

TITLE 26 HEALTH AND HUMAN SERVICES

PART 1 HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 553 LICENSING STANDARDS FOR ASSISTED LIVING FACILITIES

SUBCHAPTER A INTRODUCTION

§553.1 Purpose and Application

(a) The purpose of this chapter is to establish:

- (1) the criteria and application procedure for licensing an assisted living facility;
- (2) the licensing standards with which an assisted living facility must comply and that serve as a basis for licensure inspections, including:
 - (A) operation and resident care standards; and
 - (B) facility construction standards;
- (3) the inspections and investigations DADS may conduct as a regulatory authority; and
- (4) enforcement actions DADS may take against an assisted living facility.

(b) This chapter applies to an assisted living facility licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 247. Assisted living services are driven by a philosophy that emphasizes personal dignity and autonomy to age in place in a residential setting while receiving increasing or decreasing levels of services as the person's needs change.

§553.2 Definitions

The following words and terms, when used in this chapter, have the following meaning, unless the context clearly indicates otherwise.

(1) Abuse--

(A) For a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes, the term has the meaning in Texas Family Code §261.001(1), which is an intentional, knowing, or reckless act or omission by an employee, volunteer, or other individual working under the auspices of a facility or program that causes or may cause emotional harm or physical injury to, or the death of, a child served by the facility or program as further described by rule or policy; and

(B) For a person other than one described in subparagraph (A) of this paragraph, the term has the meaning in Texas Health and Safety Code §260A.001(1), which is:

(i) the negligent or willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical or emotional harm or pain to a resident by the resident's caregiver, family member, or other individual who has an ongoing relationship with the resident; or

(ii) sexual abuse of a resident, including any involuntary or nonconsensual sexual conduct that would constitute an offense under Section 21.08, Penal Code (indecent exposure), or Chapter 22, Penal Code (assaultive offenses), committed by the resident's caregiver, family member, or other individual who has an ongoing relationship with the resident.

(2) Accreditation commission--Has the meaning given in Texas Health and Safety Code, §247.032.

(3) Actual harm--A negative outcome that compromises a resident's physical, mental, or emotional well-being.

(4) Advance directive--Has the meaning given in Texas Health and Safety Code, §166.002.

(5) Affiliate--With respect to:

(A) a partnership, each partner thereof;

(B) a corporation, each officer, director, principal stockholder, subsidiary, and each person with a disclosable interest, as the term is defined in this section; and

(C) a natural person:

(i) said person's spouse;

(ii) each partnership and each partner thereof of which said person or any affiliate of said person is a partner; and

(iii) each corporation in which said person is an officer, director, principal stockholder, or person with a disclosable interest.

(6) Alzheimer's Assisted Living Disclosure Statement form--The HHSC-prescribed form a facility uses to describe the nature of care or treatment of residents with Alzheimer's disease and related disorders.

(7) Alzheimer's disease and related disorders--Alzheimer's disease and any other irreversible dementia described by the Centers for Disease Control and Prevention (CDC) or the most current edition of the Diagnostic and Statistical Manual of Mental Disorders.

(8) Alzheimer's facility--A type B assisted living facility that is certified to provide specialized services to residents with Alzheimer's or a related condition.

(9) Applicant--A person applying for a license to operate an assisted living facility under Texas Health and Safety Code, Chapter 247.

(10) Attendant--A facility employee who provides direct care to residents. This employee may serve other functions, including cook, janitor, porter, maid, laundry worker, security personnel, bookkeeper, activity director, and manager.

(11) Authorized electronic monitoring (AEM)--The placement of an electronic monitoring device in a resident's room and using the device to make tapes or recordings after making a request to the facility to allow electronic monitoring.

(12) Behavioral emergency--Has the meaning given in §92.41(p)(2) of this chapter (relating to Standards for Type A and Type B Assisted Living Facilities).

- (13) Certified ombudsman--Has the meaning given in 26 TAC §88.2 (relating to Definitions).
- (14) CFR--Code of Federal Regulations.
- (15) Change of ownership--An event that results in a change to the federal taxpayer identification number of the license holder of a facility. The substitution of a personal representative for a deceased license holder is not a change of ownership.
- (16) Commingles--The laundering of apparel or linens of two or more individuals together.
- (17) Controlling person--A person with the ability, acting alone or with others, to directly or indirectly influence, direct, or cause the direction of the management, expenditure of money, or policies of an assisted living facility or other person. A controlling person includes:
- (A) a management company, landlord, or other business entity that operates or contracts with others for the operation of an assisted living facility;
 - (B) any person who is a controlling person of a management company or other business entity that operates an assisted living facility or that contracts with another person for the operation of an assisted living facility;
 - (C) an officer or director of a publicly traded corporation that is, or that controls, a facility, management company, or other business entity described in subparagraph (A) of this paragraph but does not include a shareholder or lender of the publicly traded corporation; and
 - (D) any other individual who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of an assisted living facility, is in a position of actual control or authority with respect to the facility, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility, except an employee, lender, secured creditor, landlord, or other person who does not exercise formal or actual influence or control over the operation of an assisted living facility.
- (18) Covert electronic monitoring--The placement and use of an electronic monitoring device that is not open and obvious, and the facility and HHSC have not been informed about the device by the resident, by a person who placed the device in the room, or by a person who uses the device.
- (19) DADS-- Prior to September 1, 2017, the Department of Aging and Disability Services. September 1, 2017, and after, the Texas Health and Human Services Commission (HHSC).
- (20) DHS--Formerly, this term referred to the Texas Department of Human Services; it now refers to HHSC.
- (21) Dietitian--A person who currently holds a license or provisional license issued by the Texas State Board of Examiners of Dietitians.
- (22) Direct ownership interest--Ownership of equity in the capital, stock, or profits of, or a membership interest in, an applicant or license holder.
- (23) Disclosable interest--Five percent or more direct or indirect ownership interest in an applicant or license holder.
- (24) Disclosure statement--An HHSC form for prospective residents or their legally authorized representatives that a facility must complete. The form contains information regarding the preadmission, admission, and discharge process; resident assessment and service plans; staffing patterns; the physical

environment of the facility; resident activities; and facility services.

(25) Electronic monitoring device--Video surveillance cameras and audio devices installed in a resident's room, designed to acquire communications or other sounds that occur in the room. An electronic, mechanical, or other device used specifically for the nonconsensual interception of wire or electronic communication is excluded from this definition.

(26) Exploitation--

(A) For a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes, the term has the meaning in Texas Family Code §261.001(3), which is the illegal or improper use of a child or of the resources of a child for monetary or personal benefit, profit, or gain by an employee, volunteer, or other individual working under the auspices of a facility or program as further described by rule or policy; and

(B) For a person other than one described in subparagraph (A) of this paragraph, the term has the meaning in Texas Health and Safety Code §260A.001(4), which is the illegal or improper act or process of a caregiver, family member, or other individual who has an ongoing relationship with the resident using the resources of a resident for monetary or personal benefit, profit, or gain without the informed consent of the resident.

(27) Facility--An entity required to be licensed under the Assisted Living Facility Licensing Act, Texas Health and Safety Code, Chapter 247.

(28) Fire suppression authority--The paid or volunteer fire-fighting organization or tactical unit that is responsible for fire suppression operations and related duties once a fire incident occurs within its jurisdiction.

(29) Flame spread--The rate of fire travel along the surface of a material. This is different than other requirements for time-rated "burn through" resistance ratings, such as one-hour rated. Flame spread ratings are Class A (0-25), Class B (26-75), and Class C (76-200).

(30) Governmental unit--The state or any county, municipality, or other political subdivision, or any department, division, board, or other agency of any of the foregoing.

(31) Health care professional--An individual licensed, certified, or otherwise authorized to administer health care, for profit or otherwise, in the ordinary course of business or professional practice. The term includes a physician, registered nurse, licensed vocational nurse, licensed dietitian, physical therapist, and occupational therapist.

(32) HHSC--The Texas Health and Human Services Commission.

(33) Immediate threat to the health or safety of a resident--A situation that causes, or is likely to cause, serious injury, harm, or impairment to or the death of a resident.

(34) Immediately available--The capacity of facility staff to immediately respond to an emergency after being notified through a communication or alarm system. The staff are to be no more than 600 feet from the farthest resident and in the facility while on duty.

(35) Indirect ownership interest--Any ownership or membership interest in a person that has a direct ownership interest in an applicant or license holder.

(36) Isolated-- A very limited number of residents are affected and a very limited number of staff are

involved, or the situation has occurred only occasionally.

(37) Large facility--A facility licensed for 17 or more residents.

(38) Legally authorized representative--A person authorized by law to act on behalf of a person with regard to a matter described in this chapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(39) License holder--A person that holds a license to operate a facility.

(40) Listed--Equipment, materials, or services included in a list published by an organization concerned with evaluation of products or services, that maintains periodic inspection of production of listed equipment or materials or periodic evaluation of services, and whose listing states that either the equipment, material, or service meets appropriate designated standards or has been tested and found suitable for a specified purpose. The listing organization must be acceptable to the authority having jurisdiction, including HHSC or any other state, federal, or local authority.

(41) Local code--A model building code adopted by the local building authority where the assisted living facility is constructed or located.

(42) Management services--Services provided under contract between the owner of a facility and a person to provide for the operation of a facility, including administration, staffing, maintenance, or delivery of resident services. Management services do not include contracts solely for maintenance, laundry, transportation, or food services.

(43) Manager--The individual in charge of the day-to-day operation of the facility.

(44) Managing local ombudsman--Has the meaning given in 26 TAC §88.2.

(45) Medication--

(A) Medication is any substance:

(i) recognized as a drug in the official United States Pharmacopoeia, Official Homeopathic Pharmacopoeia of the United States, Texas Drug Code Index or official National Formulary, or any supplement to any of these official documents;

(ii) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease;

(iii) other than food intended to affect the structure or any function of the body; and

(iv) intended for use as a component of any substance specified in this definition.

(B) Medication includes both prescription and over-the-counter medication, unless otherwise specified.

(C) Medication does not include devices or their components, parts, or accessories.

(46) Medication administration--The direct application of a medication or drug to the body of a resident by an individual legally allowed to administer medication in the state of Texas.

(47) Medication assistance or supervision--The assistance or supervision of the medication regimen by facility staff. Refer to §92.41(j) of this chapter.

(48) Medication (self-administration)--The capability of a resident to administer the resident's own medication or treatments without assistance from the facility staff.

(49) Neglect--

(A) For a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes, the term has the meaning in Texas Family Code, §261.001(4), which is a negligent act or omission by an employee, volunteer, or other individual working under the auspices of a facility or program, including failure to comply with an individual treatment plan, plan of care, or individualized service plan, that causes or may cause substantial emotional harm or physical injury to, or the death of, a child served by the facility or program as further described by rule or policy; and

(B) For a person other than one described in subparagraph (A) of this paragraph, the term has the meaning in Texas Health and Safety Code §260A.001(6), which is the failure to provide for one's self the goods or services, including medical services, which are necessary to avoid physical or emotional harm or pain or the failure of a caregiver to provide such goods or services.

(50) NFPA 101--The 2000 publication titled "NFPA 101 Life Safety Code" published by the National Fire Protection Association, Inc., 1 Batterymarch Park, Quincy, Massachusetts 02169.

(51) Ombudsman intern--Has the meaning given in 26 TAC §88.2.

(52) Ombudsman program--Has the meaning given in 26 TAC §88.2.

(53) Pattern of violation--Repeated, but not widespread in scope, failures of a facility to comply with this chapter or a rule, standard, or order adopted under Texas Health and Safety Code, Chapter 247 that:

(A) result in a violation; and

(B) are found throughout the services provided by the facility or that affect or involve the same residents or facility employees.

(54) Person--Any individual, firm, partnership, corporation, association, or joint stock association, and the legal successor thereof.

(55) Personal care services--Assistance with feeding, dressing, moving, bathing, or other personal needs or maintenance; or general supervision or oversight of the physical and mental well-being of a person who needs assistance to maintain a private and independent residence in the facility or who needs assistance to manage his or her personal life, regardless of whether a guardian has been appointed for the person.

(56) Physician--A practitioner licensed by the Texas Medical Board.

(57) Potential for minimal harm--A violation that has the potential for causing no more than a minor negative impact on a resident.

(58) Practitioner--An individual who is currently licensed in a state in which the individual practices as a physician, dentist, podiatrist, or a physician assistant; or a registered nurse approved by the Texas Board of Nursing to practice as an advanced practice registered nurse.

(59) Private and unimpeded access--Access to enter a facility, or communicate with a resident outside of the hearing and view of others, without interference or obstruction from facility employees, volunteers, or contractors.

- (60) Qualified medical personnel--An individual who is licensed, certified, or otherwise authorized to administer health care. The term includes a physician, registered nurse, and licensed vocational nurse.
- (61) Resident--An individual accepted for care in a facility.
- (62) Respite--The provision by a facility of room, board, and care at the level ordinarily provided for permanent residents of the facility to a person for not more than 60 days for each stay in the facility.
- (63) Restraint hold--
- (A) A manual method, except for physical guidance or prompting of brief duration, used to restrict:
- (i) free movement or normal functioning of all or a portion of a resident's body; or
- (ii) normal access by a resident to a portion of the resident's body.
- (B) Physical guidance or prompting of brief duration becomes a restraint if the resident resists the guidance or prompting.
- (64) Restraints--Chemical restraints are psychoactive drugs administered for the purposes of discipline or convenience and are not required to treat the resident's medical symptoms. Physical restraints are any manual method, or physical or mechanical device, material, or equipment attached or adjacent to the resident that restricts freedom of movement. Physical restraints include restraint holds.
- (65) Safety--Protection from injury or loss of life due to such conditions as fire, electrical hazard, unsafe building or site conditions, and the hazardous presence of toxic fumes and materials.
- (66) Seclusion--The involuntary separation of a resident from other residents and the placement of the resident alone in an area from which the resident is prevented from leaving.
- (67) Service plan--A written description of the medical care, supervision, or nonmedical care needed by a resident.
- (68) Short-term acute episode--An illness of less than 30 days duration.
- (69) Small facility--A facility licensed for 16 or fewer residents.
- (70) Staff--Employees of an assisted living facility.
- (71) Standards--The minimum conditions, requirements, and criteria established in this chapter with which a facility must comply to be licensed under this chapter.
- (72) State Ombudsman--Has the meaning given in 26 TAC §88.2.
- (73) Terminal condition--A medical diagnosis, certified by a physician, of an illness that will result in death in six months or less.
- (74) Universal precautions--An approach to infection control in which blood, any body fluids visibly contaminated with blood, and all body fluids in situations where it is difficult or impossible to differentiate between body fluids are treated as if known to be infectious for HIV, hepatitis B, and other blood-borne pathogens.

(75) Vaccine Preventable Diseases--The diseases included in the most current recommendations of the Advisory Committee on Immunization Practices of the CDC.

(76) Widespread in scope--A violation of Texas Health and Safety Code, Chapter 247 or a rule, standard, or order adopted under Chapter 247 that:

(A) is pervasive throughout the services provided by the facility; or

(B) represents a systemic failure by the facility that affects or has the potential to affect a large portion of or all of the residents of the facility.

(77) Willfully interfere--To act or not act to intentionally prevent, interfere with, or impede or to attempt to intentionally prevent, interfere with, or impede.

(78) Working day--Any 24-hour period, Monday through Friday, excluding state and federal holidays.

§553.3 Types of Assisted Living Facilities

(a) Basis for licensure type. An assisted living facility must be licensed as a Type A, Type B, or Type C facility. A facility's licensure type is based on the capability of the residents to evacuate the facility or the types of services the facility provides, or both, as described in this section.

(b) Type A. In a Type A facility, a resident:

(1) must be physically and mentally capable of evacuating the facility without physical assistance from staff, which may include an individual who is mobile, although non-ambulatory, such as an individual who uses a wheelchair or an electric cart, and has the capacity to transfer and evacuate himself or herself in an emergency;

(2) does not require routine attendance during nighttime sleeping hours; and

(3) must be capable of following directions under emergency conditions.

(4) must be able to demonstrate to DADS that they can meet the evacuation requirements described in §92.62(b) of this chapter.

(c) Type B. In a Type B facility, a resident may:

(1) require staff assistance to evacuate;

(2) require attendance during nighttime sleeping hours;

(3) be incapable of following directions under emergency conditions; and

(4) require assistance in transferring to and from a wheelchair, but must not be permanently bedfast.

(d) Type C. A Type C facility is a four-bed facility that:

(1) has an active contract with DADS to provide adult foster care services as described in Chapter 48, Subchapter K of this title (relating to Minimum Standards for Adult Foster Care); and

(2) must be contracted with DADS to provide adult foster care services before it can be licensed.

§553.4 License Fees

(a) Basic fees.

(1) Type A and Type B. The license fee is \$300, plus \$15 for each bed for which a license is sought, with a maximum of \$2,250 for a three-year license. The license fee for a two-year license issued in accordance with §92.15(b)(1) or (c)(1) of this chapter is \$200, plus \$10 for each bed for which a license is sought, with a maximum of \$1,500. The fee must be paid with an initial application, change of ownership application, or renewal application.

(2) Type C. The license fee is \$150 for a three-year license. The license fee for a two-year license issued in accordance with §92.15(b)(1) of this chapter is \$100. The fee must be paid with a renewal application.

(3) Increase in capacity. An approved increase in capacity is subject to an additional fee of \$15 for each bed.

(b) Late renewal fee. An applicant that submits an application for license renewal later than the 45th day before the expiration date of the license must pay a late fee of an amount equal to one-half of the basic fee required in accordance with subsection (a)(1) and (2) of this section.

(c) Alzheimer's certification. In addition to the basic license fee described in subsection (a) of this section, a facility that applies for certification as an Alzheimer's facility under Subchapter C of this chapter (relating to Standards for Licensure) must pay an additional license fee. For a three-year license issued in accordance with subsection (a)(1) of this section or §92.15(a)(1) of this chapter, the additional fee is \$300. For a two-year license issued in accordance with §92.15(b)(1) or (c)(1), the additional fee is \$200.

(d) Trust fund fee.

(1) If the amount in the assisted living facility trust fund, established under Texas Health and Safety Code, Chapter 242, Subchapter D, and Chapter 247, §247.003(b), is less than \$500,000, HHSC collects an annual fee from each facility. The fee is based on a monetary amount specified for each licensed unit of capacity or bed space, and is in an amount sufficient to provide not more than \$500,000 in the trust fund. When the trust fund fee is collected, HHSC sends written notice to each facility stating the amount of the fee and the date the fee is due. A facility must pay the amount of the fee within 90 days after the date the fee is due.

(2) HHSC may charge and collect a trust fund fee more than once a year if necessary to ensure that the amount in the assisted living facility trust fund is sufficient to make the disbursements required under Texas Health and Safety Code, §242.0965. When this subsequent trust fund fee is collected, HHSC sends written notice to each facility stating the amount of the fee and the date the fee is due. A facility must pay the amount of the fee within 90 days after the date the fee is due.

(3) Failure to pay the trust fund fee within 90 days after the date the fee is due as stated on the written notice described in paragraphs (1) and (2) of this subsection may result in an assessment of an administrative penalty under the administrative penalties described in Subchapter H, Division 9 of this chapter (relating to Administrative Penalties).

(e) Plan review fee. An applicant may submit building plans for a new building, an addition, the conversion of a building not licensed, or for the remodeling of an existing licensed facility for review by HHSC architectural staff. If the applicant chooses to submit building plans for review, the applicant must pay a fee for the plan review according to the following schedule:

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(f) Payment of fees. A facility or applicant must pay fees by check, cashier's check, money order, or credit card, made payable to HHSC. All fees are nonrefundable, except as provided in Texas Government Code, Chapter 2005, and in §92.13(d) of this chapter (relating to Time Periods for Processing All Types of License Applications).

(g) Expedited Life Safety Code and physical plant inspection fee. An applicant may obtain a Life Safety Code and physical plant inspection within 15 business days after HHSC receives a written request for an expedited inspection if:

(1) the applicant:

(A) meets the criteria in §92.14 of this chapter (relating to Initial License Application Procedures and Requirements); or

(B) has a current license, and is completing construction that does not alter the capacity of the facility; and

(2) the applicant submits the appropriate Life Safety Code fee listed in the following schedule:

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(h) If, after HHSC conducts two Life Safety Code inspections for a given application, the applicant requests an additional inspection, then the applicant must pay a fee of \$25 per bed, with a minimum payment of \$1,000 for the third and each subsequent inspection pertaining to the same application.

§553.5 Health Care Professional

(a) A health care professional may coordinate the provision of services to a resident within the professional's scope of practice and as authorized under Texas Health and Safety Code, Chapter 247, however, a facility must not provide ongoing services to a resident that are comparable to the services available in a nursing facility licensed under Texas Health and Safety Code, Chapter 242.

(b) A resident may contract with a home and community support services agency licensed under Chapter 142 or with an independent health professional to have health care services delivered to the resident at the facility.

§553.6 General Characteristics of a Resident

This section describes some general characteristics of a resident in an assisted living facility. A resident may:

(1) exhibit symptoms of mental or emotional disturbance, but is not considered at risk of imminent harm to self or others;

(2) need assistance with movement;

(3) require assistance with bathing, dressing, and grooming;

(4) require assistance with routine skin care, such as application of lotions or treatment of minor cuts and burns;

(5) need reminders to encourage toilet routine and prevent incontinence;

(6) require temporary services by professional personnel;

- (7) need assistance with medication, supervision of self-medication, or administration of medication;
- (8) require encouragement to eat or monitoring due to social or psychological reasons of temporary illness;
- (9) be hearing impaired or speech impaired;
- (10) be incontinent without pressure sores;
- (11) require an established therapeutic diet;
- (12) require self-help devices; and
- (13) need assistance with meals, which may include feeding.

SUBCHAPTER B APPLICATION PROCEDURES

§553.11 Criteria for Licensing

(a) A person must be licensed to establish or operate an assisted living facility in Texas.

(1) An assisted living facility is an establishment that:

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

(B) provides:

(i) personal care services;

(ii) administration of medication by a person licensed or otherwise authorized in this state to administer the medication; or

(iii) services described in clauses (i) and (ii) of this subparagraph; and

(C) may provide assistance with or supervision of the administration of medication.

(2) An assisted living facility may provide skilled nursing services for the following limited purposes:

(A) coordinate resident care with an outside home and community support services agency or health care professional;

(B) provide or delegate personal care services and medication administration, as described in this chapter;

(C) assess residents to determine the care required; and

(D) deliver, for a period not to exceed 30 days, temporary skilled nursing services for a minor illness, injury, or emergency.

(3) DADS considers one or more facilities to be part of the same establishment and, therefore, subject to licensure as an assisted living facility, based on the following factors:

(A) common ownership;

(B) physical proximity;

(C) shared services, personnel, or equipment in any part of the facilities' operations; and

(D) any public appearance of joint operations or of a relationship between the facilities.

(4) The presence or absence of any one factor in paragraph (3) of this subsection is not conclusive.

(b) To obtain a license, a person must follow the application requirements in this subchapter and meet the criteria for a license.

(c) An applicant must affirmatively show that the applicant, license holder, controlling person, and any person required to submit background and qualification information meet the criteria and eligibility for licensing, in accordance with this section, and:

(1) the building in which the facility is housed:

(A) meets local fire ordinances;

(B) is approved by the local fire authority; and

(C) meets DADS licensing standards in accordance with Subchapter D of this chapter (relating to Facility Construction) based on an on-site inspection by DADS; and

(D) operation of the facility meets DADS licensing standards based on an on-site health inspection by DADS, which must include observation of the care of a resident; or

(2) the facility meets the standards for accreditation based on an on-site accreditation survey by the accreditation commission.

(d) An applicant who chooses the option authorized in subsection (c)(2) of this section must contact DADS to determine which accreditation commissions are available to meet the requirements of that subsection.

(e) DADS issues a license to a facility meeting all requirements of this chapter. The facility must not exceed the maximum allowable number of residents specified on the license.

(f) DADS denies an application for an initial license or a renewal of a license if:

(1) the applicant, license holder, controlling person, or any person required to submit background and qualification information has been debarred or excluded from the Medicare or Medicaid programs by the federal government or a state;

(2) a court has issued an injunction prohibiting the applicant, license holder, controlling person, or any person required to submit background and qualification information from operating a facility; or

(3) during the five years preceding the date of the application, a license to operate a health care facility, long-term care facility, assisted living facility, or similar facility in any state held by the applicant, license holder, controlling person, or any person required to submit background and qualification information has been revoked.

(g) A license holder or controlling person who operates a nursing facility or an assisted living facility for which a trustee was appointed and for which emergency assistance funds, other than funds to pay the

expenses of the trustee, were used is subject to exclusion from eligibility for:

- (1) the issuance of an initial license for a facility for which the person has not previously held a license; and
- (2) the renewal of the license of the facility for which the trustee was appointed.

(h) DADS may deny an application for an initial license or refuse to renew a license if an applicant, license holder, controlling person, or any person required to submit background and qualification information:

(1) violates Texas Health and Safety Code, Chapter 247; a section, standard or order adopted under Chapter 247; or a license issued under Chapter 247 in either a repeated or substantial manner;

(2) commits an act described in §92.551(a)(2) - (7) of this chapter (relating to Administrative Penalties);

(3) aids, abets, or permits a substantial violation described in paragraphs (1) - (2) of this subsection about which the person had or should have had knowledge;

(4) fails to provide the required information, facts, or references;

(5) provides the following false or fraudulent information:

(A) knowingly submits false or intentionally misleading statements to DADS;

(B) uses subterfuge or other evasive means of filing an application for licensure;

(C) engages in subterfuge or other evasive means of filing on behalf of another who is unqualified for licensure;

(D) knowingly conceals a material fact related to licensure; or

(E) is responsible for fraud;

(6) fails to pay the following fees, taxes, and assessments when due:

(A) license fees as described in §92.4 of this chapter (relating to License Fees); or

(B) franchise taxes, if applicable;

(7) during the five years preceding the date of the application, has a history in any state or other jurisdiction of any of the following:

(A) operation of a facility that has been decertified or has had its contract canceled under the Medicare or Medicaid program;

(B) federal or state long-term care facility, assisted living facility, or similar facility sanctions or penalties, including monetary penalties, involuntary downgrading of the status of a facility license, proposals to decertify, directed plans of correction, or the denial of payment for new Medicaid admissions;

(C) unsatisfied final judgments, excluding judgments wholly unrelated to the provision of care rendered in long-term care facilities;

(D) eviction involving any property or space used as a facility; or

(E) suspension of a license to operate a health care facility, long-term care facility, assisted living facility, or a similar facility;

(8) violates Texas Health and Safety Code, §247.021 by operating a facility without a license; or

(9) is subject to denial or refusal as described in Chapter 99 of this title (relating to Denial or Refusal of License) during the time frames described in that chapter.

(i) DADS reviews all information provided by an applicant, a license holder, a person with a disclosable interest, or a manager when considering grounds for denial of an initial license application or a renewal application in accordance with subsection (h)(8) of this section. DADS may grant a license if DADS finds the applicant, license holder, person with a disclosable interest, affiliate, or manager is able to comply with the rules in this chapter.

(j) DADS reviews final actions when considering the grounds for denial of an initial license application or renewal application in accordance with subsections (f) and (h)(8) of this section. An action is final when routine administrative and judicial remedies are exhausted. An applicant must disclose all actions, whether pending or final.

