

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. ~~Square brackets and strikethrough~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 33. ADVANCED TELECOMMUNICATIONS SERVICES

1 TAC §354.1432

The Texas Health and Human Services Commission (HHSC) proposes to amend §354.1432, concerning Telemedicine and Telehealth Benefits and Limitations.

BACKGROUND AND JUSTIFICATION

The proposed rule amendment is a result of House Bill (H.B.) 1878, 84th Legislature, Regular Session, 2015, which clarifies that physicians shall be reimbursed for telemedicine medical services provided in a school-based setting, even if the physician is not the patient's primary care physician, if certain conditions are met. The proposed amendment updates the Medicaid rule for telemedicine services to reflect the additional requirements outlined in the bill.

SECTION-BY-SECTION SUMMARY

Proposed §354.1432(1)(D) adds the requirement that parent or legal guardian consent must be obtained before a child receives telemedicine medical services in a primary or secondary school-based setting.

Proposed §354.1432(1)(E) adds the requirement that a patient's primary care physician or provider must be notified of a telemedicine medical visit, as applicable. For example, a patient who is not enrolled in managed care would not have a primary care physician or provider that would need to be notified. This section also requires consent by the patient or the patient's parent or legal guardian to the notification and describes what information must be included in the notification.

Proposed §354.1432(1)(F) adds additional information that the parent or legal guardian of a child receiving telemedicine medical services in a school-based setting must receive if the child is enrolled in managed care but does not have a primary care physician or provider.

Proposed §354.1432(1)(G) adds the requirement that a physician who provides telemedicine medical services to a child is

reimbursed if the physician is enrolled as a Medicaid provider, if the child receiving treatment is in a primary or secondary school-based setting, if a parent or legal guardian provides consent before the service is provided, and if a qualified health care professional is present with the child during treatment.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the amended rule is in effect, there will be no fiscal impact to state government. Costs and revenues of local governments will not be affected.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

HHSC has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the amended rule, as they will not be required to alter their business practices as a result of the amended rule.

PUBLIC BENEFIT

Gary Jessee, State Medicaid Director, has determined that for each year of the first five years the amended rule is in effect, the public will benefit from the adoption of the rule. The anticipated public benefit is increased communication with a child's parent/guardian and primary care physician or provider regarding any telemedicine medical services provided to that child in a school-based setting.

Ms. Rymal has also determined that there are no probable economic costs to persons who are required to comply with the amended rule.

HHSC has determined that the amended rule will not affect a local economy. There is no anticipated negative impact on local employment.

REGULATORY ANALYSIS

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule that is specifically intended to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her private real property that would otherwise exist in the absence of government action and, therefore,

does not constitute a taking under §2007.043 of the Government Code.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Erin McManus, Policy Analyst, Texas Health and Human Services Commission, P.O. Box 149030, Mail Code H370, Austin, Texas 78714-9030; by fax to (512) 730-7475; or by e-mail to Erin.McManus@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The proposed amendment implements Texas Human Resources Code, Chapter 32, and Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§354.1432. Telemedicine and Telehealth Benefits and Limitations.

Telemedicine medical services and telehealth services are a benefit under the Texas Medicaid program as provided in this section and are subject to the specifications, conditions, limitations, and requirements established by the Texas Health and Human Services Commission or its designee (HHSC).

(1) Conditions for reimbursement applicable to telemedicine medical services.

(A) The telemedicine medical services must be designated for reimbursement by HHSC. Telemedicine medical services designated for reimbursement include:

- (i) consultations;
- (ii) office or other outpatient visits;
- (iii) psychiatric diagnostic interviews;
- (iv) pharmacologic management;
- (v) psychotherapy; and
- (vi) data transmission.

(B) The services must be provided in compliance with 22 TAC Chapter 174 (relating to Telemedicine).

(C) The patient site must be:

- (i) an established medical site;
- (ii) a state mental health facility; or
- (iii) a state supported living center.

(D) For a child receiving telemedicine medical services in a primary or secondary school-based setting, advance parent or legal guardian consent for a telemedicine medical service must be obtained.

(E) The patient's primary care physician or provider must be notified of a telemedicine medical service, as applicable.

(i) The patient receiving the telemedicine medical service, or the patient's parent or legal guardian, must consent to the notification.

(ii) For a telemedicine medical service provided to a child in a primary or secondary school-based setting, the notification must include a summary of the service, including:

(I) exam findings;

(II) prescribed or administered medications; and

(III) patient instructions.

(F) If a child receiving a telemedicine medical service in a primary or secondary school-based setting does not have a primary care physician or provider, the child's parent or legal guardian must receive:

(i) the information in subparagraph (E)(ii) of this paragraph; and

(ii) a list of primary care physicians or providers from which to select the child's primary care physician or provider.

(G) Telemedicine medical services provided in a school-based setting by a physician, even if the physician is not the patient's primary care physician or provider, are reimbursed if:

(i) the physician is enrolled as a Medicaid provider;

(ii) the patient is a child who receives the service in a primary or secondary school-based setting;

(iii) the parent or legal guardian of the patient provides consent before the service is provided; and

(iv) a health care professional as defined by Texas Government Code §531.0271(a)(1) is present with the patient during the treatment.

(2) Conditions for reimbursement applicable to telehealth services.

(A) The telehealth services must be designated for reimbursement by HHSC. Designated telehealth services will be listed in the Texas Medicaid Provider Procedures Manual.

(B) The services must be provided in compliance with standards established by the respective licensing or certifying board of the professional providing the services.

(C) The patient site must be:

- (i) an established health site;
- (ii) a state mental health facility; or
- (iii) a state supported living center.

(D) The patient site presenter must be readily available for telehealth services. However, if the telehealth services relate only to mental health, a patient site presenter does not have to be readily available except when the patient may be a danger to himself or to others.

(E) Before receiving a telehealth service, the patient must receive an in-person evaluation for the same diagnosis or condition, with the exception of a mental health diagnosis or condition. For a mental health diagnosis or condition, the patient may receive a telehealth service without an in-person evaluation provided the purpose of the initial telehealth appointment is to screen and refer the patient for additional services and the referral is documented in the medical record.

(F) For the continued receipt of a telehealth service, the patient must receive an in-person evaluation at least once during the previous 12 months by a person qualified to determine a need for services.

(G) Both the distant site provider and the patient site presenter must maintain the records created at each site unless the dis-

tant site provider maintains the records in an electronic health record format.

(H) Written telehealth policies and procedures must be maintained and evaluated at least annually by both the distant site provider and the patient site presenter and must address:

(i) patient privacy to assure confidentiality and integrity of patient telehealth services;

(ii) archival and retrieval of patient service records; and

(iii) quality oversight mechanisms.

(3) Conditions for reimbursement applicable to both telemedicine medical services and telehealth services.

(A) Preventive health visits under Texas Health Steps (THSteps), also known as Early and Periodic Screening, Diagnosis and Treatment program, are not reimbursed if performed using telemedicine medical services or telehealth services. Health care or treatment provided using telemedicine medical services or telehealth services after a THSteps preventive health visit for conditions identified during a THSteps preventive health visit may be reimbursed.

(B) Documentation in the patient's medical record for a telemedicine medical service or a telehealth service must be the same as for a comparable in-person evaluation.

(C) Providers of telemedicine medical services and telehealth services must maintain confidentiality of protected health information (PHI) as required by 42 CFR Part 2, 45 CFR Parts 160 and 164, chapters 111 and 159 of the Occupations Code, and other applicable federal and state law.

(D) Providers of telemedicine medical services and telehealth services must comply with the requirements for authorized disclosure of PHI relating to patients in state mental health facilities and residents in state supported living centers, which are included in, but not limited to, 42 CFR Part 2, 45 CFR Parts 160 and 164, Health and Safety Code §611.004, and other applicable federal and state law.

(E) Telemedicine medical services and telehealth services are reimbursed in accordance with Chapter 355 of this title (relating to Reimbursement Rates).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 4, 2016.

TRD-201600020

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: February 14, 2016

For further information, please call: (512) 424-6900



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

SUBCHAPTER II. COMMISSIONER'S RULES CONCERNING HIGH SCHOOL ALLOTMENT

The Texas Education Agency (TEA) proposes amendments to §§61.1091, 61.1093, 61.1094, and 61.1099 and the repeal of §61.1100 and §61.1101, concerning the high school allotment for school districts. The sections implement provisions for the administration of high school allotment funds. The proposed amendments and repeals would update the current rules to reflect statutory changes.

