Requirements);

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

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

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

(1) with Alzheimer's disease or a related disorder, seeking placement as a resident;

(2) attempting to place another individual as a resident with Alzheimer's disease or a related disorder; or

(3) seeking information about the facility's care or treatment of residents with Alzheimer's disease or a related disorder.

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

(1) a statement of the facility's compliance record that is updated at least bi-monthly and reflects at least one
year's compliance record, in a form required by DADS; and

(2) if a facility has been cited for a violation of residents' rights, a copy of the citation, which must remain in the reports until any regulatory action with respect to the violation is complete and DADS has determined that the facility is in full compliance with the applicable requirement.

(h) The facility must inform the resident or responsible party or both upon the resident's admission that the inspection reports referenced in subsection (e)(3) of this section are available for review.

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

(j) Within 72 hours after admission, the facility must prepare a written inventory of the personal property a resident brings to the facility, such as furnishings, jewelry, televisions, radios, sewing machines, and medical equipment. The facility does not have to inventory the resident's clothing; however, the operating policies and procedures must provide for the management of resident clothing to prevent loss or damage. The facility administrator or his or her designee must sign and retain the written inventory and must give a copy to the resident or the resident's responsible party or both. The facility must revise the written inventory to show if property is lost, destroyed, damaged, replaced, or supplemented. Upon discharge of the resident, the facility must document the disposition of personal effects by a dated receipt bearing the signature of the resident or the resident's responsible party or both. See §19.416 of this chapter (relating to Personal Property).

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

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

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

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

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

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

   (A) for an employee most recently hired before September 1, 2009, by August 31, 2011, and at least every twelve months thereafter; and

   (B) for an employee most recently hired on or after September 1, 2009, at least every twelve months; and

(2) keep a copy of the results of the initial and annual searches of the NAR and EMR in the employee's personnel file.
Source Note: The provisions of this §19.1921 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective September 1, 1996, 21 TexReg 7859; amended to be effective March 1, 1998, 23 TexReg 1314; amended to be effective October 15, 1998, 23 TexReg 10496; 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, 2003, 28 TexReg 3828; amended to be effective September 1, 2003, 28 TexReg 6939; amended to be effective September 1, 2010, 35 TexReg 6353
(a) The facility must have written policies to govern the nursing care and related medical or other services provided. The written policies must include plans for promoting self-care and independence. If children are admitted to the facility, written policies must address the care of children, consistent with currently acceptable pediatric practice and should address the ongoing assessment of the potential for community reintegration.

(b) Resident care policies are developed by the medical director and by professional personnel, including one or more physicians, licensed or registered nurses, a registered pharmacist, and the licensed nursing home administrator. The advisory group must review the policies at least annually and update them as necessary.

**Source Note:** The provisions of this §19.1922 adopted to be effective May 1, 1995, 20 TexReg 2393.
(a) The facility must detail in the medical record every accident or incident, including allegations of mistreatment of residents by facility staff, medication errors, and drug reactions.

(b) Accidents, whether or not resulting in injury, and any unusual incidents or abnormal events including allegations of mistreatment of residents by staff or personnel or visitors, must be described in a separate administrative record and reported by the facility in accordance with the licensure Act and this section.

   (1) If the incident appears to be of a serious nature, it must be investigated by or under the direction of the director of nurses, the facility administrator, or a committee charged with this responsibility.

   (2) If the incident involves a resident and is serious or requires special reporting to the Texas Department of Human Services (DHS), the resident's responsible party and attending physician must be immediately notified.

(c) Accident or incident reports must be retained for at least two years following the occurrence and must contain the following information.

   (1) For incidents involving residents, the name of the resident; witnesses, if any; date, time, and description of the incident; circumstances under which it occurred; action taken including documentation of notification of the responsible party and attending physician, if appropriate; and the resident's current (post-incident) health condition, including vital signs and date and time of entry.

   (2) Incident reports describing incidents not involving residents must contain such information as names of individuals involved, date, time, witnesses (if witnesses were present), description of the event or occurrence, including the circumstances under which it occurred, action taken, and final disposition that indicates resolution of the event or occurrence.

(d) The facility must investigate incidents/accidents and complaints for trends which may indicate resident abuse. Trends that might be identified include but are not limited to: type of accident, type of injury, time of day, staff involved, staffing level, and relationship to past complaints.

(e) The facility must make incident reports available for review, upon request and without prior notice, by representatives of DHS, the U.S. Department of Health and Human Services, if applicable; and the Texas Department of Protective and Regulatory Services. Reports related to specific incidents must be available to the designated regional staff ombudsman, Office of the State Long Term Care Ombudsman, Texas Department on Aging.
Source Note: The provisions of this §19.1923 adopted to be effective May 1, 1995, 20 TexReg 2393.
Nursing facility staff must maintain current financial records in accordance with recognized fiscal and accounting procedures. The facility must ensure that records clearly identify each charge and payment made on behalf of each resident residing in the facility. The facility must clearly state in its records to whom charges were made and for whom payment was received. Medicaid-certified facilities must also comply with the following requirements.

(1) The facility must make financial records and supporting documents available at any time within working hours and without prior notification for review by the Texas Department of Human Services, the Department of Health and Human Services, and the Texas attorney general's Medicaid Fraud Control Unit.

(2) The facility must keep the financial records in the facility for a minimum of three years and 90 days after the termination of the contract period or for three years after the end of the federal fiscal year in which services were provided if there was a provider agreement/contract with no specific termination date in effect. The facility must also keep for the same period of time supporting fiscal documents and other records necessary to ensure claims for federal matching funds.

Source Note: The provisions of this §19.1924 adopted to be effective May 1, 1995, 20 TexReg 2393.
(a) Effective December 1, 2008, minimum standards of financial condition require the applicant or license holder to have sufficient financial resources to:

(1) satisfy obligations at the time they come due; and

(2) ensure at all times the delivery of essential care and services, such as nursing or dietary services, or utilities.

(b) A license holder must notify DADS of significant adverse changes in financial condition, which include changes in financial position, cash flow, results of operation, or other events that could adversely affect the delivery of essential care and services, such as nursing or dietary services, or utilities. The following are examples of significant adverse changes in financial condition that must be reported:

(1) The license holder, operator, administrator, manager, or other controlling person receives notice that a judgment or tax lien of at least $50,000 has been filed, recorded, or levied against the facility or any of the assets of the facility or the license holder and the judgment or tax lien is not satisfied, or an appropriate extension has not been obtained, within three working days after receipt of the notice.

(2) A financial institution refuses to honor facility-operation-related checks or other financial instruments issued by the license holder, operator, administrator, manager, or other controlling person or agent of the license holder, operator, administrator, manager, or other controlling person and:

   (A) the cumulative amounts of the checks or financial instruments are $50,000 or more; and

   (B) the checks or financial instruments are not honored or replaced to the satisfaction of the holders of the instruments within five working days after the holders have notified the license holder, operator, administrator, manager, or the person authorized to issue the instrument of the dishonored items.

(3) The facility fails to maintain the facility's utilities or a sufficient quantity of supplies, including nursing, dietary, pharmaceutical, or other care and service supplies, to meet the needs of the residents.

(4) The license holder, operator, administrator, manager, or other controlling person fails to make timely payments of any facility-related tax of at least $10,000 and fails to satisfy such tax within five working days after the date the tax becomes due.

(5) The license holder, operator, administrator, manager, or other controlling person files a voluntary bankruptcy petition, or a creditor files an involuntary bankruptcy petition against the license holder or controlling person, under the United States Code or any other laws of the United States.
(6) A court appoints a bankruptcy trustee for the facility.

(7) A person seeking appointment of a receiver for the facility files a petition in any jurisdiction.

(8) The license holder, operator, administrator, manager, or other controlling person is unable to meet conditions of a facility-operation-related loan or debt covenant unless the loan or debt covenant has been waived, and that inability leads to:

(A) the imposition of a fine or penalty;

(B) restructuring;

(C) a change in terms or conditions of the loan or debt covenant; or

(D) a recall by the issuing entity.

(9) The license holder, operator, administrator, manager, or other controlling person is delinquent on more than $50,000 of facility-related contractual obligations or vendor contracts and has not cured the delinquency within five working days after receipt of notice from the creditor or creditors to pay the debt.

c) The license holder must notify DADS in writing of a significant adverse change in its financial condition as required by subsection (b) of this section within 72 hours after the license holder becomes aware of or should have become aware of the change.

d) The license holder's notice required by subsection (b) of this section must include a description of:

(1) the specific significant adverse change in financial condition;

(2) how the significant adverse change in financial condition affects the license holder's ability to deliver essential care and services; and

(3) the actions the license holder has taken to address the significant adverse change in financial condition.

e) The license holder must fax the notice required in subsection (b) of this section to (512) 438-2730 or (512) 438-2728, and the notice must be kept on file with a copy of the fax confirmation.

f) The license holder must provide any other information DADS requests to substantiate continued compliance with the requirements of this section within 30 days after the request.

Source Note: The provisions of this §19.1925 adopted to be effective September 1, 2007, 32 TexReg 4231
(a) When a nursing facility (NF) contracts for hospice services for residents, the nursing facility must:

(1) have a written contract for the provision of arranged services, which must be signed by authorized representatives of the NF and hospice and must include the following:

   (A) the services to be provided;

   (B) a stipulation that hospice-related services performed by NF staff may be provided only with the express authorization of the hospice;

   (C) how the contracted services are to be coordinated, supervised, and evaluated by the hospice and the NF;

   (D) delineation of the roles of the hospice and the NF in the admission process, recipient and family assessment, and the interdisciplinary team case conferences;

   (E) a requirement for documentation of services furnished; and

   (F) the qualifications of the personnel providing the services;

(2) provide room and board services, which include the performance of personal care services, including assistance in the activities of daily living, administration of medication, socializing activities, maintaining the cleanliness of a resident's room, and supervision and assisting in the use of durable medical equipment and prescribed therapies;

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

(4) have joint procedures with the hospice provider for ordering medications that ensure the proper payor is billed and for reconciling billing between NF and hospice, including:

   (A) contacting the hospice prior to filling a new prescription; and

   (B) ensuring that drugs unrelated to the terminal illness are ordered through the Vendor Drug program; and

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

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

(C) Physician Certification of Terminal Illness form;

(D) Medicare Election Statement, if dually eligible;

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

(F) hospice interdisciplinary assessments;

(G) hospice plan of care; and

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

(i) nurses notes and summaries;

(ii) physician orders and progress notes; and

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

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

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

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

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

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

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

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

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

Source Note: The provisions of this §19.1926 adopted to be effective December 1, 2000, 25 TexReg 10374;
amended to be effective January 1, 2002, 26 TexReg 10389; amended to be effective September 1, 2008, 33 TexReg 7264
(a) The facility must promote a volunteer program designed to assist in meeting the social and emotional needs of the residents.

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

(c) The facility should promote volunteer programs designed to provide social, emotional, educational, and sensory opportunities for its pediatric residents.

Source Note: The provisions of this §19.1928 adopted to be effective May 1, 1995, 20 TexReg 2393.
Each facility must implement and maintain programs of orientation, training, and continuing in-service education to develop the skills of its staff, as described in §19.1903 of this title (relating to Required Training of Nurse Aides).

(1) As part of orientation and annually, each employee must receive instruction regarding:

(A) Human Immunodeficiency Virus (HIV), as outlined in the educational information provided by the Texas Department of Health Model Workplace Guidelines. At a minimum the HIV curriculum must include:

(i) modes of transmission;

(ii) methods of prevention;

(iii) behaviors related to substance abuse;

(iv) occupational precautions;

(v) current laws and regulations concerning the rights of an acquired immune deficiency syndrome/HIV-infected individual; and

(vi) behaviors associated with HIV transmission which are in violation of Texas law; and

(B) restraint reduction and the prevention of falls through competency-based training. Facilities also may choose to train on behavior management, including prevention of aggressive behavior and de-escalation techniques.

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

(3) Nursing staff, licensed nurses, and nurse aides must receive annual in-service training which includes components, appropriate to their job responsibilities, from one or more of the following categories:

(A) communication techniques and skills useful when providing geriatric care, such as skills for communicating with the hearing impaired, visually impaired and cognitively impaired; therapeutic touch; and recognizing communication that indicates psychological abuse;

(B) assessment and nursing interventions related to the common physical and psychological changes of aging for each body system;
(C) geriatric pharmacology, including treatment for pain management and sleep disorders;

(D) common emergencies of geriatric residents and how to prevent them, for example, falls, choking on food or medicines, injuries from restraint use; recognizing sudden changes in physical condition, such as stroke, heart attack, acute abdomen, and acute glaucoma; and obtaining emergency treatment;

(E) common mental disorders with related nursing implications; and

(F) ethical and legal issues regarding advance directives, abuse and neglect, guardianship, and confidentiality.

(4) Facilities with pediatric residents must comply with the following:

(A) Facility staff must be trained in the use of pediatric equipment and supplies, including emergency equipment and supplies.

(B) Facility staff should receive annual continuing education dealing with pediatric issues, including child growth and development and pediatric assessment.

(5) Minimum continuing in-service education requirements are listed in subparagraphs (A)-(B) of this paragraph. Attendance at relevant outside training may be used to satisfy the in-service education requirement. The facility must keep in-service records for each employee listed. The minimum requirements are:

(A) licensed personnel--two hours per quarter; and

(B) nurse aides--12 hours annually. For the purpose of this paragraph, a medication aide is considered a nurse aide and must receive the same continuing in-service education. This in-service education does not qualify as continuing education units required for renewal of a medication aide permit.

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

Source Note: The provisions of this §19.1929 adopted to be effective September 1, 1996, 21 TexReg 7859; amended to be effective June 1, 2003, 28 TexReg 3828; amended to be effective May 1, 2004, 29 TexReg 3235
If the facility stores and transfers blood or blood products, the facility must meet the conditions established for certification of hospitals that are contained in 42 Code of Federal Regulations §482.27(d)(1)-(6).

**Source Note:** The provisions of this §19.1930 adopted to be effective May 1, 1995, 20 TexReg 2393.
(a) A nursing facility that accepts school-age residents, ages 3 through 21, must provide assurances to the Texas Department of Human Services (DHS) that it has:

(1) established a written cooperative agreement with the local independent school district that includes:

   (A) general responsibilities of the facility and the school district in delivering appropriate and mutually supportive services to eligible school-age residents;

   (B) a provision allowing the school district staff to access, with appropriate consent of the eligible resident or guardian, the facility's resident record and assessment information to avoid unnecessary duplication of services;

   (C) a provision allowing the school district staff an opportunity to participate in or provide information for the facility's admission, programmatic, and discharge-planning meetings when the educational needs of an eligible resident are being considered; and

   (D) a provision allowing the NF staff to participate in or provide information to the school district's admission, review, and dismissal (ARD) committee during its deliberations about each eligible school-age resident; and

(2) developed written policies and procedures to ensure that all eligible school-age residents, ages 3 through 21, who have neither successfully graduated from nor completed an approved school program are enrolled in a Texas Education Agency-approved educational program. The facility must:

   (A) notify the local education agency (LEA), in writing, within three days of the admittance of an individual between the ages of birth and 22; and

   (B) provide the LEA with any of the following information or records available to the facility within 14 working days of a school-age child's admission to the facility:

      (i) birth certificate or other document as proof of a child's identity;

      (ii) medical history and medical records, including current immunization records;

      (iii) social history;

      (iv) vision and hearing screening and/or evaluation;

      (v) assessment reports, including psychological, educational, related service, and vocational assessments;
(vi) the facility's care plan;

(vii) educational history (at last previous educational placement to facilitate the LEA's efforts to obtain educational records from the previous LEA); and

(viii) any court order which authorizes the placement in the facility.

(C) maintain, as a separate document in the school-age resident's record, a copy of the original Individual Education Plan (IEP) developed by the school district, and any subsequent changes;

(D) document, in the comprehensive care plan, the following:

(i) efforts to resolve differences between the IEP and the comprehensive care plan;

(ii) educational objectives (such as behavior therapy or speech therapy), services, and approaches;

(iii) the resident's adjustment to the educational program;

(iv) changes and modifications to the plan; and

(v) discipline(s) in the facility responsible for follow-through on each educational objective; and

(E) provide to the local ARD committee a description of available space should a child need to be educated at the facility. If the ARD committee decides that the facility is the appropriate educational placement and the space is adequate, the facility must:

(i) provide the space as described, free of any costs, including those incurred for the operation and maintenance of the space; and

(ii) if the space will no longer be available or must be reduced, notify the LEA 30 days in advance with regard to one student and 90 days in advance regarding more than one student.

(b) If a provider desires to provide and administer the provider's own educational program(s), the provider must secure and maintain certification as a nonpublic school from the Texas Education Agency.

(c) In accordance with the Education Code, §29.012, DHS adopts by reference 19 TAC §89.1115 (relating to the Memorandum of Understanding Concerning Interagency Coordination of Special Education Services to Students with Disabilities in Residential Facilities).

Source Note: The provisions of this §19.1934 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective June 15, 1997, 22 TexReg 5277; amended to be effective May 1, 2003, 28 TexReg 2619
(a) The Texas Department of Human Services (DHS) inspection and survey personnel will perform inspections and surveys, follow-up visits, complaint investigations, investigations of abuse or neglect, and other contact visits from time to time as they deem appropriate or as required for carrying out the responsibilities of licensing.

(b) An inspection may be conducted by an individual qualified surveyor or by a team, of which at least one member is a qualified surveyor.

(c) To determine standard compliance which cannot be verified during regular working hours, night or weekend inspections may be conducted to cover specific segments of operation and will be completed with the least possible interference to staff and residents.

(d) Generally, all inspections, surveys, complaint investigations and other visits, whether routine or non-routine, made for the purpose of determining the appropriateness of resident care and day-to-day operations of a facility will be unannounced; any exceptions must be justified. Releasing advance information of an unannounced inspection is a third degree felony, as provided in §242.045 of the Health and Safety Code.

(e) Certain visits may be announced, including, but not limited to, consultation visits to determine how a physical plant may be expanded or upgraded and visits to determine the progress of physical plant construction or repairs, equipment installation or repairs, or systems installation or repairs or conditions when certain emergencies arise, such as fire, windstorm, or malfunctioning or nonfunctioning of electrical or mechanical systems.

(f) Persons authorized to receive advance information on unannounced inspections include:

   (1) citizen advocates invited to attend inspections, as described in subsection (g) of this section;

   (2) representatives of the Texas Department of Aging serving as ombudsmen or authorized to attend or participate in inspections;

   (3) representatives of the United States Department of Health and Human Services whose programs relate to the Medicare/Medicaid Long Term Care Program; and

   (4) representatives of the Texas Department of Human Services whose programs relate to the Medicare/Medicaid long term care program.

(g) DHS will conduct at least two unannounced inspections during each licensing period of each institution.
(1) In order to ensure continuous compliance, a sufficient number of inspections will be conducted between the hours of 5:00 p.m. and 8:00 a.m. in randomly selected institutions. This cursory after-hours inspection will be conducted to verify staffing, assurance of emergency egress, resident care, medication security, food service or nourishments, sanitation, and other items as deemed appropriate. To the greatest extent feasible, any disruption of the residents will be minimal.

(2) For at least two unannounced inspections each licensing period, DHS will invite to the inspections at least one person as a citizen advocate from the American Association of Retired Persons, the Texas Senior Citizen Association, the Texas Retired Federal Employees, the Texas Department on Aging Certified Long Term Care Ombudsman, or any other statewide organization for the elderly. DHS will provide to these organizations basic licensing information and requirements for the organizations’ dissemination to their members whom they engage to attend the inspections. Advocates participating in the inspections must follow all protocols of DHS. Advocates will provide their own transportation. The schedule of inspections in this category will be arranged confidentially in advance with the organizations. Participation by the advocates is not a condition precedent to conducting the inspection.

(h) The facility must make all of its books, records, and other documents maintained by or on behalf of a facility accessible to DHS upon request.

(1) During an inspection, survey, or investigation, DHS is authorized to photocopy documents, photograph residents, and use any other available recordation devices to preserve all relevant evidence of conditions that DHS reasonably believes threaten the health and safety of a resident.

(2) Examples of records and documents which may be requested and photocopied or otherwise reproduced are resident medical records, including nursing notes, pharmacy records medication records, and physician's orders.

(3) When the facility is requested to furnish the copies, the facility may charge DHS at the rate not to exceed the rate charged by DHS for copies. The procedure of copying will be the responsibility of the administrator or his designee. If copying requires the records be removed from the facility, a representative of the facility will be expected to accompany the records and assure their order and preservation.

(4) DHS will protect the copies for privacy and confidentiality in accordance with recognized standards of medical records practice, applicable state laws, and department policy.

(i) DHS will provide for a special team to conduct validation surveys or verify findings of previous licensure surveys.

(1) At DHS’s discretion, based on record review, random sample, or any other determination, DHS may assign a team to conduct a validation survey. DHS may use the information to verify previous determinations or identify training needs to assure consistency in deficiencies cited and in punitive actions recommended throughout the state.

(2) Facilities will be required to correct any additional deficiencies cited by the validation team but will not be subject to any new or additional punitive action.
Source Note: The provisions of this §19.2002 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective March 1, 1998, 23 TexReg 1314.
(a) DADS determines if a facility meets the licensing rules, including both physical plant and facility operation requirements.

(b) Violations of regulations will be listed on forms designed for the purpose of the inspection or will be listed in letter form when administrative penalties are being proposed.

(c) At the conclusion of an inspection, survey, or investigation, the violations will be discussed in an exit conference with the facility's management. A written list of the violations will be left with the facility at the time of the exit conference; any additional violation that may be determined during review of field notes or preparation of the official final list will be communicated to the facility in writing within 10 working days after the exit conference. DADS gives the facility an additional exit conference regarding the additional violations.

(d) Not later than the fifth working day after the date a facility receives the final statement of violations under this section, the facility must provide a copy of the statement to a representative of the facility's family council.

(e) Within 10 working days after receipt of the final statement of violations, the facility must submit an acceptable plan of correction to the regional director, except plans of correction under §19.2112(i) of this chapter (relating to Administrative Penalties). An acceptable plan of correction must address the following areas:

1. how corrective action will be accomplished for those residents affected by the violations;
2. how the facility will identify other residents with the potential to be affected by the same violations;
3. what measures will be put into place or systemic changes made to ensure the violations will not recur;
4. how the facility will monitor its corrective actions to ensure that the violations are being corrected and will not recur; and
5. when corrective action will be completed.

(f) A clear and concise summary in nontechnical language of each licensure inspection or complaint investigation will be provided by DADS at the time the report of contact or similar document is provided.

Source Note: The provisions of this §19.2004 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective March 1, 1998, 23 TexReg 1314; amended to be effective January 1, 2000, 24 TexReg 11781; amended to be effective August 1, 2000, 25 TexReg 6779; amended to be effective
(a) Each incident or complaint report must reflect the reporting person's belief that a resident has been or will be abused or neglected and must contain the following information:

(1) the address or phone number of the person making the report so that the Texas Department of Human Services (DHS) can contact the person for any additional information, except for an anonymous report;

(2) the name and address of the resident;

(3) the name and address of the person responsible for the care of the resident, if available;

(4) information required by DHS guidelines, when the report is an incident; and

(5) any other relevant information. Relevant information includes the reporter's or complainant's basis or cause for reporting and his or her belief that a resident's physical or mental health or welfare has been or may be adversely affected by abuse or neglect caused by another person or persons, and any other information DHS considers relevant for the report.

(b) Should a report not include the information in paragraph (a) of this subsection, the report may be considered a complaint or an incident report not meeting the reporting criteria and may be investigated using other procedures. In receiving an oral report, the Texas Department of Human Services (DHS) will take all reasonable steps to elicit from the reporter all the information in paragraph (a) of this subsection.

(c) Anonymous complaints of abuse or neglect will be treated in the same manner as acknowledged reports unless the anonymous report accuses a specific individual of abuse or neglect, which report need not be investigated.

Source Note: The provisions of this §19.2006 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective August 1, 2000, 25 TexReg 6779
(a) In accordance with the memorandum of understanding between the Texas Department of Human Services (DHS) and the Texas Department of Protective and Regulatory Services (TDPRS) (relating to Memorandum of Understanding Concerning Protective Services for the Elderly), DHS will receive and investigate reports of abuse, neglect, and exploitation of elderly and disabled persons or other residents living in facilities licensed under this chapter. In investigating allegations of abuse and neglect of children residing in facilities, the definitions of "abuse," "neglect," and "person responsible for a child's care, custody, or welfare" are those found in §261.001 of the Texas Family Code.

(b) DHS will investigate complaints of abuse, neglect, or exploitation when the act occurs in the facility, when such licensed facility is responsible for the supervision of the resident at the time the act occurs, or when the alleged perpetrator is affiliated with the facility. Complaints of abuse, neglect, or exploitation not meeting this criteria will be referred to the Texas Department of Protective and Regulatory Services.

(c) The primary purpose of an investigation is the protection of the resident. If, before the completion of an investigation, DHS determines that the immediate removal of the resident is necessary to protect the resident from further abuse or neglect, DHS will petition a court to allow the immediate removal of the resident from the facility.

(d) Investigations under this section are conducted in accordance with Health and Safety Code, §242.126.

(e) Investigations of reports do not preclude actions under the provisions of Subchapter V of this chapter (relating to Enforcement).

(f) If the initial phase of an incident or complaint investigation concludes that no abuse or neglect adversely affecting the physical or mental health or welfare of a resident has occurred, no further investigation will be undertaken.

(g) The individual reporting the alleged abuse or neglect or other complaint, the resident, the resident's family, any person designated by the resident to receive information concerning the resident, and the facility will be notified of the results of DHS's investigation of a reported case of abuse or neglect or other complaint.

Source Note: The provisions of this §19.2008 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective June 1, 1997, 22 TexReg 3816; amended to be effective March 1, 1998, 23 TexReg 1314; amended to be effective October 15, 1998, 23 TexReg 10496; amended to be effective July 1, 2001, 26 TexReg 3824; amended to be effective September 1, 2003, 28 TexReg 6939
Hearings required by 42 Code of Federal Regulations §488.335 will be conducted in person or by telephone for the purpose of determining whether sufficient grounds exist for a referral of an individual to the appropriate licensure authority and the facility administrator. The hearings referenced in this section are not applicable to information provided by the Texas Department of Human Services pursuant to 42 CFR §488.325(h) (referrals for substandard quality of care).

Source Note: The provisions of this §19.2009 adopted to be effective July 31, 1995, 20 TexReg 5258; amended to be effective August 1, 1998, 23 TexReg 7388.
(a) Confidentiality. All reports, records, and working papers used or developed by the Texas Department of Human Services (DHS) in an investigation are confidential and may be released to the public only as provided below.

(1) Completed written investigation reports are open to the public, provided the report is de-identified. The process of de-identification means removing all names and other personally identifiable data, including any information from witnesses and others furnished to DHS as part of the investigation.

(2) If DHS receives written authorization from a facility resident or the resident’s legal representative regarding an investigation of abuse or neglect involving that resident, DHS will release the completed investigation report without removing the resident’s name. The authorization must:

(A) be signed and dated within six months of the request or state a length of time the authorization is valid;

(B) detail the information to be released;

(C) identify to whom the information can be released; and

(D) release DHS from all liability for complying with the authorization.

(b) Immunity. A person who reports suspected instances of abuse or neglect will, in the absence of bad faith or malicious conduct, be immune from civil or criminal liability which might have otherwise resulted from making the report. Immunity will extend to participation in any judicial proceeding resulting from the report.

(c) Privileged communications. In a proceeding regarding a report or investigation conducted under this subchapter, evidence will not be excluded on a claim of privileged communication except in the case of a communication between an attorney and a client.

(d) Central registry. DHS will maintain a central registry of reported cases of abuse and neglect at the central office in Austin.

Source Note: The provisions of this §19.2010 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective June 1, 1997, 22 TexReg 3816.
(a) Procedures for inspection of public records will be in accordance with the Texas Government Code, Chapter 552, and as further described in this section.

(b) Long-Term Care-Regulatory, Texas Department of Human Services (DHS), is responsible for the maintenance and release of records on licensed facilities, and other related records.

(c) The application for inspection of public records is subject to the following criteria:

(1) the application must be made to Long-Term Care-Regulatory, Texas Department of Human Services, 701 West 51st Street, Austin, Texas 78751 or P.O. Box 149030, Austin, Texas 78714-9030;

(2) the requestor must identify himself;

(3) the requestor must give reasonable prior notice of the time for inspection and/or copying of records;

(4) the requestor must specify the records requested;

(5) on written applications, if DHS unable to ascertain the records being requested, DHS may return the written application to the requestor for clarification; and

(6) DHS will provide the requested records as soon as possible; however, if the records are in active use, or in storage, or time is needed for proper de-identification or preparation of the records for inspection, DHS will so advise the requestor and set an hour and date within a reasonable time when the records will be available.