(k) If an applicant owns multiple facilities, DADS examines the overall record of compliance in all of the applicant's facilities. An overall record poor enough to deny issuance of a new license does not preclude the renewal of a license of a facility with a satisfactory record.

§553.12 General Application Requirements

(a) An application must be made on the form prescribed by and available from DADS.

(b) An applicant must complete the application in accordance with the instructions provided with the application. An application must be signed, dated, and notarized, and must contain the applicable license fee as described in §92.4 of this chapter (relating to License Fees).

(c) An application must include the written approval of the local fire authority that the facility and its operations meet local fire ordinances.

(d) If an applicant decides not to continue the application process for a license after submitting an application and license fee, the applicant must submit to DADS a written request to withdraw the application. DADS does not refund the license fee for an application that is withdrawn, except as provided in §92.13(d) of this subchapter (relating to Time Periods for Processing All Types of License Applications).

§553.13 Time Periods for Processing All Types of License Applications

(a) DADS reviews an application for a license within 30 days after the date DADS' Licensing and Credentialing Section receives the application and notifies the applicant if additional information is needed to complete the application.

(b) DADS denies an application that remains incomplete 120 days after the date that DADS' Licensing and Credentialing Section receives the application.

(c) DADS issues a license within 30 days after DADS determines that the applicant and the facility have met all licensure requirements referenced in §92.14 of this subchapter (relating to Initial License Application Procedures and Requirements) or §92.15 of this subchapter (relating to Renewal Procedures and Qualification), as applicable.

(d) If DADS does not process an application in the time period stated, the applicant has a right to make a request to the program director for reimbursement of the license fees paid with the application.

(1) If the program director does not agree that the established time period has been violated or finds that good cause existed for exceeding the established time period, the program director denies the request.

(2) Good cause for exceeding the established time period exists if:

(A) the number of applications to be processed exceeds by 15 percent or more the number processed in the same calendar quarter of the preceding year;

(B) DADS must rely on another public or private entity to process all or a part of the application received by DADS, and the delay is caused by that entity; or

(C) other conditions existed giving good cause for exceeding the established time period.

(3) If the request for reimbursement is denied, the applicant may appeal to the DADS commissioner for resolution of the dispute. The applicant must send a written statement to the DADS commissioner describing the request for reimbursement and the reason for the request. The DADS commissioner will make a timely decision concerning the appeal and notify the applicant in writing of the decision.

§553.14 Initial License Application Procedures and Requirements

(a) An applicant must complete the DADS pre-licensure training course before submitting an application for an initial license. An applicant that is currently licensed under Texas Health and Safety Code, Chapter 247 is exempt from this requirement.

(b) An applicant for an initial license must submit an application in accordance with §92.12 of this subchapter (relating to General Application Requirements) and include the fees required in §92.4 of this chapter (relating to License Fees).

(c) DADS reviews an application for an initial license within 30 days after the date DADS' Licensing and Credentialing Section receives the application and notifies the applicant if additional information is needed to complete the application.

(d) The applicant must send written notice to DADS indicating that the facility is ready for a Life Safety Code (LSC) inspection. The written notice must be submitted with the application or within 120 days after DADS' Licensing and Credentialing Section receives the application. After DADS has received the written notice and the applicant has satisfied the application submission requirements in §92.11 of this subchapter (relating to Criteria for Licensing) and §92.12 of this subchapter, DADS staff conduct an on-site LSC inspection of the facility to determine if the facility meets the licensure requirements in Subchapter D of this chapter (relating to Facility Construction).

(e) If the facility fails to meet the licensure requirements within 120 days after the initial LSC inspection, DADS denies the application for a license.

(f) After a facility has met the licensure requirements in Subchapter D of this chapter (relating to Facility Construction) and has admitted at least one but no more than three residents, the applicant must send a written notice to DADS indicating the facility is ready for a health inspection.

(1) DADS staff conduct an on-site health inspection to determine if the facility meets the licensure requirements for standards of operation and resident care in Subchapter C of this chapter (relating to

Standards for Licensure).

(2) If the facility fails to meet the licensure requirements for standards of operation and resident care within 120 days after the initial health inspection, DADS denies the application for a license.

(g) DADS issues a license within 30 days after DADS determines that the applicant and the facility have met the licensure requirements of this section. The issuance of a license constitutes DADS' official written notice to the facility of the approval of the application.

(h) DADS may deny an application for an initial license if the applicant, controlling person, or any person required to submit background and qualification information fails to meet the criteria for a license established in §92.11 of this subchapter.

(i) If DADS denies an application for an initial license, DADS sends the applicant a written notice of the denial and informs the applicant of the applicant's right to request an administrative hearing to appeal the denial. The administrative hearing is held in accordance with Texas Health and Human Services Commission rules at 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act).

§553.15 Renewal Procedures and Qualifications

(a) A license issued under this chapter:

(1) expires three years after the date issued, except as provided in subsections (b)(1) and (c)(1) of this section;

(2) must be renewed before the license expiration date; and

(3) is not automatically renewed.

(b) If HHSC renews a license that expires after December 31, 2018, and before January 1, 2020, HHSC:

(1) issues a license that is valid for two years, if the license is for a facility with a facility identification number that ends in 0-3 or 7-9; and

(2) issues a license that is valid for three years, if the license is for a facility with a facility identification number that ends in 4-6.

(c) If HHSC renews a license that expires after December 31, 2019, and before January 1, 2021, HHSC:

(1) issues a license that is valid for two years, if the license is for a facility with a facility identification number that ends in 4-6; and

(2) issues a license that is valid for three years, if the license is for a facility with a facility identification number that ends in 0-3 or 7-9.

(d) An application for renewal must comply with the requirements of §92.12 of this subchapter (relating to General Application Requirements) and §92.13 of this subchapter (relating to Time Periods for Processing All Types of License Applications). The submission of a license fee alone does not constitute an application for renewal.

(e) To renew a license, a license holder must submit an application for renewal with HHSC before the expiration date of the license. HHSC considers the license holder to have met the renewal application

submission deadline if the license holder submits to HHSC the basic fee described in §92.4(a)(1) or (2) of this chapter (relating to License Fees) and:

- (1) a complete application for renewal no later than 45 days before the expiration of the current license;
 - (2) an incomplete application for renewal, with a letter explaining the circumstances that prevented the inclusion of the missing information no later than 45 days before the expiration of the current license; or
 - (3) a complete application or an incomplete application with a letter explaining the circumstances that prevented the inclusion of the missing information, and the late fee described in §92.4(b) of this chapter during the 45-day period ending on the date the current license expires.
- (f) If a renewal application is postmarked on or before the submission deadline, the application is considered to be timely if it is received in HHSC Licensing and Credentialing Section, Long-term Care Regulatory Services Division, within 15 days after the date of the postmark, or within 30 days after the date of the postmark and the license holder proves to the satisfaction of HHSC that the delay was due to the carrier. It is the license holder's responsibility to ensure that the application is timely received by HHSC.
- (g) For purposes of Texas Government Code, §2001.054, a license holder has submitted a timely and sufficient application for the renewal of a license if the license holder's application is submitted in accordance with subsections (e) and (f) of this section. A license expires if the license holder fails to submit a timely and sufficient application before the expiration date of the license.
- (h) An application for renewal submitted after the expiration date of the license is considered to be an application for an initial license and must comply with the requirements for an initial license in §92.14 of this subchapter (relating to Initial License Application Procedures and Requirements).
- (i) HHSC reviews an application for a renewal license within 30 days after the date HHSC Licensing and Credentialing Section receives the application and notifies the applicant if additional information is needed to complete the application.
- (j) A license holder applying for a renewal license must show that the facility meets HHSC licensing standards based on an on-site inspection by HHSC. The on-site inspection must include an observation of the care of a resident.
- (k) If an applicant is relying on meeting standards for accreditation in accordance with §92.11(c)(2) of this subchapter (relating to Criteria for Licensing) to show that it meets the requirements for licensure, the application for a renewal license must include a copy of the license holder's accreditation report from the accreditation commission with its application for renewal.
- (l) HHSC may pend action on an application for the renewal of a license for up to six months if the facility does not meet licensure requirements during an on-site inspection.
- (m) The issuance of a license constitutes official written notice from HHSC to the facility that its application is approved.
- (n) HHSC may deny an application for the renewal of a license if the applicant, controlling person, or any person required to submit background and qualification information fails to meet the criteria for a license established in §92.11 of this subchapter.
- (o) Before denying an application for renewal of a license, HHSC gives the license holder:

(1) notice by registered or certified mail of the facts or conduct alleged to warrant the proposed action; and

(2) an opportunity to show compliance with all requirements of law for the retention of the license.

(p) To request an opportunity to show compliance, the license holder must send its written request to the director of the Enforcement Section, Long-Term Care Regulatory. The request must:

(1) be postmarked no later than 10 days after the date of HHSC notice and be received in the office of the director of the Enforcement Section, Long-Term Care Regulatory, no later than 10 days after the date of the postmark; and

(2) contain specific documentation refuting HHSC allegations.

(q) The opportunity to show compliance is limited to a review of documentation submitted by the license holder and information HHSC used as the basis for its proposed action and is not conducted as an adversary hearing. HHSC gives the license holder a written affirmation or reversal of the proposed action.

(r) If HHSC denies an application for the renewal of a license, the applicant may request:

(1) an informal reconsideration by HHSC; and

(2) an administrative hearing or binding arbitration, as described in §92.601 of this chapter (relating to Arbitration), to appeal the denial.

§553.16 Change of Ownership and Notice of Changes

(a) A license holder may not transfer its license.

(b) At least 30 days before the anticipated date of a change of ownership, the prospective license holder must notify DADS of the change of ownership by submitting an application for an initial license based on a change of ownership under §92.14 of this subchapter (relating to Initial Application Procedures and Requirements) and the fee required in §92.4 of this chapter (relating to License Fees).

(c) To avoid a facility operating while unlicensed, an applicant must submit an application for an initial license based on a change of ownership at least 30 days before the anticipated date of the change of ownership. The effective date of the change of ownership cannot precede the date the application is received by DADS Licensing and Credentialing Section, Regulatory Services Division.

(d) DADS may assess an administrative penalty in accordance with Subchapter H, Division 9 of this chapter (relating to Administrative Penalties) against a person who fails to notify DADS before the effective date of the change of ownership.

(e) Pending DADS review of the application for an initial license based on a change of ownership, the current license holder must continue to meet all requirements for operation of the facility.

(f) DADS conducts an on-site health inspection to verify compliance with the licensure requirements before issuing a license based on a change of ownership. DADS may conduct a desk review instead of an on-site health inspection if DADS determines that the facility was required to obtain a new tax identification number and:

(1) less than 50 percent of the direct or indirect ownership interest in the former license holder changed when compared to the new license holder; or

(2) every owner with a disclosable interest in the new license holder had a disclosable interest in the former license holder.

(g) DADS, in its sole discretion, may conduct an on-site Life Safety Code inspection of the facility before issuing a license based on a change of ownership.

(h) DADS issues the license within 30 days after DADS determines that the applicant and the facility have met the licensure requirements of this section. The issuance of a license constitutes DADS official written notice to the facility of the approval of the application for a change of ownership.

(i) DADS may deny an application for a change of ownership if the applicant, controlling person, or any person required to submit background and qualification information fails to meet the criteria for a license established in §92.11 of this subchapter (relating to Criteria for Licensing).

(j) If DADS denies an application for an initial license based on a change of ownership, DADS sends the applicant a written notice of the denial and informs the applicant of the applicant's right to request an administrative hearing to appeal the denial. The administrative hearing is held in accordance with Texas Health and Human Services Commission rules at 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act).

(k) If a license holder that is not a publicly traded company adds an owner with a disclosable interest but the license holder does not undergo a change of ownership, the license holder must notify DADS no later than 30 days after the addition of the owner.

§553.17 Relocation

(a) Relocation is the closing of a facility and the movement of its residents to another location.

(b) A license holder must not relocate a facility without approval from DADS.

(c) Before a relocation, the license holder must submit an application for an initial license for the new location in accordance with §92.14 of this subchapter (relating to Initial Application Procedures and Requirements) and the fee required in §92.4 of this chapter (relating to License Fees).

(d) Residents must not be relocated until the new building has been inspected and approved as meeting the Life Safety Code licensure requirements in Subchapter D of this chapter (relating to Facility Construction).

(e) Following Life Safety Code approval by DADS, the license holder must notify DADS of the date the residents will be relocated.

(f) DADS issues a license for the new facility if the new facility meets the standards of operation and resident care based on an on-site health inspection. The effective date of the license is the date all residents are relocated.

(g) The license holder must continue to maintain the license at the current location and must continue to meet all requirements for operation of the facility until DADS has approved the relocation. The issuance of a license constitutes DADS' approval of the relocation. The license for the current location becomes invalid upon issuance of the new license for the new location.

§553.18 Increase in Capacity

(a) A license holder must not increase a facility's licensed capacity without approval from DADS.

- (b) The license holder must submit an application for an increase in capacity in accordance with §92.12 (relating to General Application Requirements) and the fee required in §92.4 of this chapter (relating to License Fees).
- (c) The license holder must arrange for an inspection of the facility by the local fire marshal and provide the signed fire marshal approval to DADS.
- (d) After DADS' review of an application and after the applicant notifies DADS in writing that the facility is ready for a Life Safety Code (LSC) inspection, DADS staff conduct an on-site LSC inspection of the facility to determine if the facility meets the LSC licensure requirements in Subchapter D of this chapter (relating to Facility Construction).
- (e) If the facility fails to meet the LSC licensure requirements within 120 days after the LSC inspection, DADS denies the application for an increase in capacity.
- (f) After a facility has met LSC licensure requirements, DADS staff conduct an on-site health inspection to determine if the facility meets the licensure requirements for standards of operation and resident care in Subchapter C of this chapter (relating to Standards for Licensure).
- (g) DADS issues a new license with an increased capacity within 30 days after DADS determines that all licensure requirements have been met. DADS may grant approval to occupy the increased capacity once DADS determines that all licensure requirements have been met.
- (h) In order to meet the residents' health and safety needs in the event of a fire, natural disaster, or catastrophic event, DADS may grant approval to temporarily exceed a facility's licensed capacity provided the health and safety of residents are not compromised and the facility can meet the required health care service needs of all residents. A facility may exceed its licensed capacity under this circumstance, monitored by DADS, until residents can be transferred to a permanent location. DADS will issue authorization for the temporary increase in the facility's licensed capacity. The authorization to temporarily increase the capacity ends when the facility receives written notice from DADS ending the authorization.

§553.19 Decrease in Capacity

- (a) A license holder that wishes to decrease the licensed capacity of the facility must provide written notification to DADS' Licensing and Credentialing Section. The written notification must include the desired capacity for the new license.
- (b) Upon receipt of the written notification, DADS issues a new license with the desired capacity as indicated in the written notification.

§553.20 Provisional License

- (a) HHSC may issue a six-month provisional license in the case of a corporate change of ownership.
- (b) HHSC must issue a six-month provisional license for a newly constructed facility without conducting an NFPA 101 inspection if:
- (1) an applicant makes a request in writing for a provisional license;
 - (2) the applicant submits working drawings and specifications to HHSC for review in accordance with §92.64 of this chapter (relating to Plans, Approvals, and Construction Procedures) before facility construction begins;

(3) the applicant obtains all approvals, including a certificate of occupancy in a jurisdiction that requires one, from local authorities having jurisdiction in the area in which the facility is located, such as the fire marshal, health department and building inspector;

(4) the applicant submits a complete license application within 30 days after receipt of all local approvals described in paragraph (3) of this subsection;

(5) the applicant pays the license fee required by §92.4 of this chapter (relating to License Fees);

(6) the applicant, or a person who is a controlling person and an owner of the applicant, has constructed another facility in this state that complies with the NFPA 101; and

(7) the applicant is in compliance with resident-care standards for licensure required by Subchapter C of this chapter (relating to Standards for Licensure) based on an on-site inspection conducted in accordance with §92.81 of this chapter (relating to Inspections and Surveys).

(c) HHSC considers the date facility construction begins to be the date the building construction permit for the facility was approved by local authorities.

(d) A provisional license expires on the earlier of:

(1) the 180th day after the effective date of the provisional license or the end of any extension period granted by HHSC; or

(2) the date a three-year license is issued to the provisional license holder.

(e) HHSC conducts an NFPA 101 inspection of a facility as soon as reasonably possible after HHSC issues a provisional license to the facility.

(f) After conducting an NFPA 101 inspection, HHSC issues a license in accordance with Texas Health and Safety Code §247.023 to the provisional license holder if the facility passes the inspection and the applicant meets all requirements for a license.

§553.21 Initial License for a Type A or Type B Facility for an Applicant in Good Standing

(a) An applicant may request that DADS issue, before conducting an on-site health inspection, an initial license for a Type A or Type B facility. The applicant must request the license by submitting a form prescribed by and made available from DADS.

(b) If an applicant makes a request in accordance with subsection (a) of this section, DADS determines the applicant is in good standing, and the applicant complies with subsection (d) of this section, the applicant is not required to admit a resident to the facility or have the on-site health inspection described in §92.14(f) of this subchapter (relating to Initial License Application Process and Requirements) before DADS issues an initial license.

(c) For purposes of this section, an applicant is in good standing if:

(1) one of the following conditions is met:

(A) the applicant has operated or been a controlling person of a licensed Type A or Type B facility in Texas for at least six consecutive years; or

(B) the applicant has not held a license for a Type A or Type B facility, but a controlling person of the applicant has operated or been a controlling person of a licensed Type A or Type B facility in Texas for at least six consecutive years; and

(2) each licensed facility operated by the applicant or the controlling person described in paragraph (1)(A) or (B) of this subsection:

(A) has not had a violation of a licensing rule:

(i) that:

(I) resulted in actual harm to a resident, which is defined as a negative outcome that compromises the resident's physical, mental or emotional well-being; or

(II) posed an immediate threat of harm causing or likely to cause serious injury, impairment, or death to a resident; and

(ii) that:

(I) the facility did not challenge;

(II) was affirmed; or

(III) is pending a final determination; and

(B) has not had a sanction imposed by DADS against the facility during the six years before the date an application is submitted that resulted in:

(i) a civil penalty;

(ii) an administrative penalty;

(iii) an injunction;

(iv) the denial, suspension, or revocation of a license; or

(v) an emergency closure.

(d) An applicant that makes a request in accordance with subsection (a) of this section must:

(1) submit to DADS:

(A) the applicant's policies and procedures;

(B) evidence that the applicant has complied with §92.123 of this chapter (relating to Investigation of Facility Employees); and

(C) documentation that the applicant's employees have the credentials described in §92.41(a) of this chapter (relating to Standards for Type A and Type B Assisted Living Facilities); and

(2) comply with §92.14(d) of this subchapter and §92.11(c)(1)(A) - (C) of this subchapter (relating to Criteria for Licensing).

(e) DADS issues an initial license to an applicant that makes a request in accordance with subsection (a) of this section if DADS determines that an applicant:

(1) is in good standing;

(2) has submitted information in accordance with subsection (d)(1) of this section that complies with this chapter; and

(3) is in compliance with the requirements of Subchapter D of this chapter (relating to Facility Construction), including meeting the requirements of a Life Safety Code (LSC) inspection within 120 days after the date DADS conducts the initial LSC inspection.

(f) DADS conducts an on-site health inspection within 90 days after the date DADS issues a license in accordance with subsection (e) of this section. The on-site health inspection includes DADS observation of the facility's provision of care to at least one resident.

(g) Until a facility that is issued an initial license under this section meets the requirements of the on-site health inspection described in subsection (f) of this section, the facility must attach a written addendum to the disclosure statement required by §92.41(d)(1) of this chapter as notice to a resident or a prospective resident that the facility has not met the requirements of the on-site health inspection. At a minimum, the addendum must state that:

(1) the facility has not met the requirements of an initial on-site health inspection for a license; and

(2) DADS will conduct an on-site health inspection for licensure within 90 days after the date the license is issued.

§553.22 Alzheimer's Certification of a Type B Facility for an Initial License Applicant in Good Standing

(a) An applicant may request that DADS, before conducting an on-site health inspection, issue an initial license for a Type B facility and an Alzheimer's certification for the facility or a distinct unit of the facility. The applicant must meet the requirements of §92.21 of this subchapter (relating to Initial License for a Type A or Type B Facility for an Applicant in Good Standing) for the initial license and the requirements of this section for certification of the facility or unit.

(b) An applicant must request certification by submitting forms prescribed by and made available from DADS and include the fee described in §92.4 of this chapter (relating to Licensing Fees).

(c) An applicant that makes a request in accordance with subsection (a) of this section is not required to admit a resident to the facility or unit or have the on-site health inspection described in §92.14(f) of this subchapter (relating to Initial License Application Process and Requirements) before DADS certifies the facility or unit if DADS determines that the applicant is in good standing:

(1) for the issuance of an initial license of the facility in accordance with §92.21(c) of this chapter; and

(2) for certification of the facility or unit in accordance with subsection (d) of this section.

(d) An applicant is in good standing to obtain certification of a facility or unit if:

(1) for at least six consecutive years before applying for certification:

(A) the applicant has been:

(i) the license holder for an Alzheimer's certified facility in Texas or a facility in Texas that has an Alzheimer's certified unit; or

(ii) a controlling person of the license holder for an Alzheimer's certified facility in Texas or a facility in Texas that has an Alzheimer's certified unit; or

(B) a controlling person of the applicant has been:

(i) the license holder for an Alzheimer's certified facility in Texas or a facility in Texas that has an Alzheimer's certified unit; or

(ii) a controlling person of the license holder for an Alzheimer's certified facility in Texas or a facility in Texas that has an Alzheimer's certified unit;

(2) each licensed facility operated by the applicant or the controlling person has not had a violation or sanction described in §92.21(c)(2) of this subchapter; and

(3) each licensed facility operated by the applicant or the controlling person has had no more than two violations listed in §92.125(a) of this chapter (relating to Resident's Bill of Rights and Provider Bill of Rights) during the six-year period immediately before the applicant applied for certification.

(e) For purposes of subsection (d)(3) of this section, a facility has a violation if:

(1) the applicant or controlling person operating the facility did not challenge the violation;

(2) a final determination on the violation is pending; or

(3) the violation was upheld.

(f) An applicant that makes a request in accordance with subsection (a) of this section must submit to DADS for approval:

(1) the applicant's policies and procedures required by §92.53 of this chapter (relating to Standards for Certified Alzheimer's Assisted Living Facilities); and

(2) documentation demonstrating that the applicant is complying with §92.53 and §92.123 of this chapter (relating to Investigation of Facility Employees).

(g) DADS certifies a facility or unit after an applicant makes a request in accordance with subsection (a) of this section if DADS determines that the applicant:

(1) meets the good standing requirements described in §92.21(c) of this subchapter and subsection (d) of this section;

(2) has submitted information in accordance with subsection (f) of this section; and

(3) is in compliance with:

(A) §92.51 of this chapter (relating to Certification of a Facility or Unit for Persons with Alzheimer's Disease and Related Disorders); and

(B) §92.53(i) of this chapter.

(h) DADS conducts an on-site health inspection to determine if the facility or unit meets the requirements of §92.53(a) - (h) of this chapter within 90 days after the date DADS certifies a facility or unit in accordance with subsection (g) of this section. During the on-site health inspection, DADS must observe the provision of care to at least one resident who has been admitted to the facility or unit.

(i) Until a facility or unit that is issued a certification under this section meets the requirements of the on-site health inspection described in subsection (h) of this section, the facility must attach a written addendum to the disclosure statement required by §92.53(d) of this chapter to notify a resident or a prospective resident that the facility or unit has not met the requirements of the on-site health inspection. At a minimum, the addendum must state that:

(1) the facility or unit has not met the requirements of an initial on-site health inspection for Alzheimer's certification; and

(2) DADS will conduct an on-site health inspection for Alzheimer's certification within 90 days after the date of certification.

(j) To obtain certification of a unit in a Type B facility that is already licensed, a license holder must comply with §92.51 of this chapter (relating to Certification of a Facility or Unit for Persons with Alzheimer's disease and Related Disorders). **SUBCHAPTER C STANDARDS FOR LICENSURE**

§553.41 Standards for Type A and Type B Assisted Living Facilities

(a) Employees.

(1) Manager. Each facility must designate, in writing, a manager to have authority over the operation.

(A) Qualifications. In small facilities, the manager must have proof of graduation from an accredited high school or certification of equivalency of graduation. In large facilities, a manager must have:

(i) an associate's degree in nursing, health care management, or a related field;

(ii) a bachelor's degree; or

(iii) proof of graduation from an accredited high school or certification of equivalency of graduation and at least one year of experience working in management or in health care industry management.

(B) Training in management of assisted living facilities. After August 1, 2000, a manager must have completed at least one educational course on the management of assisted living facilities, which must include information on the assisted living standards; resident characteristics (including dementia), resident assessment and skills working with residents; basic principles of management; food and nutrition services; federal laws, with an emphasis on the Americans with Disability Act's accessibility requirements; community resources; ethics, and financial management.

(i) The course must be at least 24 hours in length.

(I) Eight hours of training on the assisted living standards must be completed within the first three months of employment.

(II) The 24-hour training requirement may not be met through in-services at the facility, but may be met

through structured, formalized classes, correspondence courses, training videos, distance learning programs, or off-site training courses. All training must be provided or produced by academic institutions, assisted living corporations, or recognized state or national organizations or associations. Subject matter that deals with the internal affairs of an organization will not qualify for credit.

(III) Evidence of training must be on file at the facility and must contain documentation of content, hours, dates, and provider.

(ii) Managers hired after August 1, 2000, who can show documentation of a previously completed comparable course of study are exempt from the training requirements.

(iii) Managers hired after August 1, 2000, must complete the course by the first anniversary of employment as manager.

(iv) An assisted living manager who was employed by a licensed assisted living facility on August 1, 2000, is exempt from the training requirement. An assisted living manager who was employed by a licensed assisted living facility as the manager before August 1, 2000, and changes employment to another licensed assisted living facility as the manager, with a break in employment of no longer than 30 days, is also exempt from the training requirement.

(C) Continuing education. All managers must show evidence of 12 hours of annual continuing education. This requirement will be met during the first year of employment by the 24-hour assisted living management course. The annual continuing education requirement must include at least two of the following areas:

(i) resident and provider rights and responsibilities, abuse/neglect, and confidentiality;

(ii) basic principles of management;

(iii) skills for working with residents, families, and other professional service providers;

(iv) resident characteristics and needs;

(v) community resources;

(vi) accounting and budgeting;

(vii) basic emergency first aid; or

(viii) federal laws, such as Americans with Disabilities Act, Civil Rights Act of 1991, the Rehabilitation Act of 1993, Family and Medical Leave Act of 1993, and the Fair Housing Act.

(D) Manager's responsibilities. The manager must be on duty 40 hours per week and may manage only one facility, except for managers of small Type A facilities, who may have responsibility for no more than 16 residents in no more than four facilities. The managers of small Type A facilities must be available by telephone or pager when conducting facility business off-site.

(E) Manager's absence. An employee competent and authorized to act in the absence of the manager must be designated in writing.

(2) Attendants. Full-time facility attendants must be at least 18 years old or a high-school graduate.

(A) An attendant must be in the facility at all times when residents are in the facility.

(B) Attendants are not precluded from performing other functions as required by the assisted living facility.

(3) Staffing.

(A) A facility must develop and implement staffing policies, which require staffing ratios based upon the needs of the residents, as identified in their service plans.

(B) Prior to admission, a facility must disclose, to prospective residents and their families, the facility's normal 24-hour staffing pattern and post it monthly in accordance with §92.127 of this title (relating to Required Postings).