The Texas Education Code (TEC), §42.2516(b)(3), added by the 79th Texas Legislature, Third Called Session, 2006, and amended by the 80th Texas Legislature, Regular Session, 2007, provided for an allotment of \$275 for each student in average daily attendance in Grades 9-12 in a school district. This allotment is known as the high school allotment.

The TEC, §39.113, added by the 79th Texas Legislature, Third Called Session, 2006, authorized the commissioner to adopt rules related to the recognition of high school completion and success and college readiness programs. The TEC, §39.114, also added by the 79th Texas Legislature, Third Called Session, 2006, required the commissioner to adopt rules related to permissible uses of the high school allotment.

House Bill (HB) 3, 81st Texas Legislature, 2009, renumbered the TEC, §39.113, as §39.233, and updated statutory references within the section. The bill also renumbered the TEC, §39.114, as §39.234. In addition, the criteria a district must meet to be able to use high school allotment funds on any instructional program in Grades 6-12 other than an athletic program, found in subsection (b) of the new TEC, §39.234, were revised.

The commissioner exercised rulemaking authority to implement the high school allotment by adopting 19 TAC Chapter 61, Subchapter II, Commissioner's Rules Concerning High School Allotment, effective November 9, 2006, and adopted amendments to the rules effective March 3, 2010, in response to actions from the 2006, 2007, and 2009 legislative sessions.

Subsequently, HB 5, 83rd Texas Legislature, 2013, changed graduation requirements, transitioning from three high school graduation programs to one foundation high school program with endorsement options to increase flexibility for students. HB 5 also changed some accountability indicators. The proposed revisions to 19 TAC Chapter 61, Subchapter II, would reflect these statutory changes, as follows.

Section 61.1091, Definitions, would be amended to remove the criteria related to the Distinguished Achievement High School Program.

Section 61.1093, Use of Funds, would be amended to remove options related to the Recommended High School Program and the Distinguished Achievement Program.

Section 61.1094, Exceptions for Alternative Uses of Funds, would be amended to update and specify in rule the eligibility criteria for exceptions for alternative uses of the high school allotment funds.

Section 61.1099, School District Annual Performance Review, would be amended to update the performance indicators that school districts must use to establish annual performance goals to be implemented with high school allotment funds.

Section 61.1100, Evaluation of Programs, would be repealed to minimize duplication of efforts as §61.1099 outlines school district performance review protocols.

Section 61.1101, Standards for Selecting and Methods for Recognizing Districts and Campuses Offering Exceptional Pro-

grams, would be repealed based on the 2015 Sunset Advisory Commission Review Recommendation 4.11 (and TEA's agreement with the recommendation) to eliminate the requirement for TEA to recognize schools' use of high school allotment funds.

The proposed rule actions would have no procedural or reporting implications. The proposed rule actions would have no locally maintained paperwork requirements.

FISCAL NOTE. Monica Martinez, associate commissioner for standards and programs, has determined that for the first five-year period the rule actions are in effect there will be no additional costs for state or local government as a result of enforcing or administering the rule actions.

PUBLIC BENEFIT/COST NOTE. Ms. Martinez has determined that for each year of the first five years the rule actions are in effect the public benefit anticipated as a result of enforcing the rule actions will be updated rules that reflect statutory changes. There is no anticipated economic cost to persons who are required to comply with the proposed rule actions.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICROBUSINESSES. There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins January 15, 2016, and ends February 16, 2016. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to rules@tea.texas.gov or faxed to (512) 463-5337. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on January 15, 2016.

19 TAC §§61.1091, 61.1093, 61.1094, 61.1099

STATUTORY AUTHORITY. The amendments are proposed under the Texas Education Code (TEC), §39.233, which permits the commissioner of education to adopt rules to recognize high school completion and success and college readiness programs; TEC, §39.234, which requires the commissioner to adopt rules related to the permissible use of funds allocated under the annual high school allotment; and TEC, §42.160, which requires the commissioner to adopt rules to administer the annual high school allotment.

CROSS REFERENCE TO STATUTE. The amendments implement the Texas Education Code, §§39.233, 39.234, and 42.160.

§61.1091. Definitions.

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

(1) **Academically rigorous course work**--Academically rigorous course work is an academically intense and high-quality program of study that provides students with the information and skills necessary to successfully enroll in entry-level courses at an institution of higher education without the need for developmental course work. Academically rigorous coursework includes four years of high school level mathematics and four years of high school level science.

(2) **Advanced academic opportunity**--An advanced academic opportunity includes the following:

(A) honors courses, such as College Board advanced placement and International Baccalaureate courses, and others as defined in §74.30 of this title (relating to Identification of Honors Courses), with the exception of the Social Studies Advanced Studies;

(B) dual enrollment courses for which students receive both high school and college credit, as limited by §74.25 of this title (relating to High School Credit for College Courses); and

~~[(C) an original research/project as described in §74.54 of this title (relating to Distinguished Achievement High School Program--Advanced High School Program) or by §74.64 of this title (relating to Distinguished Achievement High School Program--Advanced High School Program); and]~~

~~(C) [(D)] advanced technical credit courses.~~

(3) **College readiness program**--A college readiness program is any program, activity, or strategy designed to do either of the following:

(A) increase the number of students who are academically prepared to enroll in entry-level courses at institutions of higher education without the need for developmental course work; or

(B) increase the number of students who enroll in institutions of higher education.

(4) **Developmental course work**--As defined in §4.53 of this title (relating to Definitions), developmental course work is non-degree-credit course work designed to address a student's deficiencies.

(5) **High school allotment**--The high school allotment is the funding allocated under the Texas Education Code (TEC), §42.160.

(6) **High school completion and success initiative**--A high school completion and success initiative is any program, activity, or strategy designed to do the following:

(A) improve student achievement in high school; and

(B) increase the number of students who graduate from high school.

(7) **Institution of higher education**--An institution of higher education is any public technical institute, public junior college, public senior college or university, medical or dental unit, or other agency of higher education as defined in the TEC, §61.003.

(8) **School district**--For the purposes of this subchapter, an open-enrollment charter school is considered a school district.

§61.1093. Use of Funds.

In accordance with the Texas Education Code, §39.234(a), high school allotment funds may be spent on the following, which, unless otherwise noted, must be targeted toward Grades 6-12:

(1) programs that provide underachieving students, as defined by local policy, with the following:

(A) instruction in study skills for success in college level work;

(B) academic and community support for success in college preparatory classes;

(C) support to participate in academic competitions; and

(D) information about and access to college and financial aid;

(2) activities designed to increase the number of students who take preparatory college entrance examinations and college entrance examinations;

(3) programs that increase the number of students who enroll and succeed in College Board advanced placement courses and International Baccalaureate courses;

(4) programs that increase the number of students who take College Board advanced placement examinations and International Baccalaureate examinations;

(5) programs that expand participation in dual enrollment or concurrent enrollment courses;

(6) activities designed to increase access for underachieving students to college and financial aid;

(7) activities designed to create a college-going culture within a district or on a campus;

(8) early college high school programs that provide at-risk students and other students with the opportunity to graduate from high school with an associate's degree or 60 hours of credit toward a baccalaureate degree;

~~[(9) programs that provide academic support and instruction to increase the number of students who complete the Recommended High School Program or the Distinguished Achievement Program as defined in Chapter 74, Subchapter E, of this title (relating to Graduation Requirements, Beginning with School Year 2004-2005) or Chapter 74, Subchapter F, of this title (relating to Graduation Requirements, Beginning with School Year 2007-2008);]~~

~~(9) [(40)] strategies that create small learning communities, advocacy programs, or advisory programs for students;~~

~~(10) [(41)] programs or activities that create individualized high school graduation and postsecondary plans for students;~~

~~(11) [(42)] programs that ensure that students have access to rigorous curriculum, effective instruction, and timely formative assessment;~~

~~(12) [(43)] programs that create opportunities for middle and high school educators and college and university faculty to jointly identify college and secondary curricular requirements and expectations and develop means to align these requirements and expectations;~~

~~(13) [(44)] summer transition programs and other programs that provide academic support and instruction for students entering Grade 9; and~~

~~(14) [(45)] other high school completion and success initiatives as approved by the commissioner of education.~~

§61.1094. Exceptions for Alternative Uses of Funds.