(d) Original records may be inspected or copied, but in no instance will original records be removed from DHS offices.

(e) Records maintained by Long-Term Care-Regulatory are open to the public, with the following exceptions:

(1) incomplete reports, audits, evaluations, and investigations made of, for, or by DHS are confidential;

(2) all reports, records, and working papers used or developed by DHS in an investigation of reports of abuse and neglect are confidential, and may be released to the public as provided in §19.2010(a) of this title (relating to General Provisions);

(3) all names and related personal, medical, or other identifying information about a resident are confidential;

(4) information about any identifiable person that is defamatory or an invasion of privacy is confidential;
(5) information identifying complainants or informants is confidential;

(6) itineraries of surveys and inspections are confidential;

(7) other information that is excepted from release by the Government Code, Chapter 552, is not available to the public; and

(8) to implement this subsection, DHS may not alter or de-identify original records. Instead, DHS will make available for public review or release only a properly de-identified copy of the original record.

(f) Long-Term Care-Regulatory will charge for copies of records upon request.

(1) If the requestor wants to inspect records, the requestor will specify the records to be inspected. DHS will make no charge for this service, unless the director of Long-Term Care-Regulatory determines a charge is appropriate based on the nature of the request.

(2) If the requestor wants copies of a record, the requestor will specify in writing the records to be copied on an appropriate DHS form, and DHS will complete the form by specifying the charge for the records, which the requestor must pay in advance. Checks and other instruments of payment must be made payable to the Texas Department of Human Services.

(3) Any expenses for standard-size copies incurred in the reproduction, preparation, or retrieval of records must be borne by the requestor on a cost basis in accordance with costs established by the State Purchasing and Texas Building and Procurement Commission or DHS for office machine copies.

(4) For documents that are mailed, DHS will charge for the postage at the time it charges for the production. All applicable sales taxes will be added to the cost of copying records.

(5) When a request involves more than one long-term care facility, each facility will be considered a separate request.

Source Note: The provisions of this §19.2011 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective June 1, 1997, 22 TexReg 3816; amended to be effective May 1, 2002, 27 TexReg 3207
The Texas Department of Human Services (DHS), as the state licensing agency and the survey and certification agency for the Medicaid program, may impose concurrently licensing remedies and Medicaid remedies on Medicaid-certified facilities.

Source Note: The provisions of this §19.2102 adopted to be effective May 1, 1995, 20 TexReg 2054; amended to be effective March 1, 1998, 23 TexReg 1314.
When Texas Department of Human Services (DHS) personnel determine that a facility is out of compliance with licensure rules to a degree that places the facility at risk of the imposition of licensing actions, DHS may send a warning letter to the facility. The warning letter notifies the facility that the violations of licensing rules must be corrected.

**Source Note:** The provisions of this §19.2103 adopted to be effective May 1, 1995, 20 TexReg 2054.
(a) The Texas Department of Human Services (DHS) may suspend a facility's license when the license holder, or any other person described in §19.201(e) of this title (relating to Criteria for Licensing), has:

(1) violated the requirements in either a repeated or substantial manner; or

(2) committed any act described in §19.2112(a)(2)-(6) of this title (relating to Administrative Penalties).

(b) Suspension of a license may occur simultaneously with any other enforcement provision available to DHS.

(c) The facility will be notified by certified mail of DHS's intent to suspend the license, including the facts or conduct alleged to warrant the suspension. The facility has an opportunity to show compliance with all requirements of law for the retention of the license, as provided in §19.215 of this title (relating to Informal Reconsideration). If the facility requests an informal reconsideration, DHS will give the license holder a written affirmation or reversal of the proposed action.

(d) The facility will be notified by certified mail of DHS's suspension of the facility's license. The facility has 15 days from receipt of the certified mail notice to request a hearing in accordance with Chapter 79, Subchapter Q of this title (relating to Formal Appeals). The suspension is effective when the deadline for appeal of the suspension passes, unless the facility appeals the suspension. If the facility appeals the suspension, the status of the license holder is preserved until final disposition of the contested matter.

(e) The suspension remains in effect until DHS determines that the reason for suspension no longer exists. DHS will conduct an on-site investigation before making a determination. During the suspension, the license holder must return the license to DHS.

Source Note: The provisions of this §19.2104 adopted to be effective May 1, 1995, 20 TexReg 2054; amended to be effective March 1, 1998, 23 TexReg 1314; amended to be effective October 15, 1998, 23 TexReg 10496.
(a) DADS may revoke a facility's license when the license holder, or any other person described in §19.201(f) of this title (relating to Criteria for Licensing), has:

(1) violated the requirements of the Health and Safety Code, Chapter 242, or the rules adopted under that chapter, in either a repeated or substantial manner;

(2) committed any act described in §19.2112(a)(2) - (6) of this title (relating to Administrative Penalties); or

(3) failed to notify DADS of a significant adverse change in financial condition, as required under §19.1925(b) of this title (relating to Financial Condition).

(b) Revocation of a license may occur simultaneously with any other enforcement provision available to DADS.

c) The license holder will be notified by certified mail of DADS' intent to revoke the license, including the facts or conduct alleged to warrant the revocation, with a copy being sent to the facility. The license holder has an opportunity to show compliance with all requirements of law for the retention of the license as provided in §19.215 of this title (relating to Opportunity to Show Compliance). If the license holder requests an opportunity to show compliance, DADS gives the license holder a written affirmation or reversal of the proposed action.

(d) The license holder will be notified by certified mail of DADS' revocation of the facility's license, with a copy being sent to the facility. The license holder has 15 days from receipt of the certified mail notice to request a hearing in accordance with the Health and Human Services Commission's formal hearing procedures in 1 TAC, Chapter 357, Subchapter I. The revocation will take effect when the deadline for appeal of the revocation passes, unless the license holder appeals the revocation. If the license holder appeals the revocation, the status of the license holder is preserved until final disposition of the contested matter. Upon revocation, the license must be returned to DADS.

Source Note: The provisions of this §19.2106 adopted to be effective May 1, 1995, 20 TexReg 2054; amended to be effective July 1, 1997, 22 TexReg 5672; amended to be effective March 1, 1998, 23 TexReg 1314; amended to be effective October 15, 1998, 23 TexReg 10496; amended to be effective October 1, 1999, 24 TexReg 8314; amended to be effective July 1, 2001, 26 TexReg 3824; amended to be effective July 1, 2002, 27 TexReg 5245; amended to be effective September 1, 2007, 32 TexReg 4231
(a) The Texas Department of Human Services (DHS) will suspend a facility's license or order an immediate closing of part of the facility if:

(1) DHS finds that the facility is operating in violation of the licensure rules; and

(2) the violation creates an immediate threat to the health and safety of a resident.

(b) The order suspending a license or closing a part of a facility under this section is immediately effective on the date on which the license holder receives written notice or a later date specified in the order. Written notice includes notice by facsimile transmission.

(c) The order suspending a license or ordering an immediate closing of a part of the facility is valid for ten days after the effective date of the order.

(d) When an emergency suspension has been ordered and the conditions in the facility indicate that residents should be relocated, the following rules apply unless superseded by DHS's Medicaid discharge rules in §19.502 of this title (relating to Transfer and Discharge in Medicaid-Certified Facilities):

(1) A resident's rights or freedom of choice in selecting treatment facilities must be respected.

(2) If a facility or part of a facility is closed:

   (A) DHS will notify the local health department director, city or county health authority, and representatives of the appropriate state agencies of the closure;

   (B) the facility staff must notify each resident's guardian or responsible party and attending physician, advising them of the action in process;

   (C) the resident or the resident's guardian or responsible person must be given opportunity to designate a preference for a specific facility or for other arrangements;

   (D) DHS must arrange for relocation to other facilities in the area in accordance with the resident's preference. A facility chosen for relocation must be in good standing with DHS and, if certified under Titles XVIII and XIX of the Social Security Act, must be in good standing under its contract. The facility chosen must be able to meet the needs of the resident;
(E) if absolutely necessary, to prevent transport over substantial distances, DHS will grant a waiver to a receiving facility to temporarily exceed its licensed capacity, provided the health and safety of residents is not compromised and the facility can meet the increased demands for direct care personnel and dietary services. A facility may exceed its licensed capacity under these circumstances, monitored by DHS staff, until residents can be transferred to a permanent location;

(F) with each resident transferred, the following reports, records, and supplies must be transmitted to the receiving institution:

(i) a copy of the current physician's orders for medication, treatment, diet, and special services required;

(ii) personal information such as name and address of next of kin, guardian, or party responsible for the resident; attending physician; Medicare and Medicaid identification number; social security number; and other identification information as deemed necessary and available;

(iii) all medication dispensed in the name of the resident for which a physician's orders are current. The medications must be inventoried and transferred with the resident. Medications past an expiration date or discontinued by physician order must be inventoried for disposition in accordance with state law;

(iv) the residents' personal belongings, clothing, and toilet articles. An inventory of personal property and valuables must be made by the closing facility; and

(v) resident trust fund accounts maintained by the closing facility. All items must be properly inventoried and receipts obtained for audit purposes by the appropriate state agency;

(G) if the closed facility is allowed to reopen within 90 days, the relocated residents have the first right to return to the facility. Relocated residents may choose to return, may stay in the receiving facility (if the facility is not exceeding its licensed capacity), or choose any other accommodations;

(H) any return to the facility must be treated as a new admission in regard to exchange of medical information, medications, and completion of required forms; and

(I) a licensee whose facility is closed under this section is entitled to request an administrative hearing in accordance with Chapter 79, Subchapter Q of this title (relating to Formal Appeals), but requesting a hearing does not suspend the effectiveness of the order.

Source Note: The provisions of this §19.2108 adopted to be effective May 1, 1995, 20 TexReg 2054; amended to be effective October 15, 1998, 23 TexReg 10496.
In this section, "threatened violation" means a situation which, unless immediate steps are taken to correct, may cause injury or harm to a resident's health and safety. The Texas Department of Human Services (DHS) may refer a facility to the attorney general who may petition a district court for:

1. A temporary restraining order to restrain a person from a violation or threatened violation of the requirements or any other law affecting residents if DHS reasonably believes that the violation or threatened violation creates an immediate threat to the health and safety of a resident;

2. An injunction to restrain a person from a violation or threatened violation of the requirements or any other law affecting residents if DHS reasonably believes that the violation or threatened violation creates a threat to the health and safety of a resident; or

3. The assessment of civil penalties under the Texas Health and Safety Code, §242.065, for a violation that threatens the health and safety of a resident. DHS recognizes the limited immunity from civil liability granted to volunteers serving as officers, directors, or trustees of charitable organizations, under the Charitable Immunity and Liability Act of 1987 (Texas Civil Practice and Remedies Code, Chapter 84).

Source Note: The provisions of this §19.2110 adopted to be effective May 1, 1995, 20 TexReg 2054; amended to be effective March 1, 1998, 23 TexReg 1314.
(a) If the commissioner finds that a nursing facility has committed an act for which a civil penalty may be imposed under §242.065, Health and Safety Code, the commissioner may order the nursing facility to immediately suspend admissions. For the purpose of this remedy, the Texas Department of Human Services defines an admission as the entry into a facility of a new resident or of a resident who has been absent from the facility for 24 or more hours.

(1) A waiver to allow a resident to be admitted may be considered by the commissioner or his designee.

(2) In determining whether to grant a waiver under paragraph (1) of this subsection, factors that the commissioner or his or her designee may consider include, but are not limited to:

(A) the reason(s) for which admissions at the facility are suspended;

(B) the facility's ability to correct the reasons for which admissions at the facility are suspended;

(C) the relation between the reasons for which admissions at the facility are suspended and the health care needs of the resident who seeks to return to the facility;

(D) whether the resident who wants to return to the facility has a spouse or relative in the facility; or

(E) the effect that barring the resident's return to the facility or other alternative placement will have on the ability of the resident to maintain contact with the resident's attending physician, family, responsible party, and agent (if any) under a medical power of attorney.

(3) A facility, with regard to which admissions are suspended, must inform a resident or his responsible party upon leaving that facility, that if he leaves for more than 24 hours, he may not be able to return.

(b) A suspension of admissions is effective on the date a nursing facility receives notice of the order and of the manner in which the order may be appealed. The Texas Department of Human Services provides an opportunity for a hearing on the appeal of the order within 14 days of the date the suspension becomes effective.

(c) During the time admissions are suspended, a nursing facility must post a notice of the suspension on all entrance and exit doors. The notice must contain the dates of the suspension.

(d) A person commits a Class C misdemeanor if the person does not post the required notice or removes a
notice while the suspension of admissions is in effect.

Source Note: The provisions of this §19.2111 adopted to be effective March 1, 1998, 23 TexReg 1314; amended to be effective March 1, 2001, 26 TexReg 984
(a) DADS may assess an administrative penalty against a person who:

(1) violates Chapter 242, Health and Safety Code or a rule, standard or order adopted or license issued under Chapter 242;

(2) makes a false statement, that the person knows or should know is false, of a material fact:

   (A) on an application for issuance or renewal of a license or in an attachment to the application; or

   (B) with respect to a matter under investigation by DADS;

(3) refuses to allow a representative of DADS to inspect:

   (A) a book, record, or file required to be maintained by a facility; or

   (B) any portion of the premises of a facility;

(4) willfully interferes with the work of a representative of DADS or the enforcement of this chapter;

(5) willfully interferes with a representative of DADS preserving evidence of a violation of a rule, standard, or order adopted or license issued under Chapter 242, Health and Safety Code;

(6) fails to pay a penalty assessed by DADS under Chapter 242, Health and Safety Code by the 10th day after the date the assessment of the penalty becomes final; or

(7) fails to notify DADS of a change of ownership before the effective date of the change of ownership.

(b) The persons against whom DADS may impose an administrative penalty include:

(1) an applicant for a license;

(2) a license holder;

(3) a partner, officer, director, or managing employee of an applicant or a license holder; and

(4) a person who controls a nursing facility.
(c) DADS recognizes the limited immunity from civil liability granted to volunteers serving as officers, directors or trustees of charitable organizations, under the Charitable Immunity and Liability Act of 1987 (Texas Civil Practice and Remedies Code, Chapter 84).

(d) In determining whether a violation warrants an administrative penalty, DADS considers the facility's history of compliance and whether:

1. a pattern or trend of violations exists; or
2. the violation is recurrent in nature and type; or
3. the violation presents danger to the health and safety of at least one resident; or
4. the violation is of a magnitude or nature that constitutes a health and safety hazard having a direct or imminent adverse effect on resident health, safety, or security, or which presents even more serious danger or harm; or
5. the violation is of a type established elsewhere in DADS rules concerning licensing standards for long term care facilities.

(e) In determining the amount of the penalty, DADS considers at a minimum:

1. the gradations of penalties;
2. the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard or potential hazard to the health and safety of the residents;
3. the history of previous violations;
4. deterrence of future violations; and
5. efforts to correct the violation.

(f) Administrative penalties may be levied for each violation found in a single survey. Each day of a continuing violation constitutes a separate violation. The administrative penalties for each day of a continuing violation cease on the date the violation is corrected. A violation that is the subject of a penalty is presumed to continue on each successive day until it is corrected. The date of correction alleged by the facility in its written plan of correction will be presumed to be the actual date of correction unless it is later determined by DADS that the correction was not made by that date or was not satisfactory.

1. Table of administrative penalties. The following table contains the gradations of penalties in accordance with the relative seriousness of the violation. While the table addresses most administrative penalty situations, administrative penalties for unique circumstances to which the table does not apply are established elsewhere in the requirements. The amount of the administrative penalty listed in subsection (a)(7) of this section is $500.

Attached Graphic

(2) Definitions. The following terms when used in this section have the following meanings, unless the context clearly indicates otherwise.
(A) Severity.

(i) No actual harm with a potential for minimal harm is a deficiency that has the potential for causing no more that a minor negative impact on the resident(s).

(ii) No actual harm with a potential for more than minimal harm is noncompliance that results in minimal physical, mental and/or psychological discomfort to the resident and/or has the potential (not yet realized) to compromise the resident's ability to maintain and/or reach his/her highest practicable physical, mental, and/or psychosocial well-being as defined by an accurate and comprehensive resident assessment, plan of care and provision of services.

(iii) Actual harm that is not immediate jeopardy is non-compliance that results in a negative outcome that has compromised the resident's ability to maintain and/or reach his/her highest practicable physical, mental and/or psychosocial well-being as defined by an accurate and comprehensive resident assessment, plan of care and provision of services. This does not include a deficient practice that only has limited consequence for the resident and would be included in (i) or (ii) above.

(iv) Immediate jeopardy to resident health and safety is a situation in which immediate corrective action is necessary because the facility's non-compliance with one or more requirements has caused, or likely to cause, serious injury, harm, impairment or death to a resident receiving care in the facility.

(B) Scope.

(i) Isolated means one or a very limited number of residents are affected and/or one or a very limited number of staff are involved, or the situation has occurred only occasionally or in a very limited number of locations.

(ii) Pattern means more than a very limited number of residents are affected and/or more than a very limited number of staff are involved, or the situation has occurred in several locations, and/or the same residents have been affected by repeated occurrences of the same deficient practice. The effect of the deficient practice is not found to be pervasive throughout the facility.

(iii) Widespread means the problems causing the deficiencies are pervasive in the facility and/or represent systemic failure that affected or has the potential to affect a large portion or all of the facility's residents.

(g) The penalties for a violation of the requirement to post notice of the suspension of admissions, additional reporting requirements found at §19.601(a) of this chapter (relating to Resident Behavior and Facility Practice), or residents' rights cannot exceed $1,000 a day for each violation, unless the violation of a resident's right also violates a rule in Subchapter H of this chapter (relating to Quality of Life), or Subchapter J of this chapter (relating to Quality of Care).

(h) No facility will be penalized because of a physician's or consultant's nonperformance beyond the facility's control or if documentation clearly indicates the violation is beyond the facility's control.

(i) DADS may issue a preliminary report regarding an administrative penalty. Within 10 days of the issuance of the preliminary report, DADS will give the facility written notice of the recommendation for an administrative penalty. The notice will include:
(1) a brief summary of the violations;

(2) a statement of the amount of penalty recommended;

(3) a statement of whether the violation is subject to correction under §19.2114 of this subchapter (relating to Right to Correct) and if the violation is subject to correction, a statement of:

(A) the date on which the facility must file a plan of correction (POC) to be approved by DADS; and

(B) the date on which the POC must be completed to avoid assessment of the penalty; and

(4) a statement that the facility has a right to a hearing on the violation, the amount of the penalty, or both.

(j) Within 20 days after the date on which written notice of recommended assessment of a penalty is sent to a facility, the facility must give DADS written consent to the penalty, make a written request for a hearing, or if the violation is subject to correction, submit a plan of correction in accordance with §19.2114 of this subchapter (relating to Right to Correct). If the facility does not make a response within the 20-day period, DADS will assess the penalty.

(k) The procedures for notification of recommended assessment, opportunity for hearing, actual assessment, payment of penalty, judicial review, and remittance will be in accordance with Health and Safety Code, §§242.067 - 242.069. Hearings will be held in accordance with Health and Human Services Commission's rules at 1 TAC, Chapter 357, Subchapter I. Interest on penalties is governed by Health and Safety Code §242.069(g).

Source Note: The provisions of this §19.2112 adopted to be effective May 1, 1995, 20 TexReg 2054; amended to be effective September 1, 1996, 21 TexReg 7859; amended to be effective March 1, 1998, 23 TexReg 1314; amended to be effective January 1, 2000, 24 TexReg 11781; amended to be effective August 1, 2000, 25 TexReg 6779; amended to be effective April 1, 2001, 26 TexReg 1547; amended to be effective May 4, 2008, 33 TexReg 3446
(a) The Texas Department of Human Services (DHS) may not collect an administrative penalty if, not later than the 45th day after the date the facility receives notice, the facility corrects the violation.

(b) If the facility reports to DHS that the violation has been corrected, DHS will inspect the correction or take any other steps necessary to confirm that the violation has been corrected and notify the facility that:

   (1) the correction is satisfactory and a penalty is not assessed; or

   (2) the correction is not satisfactory and a penalty is recommended.

(c) The facility must request a hearing on the violation no later than the 20th day after the date on which the notice is sent.

(d) Subsection (a) of this section does not apply:

   (1) to a violation that DHS determines:

      (A) results in serious harm to or death of a resident;

      (B) constitutes a serious threat to the health or safety of a resident; or

      (C) substantially limits the facility's capacity to provide care;

   (2) to the violations listed in §19.214(a)(2)-(6) of this title (relating to Criteria for Denying a License or Renewal of a License); or

   (3) to the violation of a resident right.

(e) A facility that corrects a violation under subsection (a) of this section must maintain the correction. If the facility fails to maintain the correction until the first anniversary of the date the correction was made, DHS may assess an administrative penalty equal to three times the amount of the original penalty assessed, but not collected. DHS does not provide a facility an opportunity to correct the subsequent violation.

Source Note: The provisions of this §19.2114 adopted to be effective March 1, 1998, 23 TexReg 1314.
(a) In lieu of demanding payment of an administrative penalty, the commissioner may allow the person to use, under supervision of the Texas Department of Human Services (DHS), a portion of the penalty to ameliorate the violation or to improve services, other than administrative services, in the nursing facility.

(b) DHS will offer amelioration to a person for a violation if DHS determines that the violation does not constitute immediate jeopardy to the health and safety of an institution resident. In this section, "immediate jeopardy to health and safety" means a situation in which immediate corrective action is necessary because the facility's noncompliance with one or more requirements has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident.

(c) DHS will not offer amelioration to a person if:

(1) the person has been charged with a violation that is subject to the right-to-correct, or

(2) DHS determines that the violation constitutes immediate jeopardy to the health and safety of a resident.

(d) DHS will offer amelioration to a person not later than the 10th day after the date the person receives from DHS a final notification of assessment of administrative penalty that is sent to the person after an informal dispute resolution process but before an administrative hearing.

(e) A person to whom amelioration has been offered must file a plan for amelioration not later than the 45th day after the date the person receives the offer of amelioration from DHS. In submitting the plan, the person must agree to waive the person's right to an administrative hearing if DHS approves the plan.

(f) At a minimum, a plan for amelioration must:

(1) propose changes to the management or operation of the facility that will improve services to or quality of care of residents,

(2) identify, through measurable outcomes, the ways in which and the extent to which the proposed changes will improve services to or quality of care of residents,

(3) establish clear goals to be achieved through the proposed changes,

(4) establish a timeline for implementing the proposed changes, and
(5) identify specific actions necessary to implement the proposed changes.

(g) DHS may require that an amelioration plan propose changes that would result in conditions that exceed the minimum requirements for nursing facility licensure.

(h) DHS will approve or deny an amelioration plan not later than the 45th day after the date DHS receives the plan. On approval of a person's plan, DHS will deny a pending request for a hearing submitted by the person.

(i) DHS will not offer amelioration to a person:

   (1) more than three times in a two-year period; or

   (2) more than one time in a two-year period for the same or similar violation.

Source Note: The provisions of this §19.2115 adopted to be effective March 1, 1998, 23 TexReg 1314; amended to be effective June 1, 2002, 27 TexReg 4367
Texas Administrative Code

TITLE 40  
SOCIAL SERVICES AND ASSISTANCE

PART 1  
DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 19  
NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

SUBCHAPTER V  
ENFORCEMENT

DIVISION 2  
LICENSING REMEDIES

RULE §19.2116  
Involuntary Appointment of a Trustee

(a) The Texas Department of Human Services (DHS) may petition a court of competent jurisdiction for the involuntary appointment of a trustee to operate a facility if one or more of the following conditions exist:

(1) the facility is operating without a license;

(2) the facility's license has been suspended or revoked;

(3) license suspension or revocation procedures against a facility are pending and an imminent threat to the health and safety of the residents exists;

(4) an emergency exists that presents an immediate threat to the health and safety of the residents; and/or

(5) the facility is closing (whether voluntarily or through an emergency closure order) and arrangements for relocation of the residents to other licensed institutions have not been made before closure.

(b) A trustee appointed under this section is entitled to a reasonable fee as determined by the court, to be paid from the Nursing and Convalescent Home Trust Fund, unless the trustee is placed in a veterans home. When a trustee is placed in a veterans home (as defined in Natural Resources Code, §164.002), the Veterans Land Board pays the trustee's fee.

(c) The trustee may use the emergency assistance funds in the trust fund only to alleviate an immediate threat to the health and safety of the residents, through such disbursements as payments for food; medication; sanitation services; minor repairs; supplies necessary for personal hygiene; or services necessary for the personal care, health, and safety of the residents.

(d) Before emergency assistance funds may be dispersed, a court order must be entered authorizing DHS to disburse emergency assistance funds to the facility.

(e) A facility that receives emergency assistance funds under this section must reimburse DHS for the amounts received not later that one year after the date on which the funds were received by the trustee. The owner of the facility at the time the trustee was appointed is responsible for the reimbursement and must pay interest from the date the funds were disbursed on the amount outstanding at a rate equal to the rate of interest determined under Texas Civil Statutes, Article 5069-1.05, to be applicable to judgments rendered during the month in which the money was disbursed to the facility. DHS will deposit the reimbursement and the interest received under this subsection to the credit of the Nursing and Convalescent Home Trust Fund. If the funds are not repaid within the year, DHS may determine that the facility is not eligible for a Medicaid contract.
(f) Any amount remaining due at the end of one year becomes delinquent and will be referred to the attorney general.

Source Note: The provisions of this §19.2116 adopted to be effective May 1, 1995, 20 TexReg 2054; amended to be effective September 1, 2003, 28 TexReg 6939
(a) A person holding a controlling interest in a facility may, at any time, request the Texas Department of Human Services (DHS) to assume the operation of the facility through the appointment of a trustee.

(b) If DHS believes that the appointment of a trustee is desirable, DHS may enter into an agreement with the person holding the controlling interest for appointment of the trustee to take charge of the facility.

(c) Any agreement entered into under this section must:

(1) specify all terms and conditions of the trustee’s appointment and authority; and

(2) preserve all rights of the residents as granted by law.

(d) The agreement will terminate either at a time specified in the agreement or upon receipt of notice of intent to terminate sent by either party.

(e) If DHS determines that termination of the agreement by the person holding a controlling interest in the facility would not be in the best interest of the residents, DHS will petition a court for an involuntary appointment under the terms of §19.2116 of this title (relating to Involuntary Appointment of a Trustee).

(f) The appointment of a trustee by agreement does not suspend the obligation of a facility to pay assessed monetary, civil, or administrative penalties.

Source Note: The provisions of this §19.2118 adopted to be effective May 1, 1995, 20 TexReg 2054.
(a) The Texas Department of Human Services (DHS) will hold an open hearing in a facility if DHS:

(1) has taken a punitive action against the facility in the preceding 12 months; or

(2) receives a complaint that DHS has reasonable cause to believe is valid from an ombudsman, advocate, resident, or relative of a resident relating to a serious or potentially serious problem in the facility.

(b) Only one hearing regarding a specific facility will be held each year unless DHS determines that, in the interest of resident health and safety, more should be held.

(c) Notice of the time, date, and place of the hearing will be mailed not less than ten days before the hearing to:

(1) the facility;

(2) the designated closest living relative or legal guardian of each resident; and

(3) appropriate state and federal agencies that work with the facility.

(d) The facility is responsible for furnishing DHS a listing of the name and current mailing address of each resident's designated closest living relative, legal guardian, or responsible party.

(e) DHS may exclude a facility's administrator and personnel from the hearing.

(f) DHS will notify, confidentially, the complainant of the results of the investigation which followed the complaint.

(g) DHS will notify the facility of any complaints which are received at the hearing and provide a summary of those complaints to the facility. In providing this information to the facility, the source of the complaints will not be identified.

Source Note: The provisions of this §19.2119 adopted to be effective May 1, 1995, 20 TexReg 2054.
The following term, when used in this undesignated head, Remedies in Medicaid-Certified Facilities, shall have the following meaning, unless the context clearly indicates otherwise. Accountability period--A 24-month period which begins each time the Texas Department of Human Services (DHS) imposes on a facility a required Category II or III remedy. Accountability periods may overlap.