(C) A facility must have sufficient staff to:

(i) maintain order, safety, and cleanliness;

(ii) assist with medication regimens;

(iii) prepare and service meals that meet the daily nutritional and special dietary needs of each resident, in accordance with each resident's service plan;

(iv) assist with laundry;

(v) assure that each resident receives the kind and amount of supervision and care required to meet his basic needs; and

(vi) ensure safe evacuation of the facility in the event of an emergency.

(D) A facility must meet the staffing requirements described in this subparagraph.

(i) Type A facility: Night shift staff in a small facility must be immediately available. In a large facility, the staff must be immediately available and awake.

(ii) Type B facility: Night shift staff must be immediately available and awake, regardless of the number of licensed beds.

(4) Staff training. The facility must document that staff members are competent to provide personal care before assuming responsibilities and have received the following training.

(A) All staff members must complete four hours of orientation before assuming any job responsibilities. Training must cover, at a minimum, the following topics:

(i) reporting of abuse and neglect;

(ii) confidentiality of resident information;

(iii) universal precautions;

(iv) conditions about which they should notify the facility manager;

(v) residents' rights; and

(vi) emergency and evacuation procedures.

(B) Attendants must complete 16 hours of on-the-job supervision and training within the first 16 hours of employment following orientation. Training must include:

- (i) in Type A and B facilities, providing assistance with the activities of daily living;
- (ii) resident's health conditions and how they may affect provision of tasks;
- (iii) safety measures to prevent accidents and injuries;
- (iv) emergency first aid procedures, such as the Heimlich maneuver and actions to take when a resident falls, suffers a laceration, or experiences a sudden change in physical and/or mental status;
- (v) managing disruptive behavior;
- (vi) behavior management, for example, prevention of aggressive behavior and de-escalation techniques, practices to decrease the frequency of the use of restraint, and alternatives to restraints; and
- (vii) fall prevention.

(C) Direct care staff must complete six documented hours of education annually, based on each employee's hire date. Staff must complete one hour of annual training in fall prevention and one hour of training in behavior management, for example, prevention of aggressive behavior and de-escalation techniques, practices to decrease the frequency of the use of restraint, and alternatives to restraints. Training for these subjects must be competency-based. Subject matter must address the unique needs of the facility. Suggested topics include:

- (i) promoting resident dignity, independence, individuality, privacy, and choice;
- (ii) resident rights and principles of self-determination;
- (iii) communication techniques for working with residents with hearing, visual, or cognitive impairment;
- (iv) communicating with families and other persons interested in the resident;
- (v) common physical, psychological, social, and emotional conditions and how these conditions affect residents' care;
- (vi) essential facts about common physical and mental disorders, for example, arthritis, cancer, dementia, depression, heart and lung diseases, sensory problems, or stroke;
- (vii) cardiopulmonary resuscitation;
- (viii) common medications and side effects, including psychotropic medications, when appropriate;
- (ix) understanding mental illness;
- (x) conflict resolution and de-escalation techniques; and
- (xi) information regarding community resources.

(D) Facilities that employ licensed nurses, certified nurse aides, or certified medication aides must provide annual in-service training, appropriate to their job responsibilities, from one or more of the following areas:

- (i) communication techniques and skills useful when providing geriatric care (skills for communicating with the hearing impaired, visually impaired and cognitively impaired; therapeutic touch; recognizing communication that indicates psychological abuse);
 - (ii) assessment and interventions related to the common physical and psychological changes of aging for each body system;
 - (iii) geriatric pharmacology, including treatment for pain management, food and drug interactions, and sleep disorders;
 - (iv) 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, acute glaucoma; and obtaining emergency treatment;
 - (v) common mental disorders with related nursing implications; and
 - (vi) ethical and legal issues regarding advance directives, abuse and neglect, guardianship, and confidentiality.
- (b) Social services. The facility must provide an activity and/or social program at least weekly for the residents.
- (c) Resident assessment. Within 14 days of admission, a resident comprehensive assessment and an individual service plan for providing care, which is based on the comprehensive assessment, must be completed. The comprehensive assessment must be completed by the appropriate staff and documented on a form developed by the facility. When a facility is unable to obtain information required for the comprehensive assessment, the facility should document its attempts to obtain the information.
- (1) The comprehensive assessment must include the following items:
- (A) the location from which the resident was admitted;
 - (B) primary language;
 - (C) sleep-cycle issues;
 - (D) behavioral symptoms;
 - (E) psychosocial issues (i.e., a psychosocial functioning assessment that includes an assessment of mental or psychosocial adjustment difficulty; a screening for signs of depression, such as withdrawal, anger or sad mood; assessment of the resident's level of anxiety; and determining if the resident has a history of psychiatric diagnosis that required in-patient treatment);
 - (F) Alzheimer's/dementia history;
 - (G) activities of daily living patterns (i.e., wakened to toilet all or most nights, bathed in morning/night, shower or bath);
 - (H) involvement patterns and preferred activity pursuits (i.e., daily contact with relatives, friends, usually attended religious services, involved in group activities, preferred activity settings, general activity preferences);

- (I) cognitive skills for daily decision-making (independent, modified independence, moderately impaired, severely impaired);
 - (J) communication (ability to communicate with others, communication devices);
 - (K) physical functioning (transfer status; ambulation status; toilet use; personal hygiene; ability to dress, feed and groom self);
 - (L) continence status;
 - (M) nutritional status (weight changes, nutritional problems or approaches);
 - (N) oral/dental status;
 - (O) diagnoses;
 - (P) medications (administered, supervised, self-administers);
 - (Q) health conditions and possible medication side effects;
 - (R) special treatments and procedures;
 - (S) hospital admissions within the past six months or since last assessment; and
 - (T) preventive health needs (i.e., blood pressure monitoring, hearing-vision assessment).
- (2) The service plan must be approved and signed by the resident or a person responsible for the resident's health care decisions. The facility must provide care according to the service plan. The service plan must be updated annually and upon a significant change in condition, based upon an assessment of the resident.
- (3) For respite clients, the facility may keep a service plan for six months from the date on which it is developed. During that period, the facility may admit the individual as frequently as needed.
- (4) Emergency admissions must be assessed and a service plan developed for them.
- (d) Resident policies.
- (1) Before admitting a resident, facility staff must explain and provide a copy of the disclosure statement to the resident, family, or responsible party. An assisted living facility that provides brain injury rehabilitation services must attach to its disclosure statement a specific statement that licensure as an assisted living facility does not indicate state review, approval, or endorsement of the facility's rehabilitative services. The facility must document receipt of the disclosure statement.
- (2) The facility must provide residents with a copy of the Resident Bill of Rights.
- (3) When a resident is admitted, the facility must provide to the resident's immediate family, and document the family's receipt of, the DADS telephone hotline number to report suspected abuse, neglect, or exploitation, as referenced in §92.102 of this chapter (relating to Abuse, Neglect, or Exploitation Reportable to DADS).
- (4) The facility must have written policies regarding residents accepted, services provided, charges, refunds, responsibilities of facility and residents, privileges of residents, and other rules and regulations.

(5) Each facility must make available copies of the resident policies to staff and to residents or residents' responsible parties at time of admission. Documented notification of any changes to the policies must occur before the effective date of the changes.

(6) Before or upon admission of a resident, a facility must notify the resident and, if applicable, the resident's legally authorized representative, of DADS rules and the facility's policies related to restraint and seclusion.

(e) Admission policies.

(1) A facility must not admit or retain a resident whose needs cannot be met by the facility or who cannot secure the necessary services from an outside resource. As part of the facility's general supervision and oversight of the physical and mental well-being of its residents, the facility remains responsible for all care provided at the facility. If the individual is appropriate for placement in a facility, then the decision that additional services are necessary and can be secured is the responsibility of facility management with written concurrence of the resident, resident's attending physician, or legal representative. Regardless of the possibility of "aging in place" or securing additional services, the facility must meet all Life Safety Code requirements based on each resident's evacuation capabilities, except as provided in subsection (f) of this section.

(2) There must be a written admission agreement between the facility and the resident. The agreement must specify such details as services to be provided and the charges for the services. If the facility provides services and supplies that could be a Medicare benefit, the facility must provide the resident a statement that such services and supplies could be a Medicare benefit.

(3) A facility must share a copy of the facility disclosure statement, rate schedule, and individual resident service plan with outside resources that provide any additional services to a resident. Outside resources must provide facilities with a copy of their resident care plans and must document, at the facility, any services provided, on the day provided.

(4) Each resident must have a health examination by a physician performed within 30 days before admission or 14 days after admission, unless a transferring hospital or facility has a physical examination in the medical record.

(5) The assisted living facility must secure at the time of admission of a resident the following identifying information:

(A) full name of resident;

(B) social security number;

(C) usual residence (where resident lived before admission);

(D) sex;

(E) marital status;

(F) date of birth;

(G) place of birth;

(H) usual occupation (during most of working life);

(I) family, other persons named by the resident, and physician for emergency notification;

(J) pharmacy preference; and

(K) Medicaid/Medicare number, if available.

(f) Inappropriate placement in Type A or Type B facilities.

(1) DADS or a facility may determine that a resident is inappropriately placed in the facility if a resident experiences a change of condition but continues to meet the facility evacuation criteria.

(A) If DADS determines the resident is inappropriately placed and the facility is willing to retain the resident, the facility is not required to discharge the resident if, within 10 working days after receiving the Statement of Licensing Violations and Plan of Correction, Form 3724, and the Report of Contact, Form 3614-A, from DADS, the facility submits the following to the DADS regional office:

(i) Physician's Assessment, Form 1126, indicating that the resident is appropriately placed and describing the resident's medical conditions and related nursing needs, ambulatory and transfer abilities, and mental status;

(ii) Resident's Request to Remain in Facility, Form 1125, indicating that:

(I) the resident wants to remain at the facility; or

(II) if the resident lacks capacity to provide a written statement, the resident's family member or legally authorized representative wants the resident to remain at the facility; and

(iii) Facility Request, Form 1124, indicating that the facility agrees that the resident may remain at the facility.

(B) If the facility initiates the request for an inappropriately placed resident to remain in the facility, the facility must complete and date the forms described in subparagraph (A) of this paragraph and submit them to the DADS regional office within 10 working days after the date the facility determines the resident is inappropriately placed, as indicated on the DADS prescribed forms.

(2) DADS or a facility may determine that a resident is inappropriately placed in the facility if the facility does not meet all requirements referenced in §92.3 of this chapter (relating to Types of Assisted Living Facilities) for the evacuation of a designated resident.

(A) If, during a site visit, DADS determines that a resident is inappropriately placed at the facility and the facility is willing to retain the resident, the facility must request an evacuation waiver as described in subparagraph (C) of this paragraph to the DADS regional office within 10 working days after the date the facility receives the Statement of Licensing Violations and Plan of Correction, Form 372, and the Report of Contact, Form 3614-A. If the facility is not willing to retain the resident, the facility must discharge the resident within 30 days after receiving the Statement of Licensing Violations and Plan of Correction and the Report of Contact.

(B) If the facility initiates the request for a resident to remain in the facility, the facility must request an evacuation waiver as described in subparagraph (C) of this paragraph from the DADS regional office within 10 working days after the date the facility determines the resident is inappropriately placed, as indicated on the DADS prescribed forms.

(C) To request an evacuation waiver for an inappropriately placed resident, a facility must submit to the

DADS regional office:

(i) Physician's Assessment, Form 1126, indicating that the resident is appropriately placed and describing the resident's medical conditions and related nursing needs, ambulatory and transfer abilities, and mental status;

(ii) Resident's Request to Remain in Facility, Form 1125, indicating that:

(I) the resident wants to remain at the facility; or

(II) if the resident lacks capacity to provide a written statement, the resident's family member or legally authorized representative wants the resident to remain at the facility;

(iii) Facility Request, Form 1124, indicating that the facility agrees that the resident may remain at the facility;

(iv) a detailed emergency plan that explains how the facility will meet the evacuation needs of the resident, including:

(I) the specific staff positions that will be on duty to assist with evacuation and their shift times;

(II) specific staff positions that will be on duty and awake at night; and

(III) specific staff training that relates to resident evacuation;

(v) a copy of an accurate facility floor plan, to scale, that labels all rooms by use and indicates the specific resident's room;

(vi) a copy of the facility's emergency evacuation plan;

(vii) a copy of the facility fire drill records for the last 12 months;

(viii) a copy of a completed Fire Marshal/State Fire Marshal Notification, Form 1127, signed by the fire authority having jurisdiction (either the local Fire Marshal or State Fire Marshal) as an acknowledgement that the fire authority has been notified that the resident's evacuation capability has changed;

(ix) a copy of a completed Fire Suppression Authority Notification, Form 1129, signed by the local fire suppression authority as an acknowledgement that the fire suppression authority has been notified that the resident's evacuation capability has changed;

(x) a copy of the resident's most recent comprehensive assessment that addresses the areas required by subsection (c) of this section and that was completed within 60 days, based on the date stated on the evacuation waiver form submitted to DADS;

(xi) the resident's service plan that addresses all aspects of the resident's care, particularly those areas identified by DADS, including:

(I) the resident's medical condition and related nursing needs;

(II) hospitalizations within 60 days, based on the date stated on the evacuation waiver form submitted to DADS;

(III) any significant change in condition in the last 60 days, based on the date stated on the evacuation waiver

form submitted to DADS;

(IV) specific staffing needs; and

(V) services that are provided by an outside provider;

(xii) any other information that relates to the required fire safety features of the facility that will ensure the evacuation capability of any resident; and

(xiii) service plans of other residents, if requested by DADS.

(D) A facility must meet the following criteria to receive a waiver from DADS:

(i) The emergency plan submitted in accordance with subparagraph (C)(iv) of this paragraph must ensure that:

(I) staff is adequately trained;

(II) a sufficient number of staff is on all shifts to move all residents to a place of safety;

(III) residents will be moved to appropriate locations, given health and safety issues;

(IV) all possible locations of fire origin areas and the necessity for full evacuation of the building are addressed;

(V) the fire alarm signal is adequate;

(VI) there is an effective method for warning residents and staff during a malfunction of the building fire alarm system;

(VII) there is a method to effectively communicate the actual location of the fire; and

(VIII) the plan satisfies any other safety concerns that could have an effect on the residents' safety in the event of a fire; and

(ii) the emergency plan will not have an adverse effect on other residents of the facility who have waivers of evacuation or who have special needs that require staff assistance.

(E) DADS reviews the documentation submitted under this subsection and notifies the facility in writing of its determination to grant or deny the waiver within 10 working days after the date the request is received in the DADS regional office.

(F) Upon notification that DADS has granted the evacuation waiver, the facility must immediately initiate all provisions of the proposed emergency plan. If the facility does not follow the emergency plan, and there are health and safety concerns that are not addressed, DADS may determine that there is an immediate threat to the health or safety of a resident.

(G) DADS reviews a waiver of evacuation during the facility's annual renewal licensing inspection.

(3) If a DADS surveyor determines that a resident is inappropriately placed at a facility and the facility either agrees with the determination or fails to obtain the written statements or waiver required in this subsection, the facility must discharge the resident.

(A) The resident is allowed 30 days after the date of notice of discharge to move from the facility.

(B) A discharge required under this subsection must be made notwithstanding:

(i) any other law, including any law relating to the rights of residents and any obligations imposed under the Property Code; and

(ii) the terms of any contract.

(4) If a facility is required to discharge the resident because the facility has not submitted the written statements required by paragraph (1) of this subsection to the DADS regional office, or DADS denies the waiver as described in paragraph (2) of this subsection, DADS may:

(A) assess an administrative penalty if DADS determines the facility has intentionally or repeatedly disregarded the waiver process because the resident is still residing in the facility when DADS conducts a future onsite visit; or

(B) seek other sanctions, including an emergency suspension or closing order, against the facility under Texas Health and Safety Code Chapter 247, Subchapter C (relating to General Enforcement), if DADS determines there is a significant risk and immediate threat to the health and safety of a resident of the facility.

(5) The facility's disclosure statement must notify the resident and resident's legally authorized representative of the waiver process described in this section and the facility's policies and procedures for aging in place.

(6) After the first year of employment and no later than the anniversary date of the facility manager's hire date, the manager must show evidence of annual completion of DADS training on aging in place and retaliation.

(g) Advance directives.

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

(2) The facility must provide written notice of these policies to residents at the time they are admitted to receive services from the facility.

(A) If, at the time notice is to be provided, the resident is incompetent or otherwise incapacitated and unable to receive the notice, the facility must provide the written notice, in the following order of preference, to:

(i) the resident's legal guardian;

(ii) a person responsible for the resident's health care decisions;

(iii) the resident's spouse;

(iv) the resident's adult child;

(v) the resident's parents; or

(vi) the person admitting the resident.

(B) If the facility is unable, after diligent search, to locate an individual listed under subparagraph (A) of this paragraph, the facility is not required to give notice.

(3) If a resident who was incompetent or otherwise incapacitated and unable to receive notice regarding the facility's advance directives policies later becomes able to receive the notice, the facility must provide the written notice at the time the resident becomes able to receive the notice.

(4) Failure to inform the resident of facility policies regarding the implementation of advance directives will result in an administrative penalty of \$500.

(A) Facilities will receive written notice of the recommendation for an administrative penalty.

(B) Within 20 days after the date on which written notice is sent to a facility, the facility must give written consent to the penalty or make written request for a hearing to the Texas Health and Human Services Commission.

(C) Hearings will be held in accordance with the formal hearing procedures at 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedures Act).

(h) Resident records.

(1) Records that pertain to residents must be treated as confidential and properly safeguarded from unauthorized use, loss, or destruction.

(2) Resident records must contain:

(A) information contained in the facility's standard and customary admission form;

(B) a record of the resident's assessments;

(C) the resident's service plan

(D) physician's orders, if any;

(E) any advance directives;

(F) documentation of a health examination by a physician performed within 30 days before admission or 14 days after admission, unless a transferring hospital or facility has a physical examination in the medical record. Christian Scientists are excluded from this requirement;

(G) documentation by health care professionals of any services delivered in accordance with the licensing, certification, or other regulatory standards applicable to the health care professional under law; and

(H) a copy of the most recent court order appointing a guardian of a resident or a resident's estate and letters of guardianship that the facility received in response to the request made in accordance with §92.42 of this subchapter (relating to Guardianship Record Requirements).

(3) Records must be available to residents, their legal representatives, and DADS staff.

(i) Personnel records. An assisted living facility must keep current and complete personnel records on a facility employee for review by DADS staff including:

- (1) documentation that the facility performed a criminal history check;
- (2) an annual employee misconduct registry check;
- (3) an annual nurse aide registry check;
- (4) documentation of initial tuberculosis screenings referenced in subsection (n) of this section;
- (5) documentation of the employee's compliance with or exemption from the facility vaccination policy referenced in subsection (r) of this section; and
- (6) the signed statement from the employee referenced in §92.102 of this chapter acknowledging that the employee may be criminally liable for the failure to report abuse, neglect and exploitation.

(j) Medications.

(1) Administration. Medications must be administered according to physician's orders.

(A) Residents who choose not to or cannot self-administer their medications must have their medications administered by a person who:

(i) holds a current license under state law that authorizes the licensee to administer medication; or

(ii) holds a current medication aide permit and acts under the authority of a person who holds a current nursing license under state law that authorizes the licensee to administer medication. A medication aide must function under the direct supervision of a licensed nurse on duty or on call by the facility.

(iii) is an employee of the facility to whom the administration of medication has been delegated by a registered nurse, who has trained them to administer medications or verified their training. The delegation of the administration of medication is governed by 22 TAC Chapter 225 (concerning RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions), which implements the Nursing Practice Act.

(B) All resident's prescribed medication must be dispensed through a pharmacy or by the resident's treating physician or dentist.

(C) Physician sample medications may be given to a resident by the facility provided the medication has specific dosage instructions for the individual resident.

(D) Each resident's medications must be listed on an individual resident's medication profile record. The recorded information obtained from the prescription label must include, but is not limited to, the medication:

(i) name;

(ii) strength;

(iii) dosage;

(iv) amount received;

(v) directions for use;

- (vi) route of administration;
- (vii) prescription number;
- (viii) pharmacy name; and
- (ix) the date each medication was issued by the pharmacy.

(2) Supervision. Supervision of a resident's medication regimen by facility staff may be provided to residents who are incapable of self-administering without assistance to include and limited to:

- (A) reminders to take their medications at the prescribed time;
- (B) opening containers or packages and replacing lids;
- (C) pouring prescribed dosage according to medication profile record;
- (D) returning medications to the proper locked areas;
- (E) obtaining medications from a pharmacy; and
- (F) listing on an individual resident's medication profile record the medication:
 - (i) name;
 - (ii) strength;
 - (iii) dosage;
 - (iv) amount received;
 - (v) directions for use;
 - (vi) route of administration;
 - (vii) prescription number;
 - (viii) pharmacy name; and
 - (ix) the date each medication was issued by the pharmacy.

(3) Self-administration.

(A) Residents who self-administer their own medications and keep them locked in their room must be counseled at least once a month by facility staff to ascertain if the residents continue to be capable of self-administering their medications/treatments and if security of medications can continue to be maintained. The facility must keep a written record of counseling.

(B) Residents who choose to keep their medications locked in the central medication storage area may be permitted entrance or access to the area for the purpose of self-administering their own medication/treatment regimen. A facility staff member must remain in or at the storage area the entire time any resident is present.

(4) General.

(A) Facility staff will immediately report to the resident's physician and responsible party any unusual reactions to medications or treatments.

(B) When the facility supervises or administers the medications, a written record must be kept when the resident does not receive or take his/her medications/treatments as prescribed. The documentation must include the date and time the dose should have been taken, and the name and strength of medication missed; however, the recording of missed doses of medication does not apply when the resident is away from the assisted living facility.

(5) Storage.

(A) The facility must provide a locked area for all medications. Examples of areas include, but are not limited to:

(i) central storage area;

(ii) medication cart; and

(iii) resident room.

(B) Each resident's medication must be stored separately from other resident's medications within the storage area.

(C) A refrigerator must have a designated and locked storage area for medications that require refrigeration, unless it is inside a locked medication room.

(D) Poisonous substances and medications labeled for "external use only" must be stored separately within the locked medication area.

(E) If facilities store controlled drugs, facility policies and procedures must address the prevention of the diversion of the controlled drugs.

(6) Disposal.

(A) Medications no longer being used by the resident for the following reasons are to be kept separate from current medications and are to be disposed of by a registered pharmacist licensed in the State of Texas:

(i) medications discontinued by order of the physician;

(ii) medications that remain after a resident is deceased; or

(iii) medications that have passed the expiration date.

(B) Needles and hypodermic syringes with needles attached must be disposed as required by 25 TAC §§1.131 - 1.137 (relating to Definition, Treatment, and Disposition of Special Waste from Health Care-Related Facilities).

(C) Medications kept in a central storage area are released to discharged residents when a receipt has been signed by the resident or responsible party.

(k) Accident, injury, or acute illness.

(1) In the event of accident or injury that requires emergency medical, dental or nursing care, or in the event of apparent death, the assisted living facility will:

(A) make arrangements for emergency care and/or transfer to an appropriate place for treatment, such as a physician's office, clinic, or hospital;

(B) immediately notify the resident's physician and next of kin, responsible party, or agency who placed the resident in the facility; and

(C) describe and document the injury, accident, or illness on a separate report. The report must contain a statement of final disposition and be maintained on file.

(2) The facility must stock and maintain in a single location first aid supplies to treat burns, cuts, and poisoning.

(3) Residents who need the services of professional nursing or medical personnel due to a temporary illness or injury may have those services delivered by persons qualified to deliver the necessary service.

(l) Resident finances. The assisted living facility must keep a simple financial record on all charges billed to the resident for care and these records must be available to DADS. If the resident entrusts the handling of any personal finances to the assisted living facility, a simple financial record must be maintained to document accountability for receipts and expenditures, and these records must be available to DADS. Receipts for payments from residents or family members must be issued upon request.

(m) Food and nutrition services.

(1) A person designated by the facility is responsible for the total food service of the facility.

(2) At least three meals or their equivalent must be served daily, at regular times, with no more than a 16-hour span between a substantial evening meal and breakfast the following morning. All exceptions must be specifically approved by DADS.

(3) Menus must be planned one week in advance and must be followed. Variations from the posted menus must be documented. Menus must be prepared to provide a balanced and nutritious diet, such as that recommended by the National Food and Nutrition Board. Food must be palatable and varied. Records of menus as served must be filed and maintained for 30 days after the date of serving.

(4) Therapeutic diets as ordered by the resident's physician must be provided according to the service plan. Therapeutic diets that cannot customarily be prepared by a layperson must be calculated by a qualified dietician. Therapeutic diets that can customarily be prepared by a person in a family setting may be served by the assisted living facility.

(5) Supplies of staple foods for a minimum of a four-day period and perishable foods for a minimum of a one-day period must be maintained on the premises.

(6) Food must be obtained from sources that comply with all laws relating to food and food labeling. If food, subject to spoilage, is removed from its original container, it must be kept sealed, and labeled. Food subject to spoilage must also be dated.

(7) Plastic containers with tight fitting lids are acceptable for storage of staple foods in the pantry.

(8) Potentially hazardous food, such as meat and milk products, must be stored at 45 degrees Fahrenheit or below. Hot food must be kept at 140 degrees Fahrenheit or above during preparation and serving. Food that is reheated must be heated to a minimum of 165 degrees Fahrenheit.

(9) Freezers must be kept at a temperature of 0 degrees Fahrenheit or below and refrigerators must be 41 degrees Fahrenheit or below. Thermometers must be placed in the warmest area of the refrigerator and freezer to assure proper temperature.

(10) Food must be prepared and served with the least possible manual contact, with suitable utensils, and on surfaces that have been cleaned, rinsed, and sanitized before use to prevent cross-contamination.

(11) Facilities must prepare food in accordance with established food preparation practices and safety techniques.

(12) A food service employee, while infected with a communicable disease that can be transmitted by foods, or who is a carrier of organisms that cause such a disease or while afflicted with a boil, an infected wound, or an acute respiratory infection, must not work in the food service area in any capacity in which there is a likelihood of such person contaminating food or food-contact surfaces with pathogenic organisms or transmitting disease to other persons.

(13) Effective hair restraints must be worn to prevent the contamination of food.

(14) Tobacco products must not be used in the food preparation and service areas.

(15) Kitchen employees must wash their hands before returning to work after using the lavatory.

(16) Dishwashing chemicals used in the kitchen may be stored in plastic containers if they are the original containers in which the manufacturer packaged the chemicals.

(17) Sanitary dishwashing procedures and techniques must be followed.

(18) Facilities that house 17 or more residents must comply with 25 TAC Chapter 228, Subchapters A - J (relating to Texas Food Establishment rules) and local health ordinances or requirements must be observed in the storage, preparation, and distribution of food; in the cleaning of dishes, equipment, and work area; and in the storage and disposal of waste.

(n) Infection control.

(1) Each facility must establish and maintain an infection control policy and procedure designated to provide a safe, sanitary, and comfortable environment and to help prevent the development and transmission of disease and infection.

(2) The facility must comply with departmental rules regarding special waste in 25 TAC §§1.131 - 1.137.

(3) The name of any resident of a facility with a reportable disease as specified in 25 TAC §§97.1 - 97.13 (relating to Control of Communicable Diseases) must be reported immediately to the city health officer, county health officer, or health unit director having jurisdiction, and appropriate infection control procedures must be implemented as directed by the local health authority.