In accordance with the Texas Education Code, §39.234(b), ~~[before the beginning of each school year, the commissioner of education will identify] school districts [that] are eligible for exceptions for alternative uses of high school allotment funds that have: [-]~~

(1) met or exceeded 95% on the four-year longitudinal graduation rate as reported in Texas Academic Performance Reports (TAPR); and

(2) achieved a rate of 70% or greater on the "College-Ready Graduates" indicator, as reported in TAPR.

§61.1099. School District Annual Performance Review.

(a) At an open meeting of the board of trustees, each school district must establish annual performance goals for programs, activities, and strategies implemented with high school allotment funds related to the following performance indicators:

(1) percentage of students graduating from high school;

(2) enrollment in advanced courses, including College Board advanced placement courses, International Baccalaureate courses, and dual or college credit courses; and

(3) percentage of "College-Ready Graduates," as defined by §61.1094(2) of this title (relating to Exceptions for Alternative Uses of Funds).

~~[(3) percentage of students successfully graduating on the Recommended High School Program or Distinguished Achievement Program described in Chapter 74, Subchapter E, of this title (relating to Graduation Requirements, Beginning with School Year 2004-2005) or Chapter 74, Subchapter F, of this title (relating to Graduation Requirements, Beginning with School Year 2007-2008);]~~

~~[(4) percentage of students who achieve the higher education readiness component qualifying scores on the English language arts section of the exit-level Texas Assessment of Knowledge and Skills (TAKS); and]~~

~~[(5) percentage of students who achieve the higher education readiness component qualifying scores on the mathematics section of the exit-level TAKS.]~~

(b) Annually, the board of trustees of each school district must review its progress in relation to the performance indicators specified in subsection (a) of this section. Progress should be assessed based on information that is disaggregated with respect to race, ethnicity, gender, and socioeconomic status.

(c) Each school district must ensure that decisions about the continuation or establishment of programs, activities, and strategies implemented with high school allotment funds are based on:

(1) state assessment results and other student performance data;

(2) standards for success and cost-effectiveness as established by the commissioner of education under the Texas Education Code (TEC), §39.233(a)(1); and

(3) guidance for improving high school completion and success and college readiness programs as established by the commissioner under the TEC, §39.233(a)(2).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 29, 2015.

TRD-201505985

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: February 14, 2016

For further information, please call: (512) 475-1497



19 TAC §61.1100, §61.1101

STATUTORY AUTHORITY. The repeals are proposed under the Texas Education Code (TEC), §39.233, which permits the commissioner of education to adopt rules to recognize high school completion and success and college readiness programs; TEC, §39.234, which requires the commissioner to adopt rules related to the permissible use of funds allocated under the annual high school allotment; and TEC, §42.160, which requires the commissioner to adopt rules to administer the annual high school allotment.

CROSS REFERENCE TO STATUTE. The repeals implement the Texas Education Code, §§39.233, 39.234, and 42.160.

§61.1100. *Evaluation of Programs.*

§61.1101. *Standards for Selecting and Methods for Recognizing Districts and Campuses Offering Exceptional Programs.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 29, 2015.

TRD-201505986

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: February 14, 2016

For further information, please call: (512) 475-1497



CHAPTER 129. STUDENT ATTENDANCE SUBCHAPTER AA. COMMISSIONER'S RULES

19 TAC §129.1029

The Texas Education Agency proposes an amendment to §129.1029, concerning the Optional Flexible Year Program (OFYP). The section implements provisions for the administration of the OFYP. The proposed amendment would modify the rule to reflect changes in statute made by House Bill (HB) 2610, 84th Texas Legislature, 2015.

HB 2610, 84th Texas Legislature, 2015, made changes to the TEC, §25.081, to modify how a school district counts instructional time for the school year by requiring a minimum of 75,600 minutes of instruction, including intermission and recess, instead of the current minimum of 180 days. It also defines one day of instruction to be equal to 420 minutes. The TEC, §25.0812, created by HB 2610, prohibits a school district from scheduling its last day of school for students before May 15.

The TEC, §25.081, currently requires school districts to provide at least 180 days of instruction to students each school year, except if the school district operates on a year-round calendar or offers a flexible year program. The statute allows the commissioner of education to approve a reduced number of instructional days if an extreme weather event or another calamity causes schools to close.

When schools close due to severe weather and the commissioner does not approve reduced instructional days, schools must make up lost instructional days by adding days to the

school calendar and extending the school year into summer. Allowing school districts to count instructional time by minutes instead of days provides for lost instructional time to be added to a regular school day, which permits districts to make up lost time without extending classes into the summer.

In accordance with HB 2610, the commissioner may approve reduced minutes of instruction if certain extreme weather or another calamity causes schools to close. If the commissioner does not approve fewer instructional minutes for a school district, the district may add additional minutes to its normal school hours as necessary, with additional instructional minutes compensating for the time lost due to bad weather or other extraordinary events.

The law also prohibits a school district from scheduling its last day of school for students before May 15, with an exception for the Texhoma Independent School District, which is also subject to Oklahoma law.

The proposed amendment to 19 TAC §129.1029 would incorporate the changes made by HB 2610, as follows.

New subsection (a) would be added to establish definitions for the OFYP and school district.

Subsection (c) would be revised to update program criteria, including the addition of new paragraph (7) to require proposed OFYP instructional time to be scheduled before the last approved student assessment testing window of the school year. The TEC, §29.0821, specifies that this program is available to assist students in meeting promotion requirements. Proposed new paragraph (7) is intended to ensure that additional instruction takes place prior to the final administration of state assessments since these are required for promotion.

Subsection (d) would be revised to update the approval process, including the requirement that a school district submit its instructional calendar that indicates the days and minutes scheduled as OFYP instructional days.

The proposed amendment would require school districts to follow new attendance accounting procedures outlined in the Student Attendance Accounting Handbook (SAAH). The proposed amendment would have no additional locally maintained paperwork documentation beyond the requirements outlined in the OFYP application and the SAAH.

FISCAL NOTE. Lisa Dawn-Fisher, associate commissioner for school finance/chief school finance officer, has determined that for the first five-year period the amendment is in effect there will be no additional costs for state or local government as a result of enforcing or administering the amendment.

PUBLIC BENEFIT/COST NOTE. Dr. Dawn-Fisher has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be increased flexibility for school districts to make up lost instructional time without extending classes into the summer. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICROBUSINESSES. There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins January 15, 2016, and ends February 16, 2016. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to rules@tea.texas.gov or faxed to (512) 463-5337. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on January 15, 2016.

STATUTORY AUTHORITY. The amendment is proposed under the Texas Education Code (TEC), §29.0821, which authorizes the commissioner of education to adopt rules necessary for the administration of provisions under the optional flexible year program.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code, §25.081 and §25.0812, as amended and added by House Bill 2610, 84th Texas Legislature, 2015, and §29.0821.

§129.1029. *Optional Flexible Year Program.*

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Optional Flexible Year Program (OFYP)--An OFYP is a program authorized under the Texas Education Code (TEC), §29.0821, that is approved by the commissioner of education to provide a flexible year program to meet the educational needs of its students, including providing intensive instructional services. A school district approved by the commissioner of education to implement an OFYP may reduce the number of instructional minutes for certain students.

(2) School district--For the purposes of this section, the definition of a school district includes an open-enrollment charter school.

[(a) General provisions. In accordance with the Texas Education Code (TEC), §29.0821, a school district may modify its instructional calendar to provide a flexible year program to meet the educational needs of its students, including providing intensive instructional services. A school district approved by the commissioner of education to implement an Optional Flexible Year Program (OFYP) may reduce the number of instructional days for certain students.]

(b) Eligibility. A student is eligible to participate in the OFYP if the student meets one or more of the following criteria.

(1) The student did not or is not likely to achieve a passing score on an assessment instrument administered under the TEC, §39.023.

(2) The student is not eligible for promotion to the next grade level.

(c) Program criteria.

(1) A school district may reduce the number of instructional minutes [days] during the regular school year for students who are not eligible for participation in this program to no fewer than 71,400 minutes [170 days].