Source Note: The provisions of this §19.2120 adopted to be effective May 1, 1995, 20 TexReg 2054; amended to be effective July 31, 1995, 20 TexReg 5259.
Enforcement actions in Medicaid-certified facilities are performed according to regulations found in 42 Code of Federal Regulations §§431.151, 431.153, 488.301, 488.325(g), 488.330, 488.331, 488.335, and 488.400-488.456.

Source Note: The provisions of this §19.2121 adopted to be effective July 31, 1995, 20 TexReg 5259; amended to be effective February 1, 1997, 21 TexReg 11822.
Interest on civil money penalties accrues at the rate of 10% from the date specified in Code of Federal Regulations §488.442 until paid.

Source Note: The provisions of this §19.2129 adopted to be effective January 1, 1997, 21 TexReg 11822.
(a) The Texas Department of Human Services (DHS) may continue payments for no more than 30 days from the date DHS cancels a facility's provider agreement if DHS determines that:

(1) reasonable efforts are being made to transfer the residents to another facility, to community care, or to other alternate care; and

(2) additional time is needed to effect an orderly transfer of the residents.

(b) When a facility's provider agreement is terminated by DHS, the department will not enter into another provider agreement with the facility until 30 days have expired. If the facility reapplies for a provider agreement, DHS conducts an on-site visit to determine if the facility is complying with Medicaid requirements. If the facility is complying with Medicaid requirements and a provider agreement with the facility is not prohibited by DHS debarment rules, DHS enters into a provider agreement with the facility. This remedy will be applied in any category which results in the termination of the provider agreement.

Source Note: The provisions of this §19.2144 adopted to be effective July 31, 1995, 20 TexReg 5259.
(a) If DADS determines that DADS or CMS has imposed a required Category II or III remedy (as defined in 42 Code of Federal Regulations (CFR)) on a facility three times within an accountability period, a recommendation is made to terminate the facility's provider agreement, unless DADS waives termination after considering the factors described in subsection (e) of this section.

(b) DADS notifies a facility in writing of its intention to terminate the facility's provider agreement. Notification occurs within:

1. three calendar days after receipt of the recommendation of remedies for a facility found in immediate jeopardy; or

2. 15 calendar days after receipt of the recommendation of remedies for a facility not found in immediate jeopardy.

(c) The provider agreement is terminated on the 20th calendar day after the facility receives notice of DADS' decision to terminate the provider agreement.

(d) An appeal for this remedy is the appeal on the issue of noncompliance that led to the imposition of a Category II or III remedy for the third time within the accountability period. The appeal for this remedy follows the federal procedures in 42 CFR Part 498 for a dually-participating facility or in 42 CFR Part 431 for a facility that is Medicaid-certified only.

(e) DADS may waive termination of a facility's provider agreement when a facility has received a Category II or III remedy three times within an accountability period of 24 consecutive months. DADS may consider one or more of the following to waive termination of a facility's provider agreement:

1. the history of violations committed by the facility resulting in three Category II or III remedies within an accountability period and the resulting enforcement action compared with the history of violations committed by other facilities that received Category II or III remedies three times within an accountability period and the resulting enforcement action;

2. the history of ownership of the facility when the Category II or III remedies were imposed; or

3. the efforts the facility has made to correct the violations that resulted in the imposition of the Category II or
Source Note: The provisions of this §19.2146 adopted to be effective July 31, 1995, 20 TexReg 5259; amended to be effective February 1, 1997, 21 TexReg 11822; amended to be effective March 1, 1998, 23 TexReg 1314; amended to be effective April 21, 2009, 34 TexReg 2541.
The Texas Department of Human Services (DHS) provides an informal dispute resolution process (IDR) in the central office, as follows:

(1) A written request, all supporting documentation, and registration information as required under paragraph (3) of this section, must be submitted to the Texas Department of Human Services, Long Term Care-Regulatory, ATTN: IDR Coordinator, P.O. Box 149030 (MC-E-343), Austin, TX 78714-9030, no later than the 10th calendar day after receipt of the official statement of deficiencies.

(2) DHS will complete the IDR process no later than the 30th calendar day after receipt of the facility's written request, all documentation, and required registration information.

(3) Any individual representing a facility in an IDR must register with DHS and disclose the following:

(A) the individual's employment history during the preceding five years, including employment in regulatory agencies of this state and other states;

(B) ownership, including the identity of the controlling person or persons, of the facility the person is representing before DHS; and

(C) the identity of other entities the person represents or has represented before the agency during the previous 24 months.

Source Note: The provisions of this §19.2147 adopted to be effective March 1, 1998, 23 TexReg 1314; amended to be effective January 1, 2000, 24 TexReg 11781
A facility may elect arbitration as provided in 1 TAC Chapter 163 (concerning Arbitration Procedures for Certain Enforcement Actions of the Department of Human Resources).

**Source Note:** The provisions of this §19.2148 adopted to be effective March 1, 1998, 23 TexReg 1314.
This undesignated head governs the cancellation of current Texas Department of Human Services (DHS) Medicaid contracts with nursing facilities; debarment of former or potential contractors is governed by §§69.275-69.279 of this title (relating to Debarment and Suspension of Current and Potential Contractor’s Rights, Causes for and Conditions of Debarment, Causes for and Conditions of Suspension, Proof Required for Debarment and Suspension, and Notice Requirements for Debarment and for Suspension).

Source Note: The provisions of this §19.2149 adopted to be effective July 31, 1995, 20 TexReg 5259.
None of the options described in this undesignated head are intended to restrict the Texas Department of Human Services (DHS) from imposing, as necessary, appropriate remedies for program violations listed in §79.2105 of this title (relating to Grounds for Fraud Referral and Administrative Sanction).

Source Note: The provisions of this §19.2150 adopted to be effective July 31, 1995, 20 TexReg 5259.
The remedies provided under this undesignated head are in addition to those otherwise available under state and federal law and are not to be construed as limiting any other remedies, including any remedy available to an individual at common law.

Source Note: The provisions of this §19.2151 adopted to be effective July 31, 1995, 20 TexReg 5259.
Voluntary Certification of Facilities for Care of Persons with Alzheimer's Disease

(a) A facility may apply for certification as a facility that provides specialized care for Alzheimer's disease and related disorders either at the time of the initial application for a license or at any time subsequent to the issuance of a license under this chapter.

(b) Application must be made on forms prescribed by the Texas Department of Human Services (DHS). The application fee must accompany the application as provided in §19.216(c) of this title (relating to License Fees).

(c) A facility licensed under this chapter is not required to apply for certification under this section in order to provide care and treatment of persons with Alzheimer's disease and related disorders.

(d) A facility may not advertise or otherwise communicate that the facility is certified by DHS to provide specialized care for persons with Alzheimer's disease or related disorders unless the facility is certified under this subchapter.

Source Note: The provisions of this §19.2204 adopted to be effective May 1, 1995, 20 TexReg 2393.
Texas Administrative Code

TITLE 40  SOCIAL SERVICES AND ASSISTANCE
PART 1  DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 19  NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

SUBCHAPTER W  CERTIFICATION OF FACILITIES FOR CARE OF PERSONS WITH ALZHEIMER'S DISEASE AND RELATED DISORDERS

RULE §19.2206  General Requirements for a Certified Facility

(a) Resident admission. The facility must admit and retain only residents whose needs can be met through service from the facility staff, or in cooperation with community resources or other providers under contract.

(b) Allowable number of residents. Each certificate must specify the maximum allowable number of residents to be cared for at any one time in the certified area. No greater number of residents must be kept in the certified area than is authorized by the certificate.

(c) Nullification of certificate. When a certificate becomes null and void, the facility must remove the certificate from display and advertising, and the certificate must be surrendered to DHS on request. A certificate is nontransferable and nonassignable; therefore, a certificate existing at the time of change of ownership becomes null and void.

(d) Display of certificate. A certificate must be displayed in a prominent location for public view. The facility may advertise as long as the certificate is in effect; however, the type of advertising must be such that the advertising can be withdrawn if the certificate becomes null and void. Upon removal of the certificate it is the responsibility of the facility to inform interested persons of the revised status. The certificate is the property of DHS.

(e) Cancellation of certificate. A certificate must be canceled if DHS finds that the certified unit is not in compliance with applicable laws and rules.

(f) Effective period of certificate. A certificate is valid for one year from the effective date of approval by DHS.

Source Note: The provisions of this §19.2206 adopted to be effective May 1, 1995, 20 TexReg 2393.
(a) General requirements.

(1) Residents eligible for admission to Alzheimer's units will have a diagnosis of Alzheimer's disease or related dementing disorders. The need for admission to the Alzheimer's unit must be documented by the attending physician.

(2) Security and safety measures are provided to prevent the residents from harming themselves or leaving designated indoor or outdoor areas without supervision by staff members or other responsible escort. Policies will also be provided to prevent abuse of the rights and property of other residents.

(3) Understanding that security measures to prevent wandering may infringe on resident rights, care must be exercised in the use of physical restraint or barriers, or chemical restraint. The specific purpose and time-limited orders for any additional physical or chemical restraint must be written and renewed according to facility policy. The frequency of such renewal must not exceed 60 days.

(4) Activity and recreational programs will be provided and utilized to the maximum extent possible for all residents in order to promote physical well being and help with behavior management. The program must be tailored to the individual resident's needs, being appropriate for his specific impairment and stage of disease.

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

(6) Access to outdoor areas must be provided and such areas must have suitable walls or fencing that do not allow climbing or present a hazard. If the enclosed area involves exit doors from the building, the following must be met.

(A) The minimum distance of the fence from the building must be:

   (i) 8'-0" from the building exit if the fence is parallel to the building and there are no window openings; or

   (ii) 20'-0" from bedroom window(s) if the fencing is solid and 15'-0" from bedroom window(s) if the fencing is open similar to chain-link (parallel with building walls).

   (B) The minimum area of enclosure must be 800 square feet. Exception: If the enclosed space has an area of refuge which extends beyond a minimum of 20'-0" from the building and the area of refuge is equal to or greater than 15 square feet per resident for the wing(s) enclosed.
(C) Exit gate(s) from the enclosure to a public way must comply with the following criteria.

(i) A minimum of two gates must be remotely located from each other if only one wing or exit is enclosed. If the enclosed space between the building and the fence is less than 10'-0", one of the remotely located exit gates must be directly in line with the building exit door.

(ii) If two or more wings are enclosed by the fencing and entry access can be made at each door, a minimum of one gate is required.

(iii) The gate(s) must be located to provide a continuous path of travel from the building exit to a public way including walkways of concrete, asphalt, or other approved materials suitable for wheeled beds, chairs, and stretchers. Gates and walkways must be wide enough to accommodate beds and wheelchairs.

(D) If gates are locked, the gate nearest the exit from the building must be locked with an electronic lock which operates the same as electronic locks on corridor control doors and/or exit doors and is in compliance with the National Electrical Code for exterior exposure. Additional gates may also have electronic locks or may have keyed locks provided staff carry the keys. A gate between two enclosed wings may have a keyed lock provided access can be gained into both wings from the exterior.

(E) Fencing material must comply with the following.

(i) Wood--no limit on height, should be constructed with posts and support members on the exterior to deter residents from climbing over fence.

(ii) Wire--if chain-link type fence, provide protection on top of the fence to prevent resident injury from pointed wire.

(7) Any security measures taken to provide for the safety of wandering patients should be as unobtrusive as possible.

(8) Toxic garden plantings must be prohibited.

(b) Staff.

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

(A) eight hours of orientation to cover the following:

(i) facility Alzheimer's policies;

(ii) etiology and treatment of dementias;

(iii) stages of Alzheimer's disease;

(iv) behavior management; and

(v) communication; and
(B) four hours of the required annual continuing education must be in Alzheimer's disease or related disorders.

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

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

(B) utilization of community resources;

(C) conducting quarterly family support group meetings; and

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

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

(4) Required overall minimum staffing ratios for direct care in certified Alzheimer's units in nursing facilities are as follows.

Attached Graphic (c) Physical plant. Alzheimer's units must be segregated from other parts of a facility with appropriate security devices and/or measures and must meet the following requirements.

(1) Living rooms, day rooms, lounges, and sun rooms must be provided on a sliding scale as follows.

Attached Graphic (2) A dining area must a minimum of ten square feet per resident with at least one exterior window(s).

(3) Bathtubs or showers must be provided at a minimum rate of one for each 20 beds in nursing facilities.

(4) Water closets and lavatories must be provided at a minimum rate of:

(A) one for each eight beds in nursing facilities; and

(B) one for each 15 clients in adult day health care facilities.

(5) In all facilities a lavatory must be provided in or adjacent to each area having a water closet.

(6) A monitoring station for staff must be provided with the following:

(A) writing surface such as a desk or built-in counter top;

(B) chair;

(C) task illumination;

(D) communication system such as a telephone or intercom to the main staff station of the facility; and
(E) storage for resident records such as a lockable metal cabinet or storage closet.

(7) Two remote exits must be provided in order to meet Life Safety Code requirements.

(8) Corridor control doors, if used for security of the residents, must be similar to smoke doors, that is, be 44 inches in width each leaf, and must swing in opposite directions. A latch or other fastening device on a door must be provided with a knob, handle, panic bar, or other simple type of releasing device, the method of operation of which is obvious, even in darkness.

(9) Locking devices may be used on the control doors provided the following criteria are met.

   (A) The building must have a complete sprinkler system and/or a complete fire alarm system including a corridor smoke detection system or smoke detectors located in each resident bedroom, which are interconnected into the fire alarm system.

   (B) The locking device must be electronic and must be released when the following occurs:

      (i) activation of the fire alarm or sprinkler systems;

      (ii) power failure to the facility; and

      (iii) pressing a button located at the main staff station and at the monitoring station.

   (C) Key pad or buttons may be located at the control doors for routine use by staff for service.

   (D) Upon loss of primary power, the control doors must not automatically reset on emergency power, but must be reset by manual means only. An exception is when the control doors are not in an exit access, they may automatically reset on emergency power. There must be at least two remote exits (on each side of the control doors) which meet all of the requirements for exits, such as proper width of egress and proper size of exterior doors, according to the 1985 Life Safety Code.

(10) The exit door(s) may be equipped with a locking device provided one of the following methods is met:

   (A) the locking arrangement meets §5-2.1.6 of the Life Safety Code; or

   (B) the following criteria which have been approved by the Health Care Financing Administration (HCFA):

      (i) The building must have a complete fire alarm system including a corridor smoke detection system or smoke detectors located in each resident bedroom and/or a complete sprinkler system which are interconnected to the fire alarm system.

      (ii) The locking device must be electro-magnetic; that is, no type of throw-bolt is to be used.

      (iii) The device must release when the following occur(s):

         (I) activation of the fire alarm or sprinkler system;

         (II) power failure to the facility; and
(III) activating a switch located at the main staff station and at the monitoring station.

(iv) Upon loss of primary power, the exit door(s) must not automatically reset on emergency power, but must be reset by manual means only.

(v) A manual fire alarm pull must be located within 5'0" of the exit door with a sign stating, "Pull to release door in an emergency."

(vi) A key pad, card, control button, or other electronic device may be located at the exit door for routine use by staff.

(vii) Staff are to be trained in the methods of releasing the locking device.

Source Note: The provisions of this §19.2208 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective July 1, 1996, 21 TexReg 4408.
(a) The facility must meet the following conditions to be approved by the Texas Department of Human Services (DHS) for participation in the Title XIX Texas Medical Assistance program and receive state and federal reimbursement for services to Title XIX residents:

(1) the facility has been certified by DHS as meeting the conditions of participation, including the requirement to have a license from DHS, in the Title XIX Texas Medical Assistance program;

(2) the entity licensed to operate the facility has filed a complete application with the Provider Enrollment Section of DHS for participation as a nursing facility in the Title XIX Texas Medical Assistance program; and

(3) the beds for which the facility wishes to contract meet the requirements of §19.2322 of this title (relating to Medicaid Bed Allocation Requirements).

(b) Only a facility with a fully executed current contract with DHS may receive state and federal reimbursement for services to Title XIX recipients.

Source Note: The provisions of this §19.2301 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective July 1, 2001, 26 TexReg 3824; amended to be effective November 1, 2002, 27 TexReg 9154
(a) This section applies to nursing facilities (NFs) that have been licensed and certified as eligible for participation under Title XIX.

(b) Each nursing facility (NF) must comply with the state requirements for participation and the facility's contract on a continuing basis.

(c) Each NF must comply with the Texas Health and Human Services Commission's (HHSC's) utilization review requirements as provided in 1 TAC §371.212 (relating to Minimum Data Set Assessments) and §371.214 (relating to Resource Utilization Group Classification System).

(d) A facility may not participate in the Texas Medical Assistance Program if it has restrictive policies or practices, including:

   (1) requiring the resident to make a will, with the facility named as legatee or devisee;

   (2) requiring the resident to assign his life insurance to the facility;

   (3) requiring the resident to transfer property to the facility;

   (4) requiring the resident to pay a lump sum entrance fee or make any other payment or concession to the facility beyond the recognized rate for board, room, and care as a condition for entry, departure, or continued stay;

   (5) controlling or restricting the resident, the resident's guardian, or responsible party in the use of the resident's personal needs allowance;

   (6) restricting the resident from leaving the facility at will except as provided by state law;

   (7) restricting the resident from applying for Medicaid for a specified period of time;

   (8) denying appropriate care to an individual on the basis of his race, religion, color, national origin, sex, age, disability, marital status, or source of payment; and

   (9) preventing terminally ill adult residents from exercising their will in making written or unwritten directives to reject life-sustaining procedures.

(e) If DADS has documentation showing good cause, it reserves the right to reject the facility's participation or to cancel an existing contract if the facility charges the Title XIX resident, any member of his family, or any other
source for supplementation or for any item except as allowed within DADS policies and regulations.

(f) If DADS suspends a facility's vendor payments or proposes to terminate a facility's contract, the facility may request an administrative hearing to challenge the action. If a facility requests a hearing, the facility must make the request in accordance with HHSC rules at 1 TAC Chapter 357, Subchapter I.

(g) DADS' interpretations of the requirements for participation or the contract may not be appealed to HHSC's hearings department unless the interpretation has caused an adverse action for the facility.

(h) Facilities must allow representatives of DADS, the Medicaid Fraud Control Unit, and the Department of Health and Human Services to enter the premises at any time to make inspections or to privately interview the residents receiving assistance from DADS.

(i) Facilities must supply DADS complete information according to federal and state requirements about the identity of:

(1) each person who directly or indirectly owns interest of 5% or more in the facility;

(2) each owner (in whole or in part) of any property, assets, mortgage, deed of trust, note, or other obligation secured by the facility;

(3) each officer and director, if the facility is organized as a corporation;

(4) each partner, if the facility is organized as a partnership (A copy of the partnership agreement is required, but the dollar amount of capital contributions of the partners may be omitted); and

(5) any director, officer, agency, or managing employee of the institution, agency, or organization, who has ever been convicted of a criminal offense related to the person’s involvement in programs established by Title XVIII, XIX, and XX (Effective dates for disclosure of any convictions are July 1, 1966, for Medicare, and January 1, 1969, for Medicaid.)

(j) If a profit-making corporation operates the facility, a copy of the following material is required:

(1) certificate of incorporation (for Texas corporations only);

(2) certificate of authority to do business in Texas (for out-of-state corporations only);

(3) a resolution from the board of directors authorizing a specific person or officer to sign contracts between DADS and the corporation; and

(4) any management contract for the facility. If no stockholder owns, directly or beneficially, 5.0% or more of the corporate stock, the president and secretary of the corporation should state this on the department form.

(k) If a nonprofit corporation operates the facility, a copy of the following material is required:

(1) certificate of incorporation (for Texas corporations only);

(2) certificate of authority to do business in Texas (for out-of-state corporations only);
(3) a resolution from the board of directors authorizing a specific person or officer to sign contracts with DADS; and

(4) a copy of any management contract for the facility.

(l) Facilities other than those described in subsections (j) and (k) of this section must furnish a copy of:

(1) charter or other legal basis for the organization which owns the facility;

(2) any management contract or agreement for the facility;

(3) by-laws of the organization (if applicable); and

(4) other information required by DADS to determine the status of the legal entity that owns the facility.

(m) Facilities must disclose business transaction information. A facility must send to DADS, within 35 days after the date of a written request, complete information on:

(1) the ownership of a subcontractor with whom the facility has had, during the previous 12 months, business transactions totaling more than $25,000; and

(2) any business transactions between the facility and any wholly owned supplier, or between the facility and any subcontractor during the five-year period ending on the date of the request.

(n) The facility must report changes in the required information promptly to DADS.

(o) Failure to provide this information may result in suspension, termination, or other contract action, including holding vendor funds. Payment to the facility is denied beginning on the day after the date information was due, and ending on the day before the date the information is received by DADS.

(p) Each facility must comply with Government Code, §531.116. A facility that furnishes services under the Medicaid program is subject to Occupations Code, Chapter 102. The facility's compliance with that chapter is a condition of the facility's eligibility to participate as a facility under those programs.

Source Note: The provisions of this §19.2302 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective January 1, 2002, 26 TexReg 10389; amended to be effective June 1, 2004, 29 TexReg 5416; amended to be effective August 31, 2004, 29 TexReg 8140; amended to be effective September 1, 2008, 33 TexReg 7264
(a) The Texas Department of Human Services (DHS) may enter into contracts with the facility.

(b) Nursing facilities (NFs) must comply with all state and federal requirements for participation.

(c) The contracting nursing facility agrees to:

(1) comply with Title VI of the Civil Rights Act of 1964 (Public Law 88-352), §504 of the Rehabilitation Act of 1973 (Public Law 93-112), the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990 (Public Law 101-336), the Safe Medical Devices Act of 1990, and all amendments to each, and all requirements imposed by the regulations issued pursuant to these acts. In addition, the contractor agrees to comply with Chapter 73 of this title (relating to Civil Rights). These provide in part that no persons in the United States shall, on the grounds of race, color, national origin, sex, age, disability, political beliefs or religion be excluded from participation in, or denied, any aid, care, service or other benefits provided by federal and/or state funding, or otherwise be subjected to discrimination;

(2) comply with Texas Health and Safety Code, Chapter 85, Subchapter E (concerning workplace and confidentiality guidelines regarding AIDS and HIV);

(3) comply with 42 Code of Federal Regulations, Part 455, Program Integrity: Medicaid.

Source Note: The provisions of this §19.2304 adopted to be effective May 1, 1995, 20 TexReg 2393.
(a) The effective date of the provider contract for an initial certification is the date the on-site survey is completed if the facility meets:

(1) all federal health and safety standards; and

(2) any other requirements imposed by the Texas Department of Human Services (DHS).

(b) If the facility does not meet any of the requirements specified for an initial certification, the contract is effective on the earlier of the following dates:

(1) the day the facility meets all requirements; or

(2) the day the facility’s correction plan, approvable waiver request, or both are accepted by DHS. The facility must have met all requirements imposed by DHS.

Source Note: The provisions of this §19.2306 adopted to be effective May 1, 1995, 20 TexReg 2393.
(a) Definition. An ownership change is defined in §19.210(c) of this title (relating to Temporary Change of Ownership). For purposes of this section, prior owner is defined as the legal entity with a Medicaid contract for the facility before the change of ownership. The new owner is the legal entity to which DADS has assigned the contract (in accordance with 42 CFR §442.14 and subsection (d) of this section). The effective date of the ownership change is the effective date of the new owner's license for the facility.

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

(c) Vendor holds based on a change of ownership.

(1) Holds on payments due to a prior owner.

(A) When DADS receives information about a proposed or actual change of ownership, DADS may place vendor payments to the prior owner on hold. Vendor payments will not be released until the Texas Health and Human Services Commission notifies DADS that the prior owner meets the final reporting requirements as specified in 1 TAC §355.306 (relating to Cost Finding Methodology) and 1 TAC §355.308(f)(1)(A) (relating to Direct Care Staff Rate Component).

(B) Once the final reporting requirements in subparagraph (A) of this paragraph are met, vendor payments may still be held so that money owed to DADS can be recouped from the funds placed on hold. Vendor payments will be released after:

(i) completion of a billing and claims reconciliation, or the passing of a time period of 12 months after the effective date of the change of ownership, whichever is sooner; or

(ii) the prior owner provides, at DADS' option, either of the following documents in a format acceptable to DADS to cover possible liabilities of the prior owner:

(I) a surety bond or an irrevocable letter of credit as described in §19.2312 of this title (relating to Surety Bonds or Letters of Credit); or

(II) written authority by the prior owner to withhold and retain funds normally due the prior owner from other Medicaid contracts the prior owner may have with DADS.
(2) Waiving holds on payments due to a prior owner.

(A) DADS may waive placing vendor payments to the prior owner on hold, if, at least 60 days before the effective date of the change of ownership:

(i) the prior owner notifies DADS of the change of ownership;

(ii) the new owner provides DADS with a signed and notarized contract application;

(iii) DADS receives information sufficient to verify that the ownership change is a reorganization of the prior owner's ownership structure and that the new owner's ownership structure:

(I) consists of individuals who owned at least 51% of the ownership in the prior owner and own at least 51% of the ownership in the new owner;

(II) does not consist of a change in a general partner, if the prior owner's ownership structure was a limited partnership; and

(III) retains control of the prior owner's financial records; and

(iv) the prior owner returns to DADS the nontransferable DADS Successor Liability Agreement (provided by DADS) signed by the prior and new owners indicating that the new owner has agreed to pay DADS for any liabilities that exist or may be found to exist during the period of the prior owner's contract with DADS.

(B) Meeting the conditions in subparagraph (A) of this paragraph but not meeting the 60-day time frame may result in DADS placing vendor payments to the prior owner on hold; however, once all of the conditions listed in subparagraph (A) of this paragraph are met, the hold will be released.

(3) Holds on payment due to the new owner.

(A) During the period between the issuance of the temporary change of ownership license and the inspection or survey of the nursing facility, DADS may not place a hold on vendor payments to the temporary license holder.

(B) If the nursing facility fails to pass the inspection or survey or fails to meet the requirements in §19.201 of this title (relating to Criteria for Licensing), DADS may place a hold on vendor payments to the new owner.

d) Contract assignment. When a change in ownership occurs, DADS automatically assigns the agreement to the new owner by issuing a new contract. By signing the contract, the new owner is representing to DADS that the new owner meets the requirements of the contract and the requirements for participation in the Medicaid program. The new owner's contract is subject to the prior owner's contract terms and conditions that were in effect at the time of transfer of ownership, including the following:

(1) any plan of correction;

(2) compliance with health and safety standards;

(3) compliance with the ownership and financial interest disclosure requirements of 42 CFR §§455.104, 455.105, and 1002.3;
(4) compliance with civil rights requirements in 45 CFR Parts 80, 84, and 90;

(5) compliance with additional requirements imposed by DADS; and

(6) any sanctions as specified in this chapter relating to remedies for violations of Title XIX nursing facility provider agreements, including deficiencies, vendor holds, compliance periods, accountability periods, monetary penalties, notification for correction of contract violations, probationary contracts, and history of deficiencies.

e) Medical assistance payments nontransferable. Neither medical assistance nor amounts payable to vendors out of public assistance funds are transferable or assignable at law or in equity. DADS will not allow non-split agreements in the case of ownership changes. Non-split agreements are arrangements where DADS does not interrupt payments to prior and new owners but continues reimbursements as though no ownership change has occurred. A split in pay agreement ensures that payments to the prior owner stop on a certain date and payments for services thereafter go to the new owner.

f) Owner agreements. The new owner and the prior owner of a nursing facility may reach any agreement they wish, but DADS will not participate in a non-split procedure which would allow the new owner to receive the prior owner's accrued vendor payments.

g) Financial records. The prior owner of the facility may remove the financial records pertaining to his period of ownership from the facility, but must maintain them for the time period prescribed by law or until such time as all audit exceptions are reconciled, whichever period is the longer. The original copies of the trust fund records, including ledger cards, may be removed by the prior owner if an exact duplicate of the trust fund records, including ledger cards, remains with the new owner.

Source Note: The provisions of this §19.2308 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective April 1, 1996, 21 TexReg 1432; amended to be effective March 1, 1998, 23 TexReg 1314; amended to be effective April 1, 2002, 27 TexReg 2060; amended to be effective February 1, 2003, 27 TexReg 12009; amended to be effective April 2, 2007, 32 TexReg 1916
A nursing facility may lose its status as a participating facility if any of the following conditions are met:

(1) the facility withdraws voluntarily from the program. The participation agreement for facilities which voluntarily withdraw from the program remains in effect with respect to services provided to residents residing in the facility the day before the effective date of the withdrawal, in accordance with Section 1919(c)(2)(F) of the Social Security Act. The owner and administrator must request withdrawal, in writing, from the Texas Department of Human Services (DHS) at least 30 days before the withdrawal date;

(2) DHS terminates certification of the facility;

(3) DHS denies a license (new or renewed) to the facility or revokes the facility's license and cancels the facility's status as a participating facility;

(4) the nursing facility (NF) is a Title XIX/XVIII provider of services, and Medicare (Title XVIII) terminates the contract because of contract violation; or

(5) DHS cancels the contract because DHS determines that the nursing facility is in breach of the contract.