(4) The facility must have written policies for the control of communicable disease in employees and residents, which includes tuberculosis (TB) screening and provision of a safe and sanitary environment for residents and employees.

- (A) If employees contract a communicable disease that is transmissible to residents through food handling or direct resident care, the employee must be excluded from providing these services as long as a period of communicability is present.
- (B) The facility must maintain evidence of compliance with local and/or state health codes or ordinances regarding employee and resident health status.
- (C) The facility must screen all employees for TB within two weeks of employment and annually, according to Centers for Disease Control and Prevention (CDC) screening guidelines. All persons who provide services under an outside resource contract must, upon request of the facility, provide evidence of compliance with this requirement.
- (D) All residents should be screened upon admission and after exposure to TB, in accordance with the attending physician's recommendations and CDC guidelines.
- (5) Personnel must handle, store, process, and transport linens so as to prevent the spread of infection.
- (6) Universal precautions must be used in the care of all residents.
- (o) Access to residents. The facility must allow an employee of DADS or an employee of a local authority into the facility as necessary to provide services to a resident.
- (p) Restraints. All restraints for purposes of behavioral management, staff convenience, or resident discipline are prohibited. Seclusion is prohibited.
- (1) As provided in §92.125(a)(3) of this chapter (relating to Resident's Bill of Rights and Provider Bill of Rights), a facility may use physical or chemical restraints only:
 - (A) if the use is authorized in writing by a physician and specifies:
 - (i) the circumstances under which a restraint may be used; and
 - (ii) the duration for which the restraint may be used; or
 - (B) if the use is necessary in an emergency to protect the resident or others from injury.
- (2) A behavioral emergency is a situation in which severely aggressive, destructive, violent, or self-injurious behavior exhibited by a resident:
 - (A) poses a substantial risk of imminent probable death of, or substantial bodily harm to, the resident or others;
 - (B) has not abated in response to attempted preventive de-escalatory or redirection techniques;
 - (C) could not reasonably have been anticipated; and
 - (D) is not addressed in the resident's service plan.
- (3) Except in a behavioral emergency, a restraint must be administered only by qualified medical personnel.
- (4) A restraint must not be administered under any circumstance if it:

(A) obstructs the resident's airway, including a procedure that places anything in, on, or over the resident's mouth or nose;

(B) impairs the resident's breathing by putting pressure on the resident's torso;

(C) interferes with the resident's ability to communicate; or

(D) places the resident in a prone or supine position.

(5) If a facility uses a restraint hold in a circumstance described in paragraph (2) of this subsection, the facility must use an acceptable restraint hold.

(A) An acceptable restraint hold is a hold in which the individual's limbs are held close to the body to limit or prevent movement and that does not violate the provisions of paragraph (4) of this subsection.

(B) After the use of restraint, the facility must:

(i) with the resident's consent, make an appointment with the resident's physician no later than the end of the first working day after the use of restraint and document in the resident's record that the appointment was made; or

(ii) if the resident refuses to see the physician, document the refusal in the resident's record.

(C) As soon as possible but no later than 24 hours after the use of restraint, the facility must notify one of the following persons, if there is such a person, that the resident has been restrained:

(i) the resident's legally authorized representative; or

(ii) an individual actively involved in the resident's care, unless the release of this information would violate other law.

(D) If, under the Health Insurance Portability and Accountability Act, the facility is a "covered entity," as defined in 45 Code of Federal Regulations (CFR) §160.103, any notification provided under subparagraph (C)(ii) of this paragraph must be to a person to whom the facility is allowed to release information under 45 CFR §164.510.

(6) In order to decrease the frequency of the use of restraint, facility staff must be aware of and adhere to the findings of the resident assessment required in subsection (c) of this section for each resident.

(7) A facility may adopt policies that allow less use of restraint than allowed by the rules of this chapter.

(8) A facility must not discharge or otherwise retaliate against:

(A) an employee, resident, or other person because the employee, resident, or other person files a complaint, presents a grievance, or otherwise provides in good faith information relating to the misuse of restraint or seclusion at the facility; or

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

(q) Accreditation status. If a license holder uses an on-site accreditation survey by an accreditation commission instead of a licensing survey by DADS, as provided in §92.11(c)(2) and §92.15(j) of this chapter

(relating to Criteria for Licensing; and Renewal Procedures and Qualifications), the license holder must provide written notification to DADS within five working days after the license holder receives a notice of change in accreditation status from the accreditation commission. The license holder must include a copy of the notice of change with its written notification to DADS.

(r) Vaccine Preventable Diseases.

(1) Effective September 1, 2012, a facility must develop and implement a policy to protect a resident from vaccine preventable diseases in accordance with Texas Health and Safety Code, Chapter 224.

(2) The policy must:

(A) require an employee or a contractor providing direct care to a resident to receive vaccines for the vaccine preventable diseases specified by the facility based on the level of risk the employee or contractor presents to residents by the employee's or contractor's routine and direct exposure to residents;

(B) specify the vaccines an employee or contractor is required to receive in accordance with paragraph (1) of this subsection;

(C) include procedures for the facility to verify that an employee or contractor has complied with the policy;

(D) include procedures for the facility to exempt an employee or contractor from the required vaccines for the medical conditions identified as contraindications or precautions by the Centers for Disease Control and Prevention;

(E) for an employee or contractor who is exempt from the required vaccines, include procedures the employee or contractor must follow to protect residents from exposure to disease, such as the use of protective equipment, such as gloves and masks, based on the level of risk the employee or contractor presents to residents by the employee's or contractor's routine and direct exposure to residents;

(F) prohibit discrimination or retaliatory action against an employee or contractor who is exempt from the required vaccines for the medical conditions identified as contraindications or precautions by the Centers for Disease Control and Prevention, except that required use of protective medical equipment, such as gloves and masks, may not be considered retaliatory action;

(G) require the facility to maintain a written or electronic record of each employee's or contractor's compliance with or exemption from the policy;

(H) include disciplinary actions the facility may take against an employee or contractor who fails to comply with the policy.

(3) The policy may:

(A) include procedures for an employee or contractor to be exempt from the required vaccines based on reasons of conscience, including religious beliefs; and

(B) prohibit an employee or contractor who is exempt from the required vaccines from having contact with residents during a public health disaster, as defined in Texas Health and Safety Code, §81.003 (relating to Communicable Diseases).

(s) A DADS employee must not retaliate against an assisted living facility, an employee of an assisted living facility, or a person in control of an assisted living facility for:

- (1) complaining about the conduct of a DADS employee;
- (2) disagreeing with a DADS employee about the existence of a violation of this chapter or a rule adopted under this chapter; or
- (3) asserting a right under state or federal law.

§553.42 Guardianship Record Requirements

(a) A facility must request, from a resident's legally authorized representative or the person responsible for the resident's support, a copy of:

- (1) the current court order appointing a guardian for the resident or the resident's estate; and
- (2) current letters of guardianship for the resident.

(b) A facility must request the court order and letters of guardianship:

- (1) when the facility admits an individual; and
- (2) when the facility becomes aware a guardian is appointed after the facility admits a resident.

(c) A facility must request an updated copy of the court order and letters of guardianship at each annual assessment and retain documentation of any change.

(d) A facility must make at least one follow-up request within 30 days after the facility makes a request in accordance with subsection (b) or (c) of this section if the facility has not received:

- (1) a copy of the court order and letters of guardianship; or
- (2) a response that there is no court order or letters of guardianship.

(e) A facility must keep in the resident's record:

- (1) documentation of the results of the request for the court order and letters of guardianship; and
- (2) a copy of the court order and letters of guardianship.

§553.43 Policy for Residents with Alzheimer's Disease or a Related Disorder

(a) A facility must adopt, implement, and enforce a written policy that:

(1) requires a facility employee who provides direct care to a resident with Alzheimer's disease or a related disorder to successfully complete training in the provision of care to residents with Alzheimer's disease and related disorders; and

(2) ensures the care and services provided by a facility employee to a resident with Alzheimer's disease or a related disorder meet the specific identified needs of the resident relating to the diagnosis of Alzheimer's disease or a related disorder.

(b) The training required for facility employees under subsection (a)(1) of this section must include information about:

- (1) symptoms of dementia;
- (2) stages of Alzheimer's disease;
- (3) person-centered behavioral interventions; and
- (4) communication with a resident with Alzheimer's disease or a related disorder.

§553.51 Certification of a Facility or Unit for Persons with Alzheimer's Disease and Related Disorders

- (a) A facility that advertises, markets, or otherwise promotes that the facility or a distinct unit of the facility provides specialized care for persons with Alzheimer's disease or related disorders must be certified or have the unit certified under subsection (d) of this section or §92.22 of this chapter (relating to Alzheimer's Certification of a Type B Facility for an Initial License Applicant in Good Standing). Certification under this section is not required for a facility to use advertising terms such as "medication reminders or assistance," "meal and activity reminders," "escort service," or "short-term memory loss, confusion, or forgetfulness."
- (b) To be certified under subsection (d) of this section, a facility must be licensed as a Type B facility.
- (c) A license holder must request certification of a facility or unit under subsection (d) of this section by using forms prescribed by HHSC and include the fee described in §92.4(c) of this chapter (relating to Licensing Fees).
- (d) After HHSC receives a request for certification in accordance with subsection (c) of this section, HHSC certifies a licensed Type B facility as a certified Alzheimer's facility or a unit of a licensed Type B facility as a certified Alzheimer's unit, if HHSC determines:
 - (1) that the facility or unit is in compliance with §92.53(i) of this subchapter (relating to Standards for Certified Alzheimer's Assisted Living Facilities) and Subchapter D of this chapter (relating to Facility Construction), including meeting the requirements of a Life Safety Code (LSC) inspection within 120 days after the date HHSC conducts an initial LSC inspection; and
 - (2) that the facility or unit meets the requirements of §92.53 (a) - (h) of this subchapter based on an on-site health inspection, during which HHSC must observe the facility's or unit's provision of care to at least one resident who has been admitted to the Alzheimer's facility or unit.
- (e) A facility or unit must not exceed the maximum number of residents specified on the Alzheimer's certificate issued to the facility by HHSC.
- (f) A facility must post the facility's or unit's Alzheimer's certificate in a prominent location for public view.
- (g) An Alzheimer's certificate is valid for three years from the effective date of approval by HHSC.
- (h) HHSC cancels an Alzheimer's certificate if:
 - (1) a certified facility, or the facility in which a certified unit is located, undergoes a change of ownership; or
 - (2) HHSC determines that a certified facility or unit is not in compliance with applicable laws and rules.
- (i) A facility must remove a cancelled certificate from display and advertising, and surrender the certificate to HHSC.

§553.53 Standards for Certified Alzheimer's Assisted Living Facilities

(a) Manager qualifications and training.

(1) The manager of the certified Alzheimer facility or the supervisor of the certified Alzheimer unit must be 21 years of age, and have:

(A) an associate's degree in nursing, health care management;

(B) a bachelor's degree in psychology, gerontology, nursing, or a related field; or

(C) proof of graduation from an accredited high school or certification of equivalency of graduation and at least one year of experience working with persons with dementia.

(2) The manager or supervisor must complete six hours of annual continuing education regarding dementia care.

(b) Staff training.

(1) All staff members must receive four hours of dementia-specific orientation prior to assuming any job responsibilities. Training must cover, at a minimum, the following topics:

(A) basic information about the causes, progression, and management of Alzheimer's disease;

(B) managing dysfunctional behavior; and

(C) identifying and alleviating safety risks to residents with Alzheimer's disease.

(2) Direct care staff must receive 16 hours of on-the-job supervision and training within the first 16 hours of employment following orientation. Training must cover:

(A) providing assistance with the activities of daily living;

(B) emergency and evacuation procedures specific to the dementia population;

(C) managing dysfunctional behavior; and

(D) behavior management, including prevention of aggressive behavior and de-escalation techniques, or fall prevention, or alternatives to restraints.

(3) Direct care staff must annually complete 12 hours of in-service education regarding Alzheimer's disease. One hour of annual training must address behavior management, including prevention of aggressive behavior and de-escalation techniques, or fall prevention, or alternatives to restraints. Training for these subjects must be competency-based. Subject matter must address the unique needs of the facility. Additional suggested topics include:

(A) assessing resident capabilities and developing and implementing service plans;

(B) promoting resident dignity, independence, individuality, privacy and choice;

(C) planning and facilitating activities appropriate for the dementia resident;

- (D) communicating with families and other persons interested in the resident;
- (E) resident rights and principles of self-determination;
- (F) care of elderly persons with physical, cognitive, behavioral and social disabilities;
- (G) medical and social needs of the resident;
- (H) common psychotropics and side effects; and
- (I) local community resources.

(c) Staffing. A facility must employ sufficient staff to provide services for and meet the needs of its Alzheimer's residents. In large facilities or units with 17 or more residents, two staff members must be immediately available when residents are present.

(d) Alzheimer's Assisted Living Disclosure Statement form. A facility must use the Alzheimer's Assisted Living Disclosure Statement form and amend the form if changes in the operation of the facility will affect the information in the form.

(e) Pre-admission. The facility must establish procedures, such as an application process, interviews, and home visits, to ensure that prospective residents are appropriate and their needs can be met.

(1) Prior to admitting a resident, facility staff must discuss and explain the Alzheimer's Assisted Living Disclosure Statement form with the family or responsible party.

(2) The facility must give the Alzheimer's Assisted Living Disclosure Statement form to any individual seeking information about the facility's care or treatment of residents with Alzheimer's disease and related disorders.

(f) Assessment. The facility must make a comprehensive assessment of each resident within 14 days of admission and annually. The assessment must include the items listed in §92.41(c)(1)(A) - (T) of this chapter (relating to Standards for Type A and Type B Assisted Living Facilities).

(g) Service plan. Facility staff, with input from the family, if available, must develop an individualized service plan for each resident, based upon the resident assessment, within 14 days of admission. The service plan must address the individual needs, preferences, and strengths of the resident. The service plan must be designed to help the resident maintain the highest possible level of physical, cognitive, and social functioning. The service plan must be updated annually and upon a significant change in condition, based upon an assessment of the resident.

(h) Activities. A facility must encourage socialization, cognitive awareness, self-expression, and physical activity in a planned and structured activities program. Activities must be individualized, based upon the resident assessment, and appropriate for each resident's abilities.

(1) The activity program must contain a balanced mixture of activities addressing cognitive, recreational, and activity of daily living (ADL) needs.

(A) Cognitive activities include, but are not limited to, arts, crafts, story telling, poetry readings, writing, music, reading, discussion, reminiscences, and reviews of current events.

(B) Recreational activities include all socially interactive activities, such as board games and cards, and

physical exercise. Care of pets is encouraged.

(C) Self-care ADLs include grooming, bathing, dressing, oral care, and eating. Occupational ADLs include cleaning, dusting, cooking, gardening, and yard work. Residents must be allowed to perform self-care ADLs as long as they are able to promote independence and self worth.

(2) Residents must be encouraged, but never forced, to participate in activities. Residents who choose not to participate in a large group activity must be offered at least one small group or one-on-one activity per day.

(3) Facilities must have an employee responsible for leading activities.

(A) Facilities with 16 or fewer residents must designate an employee to plan, supply, implement, and record activities.

(B) Facilities with 17 or more residents must employ, at a minimum, an activity director for 20 hours weekly. The activity director must be a qualified professional who:

(i) is a qualified therapeutic recreation specialist or an activities professional who is eligible for certification as a therapeutic recreation specialist, therapeutic recreation assistant, or an activities professional by a recognized accrediting body, such as the National Council for Therapeutic Recreation Certification, the National Certification Council for Activity Professionals, or the Consortium for Therapeutic Recreation/Activities Certification, Inc.; or

(ii) has two years of experience in a social or recreational program within the last five years, one year of which was full-time in an activities program in a health care setting; or

(iii) has completed an activity director training course approved by the National Association for Activity Professionals or the National Therapeutic Recreation Society.

(4) The activity director or designee must review each resident's medical and social history, preferences, and dislikes, in determining appropriate activities for the resident. Activities must be tailored to the residents' unique requirements and skills.

(5) The activities program must provide opportunities for group and individual settings. On weekdays, each resident must be offered at least one cognitive activity, two recreational activities and three ADL activities each day. The cognitive and recreational activities (structured activities) must be at least 30 minutes in duration, with a minimum of six and a half hours of structured activity for the entire week. At least an hour and a half of structured activities must be provided during the weekend and must include at least one cognitive activity and one physical activity.

(6) The activity director or designee must create a monthly activities schedule. Structured activities should occur at the same time and place each week to ensure a consistent routine within the facility.

(7) The activity director or designee must annually attend at least six hours of continuing education regarding Alzheimer's disease or related disorders.

(8) Special equipment and supplies necessary to accommodate persons with a physical disability or other persons with special needs must be provided as appropriate.

(i) Physical plant. Alzheimer's units, if segregated from other parts of the Type B facility with approved security devices, must meet the following requirements within the Alzheimer's unit:

(1) Resident living area(s) must be in compliance with §92.62(m)(3) of this chapter (relating to General Requirements).

(2) Resident dining area(s) must be in compliance with §92.62(m)(4) of this chapter.

(3) Resident toilet and bathing facilities must be in compliance with §92.62(m)(2) of this chapter.

(4) A monitoring station must be provided within the Alzheimer's unit with a writing surface such as a desk or counter, chair, task illumination, telephone or intercom, and lockable storage for resident records.

(5) Access to at least two approved exits remote from each other must be provided in order to meet the Life Safety Code requirements.

(6) In large facilities, cross corridor control doors, if used for the security of the residents, must be similar to smoke doors, which are each 34 inches in width and swing in opposite directions. A latch or other fastening device on a door must be provided with a knob, handle, panic bar, or other simple type of releasing device.

(7) An outdoor area of at least 800 square feet must be provided in at least one contiguous space. This area must be connected to, be a part of, be controlled by, and be directly accessible from the facility.

(A) Such areas must have walls or fencing that do not allow climbing or present a hazard and meet the following requirements. These minimum dimensions do not apply to additional fencing erected along property lines or building setback lines for privacy or to meet requirements of local building authorities.

(i) Minimum distance of the enclosure fence from the building is 8 feet if the fence is parallel to the building and there are no window openings;

(ii) Minimum distance of the enclosure fence (parallel with building walls) from bedroom windows is 20 feet if the fencing is solid and 15 feet from bedroom windows if the fencing is open; or

(iii) For unusual or unique site conditions, areas of enclosure may have alternate configurations with DADS approval.

(B) Access to at least two approved exits remote from each other must be provided from the enclosed area in order to meet the Life Safety Code requirements.

(C) If the enclosed area involves a required exit from the building, the following additional requirements must be met:

(i) A minimum of two gates must be remotely located from each other if only one exit is enclosed. If two or more exits are enclosed by the fencing and entry access can be made at each door, a minimum of one gate is required.

(ii) The gate(s) must be located to provide a continuous path of travel from the building exit to a public way, including walkways of concrete, asphalt, or other approved materials.

(iii) If gate(s) are locked, the gate nearest the exit from the building must be locked with an electronic lock that operates the same as electronic locks on control doors and/or exit doors and is in compliance with the National Electrical Code for exterior exposure. Additional gates may also have electronic locks or may have keyed locks provided staff carry the keys. All gates may have keyed locks, provided all staff carry the keys, and the outdoor area has an area of refuge which:

- (I) extends beyond a minimum of 30 feet from the building; and
 - (II) the area of refuge allows at least 15 square feet per person (resident, staff, visitor) potentially present at the time of a fire.
- (8) Locking devices may be used on the control doors provided the following criteria are met:
- (A) The building must have an approved sprinkler system and an approved fire alarm system to meet the licensing standards.
 - (B) The locking device must be electronic and must be released when any one of the following occurs:
 - (i) activation of the fire alarm or sprinkler system;
 - (ii) power failure to the facility; or
 - (iii) activation of a switch or button located at the monitoring station and at the main staff station.
 - (C) A key pad or buttons may be located at the control doors for routine use by staff.
- (9) Locking devices may be used on the exit doors provided:
- (A) the locking arrangements meet §7.2.1.6 of the Life Safety Code; or
 - (B) the following criteria are met:
 - (i) The building must have an approved sprinkler system and an approved fire alarm system to meet the licensing standards.
 - (ii) The locking device must be electro-magnetic; that is, no type of throw-bolt is to be used.
 - (iii) The device must release when any one of the following occurs:
 - (I) activation of the fire alarm or sprinkler system;
 - (II) power failure to the facility; or
 - (III) activation of a switch or button located at the monitoring station and at the main staff station.
 - (iv) A key pad or buttons may be located at the control doors for routine use by staff.
 - (v) A manual fire alarm pull must be located within five feet of each exit door with a sign stating, "Pull to release door in an emergency."
 - (vi) Staff must be trained in the methods of releasing the door device.

§553.54 Advertisements, Solicitations, and Promotional Material

An assisted living facility must use its state-issued facility identification number in all advertisements, solicitations, and promotional materials, including yellow pages, brochures, and business cards.

SUBCHAPTER D FACILITY CONSTRUCTION

§553.61 Introduction and Application

(a) Classification of facilities.

(1) A small facility is a building or buildings consisting of one or more floors providing sleeping accommodations for 16 or fewer residents exclusive of "live-in" houseparents, family or staff.

(2) A large facility is a building or buildings consisting of one or more floors providing sleeping accommodations for 17 or more residents exclusive of "live-in" staff.

(3) New construction is any construction work that began on or after January 6, 2014. Converting an unlicensed building or unlicensed portion of a building to an assisted living facility must meet the new construction requirements for the proposed new use referenced in the Life Safety Code.

(4) An existing facility is one that operated with a license as an assisted living facility before January 6, 2014 and has not subsequently become unlicensed.

(b) Applicability of requirements for construction and life safety.

(1) All buildings or structures, new or existing, used as a licensed assisted living facility must comply with these standards. Any exceptions are specifically mentioned.

(2) Existing buildings and structures that are converted to assisted living occupancy, must not admit assisted living residents until all standards are met and DADS grants approval for occupancy.

(3) A licensed nursing facility or licensed hospital that meets the requirements of Chapter 18, New Health Care Occupancies, or Chapter 19, Existing Health Care Occupancies, of National Fire Protection Association 101 (NFPA 101), may be considered as an assisted living occupancy without implementing additional fire safety features as may be specified in this subchapter.

(4) Buildings and structures must comply with the 2000 edition of NFPA 101, as published by the National Fire Protection Association, Inc., as follows. For new construction, DADS may authorize an assisted living facility to comply with later editions of the code, in their entirety, when required by local building authorities.

(A) All new Type A facilities and small Type B facilities must comply with Chapter 32, New Residential Board and Care Occupancies.

(B) All existing Type A facilities and small Type B facilities must comply with Chapter 33, Existing Residential Board and Care Occupancies.

(C) All new Type B large facilities must comply with Chapter 18. The requirements of limited care, as defined by the NFPA 101, may be used.

(D) All existing Type B large facilities must comply with Chapter 19. The requirements of limited care, as defined by the NFPA 101, may be used.

(E) All assisted living facilities must comply with other chapters, sections, subsections, or paragraphs of the NFPA 101, including Chapter 1, Administration; Chapter 2, Mandatory References; Chapter 3, Definitions; Chapter 4, General; Chapter 5, Performance-Based Option; Chapter 6, Classification of Occupancy and Hazard of Contents; Chapter 7, Means of Egress; Chapter 8, Features of Fire Protection; Chapter 9, Building Service and Fire Protection Equipment; and Chapter 10, Interior Finish, Contents, and Furnishings, as they

relate to Chapter 18; Chapter 19; Chapter 30, New Apartment Buildings; Chapter 31, Existing Apartment Buildings; Chapter 32; and Chapter 33.

(F) All assisted living facilities with buildings that contain living units with independent cooking and bathroom facilities must comply with NFPA 101, Chapters 30, 31, 32, and 33.

(5) New construction is subject to local codes. The description of the occupancy may vary with local codes. In the absence of a local code, DADS requires compliance with the fundamentals of the following codes:

(A) the International Building Code, 2000 edition or later by the International Code Council, relating to "I-1" Occupancy for Type A facilities and "I-2" for Type B facilities;

(B) the International Plumbing Code, 2000 edition by the International Code Council or the Uniform Plumbing Code, 2000 Edition;

(C) the National Electrical Code as specified under NFPA 101; and

(D) illumination systems must be designed and installed in accordance with the Lighting Handbook of the Illuminatory Engineering Society (IES) of North America, except as may be modified in this subchapter.

(6) An existing building either occupied as an assisted living facility at the time of initial inspection by DADS or converted to occupancy as an assisted living facility must meet all local requirements pertaining to that building for that occupancy. DADS will require the facility sponsor or licensee to submit evidence that local requirements are satisfied. When local laws, codes or ordinances are more stringent than these standards for assisted living, the more stringent requirements will govern.

(7) Buildings must be structurally sound with regard to actual or expected dead, live, and wind loads according to applicable building codes.

(8) The facility must comply with the accessibility requirements for individuals with disabilities as referenced in the revised regulations for Title II and III (2010 ADA Standards for Accessible Design) of the Americans with Disabilities Act of 1990 at Title 42, United States Code, Chapter 126; federal regulations at Title 28, Code of Federal Regulations, Part 35 and Part 36; Texas Accessibility Standards (TAS) at Texas Government Code, Chapter 469; and Texas Department of Licensing and Regulation (TDLR) rules at Title 16, Texas Administrative Code, Chapter 68. A subject facility must register plans for new construction, substantial renovations, modifications, and alterations with TDLR (Attn: Elimination of Architectural Barriers Program) and comply with TAS.

§553.62 General Requirements

(a) General. The concept of the National Fire Protection Association (NFPA) 101 Life Safety Code requirements for fire safety with regard to the residents, is based on evacuation capability. In accordance with NFPA 101, Chapters 32 and 33, Type A facilities are classified as "slow" evacuation capability and Type B facilities are classified as "impractical" evacuation capability.

(b) Evacuation procedures. A resident in a Type A facility must be able to demonstrate to the Texas Department of Aging and Disability Services (DADS) that the resident can travel from the resident's living unit to a centralized space, such as lobby, living or dining room on the level of discharge within a 13-minute period without continuous staff assistance. Elevators cannot be used as an evacuation route.

(c) Operational features.

(1) A fire causing damage to the facility or equipment must be reported to DADS within 72 hours after the fire is extinguished. A fire causing injury or death to a resident must be reported immediately. A telephone report must be followed by a written report on a form that DADS supplies.

(2) Fire drills must be conducted quarterly on each shift and with at least one drill conducted each month. The drills may be announced in advance to the residents. The drills must involve the participation of the staff in accordance with the emergency plan. Residents must be informed of evacuation procedures and locations of exits. All fire drills must be documented on a form provided by DADS. In large Type B facilities, the drill must include the activation of the fire alarm signal, except between 9:00 p.m. and 6:00 a.m.

(3) Smoking regulations must be established, and smoking areas must be designated for residents and staff. Ashtrays of noncombustible material and safe design must be provided in smoking areas.

(4) All facilities, except small, one-story facilities, must post an emergency evacuation floor plan.

(5) An assisted living facility must have in effect and available to all supervisory personnel written copies of an evacuation plan for the protection of all persons in the facility in the event of fire. The plan must address sheltering in place, evacuation to an area of refuge, and evacuation from the building when necessary. The plan must include special staff actions including fire protection procedures needed to ensure the safety of any resident. The plan must be amended or revised when needed. All employees must be periodically instructed and informed of their duties and responsibilities under the plan. A copy of the plan must be readily available at all times within the facility. The plan must reflect the current evacuation capabilities of the residents.