(2) A school district must provide at least 75,600 minutes [180 days] of instruction to those students who meet the eligibility criteria defined in subsection (b) of this section.

~~[(3) In accordance with subsection (d) of this section, a school district may request waivers for no more than five days of staff development or teacher preparation in order to provide additional days of instruction.]~~

(3) ~~[(4)]~~ A school district that provides transportation services must continue to provide these services during the OFYP.

(4) ~~[(5)]~~ A school district that provides meal services through [participates in] the National School Lunch Program, [or the National] School Breakfast Program, or a locally funded program must continue to provide these services during the OFYP.

(5) ~~[(6)]~~ A school district may require educational support personnel to provide service as necessary for an OFYP.

(6) ~~[(7)]~~ Each educator employed under a ten-month contract must provide the minimum days of service required under the TEC, §21.401, notwithstanding the reduction in the number of instructional days or in the number of staff development days.

(7) A school district must schedule proposed OFYP instructional minutes before the last approved state student assessment testing window of the school year.

(d) Approval process. To implement an OFYP, a school district must request prior approval from the commissioner of education.

(1) A school district must submit a letter to the Texas Education Agency (TEA) division responsible for state funding describing the proposed modifications to the instructional calendar, including a description of the OFYP that will be provided under the TEC, §29.0821. The letter must indicate the date on which the board of trustees approved the modified instructional calendar. If the district is requesting a waiver of staff development days or teacher preparation days, the letter must also indicate that the request to waive staff development days or teacher preparation days has been approved by the campus site-based decision-making committee.

(2) A school district must submit to the TEA a copy of its modified instructional calendar. The instructional calendar must indicate the days and minutes scheduled as OFYP instructional days. No approval will be granted that reduces the number of instructional minutes to fewer than 71,400 minutes.

(3) ~~[(2)]~~ Approval to modify the number of instructional days is limited to one year. Requests for a school district to operate an OFYP for subsequent years must be approved annually. [Extensions may be approved by submitting subsequent applications.]

~~[(3) No approval will be granted that reduces the number of instructional days to fewer than 170 days.]~~

(4) The commissioner may require a school district to provide an evaluation that demonstrates the success of its approach as a condition of approval.

(e) Funding. For a school district that operates an OFYP, the calculation of average daily attendance is modified to reflect the approved instructional calendar. For students placed on a reduced instructional calendar, the reported number of days of instruction used as the divisor in calculating average daily attendance must reflect the reduced number of days [~~no fewer than 170~~]. For eligible students served through the OFYP, the reported number of days of instruction used as the divisor in calculating average daily attendance must reflect the scheduled number of days [~~180 or more~~] in which instruction took place.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 29, 2015.

TRD-201505987

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: February 14, 2016

For further information, please call: (512) 475-1497



CHAPTER 153. SCHOOL DISTRICT PERSONNEL

SUBCHAPTER BB. COMMISSIONER'S RULES CONCERNING PROFESSIONAL DEVELOPMENT

19 TAC §153.1013

The Texas Education Agency (TEA) proposes new §153.1013, concerning suicide prevention training. The proposed new rule would provide a schedule for conducting suicide prevention training to all existing school district and open-enrollment charter school educators, establish when new school district and open-enrollment charter school educators are to be trained, address how previous training can be credited, and describe locally maintained paperwork requirements.

House Bill (HB) 1386, 82nd Texas Legislature, Regular Session, 2011, added the Health and Safety Code (HSC), §161.325, which required the Department of State Health Services (DSHS), in coordination with the TEA, to provide a list of recommended best practice-based suicide prevention programs for implementation in public elementary, junior high, middle, and high schools. The statute provides that each school district may select from the list a program or programs appropriate for implementation in the district.

Senate Bill 460, 83rd Texas Legislature, Regular Session, 2013, amended the HSC, §161.325, to require each school district to provide suicide prevention training for teachers, counselors, principals, and all other appropriate personnel. A school district was required to provide the training at an elementary campus only to the extent that sufficient funding and programs were available. School districts were allowed to implement a program on the list of recommended best practice-based suicide prevention programs to meet the requirements of this legislation. School districts that provided this training were required to train school district employees at least one time and maintain the records of the training to include the name of each employee who participated in training.

HB 2186, 84th Texas Legislature, Regular Session, 2015, amended the TEC, §21.451(d), to require all school districts and open-enrollment charter schools to provide suicide prevention training to all existing educators on a schedule adopted in rule by the TEA. The legislation also requires all new school district and open-enrollment charter school educators to be trained on an annual basis as part of new employee orientation. School districts and open-enrollment charter schools may select training programs from the list of recommended best practice-based programs or they may conduct an independent review of an online program that complies with guidelines developed by the TEA.

Proposed new 19 TAC §153.1013 would require school districts and open-enrollment charter schools to provide suicide prevention training to all new educators as part of new employee orientation during the 2016-2017 school year and each subsequent school year. The proposed new rule would also require that the training be provided to all currently employed educators by September 30, 2016, and allows for training provided to existing educators on or after September 1, 2013, to meet these suicide prevention training requirements under certain conditions.

In accordance with the HSC, §161.325, the proposed new rule would require school districts to continue to maintain records that include the name of each educator who participated in the suicide prevention training. Additionally, the proposed new rule would encourage open-enrollment charter schools to maintain suicide prevention training records that include the name of each educator who participated in the suicide prevention training.

The TEA has posted guidelines for suicide prevention training on its website and informed school districts and open-enrollment charter schools about the new requirements through TEA correspondence on August 26, 2015.

The proposed new rule has no additional procedural and reporting implications. The proposed new rule has no additional locally maintained paperwork requirements because the HSC, §161.325, already requires school districts to maintain records of employees who participate in the required training. Prior to the passage of HB 2186, school districts were required to provide training at elementary school campuses only to the extent that sufficient funding and programs are available. With the passage of HB 2186, there are several programs on the recommended best practice-based list that are offered at no cost and are appropriate for elementary school campuses. Alternatively, school districts may conduct independent reviews of online programs that are offered at no cost and are appropriate for elementary school campuses if the programs comply with guidelines developed by the TEA. Open-enrollment charter schools are encouraged, but not required, to maintain suicide prevention training records that include the name of each educator who participated in the suicide prevention training.

FISCAL NOTE. Ryan Franklin, associate commissioner for educator leadership and quality, has determined that for the first five-year period the new section is in effect there will be no additional costs for state or local government as a result of enforcing or administering the new section because there are several programs on the recommended best practice-based list that are offered at no cost and school districts and open-enrollment charter schools may conduct independent reviews of online programs that are offered at no cost if the programs comply with guidelines developed by the TEA.

PUBLIC BENEFIT/COST NOTE. Mr. Franklin has determined that for each year of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the new section will be that all school district and open-enrollment charter school educators will be sufficiently trained on best practices for youth suicide prevention. There is no anticipated economic cost to persons who are required to comply with the proposed new section.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICROBUSINESSES. There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility

analysis, specified in Texas Government Code, §2006.002, is required.

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins January 15, 2016, and ends February 16, 2016. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to rules@tea.texas.gov or faxed to (512) 463-5337. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on January 15, 2016.

STATUTORY AUTHORITY. The new section is proposed under the Texas Education Code, §21.451(d), as amended by House Bill 2186, 84th Texas Legislature, Regular Session, 2015, which requires the Texas Education Agency to adopt in rule a schedule by which each school district and open-enrollment charter school will provide suicide prevention training to its educators.

CROSS REFERENCE TO STATUTE. The new section implements the Texas Education Code, §21.451(d), as amended by House Bill 2186, 84th Texas Legislature, Regular Session, 2015.

§153.1013. Suicide Prevention Training.

(a) All school districts and open-enrollment charter schools shall provide suicide prevention training as required by the Texas Education Code (TEC), §21.451(d), to all new school district and open-enrollment charter school educators as a part of new employee orientation during the 2016-2017 school year.

(b) Each subsequent school year, school districts and open-enrollment charter schools shall provide suicide prevention training as required by the TEC, §21.451(d), to all new school district and open-enrollment charter school educators as a part of new employee orientation.

(c) All school districts and open-enrollment charter schools shall provide suicide prevention training as required by the TEC, §21.451(d), to all currently employed school district and open-enrollment charter school educators on or by September 30, 2016.