Source Note: The provisions of this §19.2310 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective August 1, 2000, 25 TexReg 6779
(a) If the facility has a change in ownership or termination of a contract (voluntary or involuntary), the prior owner's and/or the new owner's vendor payments may be held. Usually, the amount held is equal to the facility's average monthly payments.

(b) At its sole option, the Texas Department of Human Services (DHS) may allow the prior owner to obtain a surety bond or an irrevocable letter of credit (collateral) and release the vendor payments on hold. Money owed DHS by the prior owner for any reason will be recovered through the surety bond or the letter of credit. Usually, the surety bond equals the average monthly vendor payments paid to the facility. Facilities terminating a contract for long-term care services may furnish a surety bond or letter of credit only if:

(1) all required long-term care facility cost reports have been filed with the Texas Health and Human Services Commission (HHSC) Rate Analysis Department;

(2) all required long-term care facility staffing and compensation reports have been filed with HHSC's Rate Analysis Department; and

(3) funds identified for recoupment from 1 TAC §355.308(n) or (o) or both (relating to Direct Care Staff Rate Component) have been repaid to HHSC or its designee.

(c) If an acceptable surety bond or letter of credit is presented to DHS, the vendor payments may be released. Facilities must ensure that this bond or irrevocable letter of credit is in a format acceptable to DHS, and does not include requirements that DHS, as a condition of receiving payment, either:

(1) return the original bond or letter; or

(2) submit to any draft requirement of an irrevocable letter of credit or surety bond, in addition to DHS's letter demanding payment.

Source Note: The provisions of this §19.2312 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective April 1, 1996, 21 TexReg 1432; amended to be effective October 15, 1998, 23 TexReg 10496; amended to be effective August 31, 2004, 29 TexReg 8140
(a) The Texas Department of Human Services (DHS) may audit all facilities, including facilities' trust fund accounts, periodically. A facility is notified of audit plans and is given a report of the final audit findings. If vendor payment problems are found, Provider Enrollment requests that the Nursing Facility Billing Unit work with the facility to reconcile the discrepancies. If the findings show that refunds are due residents or their responsible parties, Provider Enrollment requests that the regional staff assist the facility in reconciling the audit findings. Facilities which fail to provide documentation for audit exceptions or evidence of federally-mandated surety bonds or fail to keep other records required for audit are subject to the withholding of vendor payments until such problems are resolved. Money owed to DHS will be recouped from the funds placed on hold.

(b) Upon receipt of an audit exception, the facility must provide additional documentation, reach a final agreement, make restitution within 60 days, or request a hearing within 15 days. Requests for an informal hearing are to be directed to DHS, Provider Enrollment. Requests for a formal hearing are to be directed to DHS's Hearings Department, P.O. Box 149030 (W-613), Austin, Texas 78714-9030.

(c) If the facility does not pay the amount due the resident within the specified time frame, DHS may withhold other funds due the facility beginning on the 60th day without providing advance notice. DHS releases funds when the facility produces documentation that it has refunded the proper amount to the resident or responsible party.

(d) DHS may require the facility to pay the resident refund amount to DHS plus any anticipated cost, including personnel salaries, which is incurred by DHS in making the refund to the proper party.

Source Note: The provisions of this §19.2314 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective April 1, 1996, 21 TexReg 1432.
(a) Nursing facilities may collect from the recipient only the applied income that is specified on the recipient's payment plan forms, except when that amount exceeds the monthly vendor rate. In this event, the facility may collect only an applied-income amount equal to the maximum monthly Medicaid vendor rate.

(b) If a payment plan appears incorrect, the facility administrator should contact the local Texas Department of Human Services (DHS) worker to correct the plan. Even if a recipient's income increases, the administrator must not collect an increased payment until the plan is changed. The administrator should not collect an increased payment in anticipation of a payment plan increase.

(c) If an admitted recipient does not have a payment plan, the administrator should contact the local worker for help in determining how much applied income is owed. If the forthcoming forms indicate a lesser payment, the administrator should refund the excess immediately and notify the worker.

(d) Facilities that collect payments (part applied income, part Medicaid) in excess of the vendor rate are in violation of DHS regulations and of Public Law 95-142 which makes "solicitation of supplementation" a felony.

(e) Regional DHS staff must report any violations. If an investigation shows that the facility has violated this standard, a recommendation for withholding vendor payments, contract termination, referral to the courts, or other contract action may be made.

(f) The nursing facility must refund the recipient's prorated applied income money when the recipient has paid in advance for the full month and is discharged from the facility any time during the month. The facility must make the refund within 30 calendar days from and including the date of discharge, even when vendor payment has not been received from DHS.

Source Note: The provisions of this §19.2316 adopted to be effective May 1, 1995, 20 TexReg 2393.
Computation of Daily Reimbursement Rate for Recipients with Applied Income

(a) Reimbursement is computed by multiplying the established daily rate by the number of days in the month. The recipient's applied income is then subtracted and the result is divided by the number of days in the month.

(b) A facility may not collect more than the applied income reported on the payment plan form in a 31-day month.

Source Note: The provisions of this §19.2318 adopted to be effective May 1, 1995, 20 TexReg 2393.
(a) The nursing facility is responsible for providing normal transportation for the recipient to medical services outside the facility. The attending physician must have ordered the medical services.

(b) Normal transportation is to and from the medical care provider of the recipient's choice, who is generally available and used by recipients of the locality for medical care included under the Texas Medical Assistance program. If a Title XIX provider is not in the locality, transportation is to and from the nearest appropriate Title XIX provider if the recipient so chooses. The term "locality" means the service area surrounding the nursing facility from which individuals ordinarily come or are expected to come for inpatient or outpatient services.

(c) Transportation charges, including non-emergency, routine ambulance services, involved in the certification or recertification of a recipient are the responsibility of the nursing facility.

(d) The facility may not charge the state's Medicaid health insuring agent, the recipient, the family, or responsible party for normal transportation as defined in this section. Normal transportation charges are covered in the monthly vendor rate. The facility may not use the state's Medicaid community-based Title XIX medical transportation program except to transport recipients for renal dialysis treatments.

(e) Charges for the following medically necessary ambulance services, when provided by a Medicaid-enrolled provider, are not the responsibility of the nursing facility, but are payable by the state's Medicaid health insuring agent as a Medicaid benefit:

(1) emergency transport, which is ambulance service for a Medicaid recipient with an emergency medical condition. Emergency medical condition is defined as one which manifests itself by acute symptoms of sufficient severity such that the absence of immediate medical attention could result in placing the recipient's health in serious jeopardy; and

(2) nonemergency transport, under the following conditions:

   (A) the recipient is severely disabled, which is defined as a condition which limits mobility and requires confinement to bed at all times, prevents sitting unassisted at all times, or requires the monitoring of life support systems, including oxygen or intravenous infusion;

   (B) the severely disabled recipient cannot be transported by any means other than an ambulance without endangering the health or safety of the recipient; and

   (C) the nonemergency ambulance transportation of the severely disabled recipient is to or from a scheduled medical appointment and authorization has been received from the Texas Department of Health or its designee.
If payment under the medical assistance program is denied because the facility failed to obtain prior authorization, the facility must pay for the service if presented a copy of the bill for which payment was denied.

(f) If ambulance services are reimbursable by the state's Medicaid health insuring agent, they are not the responsibility of the recipient, the family, or the responsible party.

(g) Nursing facilities are encouraged to use family, friends, sponsors, civic groups, or charitable organizations as resources for transportation services. If normal transportation is not obtainable from these sources, the facility must provide or purchase the appropriate services.

Source Note: The provisions of this §19.2320 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective March 1, 1998, 23 TexReg 1314; amended to be effective June 1, 2004, 29 TexReg 5416; amended to be effective August 31, 2004, 29 TexReg 8141.
(a) Definitions. The words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise.

(1) Applicant--The entity requesting a bed allocation waiver or exemption.

(2) Assignment of rights--The conveyance of all rights to a specific number of allocated Medicaid beds from a nursing facility or entity to another entity for purposes of constructing a new nursing facility or for any other use as authorized by these rules.

(3) Bed allocation--The process by which the Texas Department of Human Services (DHS) controls the number of nursing facility beds that are eligible to become Medicaid-certified in each nursing facility.

(4) Bed certification--The process by which DHS certifies compliance with state and federal Medicaid requirements for a specified number of Medicaid beds within a nursing facility.

(5) Licensee--The entity, which includes controlling persons, that is:

   (A) an applicant for licensure by DHS under Chapter 242 of the Texas Health and Safety Code and Medicaid certification;

   (B) licensed by DHS under Chapter 242 of the Texas Health and Safety Code; or

   (C) licensed under Chapter 242 of the Texas Health and Safety Code and holds the contract to provide Medicaid services.

(6) Lien holder--The entity that holds a lien against the physical plant.

(7) Multiple-facility owner--An entity that owns, controls, or operates under lease two or more nursing facilities within or across state lines.

(8) Occupancy rate--The number of residents occupying certified Medicaid beds divided by the number of certified Medicaid beds in a nursing facility.

(9) Physical plant--The land and attached structures to which beds are allocated or for which an application for bed allocation has been submitted.

(10) Property owner--The person or entity that owns a physical plant.
(11) Transfer of beds--The conveyance of a specific number of allocated Medicaid beds from a nursing facility or entity to an existing licensed nursing facility. The nursing facility may use the transferred Medicaid beds to increase the number of Medicaid-certified beds currently licensed or to increase the number of Medicaid certified beds when additional licensed beds are added to the nursing facility in the future.

(b) Purpose. The purpose of this section is to control the number of Medicaid beds for which DHS contracts, to improve the quality of resident care by selective and limited allocation of Medicaid beds, and to promote competition.

(c) Bed allocation general requirements. The allocation of Medicaid beds represents an opportunity for the property owner or the lessee of a nursing facility to obtain a Medicaid nursing facility contract for a specific number of Medicaid-certified beds.

(1) Medicaid beds are allocated to a nursing facility and remain at the physical plant to which they originally were allocated, unless beds are assigned or transferred in accordance with these requirements.

(2) When Medicaid beds are allocated to a nursing facility as a result of actions by the licensee, the beds remain allocated to the physical plant, even when the licensee ceases operating the nursing facility, unless the beds are subsequently assigned or transferred in accordance with these requirements.

(3) Notwithstanding any language in subsections (f) and (g) of this section and the fact that applicants for bed allocation waivers and exemptions may be licensees or property owners, beds are allocated to the physical plant and the rights to all allocated Medicaid beds belong to the property owner, subject to any and all valid physical plant liens.

(d) Control of beds. Except as specified in this section, DHS does not accept applications for a Medicaid contract for nursing facility beds from any nursing facility that was not granted:

(1) a valid certificate of need (CON) by the Texas Health Facilities Commission before September 1, 1985;

(2) a waiver by DHS before January 1, 1993; or

(3) other valid order that had the effect of authorizing the operation of the nursing facility at the bed capacity for which participation is sought.

(e) Quality of care. Unless specifically exempted from this requirement, applicants for Medicaid bed allocation waivers or exemptions and any controlling persons must demonstrate a history of providing quality care.

(1) In determining if an applicant or a controlling person has a history of providing quality care, DHS may consider the provisions detailed in §19.214(a) of this title (relating to Criteria for Denying a License or Renewal of a License).

(A) Additionally, DHS will determine an applicant to have demonstrated a history of quality of care if, within the preceding 24 months, an applicant has not received any of the following sanctions:

(i) termination of Medicaid and/or Medicare certification;

(ii) termination of Medicaid contract;
(iii) denial, suspension, or revocation of nursing facility license;

(iv) cumulative Medicaid and/or Medicare civil monetary penalties totaling more than $5,000 per facility;

(v) civil penalties pursuant to §242.065 of the Texas Health and Safety Code; or

(vi) denial of payment for new admissions; and

(B) DHS finds no clear pattern of substantial or repeated licensing and Medicaid sanctions, including administrative penalties and/or other sanctions.

(2) Nursing facilities that have received any of the sanctions listed under paragraph (1) of this subsection within the previous 24 months are not eligible for an allocation of additional Medicaid beds. In the case of sanctions that are appealed, either administratively or judicially, an application will be suspended until the appeal has been resolved. Sanctions that have been administratively withdrawn or were subsequently reversed upon administrative or judicial appeal will not be considered.

(3) When the applicant for an allocation of additional Medicaid beds is a multiple-facility owner or a multiple-facility owner owns an applicant nursing facility, the multiple-facility owner must demonstrate an overall record of providing quality care in addition to the applicant facility's meeting the quality-of-care requirements in this subsection.

(4) When a licensee has operated a nursing facility for less than 24 months, the nursing facility must establish at least a 12-month compliance record in which the nursing facility has not received any of the sanctions listed under paragraph (1) of this subsection.

(5) When the applicant has no history of operating nursing facilities, DHS will review the compliance record of health-care facilities operated, managed, or otherwise controlled by controlling parties of the applicant. If the controlling parties or the applicant has never operated, managed, or otherwise controlled any health-care facilities, a compliance review will not be required.

(6) The commissioner, or the commissioner's designee, may make an exception to any of the requirements in this subsection if it is determined the needs of Medicaid recipients in a local community will be served best by granting a Medicaid bed allocation waiver or exemption. In determining whether to make an exception to the quality-of-care requirements, the commissioner or the commissioner's designee may consider the following:

(A) the overall compliance record of the waiver or exemption applicant;

(B) the current availability of Medicaid beds in facilities providing a high quality of care in the local community;

(C) the level of support for the waiver or exemption from the local community;

(D) how a waiver or exemption will improve the overall quality of care for nursing facility residents; and

(E) the age and condition of nursing facility physical plants in the local community.

(f) Exemptions. Under the following circumstances, DHS may grant an exemption of the policy stated in
subsection (d) of this section. All exemption actions must comply with the requirements in this subsection and
with requirements of the Centers for Medicare and Medicaid Services (CMS) regarding bed additions and
reductions. When a bed allocation exemption is approved, the licensee must comply with the requirements
contained in §19.201 of this title (relating to Criteria for Licensing) at the time of licensure and/or Medicaid
certification of the new beds or nursing facility.

(1) Replacement Medicaid nursing facilities and beds. Currently allocated Medicaid beds may be replaced
through the construction of one or more new nursing facilities.

(A) The applicant must either own the physical plant to which the beds are allocated or possess a valid
assignment of rights to the Medicaid beds.

(B) Assignment of the Medicaid beds to the replacement nursing facility must be approved by all lien holders
of the physical plant to which the beds are allocated.

(C) Replacement nursing facility applicants, including those who obtained the rights to the beds through a
valid assignment of rights, must comply with the history of quality-of-care requirements in subsection (e) of this
section, unless the applicant for a replacement nursing facility is the current property owner.

(D) Replacement facilities will be granted an increase of up to 25% of the currently allocated Medicaid beds,
if the applicant complies with the history of quality-of-care requirements in subsection (e) of this section. The
additional allocation of beds may not be transferred or assigned until they are certified at the replacement facility.

(E) The replacement nursing facility must be located in the same county in which the Medicaid beds currently
are allocated.

(2) Transfer of Medicaid beds. Allocated Medicaid beds currently certified or certified previously may be
transferred to another physical plant.

(A) The applicant must own the physical plant to which the beds are allocated or must present DHS with one
of the following:

(i) a valid Medicaid bed transfer agreement that specifies the number of additional Medicaid beds to be
allocated to the receiving nursing facility; or

(ii) a valid assignment of rights to currently allocated Medicaid beds that specifies the number of additional
Medicaid beds to be allocated to the receiving nursing facility.

(B) If the Medicaid beds currently are allocated to a specific physical plant, the current property owner and
all current lien holders must approve the transfer agreement.

(C) The receiving licensee must comply with the history of quality-of-care requirements in subsection (e) of
this section.

(D) Both facilities must be located in the same county.

(3) High-occupancy facilities. Medicaid-certified nursing facilities with high occupancy rates may periodically
receive bed allocation increases.

(A) The...
(A) The occupancy rate of the Medicaid beds of the applicant nursing facility must be at least 90% for nine of the previous 12 months.

(B) The application for additional Medicaid beds may be no greater than 10% (rounded to the nearest whole number) of the current number of Medicaid-certified nursing facility beds.

(C) The applicant nursing facility must comply with the history of quality-of-care requirements in subsection (e) of this section.

(D) The applicant nursing facility may reapply for additional Medicaid beds no sooner than nine months from the date of the previous allocation increase.

(E) Medicaid beds allocated to a nursing facility under this requirement may only be certified at the applicant facility. The additional allocation of beds may not be transferred or assigned until they are certified at the applicant facility.

(4) Non-certified nursing facilities. Licensed nursing facilities that do not have Medicaid-certified beds may receive an initial allocation of Medicaid beds.

(A) The application for Medicaid beds may be no greater than 10% (rounded to the nearest whole number) of the current licensed nursing facility beds.

(B) The applicant licensee must comply with the history of quality-of-care requirements in subsection (e) of this section.

(C) After the applicant receives an allocation of Medicaid beds, the licensee may reapply in accordance with provisions of paragraph (3) of this subsection.

(D) Facilities that have Medicaid beds allocated under provisions of the Alzheimer's waiver may apply for general Medicaid beds in accordance with paragraph (3) or (4) of this subsection. The beds allocated under the Alzheimer's waiver provisions will be excluded from this computation; for example, a 120-bed nursing facility with 60 Alzheimer waiver beds would be eligible for 10% of the 60 remaining beds or six additional Medicaid beds.

(5) Low-capacity facilities. For purposes of efficiency, nursing facilities with a Medicaid bed capacity of less than 60 may receive additional Medicaid beds to increase their capacity up to a total of 60 Medicaid beds.

(A) The nursing facility must be licensed for less than 60 beds and have a current certification of less than 60 Medicaid beds.

Cont'd...
(B) The nursing facility must have been Medicaid-certified before June 1, 1998.

(C) The applicant licensee must comply with the history of quality-of-care requirements in subsection (e) of this section.

(D) Facilities that have a Medicaid capacity of less than 60 beds due to the loss of Medicaid beds under provisions in subsection (h) of this section are not eligible for this exemption.

(6) Spend-down Medicaid beds. Licensed nursing facilities may receive temporary spend-down Medicaid beds for residents who have "spent down" to become eligible for Medicaid, but for whom no Medicaid bed is available. Approval of spend-down Medicaid beds allows a nursing facility to exceed temporarily its allocated Medicaid bed capacity.

(A) The applicant nursing facility must have a Medicaid contract. If the nursing facility is not currently Medicaid-certified, the licensee must be approved for Medicaid certification and obtain a Medicaid contract.

(B) All Medicaid or dually certified beds must be occupied by Medicaid or Medicare recipients at the time of application.

(C) The application for a spend-down Medicaid bed must include documentation that the person for whom the spend-down bed is requested:

   (i) was not eligible for Medicaid at the time of the resident's most recent admission to the nursing facility; and

   (ii) was a resident of the nursing facility for at least the immediate three months before becoming eligible for Medicaid, excluding hospitalizations.

(D) The nursing facility is eligible to receive Medicaid benefits effective the date the resident meets Medicaid eligibility requirements.

(E) The nursing facility must assign a permanent Medicaid bed to the resident as soon as one becomes available.

(F) Facilities with multiple residents in spend-down beds must assign permanent Medicaid beds to those residents in the same order the residents were admitted to spend-down beds.

(G) The assignment of residents in spend-down beds to permanent Medicaid beds must precede the admission of new residents to permanent beds.
(H) The nursing facility must notify DHS immediately upon the death or permanent discharge of the resident or transfer of the resident to a permanent Medicaid bed. Failure of the nursing facility to notify DHS of these occurrences in a timely manner is basis for denying applications for spend-down Medicaid beds.

(I) The nursing facility is not required to comply with quality-of-care requirements in subsection (e) of this section.

(g) Waivers. The commissioner or the commissioner's designee may grant a waiver of the policy stated in subsection (d) of this section under certain conditions. Applicants must meet the following conditions to be eligible for the specific waivers in subsection (h) of this section.

(1) The applicant must meet the quality-of-care requirement stated in subsection (e) of this section.

(2) Every waiver application must include identification of all controlling parties of the applicant entity.

(3) At the time of licensure and/or Medicaid certification of the allocated beds, the licensee must comply with the requirements contained in §19.201 of this title.

(4) Approved waivers may be assigned by the applicant to another entity under the following circumstances.

(A) Waivers may be assigned to another entity controlled by the majority owners of the waiver.

(B) Waivers may be assigned to the entity that owns the facility at the time of certification. Assignment of the waiver under these circumstances will be approved by DHS only if the entity that owns the facility at the time of certification complies with subsection (e) of this section and the waiver applicant is the licensee of the new facility. Control of the allocated beds after initial Medicaid certification is subject to subsection (c) of this section.

(C) Assignment of waivers under circumstances listed in subparagraphs (A) and (B) of this paragraph must be reported to DHS.

(5) Any additional controlling parties of the new entity must be reported to DHS. The validity of the waiver will be contingent on the new controlling parties' compliance with the quality-of-care requirements in subsection (e) of this section.

(6) Waiver applicants who submit false information will not be eligible for a waiver. Waivers issued based on false information provided by the applicant are void.

(7) Waiver applications will be considered in the order in which they are received.

(h) Specific waivers. Waivers may be granted if it is determined that Medicaid beds are necessary for the following circumstances.

(1) Community needs waiver. A community needs waiver is designed to meet the needs of communities that do not have reasonable access to quality nursing facility care.

(A) The applicant must submit a study, prepared by an independent professional experienced at preparing demographic studies, that documents:
(i) an immediate need for additional Medicaid beds in the community;

(ii) Medicaid residents in the community do not have reasonable access to quality nursing facility care; and

(iii) substantial community support for the new nursing facility or beds.

(B) Applicants must disclose if they have served as a trustee of a nursing facility within the previous 24 months.

(2) Criminal justice waiver. The criminal justice waiver is designed to meet the needs of the Texas Department of Criminal Justice (TDCJ). The applicant must document that:

(A) the waiver is needed to meet the identified and determined nursing facility needs of TDCJ; and

(B) the new nursing facility is approved by TDCJ to serve persons under their supervision who have been released on parole, mandatory supervision, or special needs parole under the Code of Criminal Procedure, Article 42.18.

(3) Under-served minority waiver. The under-served minority waiver is designed to meet the needs of minority communities that do not have adequate nursing facility care. For purposes of this waiver, the term minority means black, Hispanic, Asian or Pacific Islander, American Indian, or Alaskan native. The applicant must submit a study, prepared by an independent professional experienced at preparing demographic studies, that documents:

(A) the new nursing facility or beds will serve a ZIP code that has a minority population greater than 50% according to the most recent U.S. census; and

(B) minority residents in the ZIP code in which the nursing facility or beds will be located do not have reasonable access to quality nursing facility care.

(4) Alzheimer's waiver. The Alzheimer's waiver is designed to meet the needs of communities that do not have reasonable access to Alzheimer's nursing facility services.

(A) The applicant must document that:

(i) the nursing facility is affiliated with a medical school operated by the state;

(ii) the nursing facility will participate in ongoing research programs for the care and treatment of persons with Alzheimer's disease;

(iii) the nursing facility will be designed to separate and treat residents with Alzheimer's disease by stage and functional level;

(iv) the nursing facility will obtain and maintain voluntary certification as an Alzheimer's nursing facility in accordance with §§19.2204, 19.2206, 19.2208 of this title (relating to Voluntary Certification of Facilities for Care of Persons with Alzheimer's Disease; General Requirements for a Certified Facility; and Standards for Certified Alzheimer's Facilities); and

(v) only residents with Alzheimer's disease or related dementia will be admitted to the Alzheimer's Medicaid...
(B) The applicant must submit a study, prepared by an independent professional experienced at preparing
demographic studies, that documents the need for the number of Medicaid Alzheimer's beds requested.

(5) Teaching nursing facility waiver. A teaching nursing facility waiver is designed to meet the statewide needs
for providing training and practical experience for health-care professionals. The applicant must submit
documentation that the nursing facility:

(A) is affiliated with a state-supported medical school;

(B) is located on land owned or controlled by the state-supported medical school; and

(C) serves as a teaching nursing facility for physicians and related health-care professionals.

(6) Rural county waiver. A rural county waiver is designed to meet the needs of rural areas of the state that do
not have reasonable access to quality nursing facility care. For purposes of this waiver, a rural county is one that
has a population of 100,000 or less according to the most recent census, and has no more than two Medicaid-
certified nursing facilities. DHS will approve no more than 120 additional Medicaid beds per county per year
and no more than 500 additional Medicaid beds statewide in a calendar year under this waiver provision. The
waivers will be considered on a first-come, first-served basis. Requests received in a year in which the 500-bed
limit has been met will be carried over to the next year. The waiver must be requested by the county
commissioner's court.

(A) The commissioner's court must notify DHS of its intent to consider a rural county waiver and obtain
verification from DHS that the county complies with the definition of rural county.

(B) The commissioner's court must publish a notice in the Texas Register and in a newspaper of general
circulation in the county. The notice must seek:

(i) comments on whether a new Medicaid nursing facility should be requested; and

(ii) proposals from persons or entities interested in providing additional Medicaid-certified beds in the
county, including persons or entities currently operating Medicaid-certified facilities with high occupancy rates.
Persons or entities that submit false information will be eliminated from the process.

(C) The commissioner's court must determine whether to proceed with the waiver request after considering
all comments and proposals received in response to the notices provided under subparagraph (B) of this
paragraph. In determining whether to proceed with the waiver request, the commissioner's court must consider:

(i) the demographic and economic needs of the county;

(ii) the quality of existing Medicaid nursing facilities in the county;

(iii) the quality of the proposals submitted, including a review of the past history of care provided, if any, by
the person or entity submitting the proposal; and

(iv) the degree of community support for additional Medicaid nursing facility services.
The commissioner's court must document the comments received, proposals offered and factors considered in subparagraph (C) of this paragraph.

(E) The commissioner's court, if it decides to proceed with the waiver request, must submit a recommendation that DHS issue a waiver to a person or entity who submitted a proposal for new or additional Medicaid beds. The recommendation must include:

(i) the name, address, and telephone number of the person or entity recommended for contracting for the Medicaid beds;

(ii) the location, if the commissioner's court desires to identify one, of the recommended nursing facility;

(iii) the number of beds recommended; and

(iv) the information listed in subparagraph (D) of this paragraph used to make the recommendation.

(7) State veterans homes. State veterans homes, authorized and built under the auspices of the State Veterans Land Board, must meet all requirements for Medicaid participation.

(i) Time Limits and Extensions.

(1) With the exception of transferred Medicaid beds and temporary Medicaid beds, all beds approved under the exemption provisions of subsection (f) of this section must be constructed, licensed, and certified within 24 months of the exemption approval.

(2) Medicaid beds transferred in accordance with subsection (f)(2) of this section must be certified within six months of the exemption approval.

(3) Time limits applicable to temporary Medicaid beds are specified in subsection (f)(6) of this section.

(4) All facilities and beds approved in accordance with waiver provisions of subsection (h) of this section must be constructed, licensed, and certified within 24 months of the waiver approval.

(5) With the exception of transferred Medicaid beds and temporary Medicaid beds, applicants for exemptions and waivers must submit a progress report every 12 months after approval of the exemption or waiver. The exemption or waiver may be declared void if the applicant fails or refuses to provide the progress report as required or if the progress report contains false information.

Cont'd...
(6) At the discretion of the commissioner or the commissioner's designee, deadlines specified in this section may be extended. The applicant must submit evidence of good-faith efforts to meet the deadline and/or evidence that delays were beyond the applicant's control.

(7) Applicants who receive an extension of their waiver of exemption must submit a progress report every six months after approval of the extension until the nursing facility beds are certified. The exemption or waiver may be declared void if the applicant fails or refuses to provide the progress report as required or if the progress report contains false information.

(8) Failure to meet the requirements of this section is grounds for loss of the Medicaid bed allocation.

(j) Loss of Medicaid Beds.

(1) Loss of Medicaid beds based on sanctions.