(d) Safety operations. The facility must have a written emergency preparedness and response plan. The facility must attach to the plan the procedures the staff must follow. The plan must address, at a minimum, the eight core functions of emergency management, which are: direction and control; warning (how the facility will be notified of emergencies and who they will notify); communication (with whom and by what mechanism); sheltering arrangements; evacuation (destinations, routes); transportation; health and medical needs; and resource management (supplies, staffing, emergency equipment, records). Plans must be coordinated with the local emergency management coordinator and should address those natural, technological and man-made emergencies that could affect the facility. Information about the local emergency management coordinator may be obtained from the office of the local mayor or county judge.

(e) Construction.

(1) An assisted living facility must be separated from other occupancies. A common wall between an assisted living facility and another occupancy must be not less than a two-hour fire-rated partition. The partition must be constructed as required by National Fire Protection Association Standards. A licensed nursing facility or licensed hospital is not considered another occupancy for this purpose. An exception occurs when an occupancy not subject to DADS licensing standards is located in the same building or structure and is so intermingled that a two hour fire rated partition is impracticable. The means of egress, construction, protection and other safeguards for that location must comply with the National Fire Protection Association (NFPA) 101 requirements of the licensed occupancy.

(2) Interior wall and ceiling surfaces must have as the finished surface or as substrate or sheathing a fire resistance of not less than that provided by 3/8" gypsum board (20 minute fire rating), unless approved otherwise by DADS. A sprinkler system will not substitute for the minimum construction requirements. Exceptions are existing Type B large facilities must meet the construction requirements of NFPA 101, Chapter 19.1.6 and new Type B large facilities must meet NFPA 101, Chapter 18.1.6.

(3) An assisted living facility must meet flame spread rate requirements as specified in Chapters 18, 19, 32, and 33 of NFPA 101.

(4) Doors between resident rooms and corridors or public spaces must be not less than 1-3/4" thick solid core wood construction or 20-minute fire-rated, self-closing or automatic-closing, and latch in their frames. Exceptions are as follows.

(A) Small Type A facilities may have smoke resisting doors, with self-closing or automatic closing devices, if the interior finish is Class 'B' or better and there are two remote exit routes.

(B) Small Type A facilities that have 20-minute fire-rated doors or 1-3/4" solid core wood, Class 'B' or better interior finish, and two remote exit routes are not required to have self-closing or automatic-closing doors.

(C) In a small or large Type A facility protected throughout by an approved automatic sprinkler system, doors to resident bedrooms are not required to be self-closing or automatic-closing, except for a three story or larger building that does not meet construction requirements of NFPA 101, Chapter 18.

(D) In a small or a large Type B facility protected throughout by an approved automatic sprinkler system, the facility may have smoke resisting doors. Door-closing devices are not required.

(5) Upper floors of an assisted living facility must have at least two separate approved stairs. Each stair must be arranged and located so that it is not necessary to go through another room, including a bedroom or bathroom, to reach the stair. All stairs must be provided with handrails and with normal lighting. Refer to NFPA 101 for Class 'A' stair details. DADS may exempt an existing facility with 16 beds or less from meeting this requirement. In the facility, at least one main stair may be Class 'B' and constructed of wood.

(6) All hazardous areas, as defined in NFPA 101, Chapter 18, 19, 32, or 33, must have a one-hour fire-separated barrier or have sprinkler protection, or both, if considered severe. Gasoline, volatile materials, oil base paint, charcoal lighter fluid, or similar products must not be stored in the building housing residents.

(7) Exit signs, with emergency power, must be provided in all large facilities and installed in accordance with NFPA 101, §7.10.

(8) Emergency lighting must be provided in all buildings with 25 or more rooms; in apartment buildings with 12 or more living units or that are three or more stories high; and in all large facilities that are designed for Type B. The system must be installed in accordance with NFPA 101, §7.9.

(9) Emergency motor generators, if required or provided, must be installed in accordance with NFPA 37 or NFPA 110 or other applicable NFPA code or standard.

(f) Fire alarm and sprinkler systems.

(1) Fire alarm and smoke detection system. An assisted living facility must install an underwriter's laboratory (U.L.) listed manual fire alarm initiating system, with an interconnected automatic smoke detection and alarm initiation system, that complies with the NFPA 101, §9.6. The operation of any alarm initiating device must activate an audible or visual alarm at the site.

(A) Smoke detectors must be installed in resident bedrooms, corridors, hallways, living rooms, dining rooms, offices, and public or common areas. Kitchens, laundries, and attached garages used for car parking may have heat detectors in lieu of smoke detectors. Exceptions are as follows.

(i) A large facility with apartment units may use listed smoke detectors with an alarm device and separate heat detector contacts in the living area. The smoke detector must emit an audible signal within the apartment, and annunciate at the main staff station or location. The heat detector contacts must be connected into the fire alarm system and provide a general alarm when activated.

- (ii) A facility constructed to meet the requirements of NFPA 101, Chapter 18, must meet §18.3.4.5.3 for smoke detector locations.
 - (iii) A facility constructed to meet the requirements of NFPA 101, Chapter 19 must meet §19.3.4.5.1 for smoke detector locations.
 - (B) The fire alarm control panel must be visible to staff at or near the staff area that is attended 24 hours a day. An exception to this requirement is a fire alarm control panel that is monitored by a device carried by the staff.
 - (C) The primary power source for the complete fire alarm system must be commercial electric and permanently wired for power on a dedicated circuit in accordance with the National Electrical Code.
 - (D) An emergency power source must be from approved storage batteries or on-site engine-driven generator set.
 - (E) The facility must have a written contract with a fire alarm firm which has been issued an Alarm Certificate of Registration (ACR) number from the Texas State Fire Marshal's Office to perform the inspection, test and maintenance requirements of NFPA 72 semiannually. Inspections stipulated in the contract must be performed. The person performing the semiannual service must have an individual fire alarm license from the Texas State Fire Marshal's Office. All other NFPA 72 requirements must be performed and documented by a knowledgeable individual.
 - (F) Smoke detector sensitivity must be checked within one year after installation and every alternate year thereafter in accordance with NFPA 72. Documentation, including as-built installation drawings, operation and maintenance manuals, and a written sequence of operation, must be available for examination by DADS.
 - (G) In large facilities, the fire alarm panel must indicate as a separate zone, each floor and smoke compartment as applicable. Each zone must have an alarm and trouble indication. Identification by zone is not required where all alarm initiating devices are addressable and the status of each device is identified on the fire alarm panel.
 - (H) In large Type B facilities the fire alarm must automatically notify the fire department in accordance with NFPA 101, §9.6.4.
- (2) Sprinkler systems. When installed or required, sprinkler systems must be inspected, tested, and maintained in accordance with NFPA 25. The facility must have a written contract with a fire protection sprinkler firm that has been issued a Sprinkler Certificate of Registration number (SCR) from the Texas State Fire Marshal's Office to perform the required services semiannually. The facility must have documentation available to show that all the requirements of NFPA 25 have been met including the annual inspection, test, and maintenance by the registered fire sprinkler firm. The facility must retain one set of the fire sprinkler system plans and hydraulic calculations on the property in accordance with NFPA 25.
- (A) An existing small Type A facility housing 16 or fewer residents may have a system that meets NFPA 13, 13D, or 13R requirements.
 - (B) A new small Type A facility housing 16 or fewer residents must have a system that meets NFPA 13, 13D, or 13R requirements, installed in accordance with §32.2.3.5.2.
 - (C) An existing small Type B facility housing 16 or fewer residents must be protected by a sprinkler system that meets the requirements of NFPA 13, 13D, or 13R with additional requirements for coverage in all habitable areas and closets as specified by NFPA 101, §33.2.3.5.2.

(D) A new small Type B facility housing 16 or fewer residents must be protected by a sprinkler system that meets the requirement of NFPA 13, NFPA 13R, or NFPA 13D, with additional requirements for coverage in all habitable areas and closets as specified by NFPA 101, §32.2.3.5.2.

(E) A new and an existing large Type B facility must have a complete sprinkler system that meets the requirements of the NFPA 13.

(F) An existing large Type A facility may have an NFPA 13 system. In a building not more than four stories high an NFPA 13R system may be permitted.

(G) A new large Type A facility must have an NFPA 13 system, however a building not more than four stories high may have an NFPA 13R system.

(g) Site and location.

(1) The facility must be serviced by a paid or volunteer firefighting unit. Water supply for firefighting purposes must be as required and approved by the firefighting unit.

(2) The facility must correct any site or building conditions determined by DADS to be a fire, health, or physical hazard.

(3) The facility must provide or arrange for nearby parking spaces for private vehicles of residents and visitors. A minimum of one space must be provided for each four beds or fraction thereof, or per local code, whichever is more stringent.

(4) The facility must ensure that ramps, walks, and steps are of slip-resistive texture and uniform, without irregularities. Ramps must not exceed 1:12 slope, and must meet Texas Accessibility Standards for width. Guardrails, fences, or handrails must be provided where grades make an abrupt change in level.

(5) The facility must ensure that all outside areas, grounds, and adjacent buildings are maintained in good condition and kept free of rubbish, garbage, untended growth that may constitute a fire or health hazard. Site grades must provide for water drainage away from the structure to prevent ponding or standing water at or near the building.

(h) Sanitation and housekeeping.

(1) Wastewater and sewage must be discharged into an approved sewerage system or an onsite sewerage facility approved by the Texas Commission on Environmental Quality or its authorized agent.

(2) The water supply must be of safe, sanitary quality, suitable for use, and adequate in quantity and pressure, and obtained from a water supply system. The location, construction, and operation of the water supply system must be approved by DADS.

(3) Waste, trash, and garbage must be disposed of from the premises at regular intervals in accordance with state and local requirements. Excessive accumulations are not permitted. The facility must comply with 25 TAC §§1.131 - 1.137 (relating to Definition, Treatment, and Disposition of Special Waste from Health Care Related Facilities).

(4) Operable windows must be insect screened.

(5) An ongoing pest control program must be provided by facility staff or by contract with a licensed pest control company. The least toxic and least flammable effective chemicals must be used.

(6) Bathrooms, toilet rooms, and other odor-producing rooms or areas for soiled and unsanitary operations must be ventilated with operable windows. Bathrooms without operable windows must have powered exhaust vented to the exterior for odor control. An exception is granted for small facilities that vent into an attic in accordance with the International Building Code or local building code.

(7) In kitchens and in laundries, there must be procedures utilized by facility staff to avoid cross-contamination between clean and soiled utensils and linens.

(8) The facility must be kept free of accumulations of dirt, rubbish, dust, and hazards. Floors must be maintained in good condition and cleaned regularly. Walls and ceilings must be structurally maintained, repaired, and repainted or cleaned as needed. Storage areas and cellars must be kept in an organized manner. No storage will be permitted in the attic spaces.

(9) The facility must be ventilated through the use of windows, mechanical ventilation, or a combination of both. Interior areas designated for smoking within the building must have mechanical ventilation directed to the exterior to remove smoke at the rate of 10 air changes per hour.

(10) In addition to a janitor closet required in specific departments of large facilities, other janitor closets must be provided throughout the facility to maintain a clean and sanitary environment. Each janitor closet must have a service sink and forced air ventilation ducted to the outside.

(11) A large facility with 60 beds or less must provide a toilet, including a commode and lavatory, for use by the public and facility staff. A facility that has more than 60 beds must have separate public and staff toilets in addition to the staff toilets required for the dietary staff. Toilets must comply with accessibility standards.

(12) If the facility provides linens to the residents, the quantity of available linen must meet the sanitary and cleanliness needs of the residents. Clean linens must be stored in a clean area.

(i) General safety features.

(1) The facility must have an annual inspection by the local fire marshal.

(2) The building must be kept in good repair. Electrical, heating, and cooling systems must be maintained in a safe manner. DADS may require the facility sponsor or licensee to submit evidence to this effect, consisting of a report from the fire marshal, city or county building official having jurisdiction over the location of the facility, licensed electrician, or a registered professional engineer. Use of electrical appliances, devices, and lamps must not overload circuits or cause excessive lengths of extension cords.

(3) Existing furnace and water heater installations may be continued in service, subject to approval by DADS.

(4) In a large Type B facility, all draperies and other window coverings in public or common areas, bedrooms, and living units must be flame resistant. In a large Type A facility, draperies must be flame resistant, where smoking is permitted.

(5) In an existing large facility, all new floor carpet installed in public or common spaces after DADS performs the initial inspection must be classified as Class I or II based on the "Critical Radiant Flux" ratings as required by NFPA 101, §10.2.7. The facility must provide proper documentation by the carpet manufacturer.

(6) Open flame heating devices are prohibited. All fuel burning heating devices must be vented. Working fireplaces are acceptable if of safe design and construction and if screened or otherwise enclosed.

- (7) There must be at least one telephone in the facility available to both staff and residents for use in case of an emergency. Emergency telephone numbers, including fire, police, ambulance, EMS, and poison control center, must be posted conspicuously at or near the telephone.
- (8) An initial pressure test of facility gas lines from the gas meter must be provided. Additional pressure tests will be required when the facility has major renovations or additions where the gas service is interrupted. All gas heating systems must be checked prior to the heating season for proper operation and safety by persons who are licensed or approved by the State of Texas to inspect the equipment. A record of the testing of the gas heating system must be maintained by the facility. The facility must correct unsatisfactory conditions promptly.
- (9) Exterior and interior stairs must have handrails that are firmly secured to prevent falls.
- (10) Cooling and heating must be provided for resident comfort. Air conditioning systems must be capable of maintaining the comfort ranges of 68 degrees Fahrenheit to 82 degrees Fahrenheit in resident-use areas. A facility constructed or licensed after August 1, 2004, must have a central air conditioning system, or a substantially similar air conditioning system, that is capable of maintaining a temperature suitable for resident comfort within areas used by residents. Heating, ventilating, and air conditioning (HVAC) equipment must comply with the requirements of NFPA 90A or 90B, as applicable. NFPA 90A requires automatic shut down upon activation of the fire alarm in HVAC systems of over 2,000 cubic feet per minute (cfm) capacity.
- (11) The Illumination Engineering Society of North America recommendations must be followed to achieve proper illumination characteristics and lighting levels throughout the facility. Minimum illumination must be 10 footcandles in resident rooms during the day and 20 footcandles in corridors, staff stations, dining rooms, lobbies, toilets, bathing facilities, laundries, stairways and elevators during the day. Illumination requirements for these areas apply to lighting throughout the space and should be measured at approximately 30 inches above the floor anywhere in the room. Minimum illumination for medication preparation or storage areas, kitchens, and staff station desks must be 50 footcandles during the day. Illumination requirements for these areas apply to the task performed and should be measured on the tasks.
- (12) All buildings three stories or higher and facilities that provide services, treatment, or social activities on floors above or below the level of discharge and house mobility impaired residents must have a passenger elevator. The lowest level of discharge will be the first floor for determining floor level.
- (13) Floor, ceiling, and wall finish materials must be complete and in place to provide a sanitary and structurally safe environment.
- (14) All equipment requiring periodic maintenance, testing, and servicing must be reasonably accessible. Necessary equipment to conduct maintenance, testing, and servicing, including ladders, specific tools, and keys, must be readily available on site. Access panels (20" x 20" minimum) must be provided for building maintenance and must be located for reasonable access to equipment or barriers installed in the attic or other concealed spaces.
- (15) The facility must implement procedures that comply with the standards and recommendations of the Compressed Gas Association to assure safe and sanitary use and storage of oxygen. Liquid oxygen containers must be certified by Underwriters Laboratory (UL) or other approved testing laboratories for compliance with NFPA 50 requirements. The facility is responsible for defining all potential hazards both graphically and verbally to all persons involved in the use of liquid oxygen and ensuring the liquid oxygen provider does also.
- (j) Portable fire extinguishers. Portable fire extinguishers must be provided and maintained to comply with the provisions of NFPA 10. For extinguisher types (A, B, C, and K), the facility must comply with location,

spacing, mounting heights, monthly inspections by staff, yearly inspections by a licensed agent, including any necessary servicing, and hydrostatic testing as recommended by the manufacturer.

(1) Extinguishers in resident corridors must be spaced so that travel distance is not more than 75 feet. The minimum size of extinguishers must be either 1-A for water type or 2-A 5-BC type. Actual sizes must meet NFPA 10 requirements for maximum floor area per unit covered. In large facilities, at least one portable Underwriters Laboratory (U.L.) or factory mutual (F.M.)-approved 20-B:C dry chemical fire extinguisher, rechargeable type, is required in each laundry, kitchen and walk-in mechanical room.

(2) Extinguishers must be installed on supplied hangers or brackets or be mounted in cabinets approved by DADS.

(3) Extinguishers must be surface wall-mounted or recessed in cabinets where they are not subject to physical damage or dislodgement.

(4) Extinguishers having a gross weight not exceeding 40 pounds must be installed so that the top of the extinguisher is not more than five feet above the floor. Extinguishers with a gross weight greater than 40 pounds must be installed so the top of the extinguisher is not more than 3 1/2 feet above the floor. The clearance between the bottom of the extinguisher and the floor must not be less than four inches.

(5) Portable extinguishers provided in hazardous rooms must be located as close as possible to the exit door opening and on the latch or knob side.

(6) Staff must be appropriately trained in the use of each type of extinguisher in the facility.

(7) Regular monthly inspections or "quick checks" must be made by facility representatives to assure that extinguishers are in the proper location, condition, and working order. Annual maintenance or "thorough checks" must be accomplished in accordance with NFPA 10 by competent personnel licensed or certified to perform servicing by the State Fire Marshal. Unserviceable extinguishers must be replaced.

(k) Waste and storage containers.

(1) Metal waste baskets of substantial gauge or any U.L. or F.M. approved containers must be provided in facilities in all areas where smoking is permitted.

(2) Garbage, waste, or trash containers provided for kitchens, janitor closets, laundries, mechanical or boiler rooms, general storage, and similar places must be made of metal or any U.L. or F.M. approved material with a close fitting cover. Disposable plastic liners may be used in these containers for sanitation.

(l) Accessibility provisions. The physical plant of facilities housing residents with physical disabilities or mobility impairments must comply with applicable federal, state and local requirements for persons with disabilities.

(m) Resident accommodations.

(1) Resident bedrooms.

(A) Bedroom usable floor space for Type A facilities must not be less than 80 square feet for a one-bed room and not less than 60 square feet per bed for a multiple bed room. A bedroom must be not less than eight feet in the smallest dimension, unless specifically approved otherwise by DADS. A bedroom for a person with a physical disability or mobility impairment must meet accessibility standards for access around the bed or beds, which is a minimum of 3'-0" clear width for access aisles.

(B) Bedroom usable floor space for Type B facilities must be not less than 100 square feet per bed for a single-bed room and not less than 80 square feet per bed for a multiple-bed room. A bedroom for a person with a physical disability or mobility impairment must meet accessibility standards for access around the bed or beds, which is a minimum of 3'-0" clear width for access aisles. A bedroom must not be less than ten feet in the smallest dimension unless specifically approved by DADS.

(C) In facilities that have living units consisting of separate living spaces, dining spaces, and bedrooms, 10% of the required bedroom square footage may be included as part of the living and dining space.

(D) A facility must have no more than 50 percent of its beds in bedrooms of three or more beds. A bedroom must have no more than four beds.

(E) Each bedroom must have at least one operable window with outside exposure. The window sill must be no higher than 44" from the floor and must be at or above grade level. The window must be operable from the inside, without the use of tools or special devices, and provide an operable section with a clear opening of not less than 5.7 square feet with a minimum width of 20" x 41.2" high and minimum height of 24" x 34.2" wide. Windows required for evacuation must not be blocked by bars, shrubs, or any obstacle that would impede evacuation. Exceptions are as follows.

(i) In large Type B facilities and other facilities protected throughout by an approved automatic sprinkler system, the window opening size may be smaller than the minimum size listed in this subparagraph but must permit the venting of products of combustion in compliance with the Life Safety Code for Healthcare Occupancy. The total window area in a bedroom must not be less than 8 percent of the required bedroom size.

(ii) In existing buildings, if the window is not required for the secondary means of escape, the window size and sill height requirements do not apply if the windows meet the requirements of the local building code.

(F) In the event the resident does not provide his or her own furnishings, the facility must provide for each resident a bed with mattress, chair, table or dresser, and enclosed closet space for clothing and personal belongings. Drawer space must be provided. Furnishings provided by the facility must be maintained in good repair.

(G) All resident rooms must open upon an exit, corridor, living area, or public area and must be arranged for convenient resident access to dining and recreation areas.

(H) A staff or attendant area must be provided on each floor or in each separate building. The area must consist of a desk or writing surface and telephone. An exception is that Type A facilities, two-story or less in height, with separate buildings grouped together, and connected by covered walks, need not have staff or attendant areas on each floor or in each building, provided that the areas are not more than 200 feet walking distance from the furthest resident living unit. The areas must have a communication system and fire alarm annunciation indicating the units served.

(I) Facilities which consist of two or more floors or separate buildings must have a communication system from each resident living unit to a central staff location. This communication system may be a direct telephone, nurse call, or intercom.

(2) Resident toilet and bathing facilities.

(A) All bedrooms must be served by separate private, connecting, or general toilet rooms for each sex if the facility houses both sexes. General toilet room or bathing room must be accessible from a corridor or public space. A lavatory must be readily accessible to each water closet. At least one water closet, lavatory, and bathing unit must be provided on each sleeping floor accessible to residents of that floor.

(B) One water closet and one lavatory for each six occupants or fraction thereof including a portion less than six is required. One tub or shower for each ten occupants or fraction thereof is required.

(C) Privacy partitions or curtains must be provided at water closets and bathing units in rooms for multi-resident use.

(D) Tubs and showers must have non-slip bottoms or floor surfaces, either built-in or applied to the surface.

(E) Resident-use hot water for lavatories and bathing units will be maintained between 100 degrees Fahrenheit and 120 degrees Fahrenheit.

(F) Towels, soap, and toilet tissue must be available at all times for individual resident use.

(3) Resident living areas.

(A) Social-diversional spaces must be provided and have appropriate furniture. Examples of social-diversional spaces include living rooms, day rooms, lounges, dens, game rooms, and sunrooms. A minimum of 120 square feet must be provided in at least one space regardless of number of residents. This space must have exterior windows providing a view of the outside.

(B) The total space requirement for social-diversional areas must be provided on a sliding scale as follows:

[Attached Graphic201305985-1.html](#) [Attached Graphic](#)

(C) For calculation purposes, DADS deducts a pathway equal to the corridor width when a corridor is required through a living or dining area to access an exit. The exit pathways must be kept clear of obstructions.

(4) Resident dining areas.

(A) A dining area must be provided and have appropriate furnishings. A minimum of 120 square feet must be provided in at least one space, regardless of number of residents. This space must have exterior windows providing a view of the outside.

(B) Access to a dining area from the resident living units or bedrooms must be covered.

(C) The total space requirement for a dining area must be provided on a sliding scale as follows:

[Attached Graphic201305985-2.html](#) [Attached Graphic](#)

(D) The total living and dining area may be a single or interconnecting space with a minimum of 240 square feet of area.

(5) Storage areas. The facility must provide sufficient separate storage spaces or areas for the following:

(A) administration for records and office supplies;

(B) locked areas for medications and medical supplies. Poisons must be stored in a locked area and separate from all medications and preparation;

(C) equipment supplied by the facility for resident needs including wheelchairs, walkers, beds, and mattresses;

(D) cleaning supplies including janitorial needs;

(E) food storage;

(F) clean linens and towels if furnished by the facility;

(G) lawn and maintenance equipment, if needed;

(H) janitor closets with deep sink and hot and cold water for large facilities; and

(I) soiled linen storage or holding room if the facility furnishes linen.

(6) Kitchen.

(A) The facility must have a kitchen or dietary area to meet the general food service needs of the residents. It must include provisions for the storage, refrigeration, preparation, and serving of food, dish and utensil cleaning, and refuse storage and removal. Exception: Food may be prepared off-site or in a separate building provided that the food is served at the proper temperature and transported in a sanitary manner.

(B) Kitchens for facilities serving 16 or fewer non-employees per meal on a routine basis that have residential ranges may have residential range hoods, if the range hoods meet the requirements of the local building code.

(C) Kitchens for facilities serving 17 or more non-employees per meal on a routine basis must be designed as follows:

(i) Kitchens are evaluated on the basis of their performance in the sanitary and efficient preparation and serving of meals to residents and compliance with requirements for dietary service in §92.41(m)(18) of this chapter (relating to Standards for Type A and Type B Assisted Living Facilities).

(I) A facility must consider the type of meals served, the overall building design, the food service equipment, arrangement, and the work flow involved in the preparation and delivery of food.

(II) Plans must include a detailed kitchen layout designed by a registered or licensed dietitian or architect with knowledge of the design of food service operations.

(ii) Kitchens must be designed so that room temperature, at peak load or in the summer, must not exceed 85 degrees Fahrenheit measured over the room at the five foot level. The amount of supply air must take into account the large quantities of air that may be exhausted at the range hood and dishwashing area.

(iii) Facilities for washing and sanitizing dishes and cooking utensils must be provided. The kitchen must contain a multi-compartment pot sink large enough to immerse pots and pans, and a mechanical dishwasher for washing and sanitizing dishes. Separation of soiled and clean dish areas must be maintained, including air flow.

(iv) A food preparation sink must be provided. It must be separate from the pot and hand sinks.

(v) A supply of hot and cold water must be provided. Hot water for sanitizing purposes must be 180 degrees Fahrenheit or the manufacturer's suggested temperature for chemical sanitizers.

(vi) The kitchen must be provided with a hand-washing lavatory in the food preparation area with hot and cold water, soap, towel dispenser, and waste receptacle. The dish room area must have ready access to a hand

washing lavatory.

(vii) Staff restroom facilities with lavatory must be directly accessible to kitchen staff without traversing resident use areas. The rest room must not open directly into the kitchen, but must open into a vestibule. An exception may exist in an existing facility if the staff restroom is located outside of the kitchen area.

(viii) Janitorial facilities must be provided exclusively for the kitchen and must be located in the kitchen area. An exception may occur if a janitorial closet in an existing facility is located outside of the kitchen and if sanitary procedures are used to reduce the possibility of cross-contamination.

(ix) Non-absorbent smooth finishes or surfaces must be used on kitchen floors, walls and ceilings. Surfaces must be capable of being routinely cleaned and sanitized to maintain a healthful environment. Counter and cabinet surfaces, inside and outside, must also have smooth, cleanable, non-porous finishes.

(x) Doors between kitchen and dining or serving areas must have 1/4-inch fixed safety glass or a fire related glazing view panel mounted in a steel frame.

(xi) A garbage can or cart washing area with drain and hot water must be provided either on the interior or exterior of the facility.

(xii) Floor drains must be provided in the kitchen and dishwashing areas. Exception: Floor drains are not required in existing facilities provided the floors are kept clean.

(xiii) A commercial range must be provided and equipped with a commercial range hood and exhaust designed and installed in accordance with NFPA 96.

(xiv) Grease traps must be provided as required by local authorities.

(D) Food storage areas for large facilities must be as follows.

(i) Food storage areas must provide for storage of a four-day minimum supply of non-perishable foods at all times.

(ii) Shelves must be adjustable wire type. An exception may occur if an existing facility uses wood shelves and keeps the shelves sealed and clean.

(iii) Walls and floors must have a non-absorbent finish to provide a cleanable surface.