(d) Suicide prevention training that is required by the TEC, §21.451(d), and was provided to existing educators by a school district or open-enrollment charter school on or after September 1, 2013, may be used to meet the requirements of this section if the training program is on the recommended best practice-based list maintained by the Department of State Health Services (DSHS), in coordination with the Texas Education Agency (TEA), or is an online program that meets the TEA guidelines for independent review.

(e) In accordance with the Health and Safety Code, §161.325, school districts shall maintain records that include the name of each educator who participated in the suicide prevention training.

(f) Open-enrollment charter schools are encouraged to maintain suicide prevention training records that include the name of each educator who participated in the suicide prevention training.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 29, 2015.

TRD-201505988

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: February 14, 2016

For further information, please call: (512) 475-1497



CHAPTER 157. HEARINGS AND APPEALS
SUBCHAPTER EE. INFORMAL REVIEW,
FORMAL REVIEW, AND REVIEW BY STATE
OFFICE OF ADMINISTRATIVE HEARINGS
DIVISION 1. INFORMAL REVIEW

19 TAC §157.1123

The Texas Education Agency (TEA) proposes an amendment to §157.1123, concerning hearings and appeals. The section addresses informal reviews requested by a school district, open-enrollment charter school, or any person who is subject to an investigation, assignment, determination, or decision identified in 19 TAC §157.1121, Applicability. The proposed amendment would modify the rule to increase the ability of an open-enrollment charter school to participate in the TEA's informal review of its investigation of alleged misconduct by the charter.

The TEC, §12.116, requires that the commissioner adopt an informal procedure for revoking the charter of an open-enrollment charter school or reconstituting the governing body of a charter holder. Section 157.1123, Informal Review, implements the requirement by providing an open-enrollment charter school the opportunity for an informal review of an investigation, assignment, determination, or decision identified under 19 TAC §157.1121.

The 84th Texas Legislature, Regular Session, 2015, passed House Bill (HB) 1842, which modified the informal review for certain actions required by the TEC, §12.116(a). The statutory changes require additional procedures for informal reviews of decisions to deny the renewal of a charter under the TEC, §12.1141(c), and decisions to revoke a charter or reconstitute the charter's governing board under the TEC, §12.115(a). The procedures must allow representatives of the charter holder to meet with the commissioner to discuss the commissioner's decision and must allow the charter holder to submit additional information relating to the decision. In addition, in a final decision, the commissioner must provide a written response to any additional information submitted by the charter holder.

The proposed amendment to 19 TAC §157.1123 would implement HB 1842 by making the following changes.

Subsection (c) would be modified to specify that, at the request of an open-enrollment charter school, a TEA representative will meet with representatives of the charter school in person at the TEA headquarters or by telephone if requested by the charter school. In addition, subsection (c) would be amended to state that the meeting is not a contested-case hearing and will not include the examination of any witnesses and that the rules of civil procedure and evidence do not apply.

Subsection (f) would be amended to specify that the commissioner's final decision will provide a written response to any information the charter holder submits at the informal review.

The proposed amendment would have no procedural or reporting implications. The proposed amendment would have no locally maintained paperwork requirements.

FISCAL NOTE. Von Byer, general counsel, has determined that for the first five-year period the amendment is in effect there will be no additional costs for state or local government as a result of enforcing or administering the amendment.

PUBLIC BENEFIT/COST NOTE. Mr. Byer has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be ensuring that an open-enrollment charter school that is the subject of an action under the TEC, §12.1141(c) or §12.115(a), is provided an opportunity to participate in the informal review of an investigation, assignment, determination, or decision with regards to that open-enrollment charter school. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND MICROBUSINESSES. There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins January 15, 2016, and ends February 15, 2016. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to rules@tea.texas.gov or faxed to (512) 463-5337. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on January 15, 2016.

STATUTORY AUTHORITY. The amendment is proposed under the Texas Education Code (TEC), §12.1141, which authorizes the commissioner to adopt rules for the procedure and criteria for renewal, denial of renewal, or expiration of a charter of an open-enrollment charter school; TEC, §12.115, which authorizes the commissioner to adopt rules necessary for the administration of the basis for charter revocation and the reconstitution of the charter holder's governing body; and TEC, §12.116, as amended by House Bill 1842, 84th Texas Legislature, Regular Session, 2015, which authorizes the commissioner to adopt an informal procedure to be used for revoking the charter of an open-enrollment charter school or for reconstituting the governing body of the charter holder. The procedure must allow representatives of the charter holder to meet with the commissioner to discuss the commissioner's decision and must allow the charter holder to submit additional information relating to the commissioner's decision. In a final decision, the commissioner must provide a written response to the additional information.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code, §§12.1141; 12.115; and 12.116, as amended by House Bill 1842, 84th Texas Legislature, Regular Session, 2015.

§157.1123. *Informal Review.*

(a) A school district, an open-enrollment charter school, or any person who is subject to an investigation, assignment, determination, or

decision identified in §157.1121 of this title (relating to Applicability) may request, in writing, an informal review under this section.

(b) A written request for informal review must be addressed to the designated Texas Education Agency (TEA) representative. The written request must be received by the TEA representative on or before the deadline identified in the notice issued under §157.1122 of this title (relating to Notice).

(c) A school district, an open-enrollment charter school, or any person requesting the informal review may submit written information to the TEA representative by the deadline set forth in the notice issued under §157.1122 of this title. In addition, the TEA representative may require attendance at a meeting at the TEA headquarters in Austin, Texas, or by telephone, to discuss the findings and/or provide additional information for review. For an informal review of a decision to non-renew the charter of an open-enrollment charter school pursuant to the Texas Education Code (TEC), §12.1141(c), or a decision to revoke the charter of an open-enrollment charter school or reconstitute the governing board of the charter holder under the TEC, §12.115(a), the TEA representative shall, at the request of the open-enrollment charter school, meet with representatives from the open-enrollment charter school at the TEA headquarters in Austin, Texas, or by telephone if requested by the open-enrollment charter school. This meeting is part of the informal review but is not a contested case hearing. The meeting will not include the examination of any witnesses, including TEA staff. The rules of civil procedure and evidence, including rules prohibiting ex parte communications, do not apply.

(d) If no informal review is requested by the deadline, a final report, assignment, determination, or decision may be issued without informal review.

(e) An informal review is not governed by the TEC [Texas Education Code], §7.057, or by the Texas Government Code, Chapter 2001.

(f) Following the informal review by the TEA representative, a final report, assignment, determination, or decision will be issued. The final report, assignment, determination, or decision may include changes or additions to the preliminary report or action, and such modifications are not subject to another informal review procedure. A final report, assignment, determination, or decision issued following an informal review is final and may not be appealed, except as provided by law or rule. For an informal review of a decision to non-renew the charter of an open-enrollment charter school pursuant to the TEC, §12.1141(c), or a decision to revoke the charter of an open-enrollment charter school or reconstitute the governing board of the charter holder under the TEC, §12.115(a), the final decision shall provide a written response to any information the charter holder submits under this section.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 4, 2016.

TRD-201600018

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: February 14, 2016

For further information, please call: (512) 475-1497

◆ ◆ ◆
TITLE 22. EXAMINING BOARDS

PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 465. RULES OF PRACTICE

22 TAC §465.1

The Texas State Board of Examiners of Psychologists proposes an amendment to §465.1, Definitions. The proposed amendment seeks to clarify certain definitions relevant to Board rule §465.18 and seeks to clarify that forensic psychological services do not include evaluations, proceedings, or hearings under the Individuals with Disabilities Education Act.

Darrel D. Spinks, Executive Director, has determined that for the first five-year period the proposed amendment will be in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule.

Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no economic costs to persons required to comply with this rule. There will be no effect on small businesses or local economies.

Comments on the proposed amendment may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, Texas 78701 within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701 or via email to brenda@tsbep.texas.gov.

The amendment is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other codes, articles or statutes are affected by this section.

§465.1. Definitions.

