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# Texas Administrative Code

[Next Rule>>](#)**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 §19.1001****Nursing Services**

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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 waived 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.

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**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.

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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.

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## NURSING SERVICES

**RULE §19.1004****Director of Nursing Services**

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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 waived 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.

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**Source Note:** The provisions of this §19.1004 adopted to be effective May 1, 1995, 20 TexReg 2393.

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## NURSING SERVICES

**RULE §19.1006****Nursing Facility Restorative Nursing Care**

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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.

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**Source Note:** The provisions of this §19.1006 adopted to be effective May 1, 1995, 20 TexReg 2393.

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(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).

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**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.

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## NURSING SERVICES

**RULE §19.1011****Student Nurses**

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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.

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**Source Note:** The provisions of this §19.1011 adopted to be effective May 1, 1995, 20 TexReg 2393.

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NURSING SERVICES

**RULE §19.1012**

**Special Nurses and Sitters**

- (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.

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