   (A) A Medicaid nursing facility operated by the person or entity who also owns the property will lose the allocation of all Medicaid beds assigned to the nursing facility property if the nursing facility's license is denied or revoked.

   (B) A Medicaid nursing facility operated by one person or entity and owned by another person or entity will lose the allocation of Medicaid beds if two or more of the following actions occur within a 42-month period:

      (i) licensure denial;

      (ii) licensure revocation; or

      (iii) Medicaid termination.

   (C) DHS may waive this loss of allocation of Medicaid beds in order to facilitate a change of ownership or other actions that would protect the health and safety of residents or assure reasonable access to quality nursing facility care.

(2) Voluntary decertification of Medicaid beds.

   (A) Facilities may request to voluntarily decertify Medicaid beds.

   (B) The licensee must submit written approval of the Medicaid bed reduction signed by the property owner and all physical plant lien holders.
(C) Medicaid beds voluntarily decertified will result in reduction of allocated Medicaid beds equal to the number of beds decertified.

(D) Facilities that voluntarily decertify Medicaid beds are eligible to receive an increased allocation of Medicaid beds if the facility qualifies for a bed allocation waiver or exemption.

(3) Nursing facility ceases to operate.

(A) The property owner of a nursing facility that closes or ceases to participate in the Medicaid program must inform DHS in writing of the intended future use of the Medicaid beds within 90 days of closure.

(B) Unless the Medicaid beds will be used for a replacement nursing facility, the allocated beds must be re-certified within 12 months of the date the Medicaid contract was terminated.

(C) Time limits in subparagraphs (A) and (B) of this paragraph may be extended in accordance with subsection (i)(6) of this section.

(D) Failure to meet the requirements of this paragraph is grounds for loss of the Medicaid bed allocation.

(k) Informal review procedures.

(1) Applicants may request an informal review of DHS actions regarding bed allocations. The request must be submitted within 30 days of notification of the action.

(2) The request for the informal review and all documentation or evidence that forms the basis for the informal review must be submitted in writing.

(3) The commissioner or the commissioner's designee will conduct the informal review.

(l) Loss of Medicaid beds based on low occupancy.

(1) DHS may review Medicaid bed occupancy rates annually for the purpose of de-allocating and decertifying unused Medicaid beds. The Medicaid bed occupancy reports for the most recent six-month period that DHS has validated will be used to determine the bed occupancy rate of each nursing facility.

(2) Medicaid beds will be de-allocated and decertified in facilities that have an average occupancy rate below 70%. The number of beds to be decertified is calculated by subtracting the preceding six-month average occupancy rate of Medicaid-certified beds from 70% of the number of allocated certified beds and dividing the difference by 2, rounding the final figure down if necessary. For example, for a facility with 100 Medicaid-certified beds and a 50% occupancy rate, the difference between 70% (70 beds) and 50% (50 beds) is 20 beds, divided by 2, is 10 beds to be decertified.

(3) Medicaid beds in a nursing facility that has obtained a replacement nursing facility exemption are not subject to the de-allocation and decertification process.

(4) Medicaid beds in a new or replacement physical plant or a newly constructed wing of an existing physical plant will be exempt from this de-allocation and decertification process until the new physical plant or new wing has been certified for two years.
(5) Medicaid beds that have been subject to a change of ownership within the past 24 months are exempt from the de-allocation and decertification process.

(6) Medicaid beds allocated to a closed nursing facility are exempt from this de-allocation and decertification process.

(7) Nursing facilities that lose Medicaid beds through this process are eligible to receive an additional allocation of Medicaid beds at a later date if the facility qualifies for a bed allocation waiver or exemption.

(8) The de-allocation and decertification of unused beds does not affect the licensed capacity of the nursing facility.

(m) Medicaid occupancy reports.

(1) Medicaid nursing facilities must submit occupancy reports to DHS each month.

   (A) The occupancy data must be reported on a form prescribed by DHS. The form must be completed in accordance with instructions and the occupancy data must be accurate and verifiable. The completed report must be submitted to DHS no later than the fifth day of the month following the reporting period.

   (B) The Medicaid occupancy rate will be determined by calculating the monthly average of the number of persons who occupy Medicaid beds.

   (C) All persons residing in Medicaid-certified beds, including Medicaid recipients, Medicare recipients, private-pay residents, or residents with other sources of payment, will be included in the calculation.

   (D) Failure or refusal to submit accurate occupancy reports in a timely manner may result in the nursing facility's vendor payment being held in abeyance until the report is submitted.

(2) DHS will determine nursing facility and county occupancy rates based on the data submitted by the nursing facilities.

   (A) The occupancy data will be used to determine eligibility for and/or compliance with waiver and exemption requirements. The occupancy data also will be used to determine if Medicaid beds should be decertified based on low occupancy.

   (B) The occupancy data will be made available to nursing facilities, licensees, property owners, waiver or exemption applicants, and others in accordance with public disclosure requirements.

   (C) Inaccurate or falsified occupancy data is grounds to disqualify facilities from eligibility for bed allocation exemptions and waivers. DHS may refuse to accept corrections to bed occupancy data submitted more than six months after the due date of the occupancy report.

(n) School-age residents. Any bed allocation waiver or exemption applicant that serves or plans to serve school-age residents must provide written notice to the affected local education agency (LEA) of its intent to establish or expand a nursing facility within the LEA's boundary.
(a) Definitions. The words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise.

(1) County occupancy rate--The number of residents occupying certified Medicaid beds in a county divided by the number of Medicaid beds allocated in the county. This calculation includes Medicaid beds that currently are certified and Medicaid beds that have been allocated but are not currently certified. In the four most populous counties, the occupancy rate will be calculated for each county-commissioner precinct.

(2) Open solicitation period--A time period in which licensees, property owners and other entities may apply for an allocation of Medicaid beds in high-occupancy counties or precincts.

(b) Primary selection process.

(1) DHS will monitor monthly Medicaid occupancy rates. When DHS determines that the occupancy rate for any county, or any precinct in the four most populous counties, equals or exceeds 90% for six consecutive months, a public notice will be placed in the Texas Register and the Electronic State Business Daily (ESBD) to announce an open solicitation period.

(2) The public notice will announce that DHS will allocate additional Medicaid beds to eligible nursing facilities. The notice will specify that the solicitation is limited to currently licensed nursing facility beds that may be converted to Medicaid-certified beds and that the number of beds allocated will be limited to the number necessary to reduce the county or precinct occupancy rate to 85%.

(3) The public notice will identify the county and/or precinct, the six-month occupancy average for the county or precinct and the beginning and end dates of the open solicitation period. The notice also will include the DHS address to which the application for additional Medicaid beds must be submitted and will specify that the application must be received by DHS before the close of business on the end date of the solicitation period.

(4) Current licensees and/or property owners of licensed facilities that choose to apply for the allocation of additional Medicaid beds must demonstrate a history of quality care as specified in §19.2322(e) of this title (relating to Medicaid Bed Allocation Requirements).

(5) Applicants must provide the name and address of the nursing facility, the name, address, and telephone number of the contact person, the number of licensed beds available and the number of additional Medicaid beds requested.
(6) At the end of the solicitation period, DHS will determine if any applicant is eligible for additional Medicaid beds and if the number of eligible licensed beds is adequate to reduce the county or precinct occupancy rate to below 90%. DHS will allocate the number of Medicaid beds necessary to reduce the occupancy rate to below 90%. If eligible nursing facilities have additional licensed beds available for conversion to Medicaid beds, DHS will allocate additional beds, but not more than the number of beds necessary to reduce the occupancy rate to 85%.

(7) If more than one nursing facility is eligible for additional Medicaid beds, the beds will be allocated equally to each facility.

(8) The additional allocation of Medicaid beds may not be transferred or assigned until they are certified at the applicant facility.

(9) Medicaid beds allocated under this provision must be certified within six months of allocation and must comply with time limit and extension requirements specified in §19.2322(i) of this title.

c) Secondary selection process.

(1) When the primary selection process does not result in the allocation of additional Medicaid beds necessary to reduce the occupancy rate to below 90%, DHS will place a second notice in the Texas Register and the ESBD. The second notice will announce that additional Medicaid beds may be allocated to eligible applicants that desire to construct a new nursing facility or to construct an addition to an existing nursing facility. In counties with 1,500 or more Medicaid beds, the notice will specify that the allocation is limited to no more than 120 beds. In counties with fewer than 1,500 Medicaid beds, the notice will specify that the allocation is limited to no more than 90 beds.

(2) The second notice will identify the county and/or precinct, the six-month occupancy average for the county or precinct and the beginning and end dates of the solicitation period. The notice also will include the DHS address to which the application for additional Medicaid beds must be submitted and will specify that the application must be received by DHS before the close of business on the end date of the solicitation period.

(3) Applicants for the secondary waiver process must demonstrate a history of quality care as specified in §19.2322(e) of this title.

(4) Applicants must provide the name and address of the applicant entity, the name, address, and telephone number of the contact person, the name and address of all controlling parties of the applicant entity and the number of Medicaid beds requested.

(5) At the end of the secondary solicitation period, DHS will determine if any applicant is eligible for additional Medicaid beds. If multiple applicants are eligible, the applicant that will receive the allocation of beds will be chosen by a lottery selection. Applicants who submit false information are not eligible for the allocation of Medicaid beds. Medicaid beds allocated based on false information are not eligible for Medicaid certification and the allocation is revoked.

(6) Medicaid beds allocated under this provision may only be transferred to another entity controlled by the same majority owners. Transfers under these circumstances must be reported to DHS.

(7) If no application for the secondary waiver process is received or if no applicant meets the requirements in...
(8) In counties with no licensed nursing facilities, DHS will implement the secondary selection process when it is determined that the county population exceeds 5,000. Since those counties contain no licensed beds eligible for the primary selection process, DHS will omit that part of the process.

(9) Medicaid beds allocated under this provision must be constructed, licensed and certified within 24 months of allocation and must comply with time limit and extension requirements specified in §19.2322(i) of this title.

(d) Informal review procedures.

(1) Applicants may request an informal review of DHS actions in this section. The request must be submitted within 30 days of notice of the action.

(2) The request for the informal review and all documentation or evidence that forms the basis for the informal review must be submitted in writing.

(3) The commissioner or the commissioner's designee will conduct the informal review.

Source Note: The provisions of this §19.2324 adopted to be effective November 1, 2002, 27 TexReg 9154
Texas Administrative Code

Texas Administrative Code

TITLE 40
SOCIAL SERVICES AND ASSISTANCE

PART 1
DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 19
NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

SUBCHAPTER X
REQUIREMENTS FOR MEDICAID-CERTIFIED FACILITIES

RULE §19.2326
Medicaid Swing Bed Program for Rural Hospitals

(a) Program description. DADS operates the Medicaid Swing Bed Program for rural hospitals located in counties with populations of 100,000 or less. The Medicaid Swing Bed Program is modeled on Medicare's Swing Bed Program. The Medicaid Swing Bed Program permits participating rural hospitals to use their beds interchangeably to furnish both acute hospital care and nursing facility care to Medicaid recipients, when no care beds are available in nursing facilities (NFs) in the area. When a participating rural hospital furnishes NF nursing care to Medicaid recipients, DADS makes payment to the hospital using the same procedures and the same Resource Utilization Group daily rates that the Texas Health and Human Services Commission authorizes for reimbursing NFs participating in the Texas Medicaid Nursing Home Program.

(b) Application to participate. Rural hospitals apply to DADS to participate in the Medicaid Swing Bed Program. Each applicant must be located in a county with a population of 100,000 or less and must meet the qualifying requirements of the Medicare Swing Bed Program. Hospitals approved for participation enter into swing bed provider agreements with DADS.

(c) Parallel participation in Medicare. A rural hospital participating in the Medicaid Swing Bed Program must:

(1) have a Medicare hospital provider agreement; and

(2) be Medicare-certified by the Department of State Health Services (DSHS) as a swing bed hospital in the Medicare Swing Bed Program.

(d) Applicability of Medicare requirements. Each participating rural hospital must satisfy all the requirements of the Medicare Swing Bed Program, except that Medicare's five-weekday transfer requirement, as stated in §482.66(b)(i)-(ii), 42 Code of Federal Regulations, and 15% payment limitation do not apply for Medicaid reimbursement purposes.

(e) Applicability of NF requirements. From day one of the resident's stay, a rural hospital participating in the Medicaid Swing Bed Program must meet the requirements set forth in §19.101 of this title (relating to Definitions); §19.2304(c) of this title (relating to Contract Requirements); §§19.300 - 19.314 and 19.316 of this title (relating to General Requirements; Applicable Codes and Standards; Waivers; Emergency Power; Space and Equipment; Resident Rooms; Toilet Facilities; Resident Call System; Dining and Resident Activities; Other Environmental Conditions; Site and Grounds; Fire Service and Access; Means of Egress; Interior Finishes - Walls, Ceilings, and Floors; Fire Alarms, Detection Systems, and Sprinkler Systems; and Subdivision of Building Spaces - Smoke Barriers); §§19.1901 - 19.1914 and 19.1917 of this title (relating to Administration; Governing Body; Required Training of Nurse Aides; Proficiency of Nurse Aides; Staff Qualifications; Use of Outside Resources; Medical Director; Laboratory Services; Radiology and Other...
(f) Rural hospital (Medicaid swing bed facility) licensure and certification requirements. Pursuant to Texas Health and Safety Code §§222.021, 222.024, and 222.025 concerning the duplication of health care inspections and licensing, a rural hospital participating in the Medicaid Swing Bed Program satisfies licensure and certification requirements referenced in this section when it is currently licensed and certified as a hospital by DSHS. However, in accordance with Texas Human Resources Code, §32.024, if the rural hospital's swing beds are used for more than one 30-day length of stay per year, per resident the hospital must comply with the full Nursing Facility Requirements.

(g) Rural hospital (Medicaid swing bed facility) administrator. The governing body of a rural hospital participating in the Medicaid Swing Bed Program satisfies the requirement to appoint a qualified full-time nursing facility administrator, found at §19.1902(b) of this title (relating to Governing Body), when it appoints a hospital administrator as its official representative and designates the administrator's responsibilities and authority, subject to the following exception. If the swing beds are used for more than one 30-day length of stay per year, per resident, the hospital's governing body must appoint a full-time licensed nursing facility administrator.

(h) Rural hospital (Medicaid swing bed facility) staff development requirements. A rural hospital participating in the Medicaid Swing Bed Program satisfies the staff development requirements found at §19.1929 of this title (relating to Staff Development) if the swing beds are used for no more than one 30-day length of stay per year, per resident.

(i) Rural hospital (Medicaid swing bed facility) transfer agreement. A rural hospital participating in the Medicaid Swing Bed Program is not required to have a transfer agreement with another hospital, as required by §19.1915 of this title (relating to Transfer Agreement).

(j) Rural hospital geographic region. The phrase "a participating rural hospital's geographic region" refers to an area that includes nursing facilities with which the hospital normally arranges transfers and all other nursing facilities in similar proximity to the hospital. If a hospital has no previous transfer practices on which to base a determination, the phrase "geographic region" refers to an area that includes all nursing facilities within 50 miles of the hospital except for facilities that the hospital demonstrates to be inaccessible to its patients.

Source Note: The provisions of this §19.2326 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective July 1, 1996, 21 TexReg 4408; amended to be effective September 1, 2008, 33 TexReg 7264
Medical necessity is the prerequisite for participation in the Medicaid (Title XIX) Long-term Care program. This section contains the general qualifications for a medical necessity determination. To verify that medical necessity exists, an individual must meet the conditions described in paragraphs (1) and (2) of this section.

(1) The individual must demonstrate a medical condition that:

   (A) is of sufficient seriousness that the individual's needs exceed the routine care which may be given by an untrained person; and

   (B) requires licensed nurses' supervision, assessment, planning, and intervention that are available only in an institution.

(2) The individual must require medical or nursing services that:

   (A) are ordered by a physician;

   (B) are dependent upon the individual's documented medical conditions;

   (C) require the skills of a registered or licensed vocational nurse;

   (D) are provided either directly by or under the supervision of a licensed nurse in an institutional setting; and

   (E) are required on a regular basis.

Source Note: The provisions of this §19.2401 adopted to be effective September 1, 2008, 33 TexReg 7264
(a) Purpose. A recipient must have a determination of medical necessity for nursing facility care to participate in the Texas Medicaid Nursing Facility Program.

(1) The state Medicaid claims administrator makes a medical necessity determination by evaluating a recipient's medical and nursing needs based on the MDS assessment required by DADS.

(2) A recipient must have a determination of medical necessity for nursing facility care before the nursing facility can be paid for services, except as provided in §19.2413 of this subchapter (relating to Determination of Payment Rate Based on the MDS Assessment Submission) and §19.2611 of this chapter (relating to Retroactive Vendor Payment).

(b) Admission MDS assessment review.

(1) The admission MDS assessment review process is initiated when the state Medicaid claims administrator receives an MDS assessment and the Long-Term Care Medicaid Information Section, in accordance with §19.2413 of this subchapter, indicating that a Medicaid applicant or recipient is requesting vendor payment for care in a contracted nursing facility. A registered nurse must sign and certify that the MDS assessment is completed in accordance with §19.801 of this chapter (relating to Resident Assessment).

(2) The admission MDS assessment review determines medical necessity and establishes the authorization for payment of a calculated RUG rate.

(c) Role of the state Medicaid claims administrator. The state Medicaid claims administrator reviews all MDS assessments, including significant change in status assessments, modifications, and significant corrections, and approves or denies medical necessity in accordance with §19.2401 of this subchapter (relating to General Qualifications for Medical Necessity Determinations).

(d) Effective period.

(1) A determination of medical necessity based on the admission MDS assessment review remains in effect for the time period determined by the federal MDS submission schedule.

(2) If a nursing facility submits a recipient's MDS assessment after the due date established by the federal MDS submission schedule, the recipient's medical necessity remains in effect for the period between the due date and the date the state Medicaid claims administrator received the MDS assessment.

(3) If a nursing facility submits a recipient's MDS assessment after the due date established by the federal
MDS submission schedule and, after reviewing the MDS assessment, the state Medicaid claims administrator determines that the recipient does not meet the criteria for medical necessity, the effective date of the denial of medical necessity is the date the state Medicaid claims administrator received the MDS assessment. A denial of medical necessity is conducted in accordance with §19.2407 of this subchapter (relating to Denied Medical Necessity).

(e) Permanent medical necessity.

(1) A recipient's permanent medical necessity status is established on the completion date of any MDS assessment approved for medical necessity no less than 184 calendar days after the recipient's admission to the Texas Medicaid Nursing Facility Program.

(2) A nursing facility must submit a recipient's MDS assessment in compliance with the federal MDS submission schedule even after the recipient achieves permanent medical necessity status.

(3) A recipient's permanent medical necessity status moves with the recipient, unless the recipient is discharged to home for more than 30 days.

(4) If a recipient who has permanent medical necessity status transfers to another Medicaid-certified nursing facility, the nursing facility to which the recipient transfers must complete a new MDS assessment in compliance with the federal MDS submission schedule.

(f) Insufficient information. If an MDS assessment does not have sufficient information for the state Medicaid claims administrator to make a medical necessity determination, the MDS assessment is put in suspense for 21 days with a message from the state Medicaid claims administrator informing the nursing facility that the MDS assessment has been put in suspense for 21 days. Unless the nursing facility provides sufficient information on the MDS assessment to determine medical necessity within 21 days, medical necessity is denied.

Source Note: The provisions of this §19.2403 adopted to be effective September 1, 2008, 33 TexReg 7264
The recipient's physician is required at intervals specified in §19.1210(b) of this title (relating to Certification and Recertification Requirements in Medicaid-Certified Facilities) to certify or recertify the necessity for continued nursing facility care.

**Source Note:*** The provisions of this §19.2405 adopted to be effective May 1, 1995, 20 TexReg 2393.
(a) If the state Medicaid claims administrator determines that a Medicaid applicant or a recipient does not meet the criteria for medical necessity described in §19.2401 of this subchapter (relating to General Qualifications for Medical Necessity Determinations), the state Medicaid claims administrator notifies the attending physician and the nursing facility in writing and provides them an opportunity to present additional information about the applicant's or recipient's medical need for nursing facility care.

(1) If the attending physician or a nursing facility physician does not respond or contest the findings of the state Medicaid claims administrator within 10 working days after receipt of the written notice about the decision, the findings are final.

(2) If the attending physician or a nursing facility physician contests the findings of the state Medicaid claims administrator, at least one physician with the state Medicaid claims administrator must review the case. If the state Medicaid claims administrator's physician determines that the applicant's or recipient's admission or stay is not medically necessary, the determination becomes final.

(3) The state Medicaid claims administrator sends written notification of the final determination of denied medical necessity to the attending physician, the nursing facility, and the applicant or recipient (or responsible party).

(b) After an applicant receives written notice of a determination of denied medical necessity, the applicant or responsible party must request a fair hearing within 90 days after the date of denied medical necessity, or the applicant loses the right to a fair hearing.

(c) After a recipient receives written notice of a determination of denied medical necessity, the recipient or responsible party must request a fair hearing within 10 days after the date of the written notice in order to have nursing facility services paid for during the appeal.

(1) If the recipient requests a fair hearing within 10 days after the date of the written notice and the determination of denied medical necessity is upheld, the effective date of the denial is 10 days after the hearing officer's written decision.

(2) If the recipient does not request a fair hearing within 10 days after the date of the written notice, DADS makes vendor payments to the nursing facility at the previously established RUG rate for 15 days or until the recipient is discharged, whichever occurs first.

(3) If the recipient does not request a fair hearing within 10 days after the date of the written notice, the recipient must request a fair hearing within 90 days after the date of denied medical necessity, or the recipient
loses the right to a fair hearing.

(d) Fair hearings are conducted by the Texas Health and Human Services Commission (HHSC) in accordance with HHSC rules at 1 TAC Chapter 357.

Source Note: The provisions of this §19.2407 adopted to be effective September 1, 2008, 33 TexReg 7264
(a) Definitions. In this section, the following words and terms have the following meanings unless the context clearly indicates otherwise.

(1) All conditions of eligibility--A recipient meets all conditions of eligibility when the state Medicaid claims administrator approves the recipient for medical necessity and the recipient meets financial eligibility for Medicaid.

(2) On-time MDS assessment--An MDS assessment that is submitted in accordance with the federal MDS submission schedule and is received by the state Medicaid claims administrator within 31 days after the completion date.

(3) Missed MDS assessment--An MDS assessment that is received by the state Medicaid claims administrator outside the time period that the MDS assessment covers.

(b) MDS submission requirement. A nursing facility must:

(1) complete all MDS assessments according to CMS' instructions;

(2) submit a recipient's MDS assessment, including an admission MDS assessment, a quarterly MDS assessment, and a significant change in status assessment, to the state MDS database in compliance with the federal MDS submission schedule;

(3) submit the Long-Term Care Medicaid Information Section to the state Medicaid claims administrator; and

(4) submit the recipient's MDS assessment in compliance with the federal MDS submission schedule even after the recipient has permanent medical necessity as described in §19.2403(e) of this subchapter (relating to Medical Necessity Determination).

(c) Admission MDS assessments.

(1) If a nursing facility discharges a recipient with a status of return not anticipated, and the recipient returns to the facility, the nursing facility must complete an admission MDS assessment for a determination of medical necessity and establishment of a RUG rate, regardless of the amount of time between the recipient's discharge and return.

(2) A nursing facility must complete and submit an admission MDS assessment to receive payment for a recipient's period of stay in the nursing facility, even if the recipient leaves the nursing facility before the MDS assessment is submitted.
assessment is completed and never returns long enough for the MDS assessment to be completed. See subsection (i) of this section for completion of an admission MDS assessment in the event of a recipient's death.

(3) DADS pays a calculated RUG rate for an admission MDS assessment from the date the recipient was admitted to the nursing facility, except as provided in §19.2611 of this chapter (relating to Retroactive Vendor Payments).

d) Payment of a calculated RUG rate. If a recipient meets all conditions of eligibility, DADS pays a calculated RUG rate for an MDS assessment if it is received by the state Medicaid claims administrator during the time period that the MDS assessment covers.

e) On-time MDS assessment. If a recipient meets all conditions of eligibility, DADS pays a calculated RUG rate from the completion date of the required MDS assessment, except for an admission MDS assessment as described in subsection (c)(3) of this section.

(f) MDS assessments that are not on time. The state Medicaid claims administrator stops payment for services if the state Medicaid claims administrator does not receive an on-time MDS assessment. Payment for services resumes when the state Medicaid claims administrator receives all MDS assessments that are due as required by the federal MDS submission schedule.

(g) Missed MDS assessments. When the state Medicaid claims administrator receives a missed MDS assessment, DADS pays the nursing facility a default RUG rate for the entire period of the missed MDS assessment if the recipient meets financial eligibility for Medicaid, except as provided in paragraph (2) of this subsection.

(1) If an MDS assessment is missed for the purpose of calculating a RUG rate, the nursing facility must still submit the MDS assessment to comply with §19.801 of this chapter (relating to Resident Assessment).

(2) For a newly contracted nursing facility and a nursing facility that undergoes a change of ownership, DADS pays the calculated RUG rate for any missed MDS assessments that occur while the nursing facility is unable to submit MDS assessments to the state MDS database.

(h) Significant change in status assessment, modification, or significant correction. If a recipient meets all conditions of eligibility, DADS pays the calculated RUG rate from the completion date of a significant change in status assessment, modification, or significant correction.

(i) Incomplete or erroneous MDS assessments. If an applicant meets all conditions of eligibility, DADS pays a default rate for an MDS assessment that is incomplete or has errors.

(j) Prohibition against recourse. A nursing facility must not charge and must not take any other recourse against a recipient, the recipient's family members, the recipient's estate or the recipient's representative for a claim that is reduced because the facility failed to comply with a DADS rule or procedure pertaining to reimbursement.

Source Note: The provisions of this §19.2413 adopted to be effective September 1, 2008, 33 TexReg 7264
(a) Definitions. The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

1. Acute inpatient care--An acute institutional setting that provides medical care, such as a hospital, but does not include inpatient psychiatric care.


4. Anencephaly--A developmental anomaly with absence of neural tissue in the cranium.

5. Chronic obstructive pulmonary disease--A disease of the respiratory system as diagnosed by a physician in accordance with the International Classification of Diseases 9th Revision Clinical Modification (ICD-9-CM).

6. Comatose--A state of unconsciousness characterized by the inability to respond to sensory stimuli as certified by a physician.


8. Convalescent care--Care provided after a person's release from an acute care hospital that is part of a medically prescribed period of recovery which does not exceed 120 days.

9. Dementia--A degenerative disease of the central nervous system as diagnosed by a physician in accordance with the International Classification of Diseases 9th revision Clinical Modification (ICD-9-CM).

10. Functioning at the brain stem level--A significantly impaired state of consciousness characterized by normal respirations and minimal (mostly reflexive) response to environmental stimuli as certified by a physician.


12. Legal representative--The parent of a minor child, the legal guardian, or the surrogate decision maker of
the applicant or the resident of a nursing facility.

(13) Level I--identification screening--The process of identifying individuals with an indication of mental illness, mental retardation and/or a related condition, who require a Level II PASARR assessment.

(14) Level II--PASARR assessment--Preadmission Screening and Resident Review assessment of persons with mental illness, mental retardation, and/or a related condition conducted in accordance with 42 United States Code Annotated, §1396r.

(15) Medical staff--Any staff licensed to practice medicine, such as a physician, registered nurse, or a licensed vocational nurse.

(16) Mental illness--A mental disorder is a schizophrenic, mood, paranoid, panic, or other severe anxiety disorder; somatoform disorder; personality disorder; other psychotic disorder; or another mental disorder that may lead to a chronic disability and does not have a primary diagnosis of dementia (including Alzheimer's disease or a related disorder). The disorder results in functional limitations in major life activities within the past three to six months that would be appropriate for the individual's developmental stage. The individual typically has at least one of the following characteristics on a continuing or intermittent basis: serious difficulty in the areas of interpersonal functioning; and/or concentration, persistence, and/or pace; and/or adaptation to change. Within the past two years, the disorder has required psychiatric treatment more than one time and more intensive than outpatient care and/or the individual has experienced an episode of significant disruption to the normal living situation for which supportive services were required to maintain functioning at home or in a residential treatment environment or which resulted in intervention by housing or law enforcement officials.

(17) Mental retardation--A diagnosis of mental retardation (mild, moderate, severe, and profound) and significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

(18) New admission--An individual who is admitted to any nursing facility in which he has not recently resided and to which he cannot qualify as a readmission.