(iv) Food must not be stored on the floor. Dollies, racks, pallets, or wheeled containers may be used to elevate foods not stored on shelving.

(v) Dry foods storage must have an effective venting system to provide for positive air circulation.

(vi) The maximum room temperature for food storage must not exceed 85 degrees Fahrenheit at any time. The measurement must be taken at the highest food storage level, but not less than five feet from the floor.

(vii) Food storage areas may be located away from the food preparation area as long as there is space adjacent to the kitchen for necessary daily usage.

(E) Auxiliary serving kitchens that are not contiguous to a food preparation or serving area) must be designed as follows.

- (i) Where service areas other than the kitchen are used to dispense foods, these areas must be designated as food service areas and contain equipment for maintaining required food temperatures while serving.
 - (ii) Separate food service areas must have hand washing facilities as part of the food service area.
 - (iii) Finishes of all surfaces must be the same as those required for food and nutrition services or comparable areas.
- (7) Laundry and linen services.
- (A) A large assisted living facility that co-mingles and processes laundry on-site in a central location must comply with the following.
- (i) The laundry must be separated and provided with sprinkler protection if the laundry area is located in the main building. Separation must consist of a one-hour fire rated partition carried to the underside of the floor or roof deck above. Access doors must be from the exterior or interior non-resident use areas including a small vestibule or service corridor.
 - (ii) The laundry must be provided with the following physical features:
 - (I) a soiled linen receiving, holding, and sorting room with a floor drain and forced exhaust to the exterior which must operate at all times when soiled linen is held in this area and may be combined with the washer section;
 - (II) a general laundry work area that is separated by partitioning a washer section and a dryer section;
 - (III) a storage area for laundry supplies;
 - (IV) a folding area;
 - (V) adequate air supply and ventilation for staff comfort without having to rely on opening a door that is part of the fire wall separation; and
 - (VI) provisions to exhaust heat from dryers and to separate dryer make-up air from the habitable work areas of the laundry.
 - (B) If linen is processed off the site, the following must be provided on the premises:
 - (i) a soiled linen holding room with adequate forced exhaust ducted to the exterior; and
 - (ii) a clean linen receiving, holding, inspection, sorting or folding, and storage room.
 - (C) Resident-use laundry, if provided, must utilize residential type washers and dryers. If more than three washers and three dryers are located in one space, the area must be separated by a one-hour fire rated barrier or have sprinkler protection.

§553.63 Construction and Initial Survey of Completed Construction

(a) Construction phase.

(1) DADS Regulatory Services Division, Licensing and Credentialing Section must be notified in writing of construction start.

(2) All construction must comply with minimum licensing requirements. It is the sponsor's responsibility to employ qualified personnel to prepare the contract documents for construction of a new facility or remodeling of an existing facility. Contract documents for additions and remodeling and for the construction of an entirely new facility must be prepared by an architect licensed by the Texas Board of Architectural Examiners. Drawings must bear the seal of the architect. Certain parts of contract documents including final plans, designs, and specifications concerning sheets and sections covering structural, electrical, mechanical, sanitary, and civil engineering must bear the seal of a professional engineer licensed by the Texas Board of Professional Engineers to operate in Texas or, the signature of a Responsible Managing Employee or Alarm Planning Superintendent licensed by the State Fire Marshal's Office as authorized by subsection (b)(12) and (15) of this section.

(A) Remodeling is the construction, removal, or relocation of walls and partitions, the construction of foundations, floors, or ceiling-roof assemblies, or the expanding or altering of safety systems including sprinkler, fire alarm, and emergency systems.

(B) General maintenance and repairs of existing material and equipment, repainting, applications of new floor, wall, or ceiling finishes, or similar projects are not included as remodeling, unless as a part of new construction. DADS must be provided flame spread documentation for new materials applied as finishes.

(b) Contract documents.

(1) Site plan documents must include grade contours; streets with names; north arrow; fire hydrants; fire lanes; utilities, public or private; fences; unusual site conditions including ditches, low water levels, other buildings on-site; and indications of buildings five feet or less beyond site property lines.

(2) Foundation plan documents must include general foundation design and details.

(3) Floor plan documents must include room names, numbers, and usages; numbered doors including swing; windows; legend or clarification of wall types; dimensions; fixed equipment; plumbing fixtures; and kitchen basic layout; and identification of all smoke barrier walls from outside wall to outside wall or fire walls.

(4) For both new construction and additions or remodeling to existing buildings, an overall plan of the entire building must be drawn or reduced to fit on an 8 1/2 inch by 11 inch sheet; submit two reduced plans for file record. See subsection (d)(3) of this section.

(5) Schedules must include door materials, widths, types; window materials, sizes, types; room finishes; and special hardware.

(6) Elevations and roof plan must include exterior elevations, including material note indications and any roof top equipment; roof slopes, drains, and gas piping, and interior elevations where needed for special conditions.

(7) Details must include wall sections as needed (especially for special conditions); cabinet and built-in work; cross sections through buildings as needed; and miscellaneous details and enlargements as needed.

(8) Building structure documents must include structural framing layout and details primarily for column, beam, joist, and structural frame building, roof framing layout if the layout cannot be adequately shown on a cross section; cross sections in quantity and detail to show sufficient structural design and structural details as necessary to assure adequate structural design, also calculated design loads.

(9) Electrical documents must include electrical layout, including lights, convenience outlets, equipment outlets, switches, and other electrical outlets and devices; service, circuiting, distribution, and panel

diagrams; exit light system with exit signs and emergency egress lighting; emergency electrical provisions including generators and panels; and similar systems including control panels, devices, and alarms; sizes and details sufficient to assure safe and properly operating systems; and a staff communication system.

(10) Plumbing documents must include plumbing layout with pipe sizes and details sufficient to assure safe and properly operating systems, water systems, sanitary systems, gas systems, other systems normally considered under the scope of plumbing, fixtures, and provisions for combustion air supply.

(11) Heating, ventilation, and air-conditioning (HVAC) documents must include sufficient details of HVAC systems and components to assure a safe and properly operating installation including, but not limited to, heating, ventilating, and air-conditioning layout, ducts, protection of duct inlets and outlets, combustion air, piping, exhausts, and duct smoke and/or fire dampers; and equipment types, sizes, and locations.

(12) Fire sprinkler system plans and hydraulic calculations must be designed in accordance with and including all the required information on the plan, specified in NFPA 13, NFPA 13R, or NFPA 13D as applicable and the NFPA documents referenced therein, published by the National Fire Protection Association and signed by a Responsible Managing Employee, licensed by the State Fire Marshal's Office or bear the seal of a licensed professional engineer.

(13) Other layouts, plans, or details as may be necessary for a clear understanding of the design and scope of the project; including plans covering private water or sewer systems must be reviewed by the local health or wastewater authority having jurisdiction. If no local authority, then the plans will be reviewed by DADS.

(14) Specifications must include installation techniques, quality standards and/or manufacturers, references to specific codes and standards, design criteria, special equipment, hardware, painting, and any others as needed to amplify drawings and notes.

(15) Detailed fire detection and alarm system working plans must be designed in accordance with the applicable sections of the National Fire Alarm and Signaling Code (NFPA 72) and the National Electric Code (NFPA 70) and signed by an Alarm Planning Superintendent licensed by the State Fire Marshal's Office or bear the seal of a licensed professional engineer.

(c) Initial survey of completed construction.

(1) Upon completion of construction, including grounds and basic equipment and furnishings, an initial architectural inspection of the facility, including additions or remodeled areas, is required to be performed by DADS prior to occupancy. The completed construction must have the written approval from the local authorities having jurisdiction where the facility is located, including the fire marshal, health department, and building inspector.

(2) The inspection described in paragraph (1) of this subsection may be obtained on an expedited basis by complying with §92.4(g) of this chapter (relating to License Fees).

(3) After the completed construction has been surveyed by DADS and found acceptable, DADS Life Safety Code staff conveys the survey results to DADS Licensing and Credentialing Section as part of an applicant's license application. In the case of additions or remodeling of existing facilities, the applicant may be required to submit a revision or modification to an existing license. All building, grades, drives, and parking must essentially be 100 percent complete including basic furnishings and operational needs at the time of the initial visit for occupancy approval and licensing. A facility may accept up to three residents after it receives initial approval from DADS Life Safety Code staff but before the license is issued.

(4) The following documents must be available to DADS surveyor at the time of the survey of the completed building:

- (A) written approval of local authorities as called for in paragraph (1) of this subsection;
 - (B) record drawings of the fire detection and alarm system as installed, signed by an Alarm Planning Superintendent licensed by the State Fire Marshal's office or sealed by a licensed professional engineer, including a sequence of operation, the owner's manuals and the manufacturer's published instructions covering all system equipment, a signed copy of the State Fire Marshal's Office Fire Alarm Installation Certificate, and, for software-based systems, a record copy of the site-specific software excluding the system executive software or external programmer software in a non-volatile, non-erasable, non-rewritable memory;
 - (C) documentation of materials used in the building which are required to have a specific limited fire or flame spread rating including special wall finishes or floor coverings, flame retardant curtains including cubicle curtains and rated ceilings. In the case of carpeting, the documentation must include a signed letter from the installer, verifying that the carpeting installed is named in the laboratory test document;
 - (D) record drawings of the fire sprinkler system as installed, signed by a Responsible Managing Employee, licensed by the State Fire Marshal's Office or sealed by a licensed professional engineer, including the hydraulic calculations, alarm configuration, aboveground and underground Contractor's Material and Test Certificate, all literature and instructions provided by the manufacturer describing the proper operation and maintenance of all equipment and devices in accordance with NFPA 25, Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems;
 - (E) service contracts for maintenance and testing of alarm systems and sprinkler systems;
 - (F) a copy of gas test results of the facility's gas lines from the meter;
 - (G) a written statement from an architect or engineer stating that, from periodic onsite observation visits, the facility as constructed is, to the best of the architect's or engineer's knowledge and belief, in substantial compliance with the architect's or engineer's construction documents, the Life Safety Code, DADS licensure standards, and local codes; and
 - (H) the contract documents specified in subsection (b) of this section.
- (d) Nonapproval of new construction.
- (1) If, during the initial on-site survey of completed construction, the surveyor finds certain basic requirements not met, the surveyor may recommend to DADS Licensing and Credentialing Unit that the facility should not yet be licensed and approved for occupancy. The basic items that may trigger non-approval include:
- (A) construction which does not meet minimum code or licensure standards for basic requirements including corridors that are less than the required width, ceilings installed at less than the minimum seven-foot six-inch height, resident bedroom dimensions less than required, and other features which would disrupt or otherwise adversely affect the residents and staff if corrected after occupancy;
 - (B) lack of written approval by local authorities having jurisdiction, including the fire marshal, health department, and building inspector;
 - (C) fire protection systems not completely installed or not functioning properly, including, but not limited to, fire alarm systems, emergency power and lighting, and sprinkler systems;
 - (D) required exits not all usable according to NFPA 101 requirements;

- (E) telephone not installed or not properly working;
- (F) sufficient basic furnishings, essential appliances, and equipment are not installed or not functioning; and
- (G) any other basic operational or safety feature which the surveyor, as the authority having jurisdiction, believes would preclude safe and normal occupancy by residents on that day.

(2) If the surveyor encounters minor deficiencies, the surveyor may recommend approval of the facility's license based on an approved written plan of correction from the facility's administrator.

(3) A facility must submit two copies of reduced size floor plans on an 8 1/2 inch by 11 inch sheet to DADS for DADS record and for the facility's use including an evacuation plan or fire alarm zone identification. The plan must contain basic legible information including scale, room usage names, actual bedroom numbers, doors, windows, and any other pertinent information.

§553.64 Plans, Approvals, and Construction Procedures

At the option of the applicant, DADS reviews plans for new buildings, additions, conversion of buildings not licensed by DADS, or remodeling of existing licensed facilities. DADS informs the applicant of the results of the review within 30 days after receipt of the plans. If the plans comply with DADS architectural requirements, DADS may not subsequently change the architectural requirement applicable to the project unless the change is required by federal law or the applicant fails to complete the project within a reasonable time.

(1) Submittal of plans.

(A) For review of plans, before construction is begun, the applicant must submit one copy of contract documents including working drawings and specifications in sufficient detail to interpret compliance with these standards and assure proper construction by the general contractor or builder. Documents must be prepared according to accepted architectural practice and must include general construction, special conditions, and schedules.

(B) Final copies of plans must have a title block showing name of facility, person, or organization preparing the sheet, sheet numbers, facility address, and drawing date. Sheets and sections covering structural, electrical, mechanical, and sanitary engineering final plans, designs, and specifications must bear the seal of a registered professional engineer licensed by the Texas Board of Professional Engineers. Contract documents for additions, remodeling, and construction of an entirely new facility must be prepared by an architect licensed by the Texas Board of Architectural Examiners. Drawings must bear the seal of the architect.

(C) A final plan for a major addition to a facility must include a basic layout to scale of the entire building onto which the addition connects. North direction must be shown. Usually the entire basic layout can be drawn to scale of 1/16 inch per foot or 1/32 inch per foot for very large buildings.

(D) Plans and specifications for conversions or remodeling must be complete for all parts and features involved. DADS review is limited to the plans and specifications for conversions or remodeling as submitted.

(E) The sponsor is responsible for employing qualified personnel to prepare the contract documents for construction. If the contract documents have errors or omissions to the extent that compliance with architectural and DADS licensing standards cannot be reasonably assured or determined by DADS, DADS may request a revised set of documents for review.

(F) The review of plans and specifications by DADS is based on general utility, the minimum licensing

standards, and conformance of the Life Safety Code, and is not to be construed as all-inclusive approval of the structural, electrical, or mechanical components, nor does it include a review of building plans for compliance with the Texas Accessibility Standards as administered and enforced by the Texas Department of Licensing and Regulation.

(G) Fees for plan review will be required in accordance with §92.4 of this chapter (relating to License Fees).

(2) Contract documents.

(A) Site plan documents must include grade contours; streets with names; North arrow; fire hydrants, fire lanes, utilities, public or private; fences; and unusual site conditions, including ditches, low water levels, other buildings on-site, and indications of buildings five feet or less beyond site property lines.

(B) Foundation plan documents must include general foundation design and details.

(C) Floor plan documents must include room names, numbers, and usages; numbered doors including swing; windows; legend or clarification of wall types; dimensions; fixed equipment; plumbing fixtures; kitchen basic layout; and identification of all smoke barrier walls from outside wall to outside wall or fire walls.

(D) For both new construction and additions or remodeling to existing buildings, an overall plan of the entire building must be drawn or reduced to fit on an 8 1/2 inch by 11 inch sheet.

(E) Schedules must include door materials, widths, and types; window materials, sizes, and types; room finishes; and special hardware.

(F) Elevations and roof plan must include exterior elevations, including material note indications and any roof top equipment; roof slopes, drains, gas piping, and interior elevations where needed for special conditions.

(G) Details must include wall sections as needed, especially for special conditions; cabinet and built-in work; cross sections through buildings as needed and miscellaneous details and enlargements as needed.

(H) Building structure documents must include structural framing layout and details primarily for column, beam, joist, and structural building; roof framing layout if the layout cannot be adequately shown on a cross section; and cross sections in quantity and detail to show sufficient structural design and structural details as necessary to assure adequate structural design and calculated design loads.

(I) Electrical documents must include electrical layout, including lights, convenience outlets, equipment outlets, switches, and other electrical outlets and devices; service, circuiting, distribution, and panel diagrams; exit light system including exit signs and emergency egress lighting; emergency electrical provisions including generators and panels; staff communication system; fire alarm and similar systems including control panel, devices, and alarms; and sizes and details sufficient to assure safe and properly operating systems.

(J) Plumbing documents must include plumbing layout with pipe sizes and details sufficient to assure safe and properly operating systems, water systems, sanitary systems, gas systems, and other systems normally considered under the scope of plumbing, fixtures, and provisions for combustion air supply.

(K) Heating, ventilating and air-conditioning systems (HVAC) documents must include sufficient details of HVAC systems and components to assure a safe and properly operating installation including, but not limited to, heating, ventilating, and air-conditioning layout, ducts, protection of duct inlets and outlets, combustion air, piping, exhausts, and duct smoke and/or fire dampers; and equipment types, sizes, and locations.

(L) Sprinkler system documents must include plans and details of NFPA designed systems; plans and details of partial systems provided only for hazardous areas; and electrical devices interconnected to the alarm system.

(M) Specifications must include information about installation techniques; quality standards and manufacturers; references to applicable codes and other standards used for design; design criteria; special equipment; hardware; finishes; and any other information DADS may need to interpret drawings and notes.

(N) Other layout, plans, or details as may be necessary for a clear understanding of the design and scope of the project, including plans covering private water or sewer systems, must be reviewed by local health or wastewater authority having jurisdiction where the facility is located.

(3) Construction phase.

(A) DADS must be notified in writing prior to construction start.

(B) All construction not done to comply with the completed plans and specifications as submitted for review and as modified in accordance with review requirements will require additional drawings if the change is significant.

(4) Initial survey of completed construction.

(A) Upon completion of construction, including grounds and basic equipment and furnishings, a final construction inspection or initial survey of the facility must be performed by DADS prior to the facility admitting residents, unless DADS issues a provisional license. An initial architectural inspection will be scheduled after DADS receives a notarized licensure application, required fee, fire marshal approval, and a letter from an architect or engineer stating that to the best of the architect's or engineer's knowledge that the facility meets the architectural requirements for a license.

(B) After DADS surveys the completed construction and finds it acceptable, DADS forwards the information to the Licensing and Credentialing Unit as part of the applicant's license application. In the case of additions or remodeling of existing facilities, the applicant may be required to submit a revision or modification to an existing license. All buildings, including basic furnishings and operational needs, grades, drives, and parking must be 100 percent complete at the time of the initial visit for occupancy approval and licensing. A facility may admit no more than three residents after it receives initial approval from DADS but before a license is issued, except if DADS issues one of the following licenses the facility may admit more than three residents:

(i) a provisional license in accordance with §92.20 of this chapter (relating to Provisional License); or

(ii) an initial license in accordance with §92.21 of this chapter (relating to Initial License for a Type A or Type B Facility for an Applicant in Good Standing).

(C) An applicant must make the following documents available to a DADS surveyor at the time of the survey of the completed building:

(i) written approval of local authorities as required by subparagraph (A) of this paragraph;

(ii) record drawings of the fire detection and alarm system as installed, signed by an Alarm Planning Superintendent licensed by the State Fire Marshal's office or bearing the seal of a licensed professional engineer, including a sequence of operation, the owner's manuals, and the manufacturer's published instructions covering all system equipment;

- (iii) a signed copy of the State Fire Marshal's Office Fire Alarm Installation Certificate;
- (iv) for software-based fire alarm systems, a record copy of the site-specific software, excluding the system executive software or external programmer software in a non-volatile, non-erasable, non-rewritable memory;
- (v) documentation of materials used in the building which have a specific limited fire or flame spread rating, including special wall finishes or floor coverings, flame retardant curtains, including cubicle curtains, and rated ceilings;
- (vi) a signed letter from the installer of carpeting verifying that the carpeting is named in the laboratory test document;
- (vii) record drawings of the fire sprinkler system as installed, signed by a Responsible Managing Employee licensed by the State Fire Marshal's Office, or bearing the seal of a licensed professional engineer, including the hydraulic calculations, fire alarm configuration, aboveground and underground Contractor's Material and Test Certificate;
- (viii) all literature and instructions provided by the sprinkler system manufacturer describing the proper operation and maintenance of all equipment and devices in accordance with NFPA 25;
- (ix) service contracts for maintenance and testing of alarm systems, sprinkler systems, and other systems;
- (x) a copy of a gas test results of the facility's gas lines from the meter;
- (xi) a written statement from an architect or engineer stating that, from periodic onsite observation visits, the facility as constructed is, to the best of architect or engineer's knowledge and belief, in substantial compliance with the architect or engineer's contract documents, the Life Safety Code, DADS licensure standards, and local codes; and
- (xii) the contract documents described in paragraph (2) of this section.

(5) Non-approval of new construction.

(A) If, during the initial on-site survey of completed construction, the surveyor finds certain basic requirements not met, DADS may recommend that the facility not be licensed and approved for occupancy. The items that may trigger non-approval include:

- (i) substantial changes made during construction that were not submitted to DADS for review and which may require revised "as-built" drawings to cover the changes, including architectural, structural, mechanical, and electrical items specified in paragraph (3)(B) of this section;
- (ii) construction that does not meet minimum Life Safety Code or DADS licensure standards, including corridors that are less than required width, ceilings installed at less than the minimum seven-foot six-inch height, resident bedroom dimensions less than required, and other features which would disrupt or otherwise adversely affect the residents and staff if corrected after occupancy;
- (iii) lack of written approval by local authorities;
- (iv) fire protection systems, including fire alarm systems, emergency power and lighting, and sprinkler systems, not completely installed or not functioning properly;
- (v) required exits not all usable according to NFPA 101 requirements;

(vi) telephones that are not installed or not properly working;

(vii) sufficient basic furnishings, essential appliances, and equipment that are not installed or not functioning;
and

(viii) any other basic operational or safety feature which would preclude safe and normal occupancy by residents on that day.

(B) If the surveyor encounters only minor deficiencies, licensure may be recommended based on an approved written plan of correction from the facility's administrator.

(C) A facility must submit two copies of reduced size floor plans on an 8 1/2 inch by 11 inch sheet to DADS for DADS records and the facility's use for evacuation plans and fire alarm zone identification. The plan must contain basic legible information including scale, room usage names, actual bedroom numbers, doors, windows, and any other pertinent information. **SUBCHAPTER E INSPECTIONS, SURVEYS, AND VISITS**

§553.81 Inspections and Surveys

(a) HHSC inspection and survey personnel will perform inspections and surveys, follow-up visits, complaint investigations, investigations of abuse or neglect, and other contact visits from time to time as they deem appropriate or as required for carrying out the responsibilities of licensing.

(b) In addition to the inspections required under §92.14 of this chapter (relating to Initial License Application Procedures and Requirements), HHSC inspects a facility at least once every two years after the initial inspection.

(c) An inspection may be conducted by an individual surveyor or by a team, depending on the purpose of the inspection or survey, size of facility, and service provided by the facility, and other factors.

(d) To determine standard compliance which cannot be verified during regular working hours, night or weekend inspections may be conducted to cover specific segments of operation and will be completed with the least possible interference to staff and residents.

(e) Generally, all inspections, surveys, complaint investigations and other visits, whether routine or nonroutine, made for the purpose of determining the appropriateness of resident care and day-to-day operations of a facility will be unannounced; any exceptions must be justified.

(f) Certain visits may be announced, including, but not limited to, conditions when certain emergencies arise, such as fire, windstorm, or malfunctioning or nonfunctioning of electrical or mechanical systems.

(g) The facility must make all books, records, and other documents maintained by or on behalf of a facility accessible to HHSC upon request.

(1) HHSC is authorized to photocopy documents, photograph residents, and use any other available recording devices to preserve all relevant evidence of conditions found during an inspection, survey, or investigation that HHSC reasonably believes threaten the health and safety of a resident.

(2) Records and documents which may be requested and photocopied or otherwise reproduced include, but are not limited to, admission sheets, medication profiles, observation notes, medication refusal notes, and menu records.

(3) When the facility is requested to furnish the copies, the facility may charge HHSC at the rate not to exceed the rate charged by HHSC for copies. Collection must be by billing HHSC. The procedure of copying is the responsibility of the administrator or his designee. If copying requires removal of the records from the facility, a representative of the facility will be expected to accompany the records and assure their order and preservation.

(4) HHSC will protect the copies for privacy and confidentiality in accordance with recognized standards of medical records practice, applicable state laws, and HHSC policy.

§553.82 Determinations and Actions

(a) DADS determines if a facility meets DADS licensing rules, including physical plant and facility operation requirements, by conducting inspections, surveys, investigations, and on-site visits.

(b) DADS lists violations of licensing rules on a report of contact. The report of contact includes a specific reference to a licensing rule that has been violated.

(c) At the conclusion of an inspection, survey, investigation, or on-site visit, a DADS surveyor conducts an exit conference to advise the facility of the findings resulting from the inspection, survey, investigation, or on-site visit.

(d) At the exit conference, the surveyor provides a copy of the report of contact described in subsection (b) of this section to the facility.

(e) If, after the initial exit conference, a DADS surveyor cites an additional licensing rule violation, the surveyor conducts another exit conference regarding the newly identified violations, and updates the report of contact with a specific reference to the licensing rule that has been violated.

(f) DADS provides to the facility a written statement of violations from an inspection, survey, investigation, or on-site visit on DADS Form 3724 within 10 days after the final exit conference. The statement of violations includes a clear and concise summary in nontechnical language of each licensing rule violation. The statement of violations does not include names of residents or staff, statements that identify a resident, or other prohibited information.

(g) A facility must submit an acceptable plan of correction to the DADS regional director within 10 days after receiving the statement of violations described in subsection (f) of this section. An acceptable plan of correction must address:

- (1) how corrective action will be accomplished for a resident affected by a violation of a licensing rule;
- (2) how the facility will identify other residents who may be affected by the violation of the licensing rule;
- (3) how the corrective action the facility implements will ensure the violation does not reoccur;
- (4) how the facility will monitor its corrective action to ensure the violation is being corrected and will not reoccur; and
- (5) dates when corrective action will be completed.

§553.83 Informal Dispute Resolution

(a) If a facility disputes a violation of a licensing rule, which HHSC cites on a statement of violations in

accordance with §92.82(f) of this subchapter (relating to Determinations and Actions), the facility may request informal dispute resolution conducted in accordance with Texas Government Code §531.058 and Texas Health and Safety Code §247.051.

(b) To request informal dispute resolution, a facility must submit a completed Informal Dispute Resolution Request Form to HHSC in accordance with the form's instructions no later than 10 days after the facility receives the statement of violations. The request form must summarize each violation that the facility disputes. A facility must indicate on the form if it is requesting documents from HHSC.

(c) If a facility requests informal dispute resolution in accordance with subsection (b) of this section, HHSC sends to the facility a copy of all documents referenced in the disputed statement of violations or on which a cited licensure violation is based in connection with the survey, inspection, investigation, or other regulatory visit, including any notes taken by, or emails or messages sent by, an HHSC employee involved with the survey, inspection, investigation, or other regulatory visit, no later than 20 working days after HHSC receives the facility's request for informal dispute resolution. HHSC redacts or excludes the following information from the documents it sends to the facility:

- (1) the name of any complainant, witness, or informant;
- (2) information that would reasonably lead to the identification of a complainant, witness, or informant;
- (3) information obtained from or contained in the records of the facility;
- (4) information that is publicly available; and
- (5) information that is confidential by law.

(d) HHSC may charge a facility \$15.00 per hour for the time HHSC spends to redact the information described in subsection (c)(1) and (2) of this section. A facility must pay any amounts that HHSC charges it in accordance with this subsection.