The following terms have the following meanings:

- (1) "Client" has the same meaning as "patient."
- (2) "Dual Relationship" means a situation where a licensee and another individual have both a professional relationship and a non-professional relationship. Dual relationships include, but are not limited to, personal friendships, business or financial interactions, mutual club or social group activities, family or marital ties, or sexual relationships.
- (3) "Forensic psychological services" are [~~"Forensic psychology" is the provision of psychological~~] services involving courts, legal claims, or the legal system. The provision of forensic psychological services includes any and all preliminary and exploratory services, testing, assessments, evaluations, interviews, examinations, depositions, oral or written reports, live or recorded testimony, or any psychological service provided by a licensee concerning a current or potential legal case at the request of a party or potential party, an attorney for a party, or a court, or any other individual or entity, regardless of whether the licensee ultimately provides a report or testimony that is utilized in a legal proceeding. However, forensic psychological services do not include evaluations, proceedings, or hearings under the Individuals with Disabilities Education Improvement Act (IDEIA). [A person who is the subject of forensic evaluation is not considered to be a patient under these rules.]

(4) "Forensic evaluation" is an evaluation conducted, not for the purpose of providing mental health treatment, but rather at the request of a court, an attorney, or an administrative body including local, state, federal and private disability benefits providers to assist in addressing a forensic referral question. [~~Additionally, forensic services would include fitness for duty evaluations, psychological evaluations conducted after an employment offer has been made in high risk professions, and risk assessment evaluations of employees as a result of their aggressive or threatening behavior.~~]

(5) [(4)] "Informed Consent" means the written documented consent of the patient, client and other recipients of psychological services only after the patient, client or other recipient has been made aware of the purpose and nature of the services to be provided, including but not limited to: the specific goals of the services; the procedures to be utilized to deliver the services; possible side effects of the services, if applicable; alternate choices to the services, if applicable; the possible duration of the services; the confidentiality of and relevant limits thereto; all financial policies, including the cost and methods of payment; and any provisions for cancellation of and payments for missed appointments; and right of access of the patient, client or other recipient to the records of the services.

(6) [(5)] "Licensee" means a licensed psychologist, provisionally licensed psychologist, licensed psychological associate, licensed specialist in school psychology, applicants to the Board, and any other individual whom the Board has the authority to discipline under these Rules.

(7) [(6)] "Multiple Relationship" means any relationship between a licensee and another individual involving a professional relationship and a non-professional relationship.

(8) [(7)] "Patient" means a person who consults or is interviewed by a licensee for a diagnosis, evaluation, or treatment of any mental or emotional condition or disorder of that person regardless of whether the patient or some other individual or entity paid for the consultation or interview. However, a person who is the subject of a forensic evaluation is not considered to be a patient under these rules. [except as identified in paragraph (3) of this section, where the subject of forensic evaluation is not considered to be a patient.]

(9) [(8)] "Professional relationship" is any relationship between a licensee and another individual, group or organization in which the licensee delivers psychological services to the individual, group, or organization.

(10) [(9)] "Professional standards" are determined by the Board through its rules, regulations, policies and any other sources adopted by the Board.

(11) [(10)] "Provision of psychological services" means any use by a licensee of his or her education or training in psychology in the context of a professional relationship. Psychological services include, but are not limited to, therapy, diagnosis, testing, assessments, evaluation, treatment, counseling, supervision, consultation, providing forensic opinions, rendering a professional opinion, performing research, or teaching to an individual, group, or organization.

(12) [(11)] "Recognized member of the clergy," as used in §501.004(a)(4) of the Act, means a member in good standing of and accountable to a denomination, church, sect or religious organization legally recognized under the Internal Revenue Code, §501(c)(3).

(13) [(12)] "Records" are any information, regardless of the format in which it is maintained, that can be used to document the delivery, progress or results of any psychological services including, but not limited to, data identifying a recipient of services, dates of services, types of services, informed consents, fees and fee schedules, as-

assessments, treatment plans, consultations, session notes, test results, reports, release forms obtained from a client or patient or any other individual or entity, and records concerning a patient or client obtained by the licensee from other sources.

(14) [(13)] "Report" includes any written or oral assessment, recommendation, psychological diagnostic or evaluative statement containing the professional judgment or opinion of a licensee.

(15) [(14)] "Test data" refers to testing materials, test booklets, test forms, test protocols and answer sheets used in psychological testing to generate test results and test reports.

(16) [(15)] "Supervision" refers to direct, systematic professional oversight of individuals who provide psychological services under the authority of a supervising licensee, whereby the supervisor has the responsibility and ability to monitor and control the psychological services provided to ensure the patient's or client's best interests are met and that the public is protected. In the context of psychological training and education, "supervision" also refers to the formal provision of systematic education and training for purposes of licensure or competency that serves to assist individuals with gaining experience and developing the skills necessary for licensure or competent practice in a particular practice area. However, the term "supervision" does not apply to the supervision of purely administrative or employment matters.

(17) [(16)] "Child custody evaluation" has the same meaning as assigned by Tex. Fam. Code Ann. §107.101.

(18) [(17)] "Adoption evaluation" has the same meaning as assigned by Tex. Fam. Code Ann. §107.151.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 29, 2015.

TRD-201505989

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: February 14, 2016

For further information, please call: (512) 305-7706



PART 30. TEXAS STATE BOARD OF EXAMINERS OF PROFESSIONAL COUNSELORS

CHAPTER 681. PROFESSIONAL COUNSELORS

The Texas State Board of Examiners of Professional Counselors (board), proposes amendments to §§681.2, 681.9, 681.12, 681.15, 681.31, 681.41, 681.48, 681.72, 681.81, 681.82, 681.83, 681.91, 681.92, 681.93, 681.102, 681.123, 681.125, 681.141, 681.142, 681.143, 681.161, 681.162, 681.166, 681.202 and 681.251, concerning the licensing and regulation of professional counselors.

BACKGROUND AND PURPOSE

The board reviewed its rules to ensure that the rules reflect the current practice of professional counseling and associated policy considerations; to update licensure requirements and standards of practice; to improve spelling, grammar, and draftsmanship of the rules; and to make the rules more accessible and understandable. Additionally, amendments to §681.41 are proposed in response to the passage of House Bill 1449 by the 84th Legislature, Regular Session, 2015.

SECTION-BY-SECTION SUMMARY

The following changes are proposed concerning Subchapter A (relating to the Board):

The amendments to §681.2 expand the definition of client and clarify that the LPC Intern must be under supervision.

The amendment to §681.9 clarifies that the board chair or vice chair may authorize changes to committee membership.

The amendment to §681.12 removes one type of circumstance in which the board may deny physical access to board records.

The amendment to §681.15 specifies the conditions under which the application process can exceed the required time period for processing.

The following changes are proposed concerning Subchapter B (relating to Authorized Counseling Methods and Practices):

Amendments to §681.31 modify the authorized counseling methods related to play therapy and assessment.

The following changes are proposed concerning Subchapter C (relating to Code of Ethics):

Amendments to §681.41 relate to general ethical requirements. Specifically, subsection (e) adds that a signed informed consent must be obtained prior to counseling. Subsection (g) requires a face-to-face initial intake session before beginning distance counseling. Subsection (p) of this section clarifies that licensees must take precautions to protect all clients in all counseling settings. Subsection (s) clarifies who must comply with record keeping requirements. Subsection (t) adds the description "Billing terms" and separates the existing subsection and is renumbered for clarity. Subsection (cc) requires licensees to comply with Texas Family Code, Chapter 107, Subchapters D, E, and F concerning Child Custody Evaluation, Adoption Evaluation, and Evaluations in Contested Adoptions.

The proposed amendment to §681.48 adds new subsection (c) to require a licensee's legal name appear on the LPC license certificate and renewal card. The rest of the subsection is renumbered accordingly to reflect this addition.

The following changes are proposed concerning Subchapter D (relating to Application Procedures):

The proposed amendment to §681.72 removes extraneous language regarding application material and renumbers the section.

The following changes are proposed concerning Subchapter E (relating to the Academic Requirements for Licensure):

Amendments to §681.81 allow for applicants with a graduate degree or graduate coursework that was awarded or earned more than 10 years prior to the application date to request a waiver of the rule and specifies that the board may require the licensee to comply with additional conditions if a waiver is granted.

Amendments to §681.82 revise subsection (b) to incorporate the revised definition of "clients." Also, a new subsection (c) was

added which provides that an applicant licensed in another state for five years preceding the application will be deemed to have met academic requirements for licensure. The remainder of the section is renumbered accordingly.

