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RULE §19.1901

Administration

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.

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(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.

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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.

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RULE §19.1904

Proficiency of Nurse Aides

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.

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RULE §19.1905

Staff Qualifications

(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.

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RULE §19.1906**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.

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RULE §19.1907

Medical Director

- (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.

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(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.

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RULE §19.1909**Radiology and Other Diagnostic Services**

(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.

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(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.

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(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

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(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)).

Source Note: The provisions of this §19.1912 adopted to be effective May 1, 1995, 20 TexReg 2393;

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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

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RULE §19.1913

Clinical Records Service Supervisor

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

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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.

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(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.

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AND MEDICAID CERTIFICATION****SUBCHAPTER T****ADMINISTRATION****RULE §19.1916****Respite Care**

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.

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-
- (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

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(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

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RULE §19.1919**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

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ADMINISTRATION

RULE §19.1920

Operating Policies and Procedures

(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.

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(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

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RULE §19.1922**Resident Care Policies**

(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.

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(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.

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ADMINISTRATION

RULE §19.1924

Financial Records

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.

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(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

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(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;

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amended to be effective January 1, 2002, 26 TexReg 10389; amended to be effective September 1, 2008, 33 TexReg 7264

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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 §19.1928

Volunteer Program

(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.

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AND MEDICAID CERTIFICATION****SUBCHAPTER T****ADMINISTRATION****RULE §19.1929****Staff Development**

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

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ADMINISTRATION

RULE §19.1930

Blood and Blood Products

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.

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AND MEDICAID CERTIFICATION****SUBCHAPTER T****ADMINISTRATION****RULE §19.1934****Educational Requirements for Persons under Age 22**

(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

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