(19) Nursing facility--A Texas Medicaid-certified institution, except for a facility certified as an intermediate care facility for persons with mental retardation or related conditions (ICF/MR/RC), providing nursing services to nursing facility residents.

(20) Nursing facility applicant--An individual seeking admission to a Texas Medicaid-certified nursing facility.

(21) Nursing facility resident--An individual who resides in a Texas Medicaid-certified nursing facility and receives services provided by professional medical nursing personnel of the facility.

(22) QMHP--Qualified Mental Health Professional. An individual who has at least one year of experience working with persons with mental illness.

(23) QMRP--Qualified Mental Retardation Professional. An individual who has at least one year experience working with persons with mental retardation and/or a related condition.

(24) Parkinson's Disease--A degenerative disease of the central nervous system as diagnosed by a physician in accordance with the Classification of Diseases 9th Revision Clinical Modification (ICD-9-CM).
(25) PASARR--Preadmission screening and resident review.

(26) PASARR determination--A decision made by DADS or its designee to establish if an individual requires the level of services provided in a nursing facility, as defined by medical necessity, if the individual has the need for specialized services for mental illness, mental retardation, and/or a related condition. The decisions are based on information included in the Level II PASARR Assessment.

(27) Readmission--An individual who is readmitted to a nursing facility from a hospital to which he or she was transferred for the purpose of receiving care.

(28) Related condition--A severe, chronic disability as defined in 42 Code of Federal Regulations §435.1009, in the definition of persons with related conditions, that meets all of the following conditions:

   (A) it is attributable to:

      (i) cerebral palsy or epilepsy; or

      (ii) any other condition including autism, but excluding mental illness, found to be closely related to mental retardation because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with mental retardation, and requires treatment or services similar to those required for these persons.

   (B) it is manifested before the person reaches age 22.

   (C) it is likely to continue indefinitely.

   (D) it results in substantial functional limitations in three or more of the following areas of major life activity:

      (i) self-care;

      (ii) understanding and use of language;

      (iii) learning;

      (iv) mobility;

      (v) self-direction; and

      (vi) capacity for independent living.

(29) Specialized services for individuals with mental illness--The implementation of an individualized plan of care developed under and supervised by an Interdisciplinary Team, which includes a physician, and other qualified mental health professionals, that prescribes specific therapies and activities for the treatment of persons who are experiencing an acute episode of severe mental illness, which necessitates supervision by trained mental health personnel.

(30) Specialized services for individuals with mental retardation or a related condition--A continuous program for each resident, which includes aggressive, consistent implementation of specialized and generic training, treatment, health services and related services that is directed toward:
(A) the acquisition of the behaviors necessary for the resident to function with as much self-determination and independence as possible; and

(B) the prevention or deceleration of regression or loss of current optimal functional status. Specialized services do not include services to maintain generally independent residents who are able to function with little supervision or in the absence of a continuous specialized services program.

(31) Substantial risk of serious harm to self and/or others--Harm which may be demonstrated either by a person's behavior or by evidence of severe emotional distress and deterioration in his mental condition to the extent that the person cannot remain at liberty, as determined by a court of law.

(32) Terminal illness--As defined for hospice purposes in 42 Code of Federal Regulations §418.3 in the definition of terminally ill.

(33) Ventilator dependent--Reliance upon a respirator or respiratory ventilator as a life support system to assist with breathing.

(b) Preadmission screenings.

(1) Purpose. All new admissions (private pay, Medicare beneficiaries, and Medicaid recipients) must be screened prior to admission to a nursing facility to determine if:

(A) the individual has mental illness (MI), mental retardation (MR), and/or a related condition (RC);

(B) the individual needs nursing facility services, as defined by medical necessity; and

(C) the individual requires specialized services.

(2) Readmissions. The following individuals are not subject to preadmission screenings:

(A) readmissions following hospitalizations;

(B) individuals who:

(i) are admitted to the nursing facility directly from a hospital after receiving acute inpatient care at the hospital;

(ii) require nursing facility services for the condition for which the individual received care in the hospital; and

(iii) have been certified by their attending physician prior to admission to the nursing facility that they are likely to require less than 30 days of nursing facility services;

(C) individuals who have a terminal illness as defined for hospice purposes in 42 Code of Federal Regulations §418.3, in the definition of terminally ill; and

(D) residents who:

(i) transfer from their current nursing facility residence to a new nursing facility residence;
(ii) have not had any interruption in continuous nursing facility residence other than for acute care hospitalization; and

(iii) have not had any change in their mental condition. For residents who transfer from one nursing facility to another, the transferring nursing facility is responsible for ensuring copies of the most recent PASARR assessment accompany the transferring resident.

(3) Level I Identification Screening. Individuals who are suspected of having mental illness, mental retardation, or a related condition (MI/MR/RC) are identified through the medical necessity screening process.

(A) Medical staff document for the presence of MI if the individual meets the following criteria:

(i) has a diagnosis of MI (excluding a primary diagnosis of Alzheimer's disease or dementia);

(ii) has a level of impairment that results in functional limitations in major life activities within the past three to six months in the areas of interpersonal functioning, concentration, persistence, pace and/or adaptation to change; and

(iii) within the last two years, due to the mental disorder, has had psychiatric treatment more intensive than outpatient care more than once and/or experienced an episode of significant disruption to the normal living situation, for which supportive services were required to maintain functioning at home, or in a residential treatment environment, or which resulted in intervention by housing or law enforcement officials.

(B) Medical staff document for the presence of MR and/or RC if the individual:

(i) has a diagnosis of MR and/or RC;

(ii) has any history of MR and/or RC identified in the past; or

(iii) presents any evidence (cognitive or behavioral functioning) that may indicate the presence of MR and/or a RC.

(C) Identification of MI, MR, or RC requires that an individual receive a Level II assessment prior to admission to a nursing facility.

(D) An individual, who has medical necessity, may be immediately admitted to or continue residing in a nursing facility if:

(i) MI, MR, or RC was substantiated in writing;

(ii) an individual is in the nursing facility for convalescent care;

(iii) an individual is comatose, functioning at the brain stem level, ventilator dependent, terminally ill, or has a serious medical condition such as chronic obstructive pulmonary disease, anencephaly, Parkinson's disease, Huntington's disease, amyotrophic lateral sclerosis, and congestive heart failure which result in an impairment so severe that the individual could not be expected to benefit from specialized services;

(iv) an individual has a primary diagnosis of dementia and is not MR and/or RC;
(v) an individual has Alzheimer's disease and no other diagnosis of MR and/or RC;

(vi) an individual is determined by DADS or its designee during the Level II Assessment process not to have MI/MR/RC.

(4) Level II--PASARR assessment. DADS or its designee assesses the need for nursing facility and specialized services.

(A) The assessment process consists of a:

(i) PASARR preadmission assessment; and

(ii) Level II--PASARR assessment.

(B) Depending on the mental and/or physical condition, an assessment is conducted by one or more of the following:

(i) a registered nurse who is a qualified mental health professional;

(ii) a registered nurse who is a qualified mental retardation professional; and

(iii) a psychologist who is a qualified mental retardation professional with at least a Master's degree; and

(iv) other qualified mental health professionals.

(C) It is the responsibility of the nursing facility to submit the required PASARR assessment to DADS or its designee and request screening of any resident suspected of having MI, MR, or RC.

(c) Change in condition.

(1) The nursing facility will promptly notify DADS or its designee after a significant change in the physical or mental condition of a resident that relates to the MI, MR, or RC diagnosis.

(2) DADS or its designee conducts a review, as described in subsection (b)(4) of this section, and makes a determination, as described in subsection (d) of this section.

(3) DADS or its designee must evaluate and contact the attending physician when there is a question regarding
a resident's capacity to understand and meaningfully participate in the decisions regarding his eligibility to remain in the nursing facility, be alternately placed, receive specialized services, and/or initiate appeals.

(A) A surrogate decision maker will be assigned by the attending physician if there is a question regarding capacity and the resident meets the criteria in the Consent to Medical Treatment Act, Health and Safety Code, Chapter 313, as referenced in §19.420(a)(3) of this chapter (relating to Documentation for the Delegation of Long-Term Care Resident's Rights).

(B) A resident will be referred to probate or county court for the assignment of a legal guardian if:

(i) no surrogate decision maker is available; or

(ii) there is a question regarding capacity, but the resident does not meet the criteria for a surrogate decision maker under §19.420(a)(3) of this chapter.

(d) Determination process.

(1) The assessment data is analyzed by a qualified mental health and/or mental retardation professional in order to determine whether:

(A) Nursing facility services are needed, as described in §19.2401 of this chapter (relating to General Qualifications for Medical Necessity Determinations).

(B) An individual requires specialized services for mental illness. The presence of verbalizations or behaviors which indicate a person may pose a substantial risk of serious harm to self or others is evidence that the person requires specialized services.

(C) An individual requires specialized services for mental retardation or a related condition. A response by a person to the environment is evidence that the person requires specialized services.

(2) One of the following determinations is made:

(A) Nursing facility services are needed, but specialized services are not needed. Those individuals may be admitted to or continue residing in a nursing facility.

(B) Nursing facility services are needed and specialized services are needed. Those individuals may be admitted to or continue residing in a nursing facility and receive specialized services within the facility.

(C) Nursing facility services are not needed but specialized services are needed. Those individuals may not be admitted to or continue residing in a nursing facility except as described in paragraph (3) of this subsection. Those individuals who are current nursing facility residents must be alternately placed as described in subsection (e) of this section.

(D) Nursing facility services are not needed and specialized services are not needed. Those individuals may not be admitted to or continue residing in a nursing facility. Those individuals who are current nursing facility residents must be alternately placed, according to discharge procedures stated under §19.502 of this chapter (relating to Transfer and Discharge in Medicaid-certified Facilities).
(3) If a nursing facility resident has 30 or more months of continuous residence in a nursing facility preceding the PASARR determination, the resident may choose to remain and receive specialized services in the nursing facility, or seek alternate placement.

(4) If during the determination process DADS or its designee ascertains that a person does not have MI/MR/RC, the PASARR determination process is discontinued and the individual may be admitted to the nursing facility.

(5) DADS or its designee notifies all individuals and their legal representative or surrogate decision maker (SDM) of the results of their PASARR determination through a letter sent to them, the nursing facility administrator, the attending physician, the local mental retardation authority (MRA) or local mental health authority (MHA) as applicable, the Office of the State Long-Term Care Ombudsman, and Texas Health and Human Services Commission (HHSC) Medicaid eligibility staff. Individuals who have undergone a preadmission screening or change in condition are notified within 10 calendar days of the determination.

(6) Any individual, or his legal representative or responsible party or SDM, not in agreement with the PASARR determination may file an appeal with HHSC to receive a fair hearing according to 1 TAC Chapter 357.

(A) If the hearing officer reverses DADS' or its designee's determination regarding nursing facility admission, the individual seeking entry into the nursing facility may be admitted immediately; and as long as the individual meets all other eligibility requirements, the facility may receive vendor payments. Current residents who have met all eligibility criteria may continue to reside in the facility and receive Medicaid reimbursement retroactive to the date when medical and financial eligibility were in effect.

(B) If the hearing officer sustains DADS' or its designee's determination regarding nursing facility admission, the individual seeking entry into the nursing facility may not enter the facility and may not be Medicaid-certified for nursing facility placement. Current residents who have met all eligibility criteria may be alternately placed.

(e) Specialized services and alternate placement.

(1) DADS requests the local MRA to provide service coordination, case management, specialized services, and alternate placement services for persons with mental retardation determined by DADS or its designee to require specialized services and/or request alternate placement. The Department of State Health Services requests the local MHA to provide service coordination, case management, specialized services, and alternate placement services for persons with mental illness determined to require specialized services, alternate placement, or both.

(2) A service coordinator must be assigned for those residents who require specialized services and/or request alternate placement.

(3) DADS provides specialized rehabilitative services, as stated under §19.1303(a) of this chapter (relating to Specialized Services in Medicaid-certified Facilities).

(4) An interdisciplinary team is constituted by the physician, mental health/mental retardation professional, Director of Nurses, or other professionals as appropriate, the resident and legal representative, responsible party or SDM to develop a plan for specialized services and/or alternate placement.
additional services required for specialized services that are not already being provided by the nursing facility and covered in the nursing facility daily vendor rate.

(5) The service coordinator must provide a monthly written report to the primary or attending physician and to the nursing facility regarding the delivery of specialized services and alternate placement activities. The report will be retained in the resident's clinical record.

(6) The nursing facility must allow Office of the State Long-Term Care Ombudsman staff or representatives from Advocacy, Inc., to counsel and inform affected residents of their rights and options under PASARR.

(7) Specialized services and nursing facility services must be coordinated and integrated for maximum benefit to the resident. A nursing facility must allow for the MRA or MHA, as applicable, or a subcontracted provider to provide specialized services within the facility. If a nursing facility accepts individuals or has individuals who require specialized services for their mental condition, it must establish and maintain a written cooperative agreement with the local MRA or MHA that includes:

(A) general responsibilities of the facility and the provider for delivering the appropriate and mutually supportive services to those residents requiring specialized services for their MI/MR/RC;

(B) a provision allowing the MRA staff or MHA staff to access the resident's clinical record and assessment information to avoid unnecessary duplication of services, with appropriate consent of the eligible resident, legal representative, responsible party or SDM;

(C) a provision allowing the MRA staff or MHA staff an opportunity to participate in or provide information for the facility's admission, programmatic, and discharge-planning meetings when the specialized services needs of an eligible resident are being considered; and

(D) a provision allowing the nursing facility staff to participate in or provide information to the service coordinator during each resident's specialized services planning.

(8) The service coordinator must provide and the nursing facility must maintain, as a separate document in the resident's record, a copy of the original Individual Specialized Services Plan developed by the interdisciplinary team, and any subsequent changes.

(9) The service coordinator must provide to the facility and the facility must document in the comprehensive care plan the following information from the specialized services plan, the designated provider, the service coordinator, other written report, and documented telephone contacts:

(A) efforts to resolve the differences between the specialized services plan and the comprehensive care plan;

(B) specialized services objectives;

(C) the resident's adjustment to the specialized services program; and

(D) changes and modification to the plan.

(10) The facility must ensure that all residents who may benefit from specialized services are identified.
(11) If a resident requires specialized rehabilitation services, the facility must cooperate in obtaining the screening or evaluation.

(12) For those residents who have been determined to be appropriately placed in a nursing facility and to need specialized services and who desire alternate placement, the following alternate placement activities occur:

(A) The MRA or MHA, as applicable, shall locate alternate placement in consultation with the resident or his legal representative.

(B) The resident, his legal representative, or SDM must approve the alternate placement.

(C) If the resident, the legal representative, or SDM refuse all alternate placement options, the resident may remain in the nursing facility and receive specialized services there until an acceptable option is found.

(13) For those residents who have been determined to not need nursing facility services and to need specialized services and who have 30 continuous months of nursing facility residence, a choice will be offered to either seek alternate placement or remain in the nursing facility. If the resident, legal representative, or SDM chooses alternate placement, the following alternate placement activities occur:

(A) The MRA or MHA, as applicable, shall locate alternate placement in consultation with the resident, his legal representative, or SDM.

(B) The resident, his legal representative, or SDM must approve the alternate placement.

(C) Until the resident, his legal representative, or SDM approves an alternate placement, the resident may remain in the nursing facility and receive specialized services.

(14) For those residents determined not to need nursing facility services and to need specialized services but who do not have 30 months continuous residence, the resident will be discharged according to procedures stated under §19.502 of this chapter.

(f) Limitations on provider charges. Nursing facilities that admit or retain residents with a diagnosis of mental illness, mental retardation, or a related condition who have not been screened by DADS or its designee or that admit or retain residents who do not need nursing facility services and who require specialized services will not be reimbursed for that resident, as described in §19.2608 of this chapter (relating to Limitations on Provider Charges).

(g) Discharge planning. Nursing facilities must provide discharge planning services to all residents who are to be alternately placed as described in this section and provide residents those rights described in §19.502 of this chapter.

Source Note: The provisions of this §19.2500 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective December 7, 1995, 20 TexReg 9900; amended to be effective August 1, 1997, 22 TexReg 6871; amended to be effective August 1, 2000, 25 TexReg 6779; amended to be effective September 3, 2008, 33 TexReg 7264
Vendor Payment (Items and Services Included)

(a) A facility provides, under the terms of the contract, for the total medical, nursing, and psychosocial needs of each recipient.

(b) The daily rate is compatible with reasonable charges consistent with efficiency, economy, and quality of total care. The facility must ensure that care meets the health needs and promotes the maximum well-being of recipients. The following items and services are included in the payment rate made to the facility by the Department of Aging and Disability Services (DADS) and, therefore, the facility must provide:

1. nursing care;
2. social services;
3. regular, special, and supplemental diets, including tube feedings;
4. nonlegend drugs, with the exception of insulin, and alcoholic beverages unless prescribed for medicinal purposes. Alcoholic beverages:
   A. prescribed for medicinal purposes must include the dosage and frequency of the alcohol; and
   B. not prescribed for medicinal purposes are at the expense of the recipient or family;
5. for a recipient who is not eligible for Medicare Part D benefits, legend drugs that are not covered by the Medicaid Vendor Drug Program;
6. for a recipient who is eligible for Medicare Part D benefits, legend drugs in a category that is not covered by Medicare Part D and that are not covered by the Medicaid Vendor Drug Program;
7. regular laundry services, except dry cleaning;
8. medical accessories, such as canulas, tubes, masks, catheters, ostomy bags and supplies, IV fluids, IV equipment, and equipment that can be used by more than one person, such as wheelchairs, adjustable chairs, crutches, canes, mattresses, hospital-type beds, enteral pumps, trapeze bars, walkers, and oxygen equipment, such as tanks, concentrators, tubing, masks, valves, and regulators.
   A. Facilities are required to maintain, in good repair, equipment necessary to meet the needs of the recipient.
   B. If a recipient desires equipment for exclusive use, its purchase is the responsibility of the recipient:
(i) Only the recipient can use the equipment, and it must be identified as the personal property of the recipient.

(ii) Upon discharge from the facility, the recipient retains the equipment he purchased. If the recipient dies, the purchased equipment must be transferred to the estate. If it is donated or sold to the facility by the recipient or the estate, the transaction must be documented. (See §19.416 of this title (relating to Personal Property)).

(C) If a recipient owns a piece of equipment that is medically necessary, the facility must maintain and repair the equipment.

(D) When Part B Medicare benefits are accessed to pay for equipment and accessories, the recipient or family may not be charged by the facility or supply company for any portion of these items;

(9) medical supplies, including, but not limited to tongue depressors, swabs, band-aids, cotton balls, and alcohol; and

(10) basic personal hygiene items and services to meet the needs of the residents (See §19.405(h) of this title (relating to Additional Requirements for Trust Funds in Medicaid-Certified Facilities) for a list of such items and services). The specific type or brand of personal hygiene items used by the facility must be disclosed to the recipient; then, if a recipient prefers to use a specific type or brand of a personal hygiene item(s) rather than the item(s) furnished by the facility, he may use his personal funds to purchase the item(s).

(A) Before purchasing or charging for the preferred item(s), the facility must secure written authorization from the recipient or family indicating his desired preference, the date, and signature of the person requesting the preferred item(s). The signature may not be that of an employee of the facility.

(B) If the recipient's personal funds are used to purchase an item(s), the item(s) is for his sole use.

(C) When the facility purchases personal hygiene item(s) with the recipient's personal funds, the facility must ensure that the item(s) is in an individual container or package that is labeled with the recipient's name. The facility is not held responsible for labeling personal hygiene items brought into the facility and not reported to the management.

(c) Facilities are not required to provide any particular brand of non-legend drug, medical accessory, equipment, or supply, but only those items necessary to ensure appropriate recipient care.

(1) Unless the physician orders a specific type or brand, the facility may choose the type or brand.

(2) If the recipient or family prefers a specific type or brand of item rather than the one furnished by the facility, the recipient, responsible party, or family may be billed for the item, or the recipient's personal funds may be used to purchase the item, or both.

(3) Before purchasing or charging for the preferred item, the facility must secure written authorization from the recipient or family indicating his desired preference, the date, and signature of the person requesting the preferred item. The signature may not be that of an employee of the facility.

(d) If a resident has requested and freely chosen to participate in an activity, or to have an item or service provided that is not included, or is different than that provided, in the daily vendor rate, then the resident may be
charged for the activity, item, or service.

(1) When documentation is present that supports the above criteria, and that is required by §19.405(d)(5) of this title, the amount may be paid from the resident's trust fund.

(2) When the facility acts as a collection agent for any item, service, or activity not included in the daily rate, the facility must be able to provide documentation that clearly indicates that any charges made to the recipient or his trust fund are pass-through costs only. The facility may not charge any fees, including handling fees, for these types of transactions.

(e) Except as described in paragraphs (1) and (2) of this subsection, DADS makes vendor payments to Nursing Facilities for the day a recipient enters a nursing facility, but not for the day a recipient leaves a facility. The two exceptions are as follows.

(1) If entrance and departure are on the same day, and the recipient does not enter another Title XIX facility on that day, DADS pays for the entire day.

(2) If departure is because of the recipient's death and the deceased recipient is not sent to another Title XIX facility for legal procedures necessary upon the death of the recipient, DADS pays for the entire day.

(f) Vendor payments are made to Medicaid Nursing Facilities that comply with the PASARR requirements.

Source Note: The provisions of this §19.2601 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective August 1, 2000, 25 TexReg 6779; amended to be effective December 1, 2000, 25 TexReg 11665; amended to be effective January 1, 2006, 30 TexReg 7890.
(a) The Texas Department of Human Services (DHS) does not make vendor payments when a Title XIX recipient is absent from the facility because of:

1. therapeutic home visits that extend beyond three days; or

2. hospital inpatient services. However, DHS makes vendor payments for periods when a recipient is a hospital outpatient subject to the following limitations.

   (A) DHS makes vendor payments when a Title XIX recipient is absent from the nursing facility past midnight for outpatient hospital services, including services resulting from hospital outpatient observation. In these cases the facility must document in the clinical record that the recipient was not admitted as an inpatient in the hospital.

   (B) If the recipient is admitted to the hospital for inpatient services anytime during a hospital outpatient observation period, a patient transaction notice showing discharge must be submitted effective the date the recipient left the nursing facility.

(b) The facility may enter into a written agreement with the recipient or responsible party to reserve a bed, according to the specifications of §19.503 of this title (relating to Notice of Bed-hold Policy and Readmission in Medicaid-Certified Facilities).

(c) The facility may charge for transportation beyond normal transportation as defined in §19.2320 of this title (relating to Medical Transportation).

(d) The billing of flu shots to recipients by the nursing facility is not allowed.

(e) A facility must bill for charges not covered by Medicaid at least once a month. Each bill must itemize all extra charges by general category.

Source Note: The provisions of this §19.2602 adopted to be effective May 1, 1995, 20 TexReg 2393.
(a) The facility must have written policies and procedures governing recipient therapeutic home visits away from the facility for the purpose of visiting with relatives and friends.

(b) The following conditions must be met for the facility to receive vendor payment:

(1) the recipient's plan of care provides for physician-authorized therapeutic visits;

(2) the facility must provide equipment and supplies necessary to meet the needs of the recipient, including, but not limited to, medication and oxygen and supplies for its administration;

(3) if a visit exceeds three days, the facility submits a discharge form effective the first day. Days are defined as 24-hour periods extending from midnight to midnight. In determining days of absence from a facility, the first day is the first 24-hour period beginning at midnight after the recipient's departure. Situations that require a discharge form effective the first day include:

   (A) alternate care living arrangements, including at home;

   (B) transfer or discharge to other medical care or living arrangements covered under Title XIX; and

   (C) therapeutic visits that are over three days (one night must be spent in the facility between therapeutic home visits if vendor payment is to be made);

(4) the facility must maintain a record of each therapeutic visit away from the facility. Verification that therapeutic visits took place and were documented is a part of the audit procedures during the DHS audit of the facility. DHS does not pay for therapeutic visits which were not documented.

(c) Before a resident goes on therapeutic leave, the facility must provide written notification to the recipient, and, if known, a responsible party, or family or legal representative, regarding the three-day time limit for a home visit, as specified in subsection (b)(3) of this section.

Source Note: The provisions of this §19.2603 adopted to be effective May 1, 1995, 20 TexReg 2393.
Vendor Payment Information

(a) Vendor payment will be made based upon the nursing facility administrator’s or the administrative designee’s approval of the Nursing Care Statement.

(b) Vendor payment will be made at periodic intervals but not less than once per month for services rendered during the previous billing period.

(c) The vendor payment for an entire month will be in accordance with the number of calendar days in the month.

(d) Vendor payment for time periods of less than an entire calendar month shall be made in accordance with the number of days care was provided beginning with the effective date on the Notification of Recipient Medical Necessity Determination and/or Vendor Payment Plan.

(e) Days are defined as 24-hour periods extending from midnight to midnight. Payment is computed in terms of whole days, even though the recipient may have been in a nursing facility only a fractional part of the day of entrance. (See §19.2601(e) of this title (relating to Vendor Payment (Items and Services Included)).

(f) Vendor payment will be made in terms of daily rates.

(g) The recipient must have the status of a certified recipient, must have been determined to be in need of nursing facility care, and must be physically located in a Medicaid-certified bed of a facility at the time the service is rendered in order for the facility to receive payment for the service.

(h) The Texas Department of Human Services (DHS) will owe the facility no interest on payments not made within the time limits provided in these rules, the provider contract, or Chapter 2251 of the Government Code when the delay is the result of a bona fide dispute between DHS and the facility over compliance with the terms and conditions of the Medicaid program or is the result of other rules, laws or contract terms authorizing the withholding or nonpayment.

Source Note: The provisions of this §19.2604 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective August 1, 2000, 25 TexReg 6779
If an applicant is determined to be eligible and in need of nursing facility care, the effective date of vendor coverage is either the date the individual entered the facility, the date of application, or the date the need for nursing facility care was established, whichever date is the latest.

(1) Once the effective date is established, the Texas Department of Human Services (DHS), through the contract agreement with the facility, sets the acceptable rates for services.

(2) If the facility charges the applicant an amount over the recognized monthly rate set by DHS, the difference must be refunded to the recipient or the responsible party.

(3) Private pay individuals living in Medicaid certified nursing facilities, or distinct parts, who do not receive SSI cash benefits may be eligible for "Three months prior" vendor payments. (See §19.2408 of this title (relating to Retroactive Medical Necessity Determinations)).

Source Note: The provisions of this §19.2605 adopted to be effective May 1, 1995, 20 TexReg 2393.
(a) Facilities must abide by Public Law 95-142 related to Medicare/Medicaid antifraud and abuse amendments.

(b) Participation will be limited to providers of services who accept, as payment in full, the amounts paid in accordance with the fee structure approved by the Texas Department of Human Services (DHS).

(c) Providers who have a contract with DHS and who solicit contributions, donations, or gifts from Medicaid recipients or family members will be in noncompliance with federal requirements.

(d) The facility must inform Medicaid recipients and their families that their right to nursing facility services is not contingent upon contributions. The facility must give copies of this notice to the recipient, and either the responsible party or family representative.

(e) If a recipient, family member, guardian, or other interested party does make a free-will contribution, the nursing facility administrator executes a statement for signature by both the contributor and the administrator. It will state that the services provided to any Medicaid recipient in the nursing facility are not predicated upon contributions and that the gifts are free-will contributions.

(f) When a provider accepts federal and/or state funds for items or services delivered which are not reimbursed within the per diem, the facility must document:

1. that the type of item or service is ordered by the physician;

2. that the item or service has not been billed to more than one payor source; and

3. that the recipient actually received the item or service.

Source Note: The provisions of this §19.2606 adopted to be effective May 1, 1995, 20 TexReg 2393.
A felony conviction with a fine of not more than $25,000 or imprisonment for not more than five years or both can be imposed on anyone in the facility who knowingly and willfully:

(1) accepts, from the recipient, money or other considerations in excess of rates established by the state for services provided under a state plan approved under Title XIX;

(2) charges, solicits, accepts, or receives any gifts, money, donation, or other consideration in addition to amounts required to be paid under a state plan approved under Title XIX (other than charitable donations from an organization or a person unrelated to the recipient) as a precondition for admitting or keeping a recipient in the nursing facility; or

(3) accepts reimbursement from more than one source (including per diem reimbursement) for the same item or service.