Amendments to §681.83(c) add a required course regarding couples, marriage, or families, and the amendment to subsection (e) clarifies that applicants who do not meet the academic requirements for licensure do not have a right to a hearing.

The following are proposed changes concerning Subchapter F (relating to Experience Requirements for Licensure):

The proposed amendment to §681.91 limits the number of supervisory sites an LPC Intern can have at any given time. Existing subsection (i) is deleted to ensure consistency with other rules, and the section is renumbered accordingly to reflect these changes.

Amendments to §681.92(g) incorporate the revised definition of "clients." Amendments to subsection (h) remove redundant language and allow for an intern to obtain extended leave from supervision if approved by their board approved supervisor. Amendments to subsection (k) provide that as of August 1, 2017, excess practicum hours may not count toward experience requirements for licensure, and for applications submitted on or before August 1, 2017, only half of the excess practicum hours counted for experience requirements may be credited towards direct client contact. Subsection (m) is removed as it is stated in renumbered §681.93(g), and the remaining subsections are renumbered accordingly.

Proposed amendments to §681.93(a) increase the amount of time a licensee must hold licensure before the licensee may apply for supervision status, effective June 1, 2016. Amendments to subsection (c) specify the percentage of the continuing education supervision course which must be face-to-face and require that the course be taught by an LPC supervisor. New subsection (d) expands upon and details the type of records a supervisor must keep for each intern. Proposed new subsection (e) requires the supervisor to maintain a summary log regarding supervision accrued by interns. Subsections that follow subsection (e) are renumbered accordingly.

Amendments to renumbered subsection (f) clarify that the supervisor must ensure that the intern complies with all board rules and require the supervisor to review a remediation plan with the LPC Intern and maintain the plan in the LPC Intern's file. Amendments to renumbered subsection (h) require licensees to inform the LPC Intern when their supervisor status is revoked, suspended, or expired and to assist the LPC Intern with finding a new supervisor. Amendments to renumbered subsection (k) specify that supervisory status will be revoked upon a probated suspension, suspension, or revocation of the supervisor's LPC license. Amendments to renumbered subsection (n) allow the board to order supervisors who violate board rules to refund supervision fees to interns.

The following changes are proposed concerning Subchapter G (relating to Licensure Examinations):

The proposed amendment to §681.102 replaces the acronym "ADA" with its full, spelled out title, "Americans with Disabilities Act", for clarification.

The proposed changes concerning Subchapter I (relating to the Regular License Renewal; Inactive and Retirement Status):

The amendment to §681.123 clarifies where the board will send renewal notices.

The amendments to §681.125 state that a licensee shall remain subject to an investigation during a period of inactive status, specify that a former supervisor must pay appropriate fees to obtain supervisor status again, limit the inactive status of an LPC license to a total of 2 years unless the licensee obtains board approval, and require board approval to place a temporary license on inactive status.

The following changes are proposed concerning Subchapter J (relating to Continuing Education Requirements):

The amendment to §681.141(c) clarifies that the continuing education ethics requirement relates to Texas LPC ethics. The amendment to subsection (f) allows for licensees holding supervisor status to obtain 3 hours of continuing education in supervision by attending an applications/supervision committee meeting of the board.

Amendments to §681.142(a) require that 9 hours of the 24 continuing education hours required for all licensees be face-to-face and allows attendance at a complaints committee meeting to count as 3 hours of continuing education credit in ethics. The amendment to subsection (b) allows continuing education to pertain to counseling methods or techniques for couples, families, organizations, or communities.

The amendment to §681.143 allows members of the board to earn continuing education credit for attending committee meetings.

The following are proposed changes concerning Subchapter K (relating to Complaints and Violations):

The amendments to §681.161(e) require an investigator to request a copy of the client's file during an investigation and require the licensee or person subject to the investigation to respond within 15 business days of an executive director's request for a response.

Proposed amendments to §681.162 clarify the circumstances under which a formal hearing may be offered to an applicant whose application for licensure was denied.

Amendments to §681.166 require the board's legal counsel to attend each informal conference.

The following are proposed changes concerning Subchapter M (relating to Schedule of Sanctions):

Amendments to §681.202 clarify certain factors considered in the type of sanction imposed upon a licensee.

The following are proposed changes concerning Subchapter N (relating to Parenting Coordination and Parenting Facilitation):

Proposed amendments to §681.251 reorganize the section to improve clarity and require a licensee acting as a parenting coordinator to inform the parties of the suit about the responsibility of the licensee and the role of the court.

FISCAL NOTE

Sarah Faszholz, Interim Executive Director, has determined that for each of the first five years the sections are in effect, there will be no fiscal implications to the state or local governments as a result of enforcing or administering the sections as proposed.

SMALL AND MICRO-BUSINESS ECONOMIC IMPACT ANALYSIS

For most proposed amendments, Ms. Faszholz has determined that there will be no effect on small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to significantly alter their business practices in order to comply with the sections. For proposed amendments regarding distance counseling, small business and micro-businesses may incur economic costs related to maintaining an office or a meeting space in which licensees will meet with clients in person, and businesses' ability to contract with companies that provide only distance counseling may be limited. However, because distance counseling utilizes emerging technology, it is difficult to estimate how the proposed amendments will affect licensees and their businesses.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There may be economic costs to persons who are required to comply with the sections as proposed. These costs are described in the section titled "Small and Micro-Business Economic Impact Analysis." However, the proposal is not expected to affect a local economy or have a negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Faszholz has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to continue to ensure public health and safety through the effective licensing and regulation of professional counselors. Specifically, proposed requirements regarding distance counseling are designed to allow licensees to better assess the client using non-verbal cues at the initial session, following which the licensee may determine which method of counseling to use and the frequency of subsequent sessions. The amendments will also allow licensees to better establish the identity of the client, ensure confidentiality during the initial session, use modalities other than talk therapy at the first counseling session, and should the client appear to be a danger to him or herself, keep the client with the licensee until help arrives. Finally, the restructuring of many of the rules should improve comprehension, resulting in fewer legal costs to the state and providers.

REGULATORY ANALYSIS

The board has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The board has determined that the proposed rules do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposed rules may be submitted to Sarah Faszholz, Interim Executive Director, Texas State Board of Examiners of Professional Counselors, Mail Code 1982, P.O. Box 149347, Austin, Texas 78714-9347 or by email to lpc@dshs.state.tx.us. When emailing comments, please indicate "Comments on Proposed Rules" in the subject line. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

SUBCHAPTER A. THE BOARD

22 TAC §§681.2, 681.9, 681.12, 681.15

STATUTORY AUTHORITY

The amendments are authorized by the Texas Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §503.202, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

The amendments affect Texas Occupations Code, Chapter 503.

§681.2. Definitions.

The following words and terms, as used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) - (5) (No change.)

(6) Client--An individual, couple, family, group, organization or community [A person] who requests and receives counseling services from a licensee or who has engaged in a therapeutic relationship with a licensee.

(7) - (11) (No change.)

(12) Indirect hours--Time spent in management, consultation, administration or other aspects of counseling service ancillary to direct client contact.

(13) - (15) (No change.)

(16) LPC Intern--A person who holds a temporary license to practice counseling only under supervision.

(17) - (18) (No change.)

§681.9. Committees.

(a) - (f) (No change.)

(g) Each committee shall consist of at least one public member and one professional member, unless the board chair or vice chair authorizes otherwise.

§681.12. Official Records of the Board.

(a) (No change.)

~~{(b) When a request is unreasonably disruptive to the ongoing business of the office or when the safety of any record is at issue, physical access by inspection may be denied and the requester will be provided the option of receiving duplicate copies at the requester's cost.}~~

~~(b) [(e)]~~ Costs of duplication shall be paid by the requester at the time of or before the duplicated records are sent or given to the requester.

~~(c) [(4)]~~ The rules of procedure for inspection and duplication of public records contained in the Public Information Act, Texas Government Code, Chapter 552, shall apply to requests received by the board.

§681.15. Processing Procedures.

Time periods. The board shall comply with the following procedures in processing applications for a license and renewal of a regular license:

(1) - (3) (No change.)

(4) The application process may exceed the time period if good cause is shown for exceeding the time period as determined by the board chair or vice chair.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 4, 2016.

