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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

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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.

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(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

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RULE §19.205**Probationary License**

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

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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.

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(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

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RULE §19.209

Exclusion from Licensure

(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

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(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

not licensed to operate the facility;

(D) the entity that is licensed to operate the facility sells or otherwise transfers its business of operating the facility to an entity that is not licensed to operate the facility;

(E) for any reason other than correction of an error, the federal taxpayer identification number changes; or

(F) the entity that is licensed to operate the facility is terminated and fails or is ineligible to be reinstated, and the facility continues to operate.

(4) Nonprofit organization. A change of ownership occurs if:

(A) the nonprofit organization that is licensed to operate the facility is sold or otherwise transferred to an entity that is not licensed to operate the facility;

(B) the entity that is licensed to operate the facility sells or otherwise transfers its business of operating the facility to an entity that is not licensed to operate the facility;

(C) for any reason other than correction of an error, the federal taxpayer identification number changes; or

(D) the entity that is licensed to operate the facility is terminated and fails or is ineligible to be reinstated, and the facility continues to operate.

(5) For-profit corporation or limited liability company. A change of ownership occurs if:

(A) ownership of the business entity that is licensed to operate the facility changes by 50% or more and one or more controlling person is added;

(B) the business entity that is licensed to operate the facility is sold or otherwise transferred to an entity that is not licensed to operate the facility;

(C) the entity that is licensed to operate the facility sells or otherwise transfers its business of operating the facility to an entity that is not licensed to operate the facility;

(D) for any reason other than correction of an error, the federal taxpayer identification number changes; or

(E) the entity that is licensed to operate the facility is terminated and fails or is ineligible to be reinstated, and the facility continues to operate.

(6) City, county, state or federal government authority, hospital district, or hospital authority. A change of ownership occurs if:

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

(B) the entity that is licensed to operate the facility is terminated and the facility continues to operate.

(7) Trust, living trust, estate or any other entity type not included in paragraphs (1) - (6) of this subsection. A change of ownership occurs if:

(A) the entity that is licensed to operate the facility is sold or otherwise transferred to an entity that is not licensed to operate the facility;

(B) the entity that is licensed to operate the facility sells or otherwise transfers its business of operating the facility to an entity that is not licensed to operate the facility;

(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

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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

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(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.

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AND MEDICAID CERTIFICATION****SUBCHAPTER C****NURSING FACILITY LICENSURE APPLICATION PROCESS****RULE §19.214****Criteria for Denying a License or Renewal of a License**

(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

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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

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(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

fund fee.

(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

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RULE §19.218

Method of Payment

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.

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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

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RULE §19.220

Expedited Life Safety Code and Physical Plant Inspection Fees

(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.

Attached Graphic

Source Note: The provisions of this §19.220 adopted to be effective June 1, 2010, 35 TexReg 4465

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