Source Note: The provisions of this §19.2607 adopted to be effective May 1, 1995, 20 TexReg 2393.
A provider of Medicaid (Title XIX) services may neither charge nor take other recourse against Medicaid applicants or recipients, their family members, or their representatives for any claim denied or reduced by the Texas Department of Human Services (DHS) because of the provider's failure to comply with any DHS rule, regulation, or procedure.

Source Note: The provisions of this §19.2608 adopted to be effective May 1, 1995, 20 TexReg 2393.
To receive payment for a service, a nursing facility must submit a complete and accurate claim to the state Medicaid claims administrator so that it is received within 12 months after the date of service. In this section, the date of service is the last day of the month in which the service was provided.

(1) All payments are subject to availability of funds as provided by law.

(2) A nursing facility must submit claims and adjustments rejected or denied to the state Medicaid claims administrator within 12 months after the date of service. DADS may pay for claims and adjustments rejected or denied during the 12-month period through no fault of the nursing facility.

(3) If a recipient's Medicaid eligibility is established after services are provided to the recipient, the nursing facility must submit the claim for service to the state Medicaid claims administrator within 12 months after the date eligibility is established.

(4) A nursing facility may resubmit a claim after the 12-month period in the case of state-generated retroactive payments.

(5) The provisions of §19.2413 of this chapter (relating to Determination of Payment Rate Based on the MDS Assessment Submission) apply to this section.

(6) DADS recoups any inadvertent payments made to a facility.

Source Note: The provisions of this §19.2609 adopted to be effective July 1, 1999, 24 TexReg 4833; amended to be effective November 1, 2002, 27 TexReg 9387; amended to be effective September 3, 2008, 33 TexReg 7264
When the Texas Department of Human Services (DHS) receives valid Medicare claims, DHS pays a portion of the Medicare Part A skilled nursing facility (SNF) deductible and coinsurance. When Medicare changes its daily interim payment, DHS adjusts the Medicaid payment on the Part A SNF coinsurance amount if necessary. The adjustment is effective on the first day of the month following the Medicare change.

Source Note: The provisions of this §19.2610 adopted to be effective May 1, 1995, 20 TexReg 2393.
(a) In this section, retroactive vendor payment is payment DADS makes retroactively to a nursing facility for services the nursing facility provided to an individual who was eligible for, but had not yet applied for, Medicaid. A nursing facility is eligible for up to three months retroactive vendor payment for services it provided, if:

(1) the individual resided in a Medicaid-certified nursing facility, or a distinct part, during the time services were provided;

(2) the individual did not receive Supplemental Security Income cash benefits;

(3) the individual met Medicaid financial eligibility requirements;

(4) the state Medicaid claims administrator has a current MDS assessment for the individual that the facility submitted in compliance with the federal MDS submission requirements; and

(5) the nursing facility met physician certification and plan of care requirements during the time services were provided.

(b) After receipt of an application for Medicaid, Texas Health and Human Services Commission (HHSC) Medicaid eligibility staff notify the applicant whether the applicant meets financial eligibility. The state Medicaid claims administrator uses the applicant's current MDS assessment to make the MN determination and determine the effective date of the MN determination. For the purpose of establishing three months prior eligibility, the effective date of the MN determination for a new recipient is the first day of the month in which the recipient qualified for MN.

(c) If the requirements in subsection (a) of this section are met, DADS makes a retroactive vendor payment based on the recipient's calculated RUG rate for the period covered by the retroactive vendor payment.

(d) DADS or HHSC may verify that the recipient's record includes the required physician's certification, recertification, and plans of care, and that the plans were reviewed as required during the applicable periods.

(e) If a recipient paid the nursing facility for services for which the facility later receives retroactive vendor payment, the facility must reimburse the recipient the full amount the recipient paid, beginning with the effective date of Medicaid eligibility, minus any applied income or co-payment as determined by HHSC Medicaid eligibility staff.

Source Note: The provisions of this §19.2611 adopted to be September 3, 2008, 33 TexReg 7264
For services delivered after September 1, 1999, the Texas Department of Human Services (DHS) may make Quality Incentive payments to facilities according to reimbursement rules developed by the Health and Human Services Commission. DHS will determine the qualifying facilities.

(1) The Texas Board of Human Services will review the adopted plan at least biennially.

(2) Incentive payments will be based on:

   (A) specific resident care domains selected from the Center for Health Systems Research and Analysis (CHSRA) Quality Indicators; and

   (B) regulatory compliance.

(3) The incentive payment is in addition to the daily vendor rate paid to the provider.

Source Note: The provisions of this §19.2612 adopted to be effective January 1, 2000, 24 TexReg 10578
(a) A specialized augmentative communication device system (ACD), also referred to as a speech-generating device system, is reimbursable if purchased by a facility for a Medicaid recipient and all criteria defined in this section are met. A physician and a licensed speech therapist must determine a recipient needs the ACD, and the facility must obtain DADS' approval of the request for reimbursement.

(b) A facility must request and receive prior authorization from DADS before purchasing the ACD. The request for prior authorization must include:

   (1) an evaluation and recommendation from a licensed speech therapist to purchase the ACD;

   (2) an attestation from the recipient's attending physician that the ACD is medically necessary for the recipient to maximize his functional communication within the facility's environment; and

   (3) a minimum of two bids for the ACD or a request for an exception to the two-bid minimum if the recommended ACD is only available through one vendor.

(c) The evaluation from the licensed speech therapist must include:

   (1) a description of how the ACD will specifically meet the need of the recipient;

   (2) detailed instructions for training on the use of the ACD for the recipient, facility staff, and family (if applicable);

   (3) a diagnosis relevant to the need for the ACD; and

   (4) the specific ACD being recommended.

(d) If an ACD costs more than $10,000, DADS will facilitate an independent speech language review, at DADS' expense, to determine necessity for the ACD.

(e) After receiving prior authorization from DADS, the facility must purchase the ACD.

(f) To obtain reimbursement from DADS, a facility must submit to DADS the receipt for payment for the ACD and a copy of the approved prior authorization.

   (1) A facility must fully explore and use other funding sources to pay for an ACD before submitting the request for reimbursement to DADS. If another funding source will pay for part of the ACD expense, the facility may request reimbursement for the balance if the requirements in subsections (b) and (c) of this section are met. If
another funding source is available, DADS reimburses only up to the remaining balance after other sources are fully utilized.

(2) A facility must submit the request for reimbursement within one year after the date of purchase.

(3) DADS reimburses the amount of the authorized bid or the remaining balance after all other sources are fully utilized.

(g) If DADS denies a request for reimbursement because the facility failed to obtain prior authorization or submit the necessary documentation for the ACD, the facility is responsible for the cost of the ACD.

(h) If DADS denies a prior authorization request, the recipient may request a Medicaid fair hearing in accordance with 1 TAC Chapter 357, Subchapter A.

(i) Only the recipient can use the ACD, and it must be identified as the personal property of the recipient.

(1) Upon discharge from the facility, the recipient retains the ACD. If the recipient dies, the ACD must be transferred to the recipient's estate. If it is donated or sold to the facility by the recipient or the recipient's estate, the transaction must be documented. (See §19.416 of this title (relating to Personal Property)).

(2) The facility is responsible for the repair and maintenance of the ACD while the recipient resides in the facility.

Source Note: The provisions of this §19.2613 adopted to be effective July 1, 2007, 32 TexReg 3857
(a) Customized power wheelchairs (CPWCs) are a service in the nursing facility Medicaid program for Medicaid-eligible nursing facility residents when medically necessary and prior authorized by the Health and Human Services Commission (HHSC) or its designee.

(b) A CPWC is a wheelchair that consists of a power mobility base and customized seating system.
   
   (1) The power mobility base may include programmable electronics and may utilize alternate input devices.

   (2) The wheelchair must be medically necessary, adapted, and fabricated to meet the individualized needs of the resident, and intended for the exclusive and ongoing use of the resident.

   (3) Components of the customized seating system must be in part or entirely usable only by the resident for whom the power wheelchair is adapted and fabricated.

(c) When requested by a resident or the resident's legal representative, the nursing facility must procure an evaluation for a CPWC from a licensed physical or occupational therapist. If the evaluation recommends a CPWC, the nursing facility must submit all required forms to HHSC or its designee for prior authorization.

(d) After receiving prior authorization from HHSC or its designee, the facility must purchase the CPWC.

(e) To be eligible for reimbursement, the nursing facility must request and receive prior authorization from HHSC or its designee before purchasing a CPWC. The prior authorization request must include:

   (1) a completed CPWC order form;

   (2) an occupational or physical therapy evaluation of the resident;

   (3) a statement signed by the resident's attending physician that the CPWC is medically necessary; and

   (4) a detailed breakdown of proposed CPWC specifications from the customized power wheelchair supplier.

(f) To be eligible for reimbursement for a CPWC, the nursing facility must obtain an evaluation of the resident by an occupational or physical therapist licensed in the state of Texas prior to purchase of the CPWC. The occupational or physical therapy evaluation must include:

   (1) a diagnosis relevant to the need for a CPWC;

   (2) the specific CPWC and adaptations being recommended;
(3) a description of how the CPWC will meet the specific needs of the resident;

(4) a description of specific training needs for use of this device including training needs of the resident, nursing facility staff, and family (when applicable); and

(5) written documentation from the therapist indicating that the resident is physically and cognitively capable of independently managing a power wheelchair.

(g) Payment for physical or occupational therapy evaluations may be obtained for eligible residents in the same manner as payment for physical or occupational therapy evaluations is obtained in the Specialized and Rehabilitative Services programs, as described in §19.1306 of this chapter (relating to Payment for Specialized and Rehabilitative Services).

(h) Following a review of the prior authorization request by HHSC or its designee, the nursing facility and resident will receive a written approval or denial of the request. If the request is approved, the nursing facility will promptly make arrangements to purchase the CPWC. If the request is denied, HHSC or its designee will send a notice of denial to the nursing facility resident informing the resident of the right to request a Medicaid fair hearing in accordance with 1 TAC Chapter 357, Subchapter A.

(i) A facility must submit the request for reimbursement to DADS within one year after the date of purchase of the CPWC. If DADS denies a request for reimbursement because the facility failed to obtain prior authorization or submit the necessary documentation for the CPWC to HHSC or its designee, the facility is responsible for the cost of the CPWC and may not charge the cost to the resident or family.

(j) A facility must fully explore and use other funding sources to pay for a CPWC before submitting the request for reimbursement to DADS. If another funding source will pay for part of the CPWC expense, the facility may request reimbursement for the balance if the requirements in subsections (d) - (f) of this section are met. If another funding source is available, DADS reimburses only up to the remaining balance after other sources are fully utilized.

(k) Only the resident can use the CPWC, and it must be identified as the personal property of the resident.

(l) The resident's comprehensive care plan must document that the CPWC is medically necessary.

(m) Upon discharge from the facility, the resident retains the CPWC. If the resident dies, the CPWC becomes property of the resident's estate. As part of the estate, the CPWC is subject to all applicable Medicaid Estate Recovery Program (MERP) requirements, as detailed in 1 TAC Chapter 373. If the CPWC is donated or sold to the facility by the resident or executor of the resident's estate, the transaction must be documented in accordance with §19.416 of this chapter (relating to Personal Property).

(n) As required by §19.2601(b)(8)(C) of this chapter (relating to Vendor Payment (Items and Services Included)), the nursing facility is required to maintain and repair all medically necessary equipment for its residents, including CPWCs obtained under this section.

(o) Requests for replacement of a CPWC must be submitted in the same manner as the original prior authorization of the CPWC outlined in this section. A replacement CPWC may be requested no earlier than five years after the original date of purchase, unless the request includes an order from the prescribing physician familiar with the resident and an assessment by a physician or a licensed occupational or physical therapist with
documentation supporting why the current CPWC no longer meets the resident's needs. DADS does not authorize replacement in situations where the CPWC has been abused or neglected.

Source Note: The provisions of this §19.2614 adopted to be effective May 1, 2008, 33 TexReg 3301
A nursing facility must electronically submit to the state Medicaid claims administrator a resident transaction notice within 72 hours after a recipient's admission or discharge from the Medicaid nursing facility vendor payment system. The nursing facility administrator must sign the resident transaction notice.

Source Note: The provisions of this §19.2615 adopted to be September 3, 2008, 33 TexReg 7264
TITLE 40
SOCIAL SERVICES AND ASSISTANCE
PART 1
DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 18
NURSING FACILITY ADMINISTRATORS
SUBCHAPTER A GENERAL INFORMATION

Rules

§18.1 Purpose
§18.2 Definitions
§18.3 Nursing Facility Administrators Advisory Committee
§18.4 Schedule of Fees

RULE §18.1 Purpose
This chapter implements the provisions of the Texas Health and Safety Code, Chapter 242, Subchapter I, Nursing Facility Administration, for the purpose of licensing nursing facility administrators in the state of Texas.

Source Note: The provisions of this §18.1 adopted to be effective June 1, 2004, 29 TexReg 4233

RULE §18.2 Definitions
The words and terms in this chapter have the following meanings, unless the context clearly indicates otherwise:

(1) Abuse--Any act, failure to act, or incitement to act done willfully, knowingly, or recklessly through words or physical action that causes or could cause mental or physical injury or harm or death to a nursing facility resident. Abuse includes verbal, sexual, mental, psychological, or physical abuse; corporal punishment; involuntary seclusion; or any other actions within this definition.

(2) Administrative law judge (ALJ)--A State Office of Administrative Hearings (SOAH) attorney who conducts formal hearings for the Department of Aging and Disability Services.

(3) Administrator--A licensed nursing facility administrator.

(4) Administrator-in-training (AIT)--A person undergoing a minimum 1,000-hour internship under a DADS-approved certified preceptor.

(5) Administrator of Record--The individual who is listed as the facility's licensed nursing facility administrator with the DADS' Licensing and Credentialing Section.

(6) Applicant--A person applying for a Texas nursing facility administrator license.

(7) Application--The notarized DADS application for licensure as a nursing facility administrator, as well as all required forms, fees, and supporting documentation.

(8) Complaint--An allegation that a licensed nursing facility administrator violated one or more
of the licensure rules or statutory requirements.

(9) DADS--The Department of Aging and Disability Services.

(10) Deficiency--Violation of a federal participation requirement in a nursing facility.

(11) Domains of the NAB--The five categories for education and continuing education of the National Association of Long Term Care Administrator Boards, which are resident care and quality of life; human resources; finance; physical environment and atmosphere; and leadership and management.

(12) Equivalent--A level of achievement that is equal in amount and quality to completion of an educational or training program.

(13) Formal hearing--A hearing held by SOAH to adjudicate a sanction taken by DADS against a licensed nursing facility administrator.

(14) Good standing--The licensure status of a nursing facility administrator who is in compliance with the rules in this chapter and, if applicable, the terms of any sanction imposed by DADS.

(15) Informal review--The opportunity for a licensee to dispute the allegations made by DADS. The informal review includes the opportunity to show compliance.

(16) Internship--The 1,000-hour training period in a nursing facility for an AIT.

(17) License--A nursing facility administrator license or provisional license.

(18) Licensee--A person licensed by DADS as a nursing facility administrator.

(19) Misappropriation of resident property--The deliberate misplacement, exploitation, or wrongful temporary or permanent use of a nursing facility resident's belongings or money without the resident's consent.

(20) NAB--The National Association of Long Term Care Administrator Boards, which is composed of state boards or agencies responsible for the licensure of nursing facility administrators.

(21) NAB examination--The national examination developed by NAB that applicants must pass in combination with the state licensure examination to be issued a license to practice nursing facility administration in Texas.

(22) NCERS--The National Continuing Education Review Service, which is the part of NAB that approves and monitors continuing education activities for nursing facility administrators.

(23) Neglect--A deprivation of life's necessities of food, water, or shelter; or a failure of an individual to provide services, treatment, or care to a nursing facility resident that causes or could cause mental or physical injury, harm, or death to the nursing facility resident.

(24) Nursing facility--An institution or facility licensed by DADS as a nursing home, nursing facility, or skilled nursing facility.

(25) Nursing facility administrator--A person who is licensed to engage in the practice of nursing facility administration, regardless of whether the person has ownership interest in the facility.

(26) Nursing Facility Administrators Advisory Committee (NFAAC)--The nine-member governor-appointed advisory committee that makes recommendations to DADS about the practice and regulation of nursing facility administration.

(27) Opportunity to show compliance--An informal meeting between DADS and a licensee that allows the licensee an opportunity to show compliance with the requirements of law for the retention of the license. The opportunity to show compliance is part of an informal review.

(28) Preceptor--A licensed nursing facility administrator certified by DADS to provide supervision to an AIT.
(29) PES--Professional examination services. The testing agency that administers the NAB and state examinations to applicants seeking licensure as nursing facility administrators.

(30) Referral--A recommendation made by Regulatory Services Division staff to investigate an administrator's compliance with licensure requirements when deficiencies or substandard quality of care deficiencies are found in a nursing facility, as required by Title 42 Code of Federal Regulations.

(31) Regulatory Services Division--The division of DADS responsible for long term care regulation, including determining nursing facility compliance with licensure and certification requirements and licensing nursing facility administrators.

(32) Sanctions--Any adverse licensure actions DADS imposes against a licensee, including letter of reprimand, suspension, revocation, denial of license, and monetary penalties.

(33) Self-study course--A NAB-approved education course that an individual pursues independently to meet continuing education requirements for license renewal.

(34) State examination--The state licensure examination that applicants must pass, in combination with the NAB examination, to be issued a license to practice nursing facility administration in Texas. This examination covers the nursing facility requirements found in Chapter 19 of this title (relating to Nursing Facility Requirements for Licensure and Medicaid Certification).

(35) State of Texas Administrator-In-Training Internship Manual--The DADS program guide used by an AIT and preceptor during the AIT’s internship for nursing facility administrator licensure.

(36) Substandard quality of care--Any deficiency in Resident Behavior and Facility Practices, Quality of Life, or Quality of Care that is immediate jeopardy to nursing facility resident health or safety; or a pattern of widespread actual harm that is not immediate jeopardy; or a widespread potential for more than minimal harm that is not immediate jeopardy, with no actual harm.

(37) Survey--A resident-focused complaint/incident investigation or annual licensure or certification inspection of a nursing facility by DADS.

(38) Traditional business hours--Monday through Friday from 8:00 a.m. until 5:00 p.m.

Source Note: The provisions of this §18.2 adopted to be effective June 1, 2004, 29 TexReg 4233; amended to be effective June 1, 2009, 34 TexReg 2795

(a) The governor-appointed NFAAC advises DADS on:
   (1) the licensing process of nursing facility administrators;
   (2) minimum standards of conduct for the practice of nursing facility administration;
   (3) proposed rule changes;
   (4) complaints and referrals against administrators; and
   (5) sanctions for rule violations.

(b) NFAAC members serve staggered terms of six years.

(c) The nine-member advisory committee is made up of:
   (1) three licensed nursing facility administrators, at least one of whom represents a not-for-profit nursing facility;
   (2) three licensed healthcare professionals with geriatric experience and not employed by a nursing facility, consisting of:
(A) a licensed physician;  
(B) a registered nurse; and  
(C) a licensed social worker; and  
(3) three public members who have working experience with the chronically ill and infirm.

Source Note: The provisions of this §18.3 adopted to be effective June 1, 2004, 29 TexReg 4233; amended to be effective June 1, 2009, 34 TexReg 2795

RULE §18.4 Schedule of Fees

DADS charges the following administrative and licensure fees:

(1) application fee--$100;  
(2) state examination fee--$155;  
(3) state reexamination fee--$155;  
(4) NAB examination fee--$285;  
(5) NAB reexamination fee--$285;  
(6) initial licensure fee--$250;  
(7) renewal fee--$250 every two years when the license is renewed on or before the date the license expires;  
(8) late renewal fees for license renewals made after the license expires:  
(A) $375 for an expired license renewed during the first 90 days after the license expires; and  
(B) $500 for an expired license renewed between 91 and 365 days after the license expires;  
(9) formal inactive status fee--$250;  
(10) reinstatement of licensure fee--$500; and  
(11) duplicate license fee--$25.

Source Note: The provisions of this §18.4 adopted to be effective June 1, 2004, 29 TexReg 4233; amended to be effective June 1, 2009, 34 TexReg 2795

SUBCHAPTER B REQUIREMENTS FOR LICENSURE

RULE §18.11 Academic Requirements

(a) Applicants seeking licensure must meet the following academic requirements:  
(1) have a baccalaureate degree in any subject from a university or health science center accredited by an association recognized by the Texas Higher Education Coordinating Board; and  
(2) complete a minimum of 15 semester credit hours in long term care administration, or its equivalent, that includes courses in the following domains of the NAB:  
(A) resident care and quality of life;  
(B) human resources;  
(C) finance;  
(D) physical environment and atmosphere; and
(E) leadership and management.
(b) DADS accepts foreign university degrees and coursework that is counted as transfer credit by accredited universities recognized by the American Association of Collegiate Registrars and Admissions Officers.

Source Note: The provisions of this §18.11 adopted to be effective June 1, 2004, 29 TexReg 4233; amended to be effective June 1, 2009, 34 TexReg 2795

RULE §18.12 Internship Requirements

An AIT must meet the following requirements:

(1) Before starting the internship, the AIT must provide DADS written notice of:
   (A) the name and license number of the DADS-approved preceptor providing training; and
   (B) the name and address of the nursing facility where the internship will be completed, and
   the administrator's name if the individual is not the preceptor of record.
(2) The internship must be in a nursing facility that has a minimum of 60 beds.
(3) The internship must be a minimum of 1,000 hours of training.
(4) A minimum of 500 of the 1,000 hours must be during traditional business hours.
(5) The AIT can train no more than 40 hours a week.
(6) Upon completing the internship, the AIT must submit to DADS:
   (A) one of the following:
       (i) a complete and notarized AIT Final Report and Preceptor Performance Report; or
       (ii) official transcript from a university accredited by an association recognized by the Texas Higher Education Coordinating Board that reflects completion of the internship; and
   (B) a signed statement from the administrator of record of the nursing facility in which the training occurred verifying the AIT trained at the nursing facility.

Source Note: The provisions of this §18.12 adopted to be effective June 1, 2004, 29 TexReg 4233; amended to be effective June 1, 2009, 34 TexReg 2795

RULE §18.13 Alternate Education, Training, and Experience

(a) Applicants not meeting the academic or internship requirements for licensure in §18.11 of this subchapter (relating to Academic Requirements) and §18.12 of this subchapter (relating to Internship Requirements), are eligible for licensure if they present evidence satisfactory to DADS of the following alternate education and experience:
   (1) a master's degree in health administration, health services administration, health care administration, or nursing, which includes coursework that encompasses the five domains of the NAB, with one year of management experience and completion of a 500-hour internship; or
   (2) a baccalaureate degree in health administration, health services administration, health care administration, or nursing, which includes coursework that encompasses the five domains of the NAB, with three years of management experience and completion of a 500-hour internship.
(b) A minimum of 250 hours of the 500-hour internship referred to in subsection (a) of this
section must be done during traditional business hours.
(c) Management experience is defined as full-time employment as a department head or licensed professional supervising two or more employees in a nursing facility or skilled nursing hospital unit.

Source Note: The provisions of this §18.13 adopted to be effective June 1, 2004, 29 TexReg 4233; amended to be effective June 1, 2009, 34 TexReg 2795

RULE §18.14 Preceptor Requirements

(a) A licensee seeking to sponsor an AIT must:
   (1) be licensed or registered as a nursing facility administrator for a minimum of five years, with the two most recent years in Texas;
   (2) be in good standing;
   (3) have paid a $25 training fee and completed DADS preceptor training to become a certified preceptor; and
   (4) meet the eligibility requirements in the State of Texas AIT Internship Manual.
(b) A preceptor must submit a complete and notarized AIT Performance Report to DADS at the end of the internship.
(c) A preceptor must obtain approval from DADS before sponsoring more than one AIT at the same time.
(d) DADS may consider any imposed sanction against a preceptor as grounds for refusing to allow the preceptor to sponsor an AIT.
(e) DADS may refuse to allow a preceptor to provide training to an AIT if the preceptor did not provide adequate training to previous AITs.
(f) DADS waives 20 of the 40 clock hours of continuing education required for license renewal for a preceptor who sponsors an AIT.
(g) A licensee is qualified to act as a preceptor for two years from the date the licensee completes DADS' preceptor training.
(h) A licensee must remain in good standing in order to act as a preceptor.

Source Note: The provisions of this §18.14 adopted to be effective June 1, 2004, 29 TexReg 4233; amended to be effective June 1, 2009, 34 TexReg 2795

RULE §18.15 Application Requirements

(a) Applicants seeking licensure must submit the following to DADS:
   (1) a complete and notarized Nursing Facility Administrator's Application for Licensure Form;
   (2) $100 application fee;
   (3) a Texas Department of Public Safety (DPS) Texas criminal conviction report and fingerprint card;
   (4) an official transcript reflecting a baccalaureate degree from a university or health science center accredited by an association recognized by the Texas Higher Education Coordinating Board;
(5) if not a part of the transcript reflecting a baccalaureate degree, another transcript reflecting
15 semester credit hours in long term care administration or its equivalent that include the five
domains of the NAB as listed in §18.11 of this subchapter (relating to Academic Requirements),
or alternate education, training and experience listed in §18.13 of this subchapter (relating to
Alternate Education, Training, and Experience); and
(6) proof of completing the minimum applicable internship that meets the internship
requirements in §18.12 of this subchapter (relating to Internship Requirements).
(b) An application is valid for one year from the date the application fee is received.
(c) Applicants not meeting the requirements for licensure and examination within one year after
DADS receives their application must resubmit the following to DADS:
(1) a notarized Nursing Facility Administrator's Application for Licensure form;
(2) $100 application fee; and
(3) a DPS Texas criminal conviction report and fingerprint card.
(d) DADS is not responsible for applications, forms, notices, and correspondence unless they are
received by DADS.
(e) DADS is not responsible for mail it sends to a licensee or applicant if the licensee's or
applicant's current address was not reported in writing to DADS.

Source Note: The provisions of this §18.15 adopted to be effective June 1, 2004, 29 TexReg
4233; amended to be effective June 1, 2009, 34 TexReg 2795

RULE §18.16

Examinations

(a) Applicants seeking licensure as nursing facility administrators from DADS must pass the
following examinations:
(1) state examination on the nursing facility requirements found in Chapter 19 of this title
(relating to Nursing Facility Requirements for Licensure and Medicaid Certification); and
(2) NAB examination.
(b) Applicants register for examination at a designated NAB website by:
(1) submitting an application for approval to test; and
(2) paying the $155 state examination and $285 NAB examination fees on-line.
(c) DADS sends e-mails notifying applicants of their eligibility to take the test.
(d) Applicants must not take any examination without DADS approval.
(e) Applicants complete the on-line state and NAB examinations at PES.
(f) DADS notifies applicants of test scores within two weeks after receiving examination results
from the testing agency.
(g) An applicant who fails an examination and wants to retest must pay the appropriate state or
NAB examination fee stated in subsection (b)(2) of this section.
(h) Applicants failing the state or NAB examination three consecutive times must complete
another minimum 1,000-hour AIT internship before retesting.
(i) Applicants previously licensed as nursing facility administrators by passing the
comprehensive examination and who have an expired licensed for 12 months or longer or
voluntarily surrendered their license must pass the NAB and state examinations to obtain a new
license.
SUBCHAPTER C

LICENSES

RULE §18.31
Initial License

(a) DADS issues a license certificate to applicants who:
   (1) receive passing scores on the state and NAB examinations;
   (2) submit the $250 initial license fee to DADS; and
   (3) meet the requirements of §18.41 of this subchapter (relating to Licensure of Persons with Criminal Backgrounds).
(b) DADS may determine that a criminal conviction or a sanction taken against an applicant in Texas or another state is a basis for pending or denying an initial license.
(c) A license expires two years from the date issued.
(d) Licensees must keep DADS informed of their current home address and employment address. If employed by a nursing facility, a licensee must submit a Data Change Request form to DADS within 30 days after a change of employment.
(e) Licensees who do not notify DADS of a change in address or employment within the required 30 days may be subject to an administrative penalty as listed in §18.57 of this chapter (relating to Schedule of Sanctions).