(e) If a facility requesting informal dispute resolution requests any documents other than documents which HHSC provides under subsection (c), it must reimburse HHSC for any costs associated with HHSC's preparation, copying, and delivery of information responsive to the facility's request. **SUBCHAPTER F ABUSE, NEGLECT AND EXPLOITATION; COMPLAINT AND INCIDENT REPORTS AND INVESTIGATIONS**

§553.102 Abuse, Neglect, or Exploitation Reportable to DADS

(a) An assisted living facility staff who has cause to believe that the physical or mental health or welfare of a resident has been or may be adversely affected by abuse, neglect, or exploitation or that the resident has died due to abuse or neglect, must report the abuse, neglect, or exploitation to:

- (1) DADS Consumer Rights and Services section at 1-800-458-9858 or via the DADS website; and
- (2) one of the following law enforcement agencies:

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

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

- (b) An assisted living facility must follow its internal policies regarding the prevention, detection, and reporting of abuse, neglect, or exploitation.
- (c) The following information must be reported to DADS:
- (1) name, age, and address of the resident;
 - (2) name and address of the person responsible for the care of the resident, if available;
 - (3) nature and extent of the elderly or disabled person's condition;
 - (4) basis of the reporter's knowledge; and
 - (5) any other relevant information.
- (d) An assisted living facility must immediately make an oral report to DADS of the alleged abuse, neglect, or exploitation and must investigate the allegation and send a written report of the investigation to DADS state office no later than the fifth calendar day after the oral report.
- (e) An assisted living facility may not retaliate against a person for filing a complaint, presenting a grievance, or providing in good faith information relating to personal care services provided by the facility.
- (f) An assisted living facility must require facility staff, as a condition of employment with the facility, to sign a statement indicating that the employee may be criminally liable for the failure to report abuse, neglect, or exploitation.

§553.103 Complaint Investigation

- (a) A complaint is any allegation received by the Texas Department of Human Services (DHS) regarding abuse, neglect, or exploitation of a resident, or a violation of state standards.
- (b) DHS must give the facility notification of the complaint received and a summary of the complaint, without identifying the source of the complaint.

§553.105 Investigations of Complaints

- (a) In accordance with the memorandum of understanding (relating to Memorandum of Understanding Concerning Protective Services for the Elderly), between the Texas Department of Human Services (DHS) and the Texas Department of Protective and Regulatory Services, DHS receives and investigates reports of abuse, neglect, and exploitation of elderly and disabled persons or other residents living in facilities licensed under this chapter.
- (b) DHS only investigates complaints of abuse, neglect, or exploitation when the act occurs in the facility, when the licensed facility is responsible for the supervision of the resident at the time the act occurs, or when the alleged perpetrator is affiliated with the facility. Other complaints of abuse, neglect, or exploitation not meeting this criteria must be referred to the Texas Department of Protective and Regulatory Services.
- (c) Complaint investigations must include a visit to the resident's facility and consultation with persons thought to have knowledge of the circumstances. If the facility fails to admit DHS staff for a complaint investigation, DHS will seek a probate or county court order for admission. Investigators may request of the court that a peace officer accompany them.

(d) In cases concluded to be physical abuse, the written report of the investigation by DHS must be submitted to the appropriate law enforcement agency.

(e) In cases concluded to be abuse, neglect, or exploitation of a resident with a guardian, the written report of the investigation by DHS must be submitted to the probate or county court which oversees the guardianship.

§553.106 General Provisions

(a) Confidentiality. All reports, records, and working papers used or developed by the Texas Department of Human Services (DHS) in an investigation are confidential, and may be released only as provided in this subsection.

(1) Completed written investigation reports on cases concluded to be abuse or neglect must be furnished to the district attorney and appropriate law enforcement agency. DHS also may release these reports to any other public agency DHS deems appropriate to the investigation.

(2) Completed written investigation reports are open to the public, provided the report is deidentified. The process of deidentification means removing all names and other personally identifiable data, including any information from witnesses and others furnished to the department as part of the investigation.

(3) The reporter and the facility will be notified of the results of the department's investigation of a reported case of abuse or neglect, whether the department concluded that abuse or neglect occurred or did not occur.

(b) Immunity. A person who reports suspected instances of abuse or neglect, in the absence of bad faith or malicious conduct, will be immune from civil or criminal liability which might have otherwise resulted from making the report. Such immunity extends to participation in any judicial proceeding resulting from the report.

(c) Privileged communications. In a proceeding regarding a report or investigation conducted under this subchapter, evidence must not be excluded on a claim of privileged communication except in the case of a communication between an attorney and a client.

(d) Central registry. DHS maintains a central registry of reported cases of abuse and neglect at the central office in Austin. **SUBCHAPTER G MISCELLANEOUS PROVISIONS**

§553.123 Investigation of Facility Employees

(a) A facility must comply with the provisions of Chapter 250 of the Health and Safety Code (relating to Criminal History Checks of Employees and Applicants for Employment in Certain Facilities Serving the Elderly or Persons with Disabilities).

(b) Before a facility hires an employee, the facility must search the employee misconduct registry (EMR) established under §253.007, Health and Safety Code, and DADS nurse aide registry (NAR) to determine if the individual is designated in either registry as unemployable. Both registries can be accessed on the DADS Internet website.

(c) A facility is prohibited from hiring or continuing to employ a person who is listed in the EMR or NAR as unemployable.

(d) 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).

(e) In addition to the initial search of the NAR and the EMR, a facility must conduct a search of the NAR and the EMR to determine if the employee is designated in either registry as unemployable as follows:

(1) for an employee most recently hired before September 1, 2009, by August 31, 2011 and at least every twelve months thereafter;

(2) for an employee most recently hired on or after September 1, 2009, at least every twelve months; and

(3) keep a copy of the results of the initial and annual searches of the NAR and EMR in the employee's personnel file.

§553.124 Procedures for Inspection of Public Records

(a) Procedures for inspection of public records will be in accordance with the Texas Open Records Act, Texas Civil Statutes, Article 6252-17a, and as further described in this section.

(b) Long Term Care-Regulatory, Texas Department of Human Services (DHS), will be responsible for the maintenance and release of records on licensed facilities, and other related records.

(c) The application for inspection of public records is subject to the following criteria.

(1) The application must be made to Long Term Care-Regulatory, Texas Department of Human Services, P.O. Box 149030 (E-349), Austin, Texas 78714-9030.

(2) The requestor must identify himself/herself.

(3) The requestor must give reasonable prior notice of the time for inspection and/or copying of records.

(4) The requestor must specify the records requested.

(5) On written applications, if the bureau is unable to ascertain the records being requested, the bureau may return the written application to the requestor for further specificity.

(6) DHS must provide the requested records as soon as possible. However, if the records are in active use, or in storage, or time is needed for proper deidentification or preparation of the records for inspection, DHS must so advise the requestor and set an hour and date within a reasonable time when the records will be available.

(d) Original records may be inspected or copied, but in no instance will original records be removed from department offices.

(e) Records maintained by the bureau are open to the public, with the following exceptions:

(1) incomplete reports, audits, evaluations, and investigations made of, for, or by the department are confidential;

(2) reports of abuse and neglect are confidential;

(3) all names and related personal, medical, or other identifying information about a resident are confidential;

(4) information about any identifiable person which is defamatory or an invasion of privacy is confidential;

(5) information identifying complainants or informants is confidential;

(6) itineraries of surveys and inspections are confidential; and

(7) to implement this subsection, the bureau may not alter or deidentify original records. Instead, the bureau will make available for public review or release only a properly deidentified copy of the original record.

(f) Charging for copies of records must be in accordance with the following criteria.

(1) If the requestor simply wants to inspect records, the requestor will specify the records to be inspected and the bureau will make no charge for this service, except where the bureau chief determines that a charge is appropriate based on the nature of the request.

(2) If the requestor wants to request copies of a record, the requestor will specify in writing the records to be copied on an appropriate DHS form, and DHS will complete the form by specifying the cost of the records which the requestor must pay in advance. Checks and other instruments of payment will be made payable to the Texas Department of Human Services.

(3) Any expenses for standard-size copies incurred in the reproduction, preparation, or retrieval of records must be borne by the requestor on a cost basis in accordance with costs established by the State Purchasing and General Services Commission or the department for office machine copies.

(4) For documents that are mailed, the department will charge for the postage at the time it charges for the reproduction. All applicable sales taxes will be added to the cost of copying records.

(5) When a request involves more than one facility, each facility will be considered a separate request.

(g) The bureau will make a reasonable effort to furnish records promptly and will extend to the requestor all reasonable comfort and facility for the full exercise of the rights granted by the Open Records Act.

§553.125 Resident's Bill of Rights and Provider Bill of Rights

(a) Resident's bill of rights.

(1) Each assisted living facility must post the resident's bill of rights, as provided by the department, in a prominent place in the facility and written in the primary language of each resident. A copy of the Resident's Bill of Rights must be given to each resident.

(2) A resident has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws of this state and the United States, except where lawfully restricted. The resident has the right to be free of interference, coercion, discrimination, and reprisal in exercising these civil rights.

(3) Each resident in the assisted living facility has the right to:

(A) be free from physical and mental abuse, including corporal punishment or physical and chemical restraints that are administered for the purpose of discipline or convenience and not required to treat the resident's medical symptoms. A provider may use physical or chemical restraints only if the use is authorized in writing by a physician or if the use is necessary in an emergency to protect the resident or others from injury. A physician's written authorization for the use of restraints must specify the circumstances under which the restraints may be used and the duration for which the restraints may be used. Except in an emergency, restraints may only be administered by qualified medical personnel;

- (B) participate in activities of social, religious, or community groups unless the participation interferes with the rights of others;
- (C) practice the religion of the resident's choice;
- (D) if mentally retarded, with a court-appointed guardian of the person, participate in a behavior modification program involving use of restraints, consistent with subparagraph (A) of this paragraph, or adverse stimuli only with the informed consent of the guardian;
- (E) be treated with respect, consideration, and recognition of his or her dignity and individuality, without regard to race, religion, national origin, sex, age, disability, marital status, or source of payment. This means that the resident:
- (i) has the right to make his/her own choices regarding personal affairs, care, benefits, and services;
 - (ii) has the right to be free from abuse, neglect, and exploitation; and
 - (iii) if protective measures are required, has the right to designate a guardian or representative to ensure the right to quality stewardship of his/her affairs;
- (F) a safe and decent living environment;
- (G) not be prohibited from communicating in his or her native language with other residents or employees for the purpose of acquiring or providing any type of treatment, care, or services;
- (H) complain about the resident's care or treatment. The complaint may be made anonymously or communicated by a person designated by the resident. The provider must promptly respond to resolve the complaint. The provider must not discriminate or take other punitive action against a resident who makes a complaint;
- (I) receive and send unopened mail, and the provider must ensure that the resident's mail is sent and delivered promptly;
- (J) unrestricted communication, including personal visitation with any person of the resident's choice, including family members and representatives of advocacy groups and community service organizations, at any reasonable hour;
- (K) make contacts with the community and to achieve the highest level of independence, autonomy, and interaction with the community of which the resident is capable;
- (L) manage his or her financial affairs. The resident may authorize in writing another person to manage his/her money. The resident may choose the manner in which his/her money is managed, including a money management program, a representative payee program, a financial power of attorney, a trust, or a similar method, and the resident may choose the least restrictive of these methods. The resident must be given, upon request of the resident or the resident's representative, but at least quarterly, an accounting of financial transactions made on his or her behalf by the facility should the facility accept his or her written delegation of this responsibility to the facility in conformance with state law;
- (M) access the resident's records, which are confidential and may not be released without the resident's consent, except:
- (i) to another provider, if the resident transfers residence; or

(ii) if the release is required by another law;

(N) choose and retain a personal physician and to be fully informed in advance about treatment or care that may affect the resident's well-being;

(O) participate in developing his/her individual service plan that describes the resident's medical, nursing, and psychological needs and how the needs will be met;

(P) be given the opportunity to refuse medical treatment or services after the resident:

(i) is advised by the person providing services of the possible consequences of refusing treatment or services; and

(ii) acknowledges that he/she understands the consequences of refusing treatment or services;

(Q) unaccompanied access to a telephone at a reasonable hour or in case of an emergency or personal crisis;

(R) privacy, while attending to personal needs and a private place for receiving visitors or associating with other residents, unless providing privacy would infringe on the rights of other residents. This right applies to medical treatment, written communications, telephone conversations, meeting with family, and access to resident councils. If a resident is married and the spouse is receiving similar services, the couple may share a room;

(S) retain and use personal possessions, including clothing and furnishings, as space permits. The number of personal possessions may be limited for the health and safety of other residents;

(T) determine his or her dress, hair style, or other personal effects according to individual preference, except the resident has the responsibility to maintain personal hygiene;

(U) retain and use personal property in his or her immediate living quarters and to have an individual locked area (cabinet, closet, drawer, footlocker, etc.) in which to keep personal property;

(V) refuse to perform services for the facility, except as contracted for by the resident and operator;

(W) be informed by the provider no later than the 30th day after admission:

(i) whether the resident is entitled to benefits under Medicare or Medicaid; and

(ii) which items and services are covered by these benefits, including items or services for which the resident may not be charged;

(X) not be transferred or discharged unless:

(i) the transfer is for the resident's welfare, and the resident's needs cannot be met by the facility;

(ii) the resident's health is improved sufficiently so that services are no longer needed;

(iii) the resident's health and safety or the health and safety of another resident would be endangered if the transfer or discharge was not made;

(iv) the provider ceases to operate or to participate in the program that reimburses for the resident's treatment or care; or

(v) the resident fails, after reasonable and appropriate notice, to pay for services;

(Y) not be transferred or discharged, except in an emergency, until the 30th day after the date the facility provides written notice to the resident, the resident's legal representative, or a member of the resident's family, stating:

(i) that the facility intends to transfer or discharge the resident;

(ii) the reason for the transfer or discharge;

(iii) the effective date of the transfer or discharge;

(iv) if the resident is to be transferred, the location to which the resident will be transferred; and

(v) any appeal rights available to the resident;

(Z) leave the facility temporarily or permanently, subject to contractual or financial obligations;

(AA) have access to the State Ombudsman and a certified ombudsman and

(BB) execute an advance directive, under the Advance Directives Act (Chapter 166, Health and Safety Code), or designate a guardian in advance of need to make decisions regarding the resident's health care should the resident become incapacitated.

(b) Provider's bill of rights.

(1) Each assisted living facility must post a providers' bill of rights in a prominent place in the facility.

(2) The providers' bill of rights must provide that a provider of assisted living services has the right to:

(A) be shown consideration and respect that recognizes the dignity and individuality of the provider and assisted living facility;

(B) terminate a resident's contract for just cause after a written 30-day notice;

(C) terminate a contract immediately, after notice to the department, if the provider finds that a resident creates a serious or immediate threat to the health, safety, or welfare of other residents of the assisted living facility. During evening hours and on weekends or holidays, notice to HHSC must be made to 1-800-458-9858;

(D) present grievances, file complaints, or provide information to state agencies or other persons without threat of reprisal or retaliation;

(E) refuse to perform services for the resident or the resident's family other than those contracted for by the resident and the provider;

(F) contract with the community to achieve the highest level of independence, autonomy, interaction, and services to residents;

(G) access patient information concerning a client referred to the facility, which must remain confidential as provided by law;

(H) refuse a person referred to the facility if the referral is inappropriate;

(I) maintain an environment free of weapons and drugs; and

(J) be made aware of a resident's problems, including self-abuse, violent behavior, alcoholism, or drug abuse.

§553.126 Publication of Rules

Each facility will be notified of applicable new rules when the rules are filed with the Texas Register.

§553.127 Required Postings

An assisted living facility must prominently and conspicuously post for display in a public area of the facility that is readily available to residents, employees, and visitors:

(1) the license issued under this chapter;

(2) a sign prescribed by HHSC that specifies complaint procedures established under these rules and specifies how complaints may be filed with HHSC;

(3) a notice in the form prescribed by HHSC stating that inspection and related reports are available at the facility for public inspection and providing HHSC toll-free telephone number that may be used to obtain information concerning the facility;

(4) a copy of the most recent inspection report relating to the facility;

(5) Resident Bill of Rights;

(6) Provider Bill of Rights;

(7) the telephone number of the managing local ombudsman and the toll-free number of the Ombudsman Program, 1-800-252-2412;

(8) the facility's normal 24-hour staffing patterns; and

(9) a sign stating: "Cases of Suspected Abuse, Neglect, or Exploitation must be reported to the Texas Department of Aging and Disability Services by calling 1-800-458-9858".

§553.128 Wheelchair Self-Release Seat Belts

(a) For the purposes of this section, a "self-release seat belt" is a seat belt on a resident's wheelchair that the resident demonstrates the ability to fasten and release without assistance. A self-release seat belt is not a restraint.

(b) Except as provided in subsection (c) of this section, a facility must allow a resident to use a self-release seat belt if:

(1) the resident or the resident's legal guardian requests that the resident use a self-release seat belt;

(2) the resident consistently demonstrates the ability to fasten and release the self-release seat belt without assistance;

- (3) the use of the self-release seat belt is documented in and complies with the resident's individual service plan; and
- (4) the facility receives written authorization, signed by the resident or the resident's legal guardian, for the resident to use the self-release seat belt.
- (c) A facility that advertises as a restraint-free facility is not required to allow a resident to use a self-release seat belt if the facility:
- (1) provides a written statement to all residents that the facility is restraint-free and is not required to allow a resident to use a self-release seat belt; and
 - (2) makes reasonable efforts to accommodate the concerns of a resident who requests a self-release seat belt in accordance with subsection (b) of this section.
- (d) A facility is not required to continue to allow a resident to use a self-release seat belt in accordance with subsection (b) of this section if:
- (1) the resident cannot consistently demonstrate the ability to fasten and release the seat belt without assistance;
 - (2) the use of the self-release seat belt does not comply with the resident's individual service plan; or
 - (3) the resident or the resident's legal guardian revokes in writing the authorization for the resident to use the self-release seat belt.

§553.129 Authorized Electronic Monitoring (AEM)

- (a) A facility must permit a resident, or the resident's guardian or legal representative, to monitor the resident's room through the use of electronic monitoring devices.
- (b) A facility may not refuse to admit an individual and may not discharge a resident because of a request to conduct authorized electronic monitoring.
- (c) The Texas Department of Human Services (DHS) Information Regarding Authorized Electronic Monitoring form must be signed by or on behalf of all new residents upon admission. The form must be completed and signed by or on behalf of all current residents by October 1, 2004. A copy of the form must be maintained in the active portion of the resident's clinical record.

[Attached Graphic40_0092_0129-1.html](#) [Attached Graphic](#)

- (d) A resident, or the resident's guardian or legal representative, who wishes to conduct AEM must request AEM by giving a completed, signed, and dated DHS Request for Authorized Electronic Monitoring form to the manager or designee. A copy of the form must be maintained in the active portion of the resident's clinical record.
- (1) If a resident has the capacity to request AEM and has not been judicially declared to lack the required capacity, only the resident may request AEM, notwithstanding the terms of any durable power of attorney or similar instrument.
 - (2) If a resident has been judicially declared to lack the capacity required to request AEM, only the guardian of the resident may request AEM.

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

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

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

(i) a person named in the resident's medical power of attorney or other advance directive;

(ii) the resident's spouse;

(iii) an adult child of the resident who has the waiver and consent of all other qualified adult children of the resident to act as the sole decision-maker;

(iv) a majority of the resident's reasonably available adult children;

(v) the resident's parents; or

(vi) the individual clearly identified to act for the resident by the resident before the resident became incapacitated or the resident's nearest living relative.

(e) A resident, or the resident's guardian or legal representative, who wishes to conduct AEM also must obtain the consent of other residents in the room, using the DHS Consent to Authorized Electronic Monitoring form. When complete, the form must be given to the manager or designee. A copy of the form must be maintained in the active portion of the resident's clinical record. AEM cannot be conducted without the consent of other residents in the room.

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

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

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

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

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

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

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

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

- (4) If AEM is being conducted in a resident's room, and another resident is moved into the room who has not yet consented to AEM, the monitoring must cease until the new resident, or the resident's guardian or legal representative, consents.
- (f) When the completed DHS Request for Authorized Electronic Monitoring form and the DHS Consent to Authorized Electronic Monitoring form, if applicable, have been given to the manager or designee, AEM may begin.
- (1) Anyone conducting AEM must post and maintain a conspicuous notice at the entrance to the resident's room. The notice must state that the room is being monitored by an electronic monitoring device.
- (2) The resident, or the resident's guardian or legal representative, must pay for all costs associated with conducting AEM, including installation in compliance with life safety and electrical codes, maintenance, removal of the equipment, posting and removal of the notice, or repair following removal of the equipment and notice, other than the cost of electricity.
- (3) The facility must meet residents' requests to have a video camera obstructed to protect their dignity.
- (4) The facility must make reasonable physical accommodation for AEM, which includes providing:
- (A) a reasonably secure place to mount the video surveillance camera or other electronic monitoring device; and
- (B) access to power sources for the video surveillance camera or other electronic monitoring device.
- (g) All facilities, regardless of whether AEM is being conducted, must post an 8 1/2-inch by 11-inch notice at the main facility entrance. The notice must be entitled "Electronic Monitoring" and must state, in large, easy-to-read type, "The rooms of some residents may be monitored electronically by or on behalf of the residents. Monitoring may not be open and obvious in all cases."
- (h) A facility may:
- (1) require an electronic monitoring device to be installed in a manner that is safe for residents, employees, or visitors who may be moving about the room, and meets all local and state regulations;
- (2) require AEM to be conducted in plain view; and
- (3) place a resident in a different room to accommodate a request for AEM.
- (i) A facility may not discharge a resident because covert electronic monitoring is being conducted by or on behalf of a resident. If a facility discovers a covert electronic monitoring device and it is no longer covert as defined in §92.3 of this chapter (relating to Definitions), the resident must meet all the requirements for AEM before monitoring is allowed to continue.
- (j) All instances of abuse or neglect must be reported to DHS, as required by §92.102 of this chapter (relating to Abuse, Neglect, or Exploitation Reportable to the Texas Department of Human Services (DHS) by Facilities). For purposes of the duty to report abuse or neglect, the following apply:
- (1) A person who is conducting electronic monitoring on behalf of a resident is considered to have viewed or listened to a tape or recording made by the electronic monitoring device on or before the 14th day after the date the tape or recording is made.

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

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

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

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

DIVISION 1 GENERAL INFORMATION

§553.151 When may DHS take an enforcement action?

DHS may take enforcement action when a facility is in violation of:

- (1) the sections of this chapter;
- (2) the Health and Safety Code, Chapter 247;
- (3) an order adopted under Chapter 247; or
- (4) a license issued under Chapter 247.

§553.152 What enforcement actions may DHS take?

DHS may:

- (1) suspend a license;
- (2) order immediate closing of all or part of the facility;
- (3) revoke a license;
- (4) refer the violation to the Office of the Attorney General for involuntary appointment of a trustee, injunction, or for the assessment of civil penalties; or
- (5) assess administrative penalties. **DIVISION 2 ACTIONS AGAINST A LICENSE: SUSPENSION**

§553.201 When may DHS suspend a facility's license?

DHS may suspend a facility's license when the applicant, license holder, or a controlling person violates:

(1) the Health and Safety Code, Chapter 247; a section, standard or order adopted under Chapter 247; or a license issued under Chapter 247 in a repeated or substantial manner; or

(2) §92.551(2) - (5) of this chapter (relating to When is an administrative penalty assessed?).

§553.202 Does DHS provide notice of a license suspension and the opportunity for a hearing to the applicant, license holder, or a controlling person?

Yes.

§553.203 May DHS suspend a license at the same time another enforcement action is occurring?

Yes.

§553.204 How does DHS notify a license holder of a proposed suspension?

DHS notifies a license holder by certified mail.

§553.205 What information does DHS provide the license holder concerning a proposed suspension?

DHS provides the license holder with the facts or conduct alleged to warrant the suspension.

§553.206 Does the license holder have an opportunity to show compliance with all requirements for keeping the license before DHS begins proceedings to suspend a license?

Yes.

§553.207 How does a license holder request an opportunity to show compliance?

A license holder must send a written request for an opportunity to show compliance to the Director of Long Term Care-Regulatory.

§553.208 How much time does a license holder have to request an opportunity to show compliance?

A request for an opportunity to show compliance must be postmarked within 10 calendar days of the date of DHS's notice and must be received in the Director of Long Term Care-Regulatory's office within 10 calendar days of the postmark.

§553.209 What must the request for an opportunity to show compliance contain?

The request must contain specific documentation showing how the facts or conduct that support the proposed suspension are incorrect.

§553.210 How does DHS conduct the opportunity to show compliance?

DHS's review is limited to documentation submitted by the license holder and information used by DHS as the basis for its proposed action. The review is not conducted as an adversary hearing.

§553.211 Does DHS give the license holder a written affirmation or reversal of the proposed action?

Yes.

§553.212 How does DHS notify a license holder of its final decision to suspend a license?

DHS notifies the facility by certified mail.

§553.213 May the facility request a formal hearing?

Yes.

§553.214 How long does a license holder have to request a formal hearing?

The license holder has 15 calendar days from receipt of the certified mail notice to request a hearing.

§553.215 If a license holder does not appeal, when does the suspension take effect?

The suspension takes effect after the deadline for an appeal passes.

§553.216 If a license holder appeals, when does the suspension take effect?

The status of the license remains in effect until after the appeal is complete.

§553.217 May a facility operate during a suspension?

A facility may continue to operate as long as the suspension is under appeal.

§553.218 How long is the suspension?

The suspension remains in effect until DHS determines that the reason for the suspension no longer exists, but no longer than the license expiration date.

§553.219 How does DHS decide to remove the suspension?

DHS conducts an on-site inspection.

§553.220 Must the license be returned to DHS during a license suspension?

Yes. **DIVISION 3 ACTIONS AGAINST A LICENSE: REVOCATION**

§553.251 When may DHS revoke a license?

DHS may revoke a license when the applicant, license holder, or a controlling person:

- (1) violates section §92.551(2) - (5) of this chapter (relating to When is an administrative penalty assessed?);
- (2) violates the Health and Safety Code, Chapter 247; a section, standard or order adopted under Chapter 247; or a license issued under Chapter 247 in a repeated or substantial manner;
- (3) submits false statements on a license application;

- (4) submits false statements on license application attachments;
- (5) submits misleading statements on a license application;
- (6) submits misleading statements on license application attachments;
- (7) uses subterfuge or other evasive means to obtain a license;
- (8) conceals a material fact on a license application that would have been the basis for denying a license under §92.17 of this chapter (relating to Criteria for Denying a License or Renewal of a License);
- (9) fails to disclose information required in §92.12 of this chapter (relating to Applicant Disclosure Requirements) that would have been the basis to deny a license under §92.17 of this chapter; or
- (10) violates the Health and Safety Code, §247.021.

§553.252 Does DHS provide notice of a license revocation and opportunity for a hearing to the applicant, license holder, or controlling person?

Yes.

§553.253 May DHS take more than one enforcement action at a time against a license?

Yes.

§553.254 How will DHS notify a license holder of a proposed revocation?

DHS will notify a license holder by certified mail.

§553.255 What information does DHS provide the license holder concerning a proposed revocation?

DHS provides the license holder with the facts or conduct alleged to warrant the revocation.

§553.256 Does the license holder have an opportunity to show compliance with all requirements for keeping the license before DHS begins proceedings to revoke a license?

Yes.

§553.257 How does a license holder request an opportunity to show compliance?

A license holder must send a written request for an opportunity to show compliance to the Director of Long Term Care-Regulatory.

§553.258 How much time does a license holder have to request an opportunity to show compliance?

A request for an opportunity to show compliance must be postmarked within 10 calendar days of the date of DHS's notice and must be received in the Director of Long Term Care-Regulatory's office within 10 calendar days of the postmark.

§553.259 What must the request for the opportunity to show compliance contain?

The request must contain specific documentation showing how the facts or conduct that support the proposed

revocation are incorrect.

§553.260 How does DHS conduct the opportunity to show compliance?