Source Note: The provisions of this §18.31 adopted to be effective June 1, 2004, 29 TexReg 4233; amended to be effective June 1, 2009, 34 TexReg 2795

RULE §18.32
Provisional License

(a) DADS issues a provisional license to applicants currently licensed or registered as nursing facility administrators in another state who submit the following to DADS:
   (1) complete and notarized Provisional Licensure Questionnaire and Nursing Facility Administrator License Application forms;
   (2) the $100 application fee; and
   (3) proof of the following:
       (A) a license and good standing status in another state with licensing requirements substantially equivalent to the Texas licensure requirements;
       (B) employment for at least two years as an administrator of record of a nursing facility;
       (C) a passing score on the NAB examination; and
       (D) sponsorship by an administrator licensed by DADS and who is in good standing, unless DADS waives sponsorship based on a demonstrated hardship.
(b) A provisional license expires 180 days from the date of issue.
(c) DADS issues a license certificate to a provisional license holder who:
   (1) passes the state examination;
   (2) pays DADS the $250 initial licensure fee; and
   (3) has not had a license revoked in Texas or any other state.

Source Note: The provisions of this §18.32 adopted to be effective June 1, 2004, 29 TexReg 4233; amended to be effective June 1, 2009, 34 TexReg 2795
(d) DADS may determine that a criminal conviction or sanction taken in another state is a basis for pending or denying a provisional license.

**Source Note:** The provisions of this §18.32 adopted to be effective June 1, 2004, 29 TexReg 4233; amended to be effective June 1, 2009, 34 TexReg 2795

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**RULE §18.33 Duplicate License**

DADS replaces lost, damaged, or destroyed license certificates to licensees who submit a notarized Duplicate License Request form and $25 duplicate license fee to DADS.

**Source Note:** The provisions of this §18.33 adopted to be effective June 1, 2004, 29 TexReg 4233; amended to be effective June 1, 2009, 34 TexReg 2795

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**RULE §18.34 License Renewal**

(a) DADS notifies licensees of their license expiration date and renewal requirements at least 31 days before the license expires.
(b) A licensee who does not receive a renewal notice must renew the license before the license expires.
(c) Licensees seeking renewal must submit the following to DADS on or before the date the license expires:
   (1) a complete License Renewal form;
   (2) the $250 renewal fee;
   (3) proof of completion of 40 clock hours of continuing education; and
   (4) a DPS Texas criminal conviction report and fingerprint card.
(d) DADS uses the postmark date to determine if a renewal application is on time. If there is no postmark or the postmark is not legible, DADS uses the date that the Nursing Facility Administrator Licensing Program records the renewal application as received.
(e) DADS issues a two-year license renewal card to eligible licensees who meet the requirements in subsection (c) of this section.
(f) DADS may deny a license renewal according to §18.37 of this subchapter (relating to Denial of License Renewal).

**Source Note:** The provisions of this §18.34 adopted to be effective June 1, 2004, 29 TexReg 4233; amended to be effective June 1, 2009, 34 TexReg 2795

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**RULE §18.35 Continuing Education Requirements for License Renewal**

(a) The 40 clock hours of continuing education required for license renewal must:
(1) be completed during the previous two-year licensure period;
(2) include one or more of the five domains of the NAB listed in §18.11 of this chapter (relating
(3) include at least six clock hours in ethics; and
(4) be:
   (A) approved by the National Continuing Education Review Service;
   (B) a DADS-sponsored event; or
   (C) an upper-division semester credit course taken or taught at a post-secondary institution of higher education accredited by an association recognized by the Texas Higher Education Coordinating Board.

(b) DADS accepts no more than 34 clock hours of NAB-approved self-study courses toward the required 40 clock hours of continuing education.

(c) DADS waives, at a maximum, 20 of the 40 clock hours of continuing education to a licensee who completes one three-semester hour upper-division course taken at a post-secondary institution of higher education.

(d) DADS approves continuing education hours once per licensure renewal period for the same course, seminar, workshop, or program.

(e) DADS waives 20 of the required 40 clock hours of continuing education for preceptors who sponsor an AIT.

(f) DADS may perform an audit of continuing education courses, seminars, or workshops that the licensee has reported by requesting certificates of attendance.

(g) If a licensee is on deployed military duty, the deadline to meet continuing education requirements is extended based on the actual duration of the deployment up to two years.
   (1) A licensee must submit a copy of the military orders to DADS within 60 days of completion of deployed duty.
   (2) If continuing education requirements for licensure renewal are not met by the extension deadline, the licensee must:
      (A) meet the licensure application and examination requirements for an initial license as listed in §18.15 of this chapter (relating to Application Requirements), §18.16 of this chapter (relating to Examinations), and §18.31 of this subchapter (relating to Initial License); or
      (B) prior to the extension deadline, place the license in a formal inactive status in accordance with §18.38 of this subchapter (relating to Inactive Status).

Source Note: The provisions of this §18.35 adopted to be effective June 1, 2004, 29 TexReg 4233; amended to be effective June 1, 2009, 34 TexReg 2795

RULE §18.36 Late Renewals

(a) A person has up to one year after the expiration date of a license to renew the license by:
   (1) completing 40 clock hours of continuing education as listed in §18.35 of this subchapter (relating to Continuing Education Requirements for License Renewal); and
   (2) submitting the following fee to DADS:
      (A) a $375 renewal fee for a license that has been expired for 90 days or less; or
      (B) a $500 renewal fee for a license that has been expired for 91 days to 365 days.

(b) A person whose license has been expired for more than 365 days must meet the licensure and examination requirements for an initial license.

(c) A person must retake the NAB exam if the person last took and passed the NAB exam more
than five years before the application date.
(d) A person who does not renew a license on or before the date the license expires must return
the license to DADS.
(e) A person who fails to renew a license before the expiration date must not practice in the field
of nursing facility administration until the license is renewed.
(f) DADS imposes one or more sanctions listed in §18.57 of this chapter (relating to Schedule of
Sanctions) against a person who practices with an expired license.

**Source Note:** The provisions of this §18.36 adopted to be effective June 1, 2004, 29 TexReg
4233; amended to be effective June 1, 2009, 34 TexReg 2795

**RULE §18.37 Denial of License Renewal**

(a) DADS may deny an application for license renewal based on either of the following:
   (1) a sanction taken against a licensee; or
   (2) a conviction for a crime listed in §18.41 of this subchapter (relating to Licensure of Persons
   with Criminal Backgrounds).
(b) DADS does not renew a license if:
   (1) a person's license was revoked in another jurisdiction;
   (2) the licensee defaulted on a guaranteed student loan as addressed in the Education Code,
   §57.491; or
   (3) the licensee did not comply with the terms of a sanction or settlement agreement with
   DADS.

**Source Note:** The provisions of this §18.37 adopted to be effective June 1, 2004, 29 TexReg
4233; amended to be effective June 1, 2009, 34 TexReg 2795

**RULE §18.38 Inactive Status**

(a) A licensee may place a license in a formal inactive status with DADS for up to two renewal
periods.
(b) To place a license in a formal inactive status, the licensee submits the following to DADS on
or before the date the license expires:
   (1) a completed Inactive Status Application form; and
   (2) the $250 inactive status fee.
(c) Licensees must renew the inactive license on or before the date that the inactive status expires
by submitting to DADS:
   (1) the $250 renewal fee; and
   (2) proof of completing 40 clock hours of continuing education as listed in §18.35 of this
chapter (relating to Continuing Education Requirements for License Renewal).
(d) If a licensee's inactive status has expired, the licensee must meet the licensure application and
examination requirements as listed in §18.15 of this chapter (relating to Application
Requirements) and §18.16 of this chapter (relating to Examinations).
(e) If it has been less than five years since the individual passed the NAB examination, the
individual is not required to take the NAB examination referenced in §18.16(a)(2) of this chapter, but must take the state exam.

(f) A person whose inactive status license has expired may not pay a late renewal fee.

Source Note: The provisions of this §18.38 adopted to be effective June 1, 2004, 29 TexReg 4233; amended to be effective June 1, 2009, 34 TexReg 2795

RULE §18.39  Voluntary Surrender of a License

(a) A licensee may voluntarily surrender a license by returning the license certificate to DADS.

(b) A licensee who voluntarily surrenders a license while under investigation for a violation of licensure requirements may still receive:
   (1) a written reprimand; or
   (2) an administrative penalty.

(c) A licensee who voluntarily surrenders a license in lieu of a proposed sanction, other than license revocation, may not reapply for licensure until two years after the surrender date.

(d) A licensee who voluntarily surrenders a license in lieu of a proposed license revocation is permanently disqualified from licensure in Texas.

Source Note: The provisions of this §18.39 adopted to be effective June 1, 2004, 29 TexReg 4233; amended to be effective June 1, 2009, 34 TexReg 2795

RULE §18.40  Reinstatement

Applicants who previously were licensed and in good standing in Texas may obtain a new license without reexamination if they:

(1) are licensed in good standing in another state;
(2) practiced in that state for at least the preceding two years before the date of their current licensure application; and
(3) pay DADS a $500 reactivation fee.

Source Note: The provisions of this §18.40 adopted to be effective June 1, 2004, 29 TexReg 4233; amended to be effective June 1, 2009, 34 TexReg 2795

RULE §18.41  Licensure of Persons with Criminal Backgrounds

(a) DADS considers an applicant's or a licensee's conviction of a crime related to the duties, responsibilities and job performance of an administrator as a potential basis for:
   (1) denying an initial or renewal application for licensure; and
   (2) imposing a sanction listed in §18.57 of this chapter (relating to Schedule of Sanctions).

(b) DADS considers the following when determining if a criminal conviction directly relates to the duties and responsibilities of a nursing facility administrator:
(1) the nature and seriousness of the crime;
(2) the extent to which a license may offer an individual an opportunity to engage in the same type of criminal activity; and
(3) the relationship of the crime to the ability or fitness required to perform the duties of nursing facility administrator.
(c) DADS has determined that a conviction of the following crimes relates to nursing facility administration and reflects an inability to perform or tendency to inadequately perform as an administrator:
(1) intentionally acting as a nursing facility administrator without a license;
(2) attempting or conspiring to commit or committing any offense under the following chapters of the Texas Penal Code:
   (A) Title 5 (offenses against persons), including homicide, kidnapping, unlawful restraint, and sexual and assault offenses;
   (B) Title 7 (offenses against property), including arson, criminal mischief, robbery, burglary, criminal trespass, theft, fraud, computer crimes, telecommunications crimes, money laundering, and insurance fraud;
   (C) Title 9 (offenses against public order and decency), including disorderly conduct and public indecency; or
   (D) Title 10 (offenses against public health, safety, and morals), including weapons, gambling, conduct affecting public health, intoxication, and alcoholic beverage offenses; or
(3) committing an offense listed in Texas Health and Safety Code §250.006.
(d) DADS may consider other crimes and pertinent information as a potential basis for denying an initial or renewal application.
(e) Convictions under federal law or another state or nation for offenses containing elements similar to offenses listed in subsection (c) of this section may be a basis for DADS imposing sanctions.

Source Note: The provisions of this §18.41 adopted to be effective June 1, 2004, 29 TexReg 4233; amended to be effective June 1, 2009, 34 TexReg 2795; amended to be effective September 1, 2010, 35 TexReg 6832

RULE §18.51 Referral and Complaint Procedures

(a) DADS' Professional Credentialing Enforcement Unit receives and investigates:
(1) referrals from Regulatory Services Division regional staff to determine an administrator's compliance with licensure requirements when survey findings cite deficiencies or substandard quality of care; and
(2) complaints alleging an administrator violated one or more of the licensure rules.
(b) Persons wanting to file a complaint against a licensee may contact the Professional Credentialing Enforcement Unit:
(1) by calling (512) 438-5495; or
(2) by writing the Department of Aging and Disability Services, Professional Credentialing Enforcement Unit, Mail Code E-302, ATTN: NFA Complaint Investigations, P.O. Box 149030, Austin, TX 78714-9030.
(c) DADS sends a Nursing Facility Administrator Complaint form to persons wanting to file a
complaint. The complainant must complete, sign, and return the form to DADS.
(d) If a referral or complaint is received, the Professional Credentialing Enforcement Unit notifies the licensee and, if applicable, the person filing the complaint of the:
   (1) alleged rule violation;
   (2) assigned case number; and
   (3) investigator contact information.
(e) DADS investigates referrals and complaints by first determining if a complaint is within Professional Credentialing Enforcement Unit authority to investigate, then by:
   (1) reviewing pertinent documentation maintained by the facility, including financial and resident medical records;
   (2) gathering additional evidence, including licensee and witness statements;
   (3) determining licensee culpability for survey or investigative findings; and
   (4) utilizing the services of a private investigator when special circumstances exist.
(f) DADS investigates referrals and complaints by first determining if a complaint is within Professional Credentialing Enforcement Unit authority to investigate, then by:
   (1) reviewing pertinent documentation maintained by the facility, including financial and resident medical records;
   (2) gathering additional evidence, including licensee and witness statements;
   (3) determining licensee culpability for survey or investigative findings; and
   (4) utilizing the services of a private investigator when special circumstances exist.
(g) DADS prioritizes complaints as follows:
   (1) Priority one complaints allege physical abuse, sexual abuse, neglect, serious injury, death, or immediate jeopardy to resident health or safety. Investigations are initiated within 24 hours of receipt or by the next working day.
   (2) Priority two complaints allege all other types of misconduct by the licensee. Investigations are initiated within 30 days of receipt.
(h) After the investigation is complete, a final report with supporting documentation is given to the NFAAC for review and recommendation consideration on the appropriate action.
(i) After evaluating the NFAAC's recommendation, DADS makes a decision to:
   (1) impose a sanction;
   (2) collect additional information; or
   (3) dismiss the case.
(j) DADS notifies the licensee and, if applicable, the person filing a complaint of the status and final outcome of a complaint or referral.

Source Note: The provisions of this §18.51 adopted to be effective June 1, 2004, 29 TexReg 4233; amended to be effective June 1, 2009, 34 TexReg 2795

RULE §18.41 Licensure of Persons with Criminal Backgrounds

(a) DADS considers an applicant's or a licensee's conviction of a crime related to the duties, responsibilities and job performance of an administrator as a potential basis for:
   (1) denying an initial or renewal application for licensure; and
   (2) imposing a sanction listed in §18.57 of this chapter (relating to Schedule of Sanctions).
(b) DADS considers the following when determining if a criminal conviction directly relates to the duties and responsibilities of a nursing facility administrator:
   (1) the nature and seriousness of the crime;
   (2) the extent to which a license may offer an individual an opportunity to engage in the same type of criminal activity; and
   (3) the relationship of the crime to the ability or fitness required to perform the duties of nursing facility administrator.
(c) DADS has determined that a conviction of the following crimes relates to nursing facility administration and reflects an inability to perform or tendency to inadequately perform as an administrator:
(1) intentionally acting as a nursing facility administrator without a license;
(2) attempting or conspiring to commit or committing any offense under the following chapters of the Texas Penal Code:
   (A) Title 5 (offenses against persons), including homicide, kidnapping, unlawful restraint, and sexual and assault offenses;
   (B) Title 7 (offenses against property), including arson, criminal mischief, robbery, burglary, criminal trespass, theft, fraud, computer crimes, telecommunications crimes, money laundering, and insurance fraud;
   (C) Title 9 (offenses against public order and decency), including disorderly conduct and public indecency; or
   (D) Title 10 (offenses against public health, safety, and morals), including weapons, gambling, conduct affecting public health, intoxication, and alcoholic beverage offenses; or
(3) committing an offense listed in Texas Health and Safety Code §250.006.
(d) DADS may consider other crimes and pertinent information as a potential basis for denying an initial or renewal application.
(e) Convictions under federal law or another state or nation for offenses containing elements similar to offenses listed in subsection (c) of this section may be a basis for DADS imposing sanctions.

Source Note: The provisions of this §18.41 adopted to be effective June 1, 2004, 29 TexReg 4233; amended to be effective June 1, 2009, 34 TexReg 2795; amended to be effective September 1, 2010, 35 TexReg 6832

RULE §18.51 Referral and Complaint Procedures

(a) DADS' Professional Credentialing Enforcement Unit receives and investigates:
   (1) referrals from Regulatory Services Division regional staff to determine an administrator's compliance with licensure requirements when survey findings cite deficiencies or substandard quality of care; and
   (2) complaints alleging an administrator violated one or more of the licensure rules.
(b) Persons wanting to file a complaint against a licensee may contact the Professional Credentialing Enforcement Unit:
   (1) by calling (512) 438-5495; or
   (2) by writing the Department of Aging and Disability Services, Professional Credentialing Enforcement Unit, Mail Code E-302, ATTN: NFA Complaint Investigations, P.O. Box 149030, Austin, TX 78714-9030.
(c) DADS sends a Nursing Facility Administrator Complaint form to persons wanting to file a complaint. The complainant must complete, sign, and return the form to DADS.
(d) If a referral or complaint is received, the Professional Credentialing Enforcement Unit notifies the licensee and, if applicable, the person filing the complaint of the:
   (1) alleged rule violation;
(2) assigned case number; and
(3) investigator contact information.
(e) DADS investigates referrals and complaints by first determining if a complaint is within
Professional Credentialing Enforcement Unit authority to investigate, then by:
(1) reviewing pertinent documentation maintained by the facility, including financial and
resident medical records;
(2) gathering additional evidence, including licensee and witness statements;
(3) determining licensee culpability for survey or investigative findings; and
(4) utilizing the services of a private investigator when special circumstances exist.
(f) DADS keeps records confidential in accordance with state and federal law.
(g) DADS prioritizes complaints as follows:
(1) Priority one complaints allege physical abuse, sexual abuse, neglect, serious injury, death, or
immediate jeopardy to resident health or safety. Investigations are initiated within 24 hours of
receipt or by the next working day.
(2) Priority two complaints allege all other types of misconduct by the licensee. Investigations
are initiated within 30 days of receipt.
(h) After the investigation is complete, a final report with supporting documentation is given to
the NFAAC for review and recommendation consideration on the appropriate action.
(i) After evaluating the NFAAC's recommendation, DADS makes a decision to:
(1) impose a sanction;
(2) collect additional information; or
(3) dismiss the case.
(j) DADS notifies the licensee and, if applicable, the person filing a complaint of the status and
final outcome of a complaint or referral.

Source Note: The provisions of this §18.51 adopted to be effective June 1, 2004, 29 TexReg
4233; amended to be effective June 1, 2009, 34 TexReg 2795

RULE §18.52 Informal Reviews

(a) Before DADS initiates proceedings for a sanction, DADS gives a licensee:
(1) a description of the alleged rule violation(s) warranting the proposed sanction;
(2) an opportunity to demonstrate compliance with all requirements of the law for retention of
the license; and
(3) the option to accept the sanction.
(b) A licensee's request for an informal review must:
(1) be received by DADS within 10 calendar days after the licensee receives DADS' notice
letter; and
(2) contain documentation that refutes the allegations.
(c) DADS conducts the informal review:
(1) by telephone;
(2) in person; or
(3) by reviewing the licensee's written response and supporting evidence.
(d) DADS provides the licensee with official notice of the outcome of the informal review.
**RULE §18.53  Formal Hearings**

(a) DADS gives a licensee a formal hearing notice:
   (1) when DADS proposes a sanction; and
   (2) when DADS upholds or modifies a proposed sanction after an informal review, in accordance with §18.52 of this chapter (relating to Informal Reviews).

(b) The formal hearing notice to the licensee includes:
   (1) DADS' decision to continue with sanctions;
   (2) the option for the licensee to accept the sanction as proposed; and
   (3) the option to request a formal hearing no later than 15 days after receiving DADS' notice letter.

(c) DADS imposes sanctions against a licensee when:
   (1) the licensee accepts DADS' decision to impose the sanction;
   (2) the administrative law judge upholds DADS' proposed sanction after the formal hearing; or
   (3) the licensee does not respond to DADS' formal hearing notice.

(d) A hearing is governed by 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act).

**Source Note:** The provisions of this §18.53 adopted to be effective June 1, 2004, 29 TexReg 4233; amended to be effective June 1, 2009, 34 TexReg 2795; amended to be effective September 1, 2010, 35 TexReg 6832

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**RULE §18.54  Rule or Statutory Violations**

DADS may impose sanctions listed in §18.57 of this subchapter (relating to Schedule of Sanctions) against a licensee for the following statutory violations:

(1) the licensee willfully or repeatedly violated a provision of Texas Health and Safety Code, Chapter 242, or a rule in this chapter;
(2) the licensee willfully or repeatedly acted in a manner inconsistent with the health and safety of the residents of a nursing facility of which the licensee is an administrator;
(3) the licensee obtained or attempted to obtain a license through misrepresentation or deceit or by making a material misstatement of fact on a license application;
(4) the licensee's use of alcohol or drugs creates a hazard to the residents of a facility;
(5) a judgment of a court of competent jurisdiction finds that the licensee is mentally incapacitated;
(6) the licensee has been convicted in a court of competent jurisdiction of a criminal offense listed in §18.41(c) of this chapter (relating to Licensure of Persons with Criminal Backgrounds); or
(7) the licensee has been negligent or incompetent in the licensee's duties as a nursing facility administrator.

**Source Note:** The provisions of this §18.54 adopted to be effective June 1, 2004, 29 TexReg 4233; amended to be effective June 1, 2009, 34 TexReg 2795; amended to be effective September 1, 2010, 35 TexReg 6832.
RULE §18.55 Violations of Standards of Conduct

(a) DADS may impose a sanction listed in §18.57 of this subchapter (relating to Schedule of Sanctions) against a licensee for violations of the following nursing facility administrator Standards of Conduct:

1. A licensee must employ sufficient staff to adequately meet the needs of nursing facility residents as determined by care outcomes.
2. A licensee must ensure that sufficient resources are present to provide adequate nutrition, medications, and treatments to nursing facility residents in accordance with physician orders as determined by care outcomes.
3. A licensee must promote and protect the rights of nursing facility residents and ensure that employees, contractors, and others respect the rights of residents.
4. A licensee must ensure that nursing facility residents remain free of chemical and physical restraints unless required by a physician's order to protect a nursing facility resident's health and safety.
5. A licensee must report and direct nursing facility staff to report to the appropriate government agency any suspected case of abuse, neglect, or misappropriation of resident property as defined in §18.2 of this chapter (relating to Definitions).
6. A licensee must ensure that the nursing facility is physically maintained in a manner that protects the health and safety of the residents and the public.
7. A licensee must notify and direct employees to notify an appropriate government agency of any suspected cases of criminal activity as defined by state and federal laws.
8. A licensee must post in the nursing facility where employed the notice provided by DADS that gives the address and telephone number for reporting complaints against an administrator. The notice must be posted in a conspicuous place and in clearly legible type.
9. A licensee must not knowingly or through negligence commit, direct, or allow actions that result or could result in inadequate care, harm, or injury to a nursing facility resident.
10. A licensee must not knowingly or through negligence allow nursing facility employees to harm nursing facility residents by coercion, threat, intimidation, solicitation, harassment, theft of personal property, or cruelty.
11. A licensee must not knowingly or through negligence allow or direct employees to contradict or alter in any manner the orders of a physician regarding a nursing facility resident's medical or therapeutic care.
12. A licensee must not knowingly commit or through negligence allow another individual to commit an act of abuse, neglect, or misappropriation of resident property as defined in §18.2 of this chapter.
13. A licensee must not permit another individual to use his or her license or allow a nursing facility to falsely post his or her license.
14. A licensee must not advertise or knowingly participate in the advertisement of nursing facility services in a manner that is fraudulent, false, deceptive, or misleading in form or content.
15. A licensee must not knowingly allow, aid, or abet a violation by another licensed nursing

Source Note: The provisions of this §18.54 adopted to be effective June 1, 2004, 29 TexReg 4233; amended to be effective June 1, 2009, 34 TexReg 2795
facility administrator of the Texas Health and Safety Code, Chapter 242, Subchapter I, or the agency's rules adopted under that subchapter and must report such violations to DADS.

(16) A licensee must not make or allow employees, contractors, or volunteers to make misrepresentations or fraudulent statements about the operation of a nursing facility.

(17) A licensee must not allow an employee's, a contractor's, or another person's action or inaction to result in harassment or intimidation of any person for purposes of coercing that person to use the services or equipment of a particular health agency or facility.

(18) A licensee must not falsely bill for goods or services or allow another person to bill for goods or services other than those that have actually been rendered.

(19) A licensee must not make or file false reports or allow an employee, contractor, or volunteer to make or file a report that the licensee knows to be false.

(20) A licensee must not intentionally fail to file a report or record required by state or federal law, impede or obstruct such filings, or induce another person to impede or obstruct such filings.

(21) A licensee must not use or knowingly allow employees or others to use alcohol, narcotics, or other drugs in a manner that interferes with the performance of the administrator's or other person's duties.

(22) A licensee must not knowingly or through negligence violate any confidentiality provisions as prescribed by state or federal law concerning a nursing facility resident.

(23) A licensee must not interfere or impede an investigation by withholding or misrepresenting fact to DADS representatives, or by using threats or harassment against any person involved or participating in the investigation.

(24) A licensee must not display a license issued by DADS that is reproduced, altered, expired, suspended, or revoked.

(25) A licensee must not, knowingly or through negligence, allow employees or other individuals to mismanage a resident's personal funds deposited with the nursing facility.

(26) A licensee must not harass or intimidate employees of DADS, other government agencies, or their representatives concerning the administration of the nursing facility.

(27) A licensee must not offer or give any gift, loan, or other benefit to a person working for DADS unless the benefit is offered or given on account of kinship or a personal relationship independent of the official status of the person working for DADS.

(b) Negligence, as referenced in the Standards of Conduct in subsection (a) of this section, means the failure of a licensee to use such care as a reasonably prudent and careful licensee would use in similar circumstances, or failure to act as a reasonably prudent licensee would in similar circumstances.

Source Note: The provisions of this §18.55 adopted to be effective June 1, 2004, 29 TexReg 4233; amended to be effective June 1, 2009, 34 TexReg 2795

RULE §18.56 Violations by Unlicensed Persons

(a) Persons with an expired license must not engage in activities that require a license.

(b) A person practicing as a licensed nursing facility administrator after license expiration:

   (1) commits an offense punishable as a Class B misdemeanor;

   (2) is subject to local criminal prosecution; and

   (3) may be referred to the Office of Attorney General for civil penalties not to exceed $1,000
per violation per day for each day the violation continues.
(c) A licensee whose license expires before an investigation is complete, may still receive:
(1) a written reprimand; or
(2) an administrative penalty.
(d) A licensee allowing a license to expire instead of accepting a proposed license revocation is
disqualified from licensure in Texas.
(e) A person with an expired license must return the license certificate to DADS.

Source Note: The provisions of this §18.56 adopted to be effective June 1, 2004, 29 TexReg
4233; amended to be effective June 1, 2009, 34 TexReg 2795

RULE §18.57 Schedule of Sanctions

(a) DADS may impose one or more of the following sanctions against a licensee for violations
listed in §18.54 of this subchapter (relating to Rule or Statutory Violations) and §18.55 of this
subchapter (relating to Violations of Standards of Conduct):
(1) revocation of license;
(2) license suspension;
(3) denial of application for license renewal;
(4) assessment of an administrative penalty;
(5) written letter of reprimand;
(6) requiring a licensee to participate in continuing education; or
(7) probation.
(b) If a sanction is probated, DADS may require the licensee to:
(1) report regularly to DADS on matters that are the basis of the probation;
(2) limit practice to the areas prescribed by DADS;
(3) practice under the direct supervision or guidance of a DADS-certified preceptor as specified
in §18.14 of this chapter (relating to Preceptor Requirements); or
(4) complete prescribed continuing education until the licensee attains a degree of skill
satisfactory to DADS in those areas that are the basis of the probation.
(c) Civil penalties may result from a referral to the Office of Attorney General not to exceed
$1,000 per violation per day for each day the violation continues.
(d) Administrative penalties may not exceed $1,000 per violation per day for each day the
violation continues.
(e) The amount the administrative penalty is assessed is based on:
(1) the seriousness of the violation, including:
   (A) the nature, circumstances, extent, and gravity of prohibited acts; and
   (B) the hazard or potential hazard created to the health, safety, or economic welfare of the
public;
(2) economic harm to property or environment;
(3) history of previous violations;
(4) amount necessary to deter future violations;
(5) efforts to correct the violations;
(6) the severity level of the violation:
   (A) Level I--$500 to $1,000 for violations that have or had an adverse impact on nursing
facility resident health or safety that includes serious harm, permanent injury, or death to a
nursing facility resident;
(B) Level II--$250 to $500 for violations that have or had a potential or adverse impact on the
health or safety of a nursing facility resident, but less impact than Level I; or
(C) Level III--$250 or less for violations having minimal or no significant impact on nursing
facility resident health or safety; and
(7) any other matter that justice may require.

Source Note: The provisions of this §18.57 adopted to be effective June 1, 2004, 29 TexReg
4233; amended to be effective June 1, 2009, 34 TexReg 2795