DHS's review is limited to documentation submitted by the license holder and information used by DHS as the basis for its proposed action. The review is not conducted as an adversary hearing.

§553.261 Does DHS give the license holder a written affirmation or reversal of the proposed action?

Yes.

§553.262 Does the license holder have an opportunity for a formal hearing?

Yes.

§553.263 How long does a license holder have to request a formal hearing?

The license holder has 15 calendar days from receipt of the certified mail notice to request a hearing.

§553.264 When does the revocation take effect if the license holder does not appeal?

The revocation takes effect after the deadline for an appeal passes.

§553.265 When does the revocation take effect if the license holder appeals the revocation?

The status of the license remains in effect until after the appeal is complete.

§553.266 May a facility operate during a revocation?

A facility may continue to operate, as long as the revocation is under appeal.

§553.267 What happens to a license if it is revoked?

If revoked, the license must be returned to DHS. **DIVISION 4 ACTIONS AGAINST A LICENSE: TEMPORARY RESTRAINING ORDERS AND INJUNCTIONS**

§553.301 Why would DHS refer a facility to the Office of the Attorney General or local prosecuting authority for a temporary restraining order or an injunction?

DHS refers a facility to the Office of the Attorney General or local prosecuting authority for a temporary restraining order or an injunction when:

- (1) a violation creates an immediate threat or threat to the health and safety of residents;
- (2) a facility is operating without a license; or
- (3) DHS is denied entry to a facility that is alleged to be operating without a license.

§553.302 To whom does DHS refer a facility that is operating without a license?

DHS refers a facility that is operating without a license to the:

(1) district attorney;

(2) county attorney;

(3) city attorney; or

(4) Attorney General. **DIVISION 5 ACTIONS AGAINST A LICENSE: EMERGENCY LICENSE SUSPENSION AND CLOSING ORDER**

§553.351 When may DHS suspend a license or order an immediate closing of all or part of a facility?

DHS may suspend a license or order an immediate closing of all or part of a facility when:

(1) the facility is operating in violation of the licensure rules; and

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

§553.352 How does DHS notify a facility of a license suspension or immediate closing of all or part of a facility?

A notice is hand-delivered to a facility staff member.

§553.353 When does an order suspending a license or closing all or part of a facility go into effect?

The order goes into effect immediately upon receipt of the hand-delivered written notice or on a later date specified in the order.

§553.354 How long is an order suspending a license or closing all or part of a facility valid?

An order is valid for 10 calendar days after the effective date of the order.

§553.355 May a license holder request a hearing?

Yes.

§553.356 Where can a license holder find information about administrative hearings?

Information about administrative hearings is located in Chapter 79, Subchapter Q of this title (relating to Formal Appeals).

§553.357 Does a request for an administrative hearing suspend the effectiveness of the order?

No.

§553.358 Does anything happen to a resident's rights or freedom of choice during an emergency relocation?

No.

§553.359 Who does DHS notify if all or part of a facility is closed?

If all or part of a facility is closed, DHS notifies:

- (1) the local health department director;
- (2) the city or county health authority; and
- (3) representatives of the appropriate state agencies.

§553.360 Who must a facility notify if all or part of the facility is closed?

A facility must notify each resident's:

- (1) guardian or responsible party; and
- (2) attending physician.

§553.361 Who decides where to relocate a resident?

The resident, the resident's guardian, or the resident's responsible person may designate a preference for a specific facility or for other arrangements.

§553.362 Who arranges the relocation?

DHS arranges to relocate residents to other facilities in the area.

§553.363 Is a resident's preference considered?

Yes.

§553.364 What requirements must the facility a resident chooses for relocation meet?

The following apply when a facility is chosen for relocation:

- (1) The facility must be in good standing with DHS.
- (2) If the facility is certified under Titles XVIII and XIX of the Social Security Act, it must be in good standing under its contract.
- (3) The facility must be able to meet the needs of the resident.

§553.365 Is a receiving facility allowed to temporarily exceed its licensed capacity?

Yes.

§553.366 Under what conditions is a receiving facility allowed to temporarily exceed its licensed capacity?

DHS may grant a waiver to a receiving facility to temporarily exceed its licensed capacity to prevent substantial transportation of a resident.

§553.367 What requirements must a facility meet to obtain a temporary waiver?

To be eligible for a temporary waiver to exceed its licensed capacity, a facility must:

- (1) not compromise the health and safety of residents; and
- (2) meet the increased demands for direct care personnel and dietary services.

§553.368 How long can a facility have a temporary waiver?

A facility may have a temporary waiver until residents can be transferred to a permanent location.

§553.369 Does DHS monitor a facility with a temporary waiver?

Yes.

§553.370 What records, reports, and supplies are sent to the receiving facility for transferred residents?

The following reports, records, and supplies must be sent to the receiving institution for each transferred resident:

- (1) a copy of the current physician's orders for:
 - (A) medication;
 - (B) treatment;
 - (C) diet; and
 - (D) special services required;
- (2) personal information, such as name and address of next of kin, guardian, or responsible party;
- (3) attending physician;
- (4) Medicare and Medicaid identification number, if applicable;
- (5) social security number;
- (6) other identification information as deemed necessary and available;
- (7) a copy of the resident's current comprehensive assessment and service plan;
- (8) all medications dispensed in the resident's name that have current physician's orders. Medications must be inventoried and transferred with the resident. Medications past expiration date or discontinued by physician order must be inventoried for disposition in accordance with state law. Only current prescription medications taken on a regular or as-needed basis may be transferred with the resident;
- (9) the resident's personal belongings, clothing, and toilet articles. The closing facility must make an inventory of personal property and valuables; and
- (10) resident trust fund accounts maintained by the closing facility. All items must be properly inventoried and receipts obtained for audit purposes by the appropriate state agency.

§553.371 May a resident return to the closed facility if it reopens within 90 calendar days?

Yes.

§553.372 Do the relocated residents have any special admission rights at the closed facility?

If the closed facility is allowed to reopen within 90 calendar days, the relocated residents have the first right to return to the facility.

§553.373 What options does a relocated resident have?

Relocated residents may choose to:

- (1) return to the reopened facility;
- (2) stay in the receiving facility, if the facility is not exceeding its licensed capacity; or
- (3) choose other accommodations.

§553.374 Are relocated residents who return to the facility considered new admissions?

Yes. Any relocated resident who returns to the facility must be treated as a new admission. All procedures regarding new admissions apply. **DIVISION 6 ACTIONS AGAINST A LICENSE: CIVIL PENALTIES**

§553.401 When may DHS refer a facility to the Office of the Attorney General for assessment of civil penalties?

DHS may refer a facility for a violation that threatens the health and safety of a resident.

§553.402 What is the amount of the civil penalty that can be assessed for operating without a license?

A civil penalty of \$1,000 to \$10,000 per day may be assessed for operating without a license. **DIVISION 7 TRUSTEES: INVOLUNTARY APPOINTMENT OF A TRUSTEE**

§553.451 When may DHS petition a court for the involuntary appointment of a trustee to operate a facility?

DHS may petition a court for the involuntary appointment of a trustee to operate a facility when one or more of the following conditions exist:

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

§553.452 When may DHS disburse emergency assistance funds?

DHS may disburse emergency assistance funds when a court order is given.

§553.453 Must a facility reimburse DHS for emergency assistance funds?

Yes.

§553.454 When is reimbursement for emergency assistance funds due to DHS?

Reimbursement is due not later than one year after the date the trustee received the funds.

§553.455 Who is responsible for reimbursement?

The owner of the facility at the time the trustee was appointed is responsible for reimbursement.

§553.456 What happens if a facility does not reimburse DHS in one year?

A license holder is referred to the Office of the Attorney General. DHS also may decide the facility is not eligible for a Medicaid provider contract. **DIVISION 8 TRUSTEES: APPOINTMENT OF A TRUSTEE BY AGREEMENT**

§553.501 May a facility request the appointment of a trustee to assume operation of a facility?

Yes.

§553.502 Who may make the request?

A person holding a controlling interest in a facility may request that DHS assume the operation of the facility through the appointment of a trustee.

§553.503 What are the requirements for a trustee agreement?

An agreement must:

- (1) specify all terms and conditions of the trustee's appointment and authority; and
- (2) preserve all legal rights of the residents.

§553.504 When does an agreement for a trustee terminate?

An agreement for a trustee terminates at a time specified in the agreement or upon receipt of notice of intent to terminate sent by DHS or by the person holding a controlling interest in the facility.

§553.505 What happens if the controlling person wants to terminate the agreement, but DHS determines termination of the agreement is not in the best interest of the residents?

DHS petitions a court for an involuntary appointment of a trustee under the terms of §92.451 of this chapter (relating to When may DHS petition a court for the involuntary appointment of a trustee to operate a facility?).

§553.506 When DHS appoints a trustee, is the facility always required to pay assessed civil money penalties?

Yes. **DIVISION 9 ADMINISTRATIVE PENALTIES**

§553.551 Administrative Penalties

(a) Assessment of an administrative penalty. HHSC may assess an administrative penalty if a license holder:

(1) violates:

(A) Texas Health and Safety Code, Chapter 247;

(B) a rule, standard, or order adopted under Texas Health and Safety Code, Chapter 247; or

(C) a term of a license issued under Texas Health and Safety Code, Chapter 247;

(2) makes a false statement of material fact that the license holder knows or should know is false:

(A) on an application for issuance or renewal of a license;

(B) in an attachment to the application; or

(C) with respect to a matter under investigation by HHSC;

(3) refuses to allow an HHSC representative to inspect:

(A) a book, record, or file that a facility must maintain; or

(B) any portion of the premises of a facility;

(4) willfully interferes with the work of, or retaliates against, an HHSC representative or the enforcement of this chapter;

(5) willfully interferes with, or retaliates against, an HHSC representative preserving evidence of a violation of Texas Health and Safety Code, Chapter 247; a rule, standard, or order adopted under Texas Health and Safety Code, Chapter 247; or a term of a license issued under Texas Health and Safety Code, Chapter 247;

(6) fails to pay an administrative penalty not later than the 30th calendar day after the penalty assessment becomes final;

(7) fails to notify HHSC of a change of ownership before the effective date of the change of ownership;

(8) willfully interferes with the State Ombudsman, a certified ombudsman, or an ombudsman intern performing the functions of the Ombudsman Program as described in 26 TAC Chapter 88 (relating to State Long-Term Care Ombudsman Program); or

(9) retaliates against the State Ombudsman, a certified ombudsman, or an ombudsman intern:

(A) with respect to a resident, employee of a facility, or other person filing a complaint with, providing information to, or otherwise cooperating with the State Ombudsman, a certified ombudsman, or an ombudsman intern; or

(B) for performing the functions of the Ombudsman Program as described in 26 TAC Chapter 88.

(b) Criteria for assessing an administrative penalty. HHSC considers the following in determining the amount of an administrative penalty:

- (1) the gradations of penalties established in subsection (d) of this section;
- (2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the situation, and the hazard or potential hazard created by the situation to the health or safety of the public;
- (3) the history of previous violations;
- (4) deterrence of future violations;
- (5) the license holder's efforts to correct the violation;
- (6) the size of the facility and of the business entity that owns the facility; and
- (7) any other matter that justice may require.

(c) Late payment of an administrative penalty. A license holder must pay an administrative penalty within 30 calendar days after the penalty assessment becomes final. If a license holder fails to timely pay the administrative penalty, HHSC may assess an administrative penalty under subsection (a)(6) of this section, which is in addition to the penalty that was previously assessed and not timely paid.

(d) Administrative penalty schedule. HHSC uses the schedule of appropriate and graduated administrative penalties in this subsection to determine which violations warrant an administrative penalty.

[Attached Graphic201804367-1.pdf](#) [Attached Graphic](#)

(e) Administrative penalty assessed against a resident. HHSC does not assess an administrative penalty against a resident, unless the resident is also an employee of the facility or a controlling person.

(f) Proposal of administrative penalties.

(1) HHSC issues a preliminary report stating the facts on which HHSC concludes that a violation has occurred after HHSC has:

- (A) examined the possible violation and facts surrounding the possible violation; and
- (B) concluded that a violation has occurred.

(2) HHSC may recommend in the preliminary report the assessment of an administrative penalty for each violation and the amount of the administrative penalty.

(3) HHSC provides a written notice of the preliminary report to the license holder not later than 10 calendar days after the date on which the preliminary report is issued. The written notice includes:

- (A) a brief summary of the violation;
- (B) the amount of the recommended administrative penalty;
- (C) a statement of whether the violation is subject to correction in accordance with subsection (g) of this section and, if the violation is subject to correction, a statement of:

- (i) the date on which the license holder must file with HHSC a plan of correction for approval by HHSC; and
 - (ii) the date on which the license holder must complete the plan of correction to avoid assessment of the administrative penalty; and
- (D) a statement that the license holder has a right to an administrative hearing on the occurrence of the violation, the amount of the penalty, or both.
- (4) Not later than 20 calendar days after the date on which a license holder receives a written notice of the preliminary report, the license holder may:
- (A) give HHSC written consent to the preliminary report, including the recommended administrative penalty; or
 - (B) make a written request to HHSC for an administrative hearing.
- (5) If a violation is subject to correction under subsection (g) of this section, the license holder must submit a plan of correction to HHSC for approval not later than 10 calendar days after the date on which the license holder receives the written notice described in paragraph (3) of this subsection.
- (6) If a violation is subject to correction under subsection (g) of this section, and after the license holder reports to HHSC that the violation has been corrected, HHSC inspects the correction or takes any other step necessary to confirm the correction and notifies the facility that:
- (A) the correction is satisfactory and HHSC will not assess an administrative penalty; or
 - (B) the correction is not satisfactory and a penalty is recommended.
- (7) Not later than 20 calendar days after the date on which a license holder receives a notice under paragraph (6)(B) of this subsection (notice that the correction is not satisfactory and recommendation of a penalty), the license holder may:
- (A) give HHSC written consent to HHSC report, including the recommended administrative penalty; or
 - (B) make a written request to HHSC for an administrative hearing.
- (8) If a license holder consents to the recommended administrative penalty or does not timely respond to a notice sent under paragraph (3) of this subsection (written notice of the preliminary report) or paragraph (6) (B) of this subsection (notice that the correction is not satisfactory and recommendation of a penalty):
- (A) HHSC assesses the recommended administrative penalty;
 - (B) HHSC gives written notice of the decision to the license holder; and
 - (C) the license holder must pay the penalty not later than 30 calendar days after the written notice given in subparagraph (B) of this paragraph.
- (g) Opportunity to correct.
- (1) HHSC allows a license holder to correct a violation before assessing an administrative penalty, except a violation described in paragraph (2) of this subsection. To avoid assessment of a penalty, a license holder must correct a violation not later than 45 calendar days after the date the facility receives the written notice

described in subsection (f)(3) of this section.

(2) HHSC does not allow a license holder to avoid a penalty assessment based on its correction of a violation:

(A) described by subsection (a)(2)-(9) of this section;

(B) of Texas Health and Safety Code §260A.014 or §260A.015;

(C) related to advance directives as described in §92.41(g) of this chapter (relating to Standards for Type A and Type B Assisted Living Facilities);

(D) that is the second or subsequent violation of:

(i) a right of the same resident under §92.125 of this chapter (relating to Resident's Bill of Rights and Provider Bill of Rights);

(ii) the same right of all residents under §92.125 of this chapter; or

(iii) §92.43 of this chapter (relating to Policy for Residents with Alzheimer's Disease or a Related Disorder) that occurs before the second anniversary of the date of a previous violation of §92.43 of this chapter;

(E) that is written because of an inappropriately placed resident, except as described in §92.41(f) of this chapter.

(F) that is a pattern of violation that results in actual harm;

(G) that is widespread in scope and results in actual harm;

(H) that is widespread in scope, constitutes a potential for more than minimal harm, and relates to:

(i) resident assessment as described in §92.41(c) of this chapter;

(ii) staffing, including staff training, as described in §92.41(a) of this chapter;

(iii) administration of medication as described in §92.41(j) of this chapter;

(iv) infection control as described in §92.41(n) and §92.41(r) of this chapter;

(v) restraints as described in §92.41(p) of this chapter; or

(vi) emergency preparedness and response as described in §92.62(a)-(d) of this chapter (relating to General Requirements).

(I) is an immediate threat to the health or safety of a resident.

(3) Maintenance of violation correction.

(A) A license holder that corrects a violation must maintain the correction. If the license holder fails to maintain the correction until at least the first anniversary of the date the correction was made, HHSC may assess and collect an administrative penalty for the subsequent violation.

(B) An administrative penalty assessed under this paragraph is equal to three times the amount of the original

administrative penalty that was assessed but not collected.

(C) HHSC is not required to offer the license holder an opportunity to correct the subsequent violation.

(h) Hearing on an administrative penalty. If a license holder timely requests an administrative hearing as described in subsection (f)(3) or (f)(7) of this section, the administrative hearing is held in accordance with HHSC rules at 1 TAC Chapter 357, Subchapter I (relating to Hearings under the Administrative Procedure Act).

(i) HHSC may charge interest on an administrative penalty. The interest begins the day after the date the penalty becomes due and ends on the date the penalty is paid in accordance with Texas Health and Safety Code, §247.0455(e).

(j) Amelioration of a violation.

(1) In lieu of demanding payment of an administrative penalty, the commissioner may allow a license holder to use, under HHSC supervision, any portion of the administrative penalty to ameliorate the violation or to improve services, other than administrative services, in the facility affected by the violation. Amelioration is an alternate form of payment of an administrative penalty, not an appeal, and does not remove a violation or an assessed administrative penalty from a facility's history.

(2) A license holder cannot ameliorate a violation that HHSC determines constitutes immediate jeopardy to the health or safety of a resident.

(3) HHSC offers amelioration to a license holder not later than 10 calendar days after the date a license holder receives a final notification of the recommended assessment of an administrative penalty that is sent to the license holder after an informal dispute resolution process but before an administrative hearing.

(4) A license holder to whom amelioration has been offered must:

(A) submit a plan for amelioration not later than 45 calendar days after the date the license holder receives the offer of amelioration from HHSC; and

(B) agree to waive the license holder's right to an administrative hearing if HHSC approves the plan for amelioration.

(5) A license holder's plan for amelioration must:

(A) propose changes to the management or operation of the facility that will improve services to or quality of care of residents;

(B) identify, through measurable outcomes, the ways in which and the extent to which the proposed changes will improve services to or quality of care of residents;

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

(D) establish a time line for implementing the proposed changes; and

(E) identify specific actions the license holder will take to implement the proposed changes.

(6) A license holder's plan for amelioration may include proposed changes to:

(A) improve staff recruitment and retention;

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

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

(7) HHSC may require that an amelioration plan propose changes that would result in conditions that exceed the requirements of this chapter.

(8) HHSC approves or denies a license holder's amelioration plan not later than 45 calendar days after the date HHSC receives the plan. If HHSC approves the amelioration plan, any pending request the license holder has submitted for an administrative hearing must be withdrawn by the license holder.

(9) HHSC does not offer amelioration to a license holder:

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

(B) more than one time in a two-year period for the same or a similar violation. **DIVISION 10
ARBITRATION**

§553.601 Arbitration

A facility may elect binding arbitration in accordance with Texas Health and Safety Code (THSC) §247.082. Arbitration is conducted in accordance with THSC §§247.083 - 247.098 and may be used to resolve a dispute between the facility and DADS relating to:

(1) renewal of a license;

(2) suspension, revocation, or denial of a license;

(3) assessment of a civil penalty; or

(4) assessment of an administrative penalty. **SUBCHAPTER I ACCESS TO RESIDENTS AND
RECORDS BY THE LONG-TERM CARE OMBUDSMAN PROGRAM**

§553.801 Access to Residents and Records by the State Long-Term Care Ombudsman Program

(a) A resident has the right to be visited by the State Ombudsman, a certified ombudsman, or an ombudsman intern.

(b) In accordance with the Older Americans Act, §712(b)(1)(A), and 45 CFR §1324.11(e)(2), a facility must allow:

(1) the State Ombudsman, a certified ombudsman, and an ombudsman intern to have:

(A) immediate, private, and unimpeded access to enter the facility at any time during the facility's regular business hours or regular visiting hours;

(B) immediate, private, and unimpeded access to a resident; and

(C) immediate and unimpeded access to the name and contact information of the resident's legally authorized representative, if the State Ombudsman, a certified ombudsman, or an ombudsman intern determines the

information is needed to perform a function of the Ombudsman Program; and

(2) the State Ombudsman and a certified ombudsman to have immediate, private, and unimpeded access to enter the facility at a time other than regular business hours or visiting hours, if the State Ombudsman or a certified ombudsman determines access may be required by the circumstances to be investigated.

(c) A facility, in accordance with the Older Americans Act, §712(b)(1)(B) and 45 CFR §1324.11(e)(2), must allow the State Ombudsman and a certified ombudsman to have immediate access to:

(1) all files, records, and other information concerning a resident, including an incident report involving the resident, if:

(A) the State Ombudsman or certified ombudsman has the consent of the resident or legally authorized representative;

(B) the resident is unable to communicate consent to access and has no legally authorized representative; or

(C) such access is necessary to investigate a complaint and the following occurs:

(i) the resident's legally authorized representative refuses to give consent to access to the records, files, and other information;

(ii) the State Ombudsman or certified ombudsman has reasonable cause to believe that the legally authorized representative is not acting in the best interests of the resident; and

(iii) if it is the certified ombudsman seeking access to the records, files, or other information, the certified ombudsman obtains the approval of the State Ombudsman to access the records, files, or other information without the legally authorized representative's consent; and

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

(d) The rules adopted under the Health Insurance Portability and Accountability Act of 1996, 45 CFR part 164, subparts A and E, do not preclude a facility from releasing protected health information or other identifying information regarding a resident to the State Ombudsman or a certified ombudsman if the requirements of subsections (b)(1)(C) and (c)(1) of this section are otherwise met. The State Ombudsman and a certified ombudsman are each a "health oversight agency" as that phrase is defined in 45 CFR §164.501.

Figure: 26 TAC 553(e)

Changes Effective 5/1/19

Facility Type	New or Conversion: Single story	New or Conversion: Multiple story	Addition or Remodeling	Alzheimer's Certification
Small Type A (4 to 16 beds)	\$900	\$1,100	2% of construction cost Minimum: \$350 Maximum: 50% of the plan review fee for a new facility of the same type	Not applicable
Large Type A (17 or more beds)	17-80 beds: \$1,100	17-80 beds: \$1,650	2% of construction cost Minimum: \$400 Maximum: 50% of the plan review fee for a new facility of the same type	Not applicable
	81-120 beds: \$1,650	81-120 beds: \$2,150		
	121+ beds: \$14 per bed	121+ beds: \$18 per bed		
Small Type B (4 to 16 beds)	\$1,100	\$1,650	2% of construction cost Minimum: \$350 Maximum: 50% of the plan review fee for a new	\$350 additional fee

			facility of the same type	
Large Type B (17 or more beds)	17-80 beds: \$1,600	17-80 beds: \$2,100	2% of construction cost	\$550 additional fee
	81-120 beds: \$2,150	81-120 beds: \$2,650	Minimum: \$500	
	121+ beds: \$18 per bed	121+ beds: \$22 per bed	Maximum: 50% of the plan review fee for a new facility of the same type	

Figure: 26 TAC 553(g)(2)

Changes Effective 5/1/19

Facility Type	New or Conversion: Single story	New or Conversion: Multiple story	Addition or Remodeling	Alzheimer's Certification
Small Type A (4 to 16 beds)	\$1,950	\$2,250	3% of construction cost Minimum: \$1,110 Maximum: 75% of the fee for a new facility of the same type	Not applicable
Large Type A (17 or more beds)	17-80 beds \$2,250	17-80 beds \$3,000	3% of construction cost Minimum: \$1,200 Maximum: 75% of the fee for a new facility of the same type	Not applicable
	81-120 beds: \$3,000	81-120 beds: \$3,800		
	121+ beds: \$25 per bed	121+ beds: \$32 per bed		
Small Type B (4 to 16 beds)	\$2,250	\$3,000	3% of construction cost Minimum: \$1,100 Maximum: 75% of the	\$350 additional fee

			fee for a new facility of the same type	
Large Type B (17 or more beds)	17-80 beds: \$3,000	17-80 beds: \$3,750	3% of construction cost Minimum: \$1,350 Maximum: 75% of the fee for a new facility of the same type	\$550 additional fee
	81-120 beds: \$3,800	81-120 beds: \$4,550		
	121+ beds: \$32 per bed	121+ beds: \$38 per bed		

Number of Beds	Area Per Bed Minimum in square feet
4-16	15 (minimum 120)
17-39	13
40-59	12
60 or more	10

Figure: 26 TAC 553 (m)(4)(C)

Changes Effective 5/1/19

Number of Beds	Area Per Bed Minimum in square feet
4-16	15 (minimum 120)
17-39	13
40-59	12
60 or more	10

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

A resident, or the resident's guardian or legal representative, is entitled to conduct authorized electronic monitoring (AEM) under Health and Safety Code, Chapter 247, §247.003. To request AEM, you, your guardian or your legal representative, must:

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

Who may request AEM?

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

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

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

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

Who may consent to AEM?

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

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

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

What about covert electronic monitoring?

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

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

If a covert electronic monitoring device is discovered by a facility and is no longer covert as defined in §92.3 of this chapter (relating to Definitions), the resident must meet all requirements for AEM before monitoring is allowed to continue.

Is notice of AEM required?

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

What is required for the installation of monitoring equipment?

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

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

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

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

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

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

Yes. DHS may assess an administrative penalty (see §92.559 of this chapter (relating to What is the administrative penalty schedule?)) against a facility for each instance in which the facility:

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

AEM:

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

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

4) violates any other provision related to AEM.

How does AEM affect the reporting of abuse and neglect?

Section 92.102 of this chapter (relating to Abuse, Neglect, or Exploitation Reportable to the Texas Department of Human Services (DHS) by Facilities), requires facility staff to report abuse or neglect. If abuse or neglect has occurred, the most important thing is to report it. Abuse and neglect cannot be addressed unless reported.

For purposes of the duty to report abuse or neglect, the following apply:

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

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

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

4) If abuse or neglect of the resident is reported to the facility and the facility requests a copy of any relevant tape or recording made by an electronic monitoring device, the person who possesses the tape or recording must provide the facility with a copy at the facility's expense. The cost of the copy cannot exceed the community standard.

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

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

a) Subject to applicable rules of evidence and procedure, a tape or recording created through the use of covert monitoring or AEM may be admitted into evidence in a civil or criminal court action or administrative proceeding.

b) A court or administrative agency may not admit into evidence a tape or recording created through the use of covert monitoring or AEM or take or authorize action based on the tape or recording unless:

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

Are there additional provisions of the law?

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

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

Signature of Resident/ Person Signing of Behalf of Resident

Date

		Isolated	Pattern	Widespread
S E V E R I T Y	Immediate threat	\$1500-3000 J	\$2000-4000 K	\$2500-5000 L
	Actual harm	\$250-1000 G	\$500-1500 H	\$1000-2500 I
	No actual harm with a potential for more than minimal harm	\$100-300 D	\$100-400 E	\$200-500 F
	No actual harm with a potential for minimal harm	\$0 A	\$0 B	\$0 C

S C O P E

Note: To assist in using the scope and severity chart, the following example is provided: a license holder cited for a violation that is an immediate threat to the health and safety of residents and is widespread in scope will have an administrative penalty assessed in the amount of \$2500-5000, as shown in box "L".