TRD-201600021

Glynda Corley

Chair

Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: February 14, 2016

For further information, please call: (512) 776-6972



SUBCHAPTER B. AUTHORIZED COUNSELING METHODS AND PRACTICES

22 TAC §681.31

STATUTORY AUTHORITY

The amendments are authorized by the Texas Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §503.202, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

The amendments affect Texas Occupations Code, Chapter 503.

§681.31. Counseling Methods and Practices.

The use of specific methods, techniques, or modalities within the practice of professional counseling is limited to professional counselors appropriately trained and competent in the use of such methods, techniques, or modalities. Authorized counseling methods techniques and modalities may include, but are not restricted to, the following:

(1) - (11) (No change.)

(12) play therapy which utilizes play and play media as the child's natural medium of self-expression, and verbal tracking of the child's play behaviors and feelings as a part of the therapist's role in helping children overcome their social, emotional, and behavioral [mental] issues;

(13) - (15) (No change.)

(16) assessing and appraising, in compliance with §681.43 of this title (relating to Testing), which utilizes formal and informal instruments and procedures, for which the counselor has received appropriate training and supervision, in individual and group settings for the purposes of determining the client's strengths and weaknesses, mental status [condition], emotional stability, intellectual ability, interests, aptitudes, achievement level and other [personal] characteristics [for a better understanding of human behavior, and] for diagnosing mental health disorders; but does not permit the diagnosis of a physical condition or physical disorder;

(17) - (18) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 4, 2016.

TRD-201600022

Glynda Corley

Chair

Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: February 14, 2016

For further information, please call: (512) 776-6972



SUBCHAPTER C. CODE OF ETHICS

22 TAC §681.41, §681.48

STATUTORY AUTHORITY

The amendments are authorized by the Texas Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §503.202, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

The amendments affect Texas Occupations Code, Chapter 503.

§681.41. General Ethical Requirements.

(a) - (d) (No change.)

(e) Regardless of setting, a licensee shall provide counseling only in the context of a professional relationship. Prior to providing services a licensee shall obtain from [inform] an individual a signed informed consent agreeing to the following: [in writing of the following:]

(1) - (8) (No change.)

(f) (No change.)

(g) Technological means of communication may be used to facilitate the therapeutic counseling process. A licensee shall have a face-to-face initial intake session before beginning a distance counseling relationship. When distance counseling, the licensee must reside in the State of Texas and the client must be a resident of or within the State of Texas with the exception of the military. [Counselors engaging in interactive distance counseling must adhere to each provision of the rules and statutes of the board.]

(h) - (o) (No change.)

(p) The [~~In individual and group counseling settings, the~~] licensee shall take reasonable precautions to protect clients [~~individuals~~] from physical or emotional harm resulting from interaction within a group or from individual counseling.

(q) For each client, a licensee shall keep accurate records of the signed informed consent, intake assessment, [the] dates of counseling treatment intervention, principal treatment methods, progress notes, treatment plan, and billing information.

(r) (No change.)

(s) Records created by licensees during the scope of their employment by agencies or institutions that maintain client records [educational institutions; by federal, state, or local governmental agencies; or their political subdivisions or programs] are not required to comply with subsections (q) and (r) of this section.

(t) Billing Requirements.

(1) A licensee shall bill clients or third parties for only those services actually rendered or as agreed to by mutual understanding at the beginning of services or as later modified by mutual written agreement.

(2) [(1)] Relationships between a licensee and any other person used by the licensee to provide services to a client shall be so reflected on billing documents.

(3) [(2)] Pursuant to Texas Health and Safety Code, Chapter 611, on the written request of a client, a client's guardian, or a client's parent (sole managing, joint managing or possessory conservator) if the client is a minor, a licensee shall provide, in plain language, a written explanation of the types of treatment and charges for counseling treatment intervention previously made on a bill or statement for the client. This requirement applies even if the charges are to be paid by a third party.

(4) [(3)] A licensee may not knowingly overcharge a client.

(5) [(4)] With the exception of an unkept appointment, a licensee may not submit to a client or a third party a bill for counseling treatment intervention that the licensee knows was not provided or knows was improper, unreasonable, or unnecessary.

(u) [(5)] A licensee shall comply with requirements of Texas Health and Safety Code, Chapters 611 and 181, concerning the release of mental health records and confidential information.

(v) [(6)] Prior to the commencement of counseling services to a minor client who is named in a custody agreement or court order, a licensee shall obtain and review a current copy of the custody agreement or court order, as well as any applicable part of the divorce decree. A licensee shall maintain these documents in the client's record and abide by the documents at all times. When federal or state statutes provide an exemption to secure consent of a parent or guardian prior to providing services to a minor, a licensee shall follow the protocol set forth in such federal or state statutes.

(w) [(7)] A licensee shall terminate a professional counseling relationship when it is reasonably clear that the client is not benefiting from the relationship.

(x) [(8)] Upon termination of a relationship if professional counseling is still necessary, the licensee shall take reasonable steps to facilitate the transfer to appropriate care.

(y) [(9)] A licensee shall not evaluate any individual's mental, emotional, or behavioral condition unless the licensee has personally interviewed the individual or the licensee discloses with the evaluation that the licensee has not personally interviewed the individual.

(z) [(10)] A licensee shall not knowingly over treat a client.

(aa) [(11)] A licensee shall not aid or abet the unlicensed practice of professional counseling by a person required to be licensed under the Act. A licensee shall report to the board knowledge of any unlicensed practice of counseling.

(bb) [(12)] A licensee or an applicant for licensure shall not participate in any way in the falsification of applications for licensure or renewal of license.

(cc) Licensees shall comply with Texas Family Code, Chapter 107, Subchapters D, E, and F concerning Child Custody Evaluation, Adoption Evaluation, and Evaluations in Contested Adoptions.

§681.48. *Consumer Information.*

(a) - (b) (No change.)

(c) The legal name of the licensee shall appear on the license certificate and renewal card.

(d) [(e)] A licensee shall not display a license certificate or current renewal card issued by the board which has been reproduced or is expired, suspended, or revoked.

(e) [(d)] A licensee shall not make any alteration on a license certificate or renewal card issued by the board.

(f) [(e)] On all advertisements, billings and announcements of counseling treatment by an LPC Intern, the intern's name shall be followed by the name of the supervisor in the same type size and font.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 4, 2016.

TRD-201600023

Glynda Corley

Chair

Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: February 14, 2016

For further information, please call: (512) 776-6972

◆ ◆ ◆
SUBCHAPTER D. APPLICATION PROCEDURES

22 TAC §681.72

STATUTORY AUTHORITY

The amendments are authorized by the Texas Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §503.202, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

The amendments affect Texas Occupations Code, Chapter 503.

§681.72. *Required Application Materials.*

An applicant for licensure must submit complete application materials and fee including:

(1) [(a)] a [A] general application form; [shall include, but not be limited to:]

[(1) specific information regarding personal data, employment and type of practice, other state licenses and certifications held, felony or misdemeanor convictions, and educational background;]

[(2) a statement that the applicant has read the Act and board rules, and agrees to abide by them;]

[(3) the applicant's permission to the board to seek any information it requires to determine the applicant's qualifications;]

[(4) a statement that the applicant, if issued a license certificate, shall return the license to the board upon the revocation or suspension of the license;]

[(5) a statement that the applicant understands that fees submitted in the licensing process are non-refundable;]

[(6) the applicant's signature and the date of signing;]

(2) [(b)] the [The] practicum documentation form; [shall contain:]

(3) a supervisor agreement form with a current copy of the supervisor's renewal card attached;

~~[(1) the applicant's name;]~~

~~[(2) the name and address of the agency or organization where the practicum was completed;]~~

~~[(3) the name, address, degree, position, and licensure status of the supervisor of the practicum;]~~

~~[(4) inclusive dates of the practicum, the number of clock-hours of practice, the number of academic semester hours awarded, and the name of the school at which the practicum was taken;]~~

~~[(5) the type of setting, the type of clients seen, and the counseling methods practiced;]~~

~~[(6) any evaluation of the counseling skills of the applicant; and]~~

~~[(7) the signature of the supervisor or agency or school official who can formally attest to the applicant's practicum experience.]~~

~~[(e) The supervisor shall submit a supervisory agreement form completed, signed and dated by both the supervisor and the applicant. A current copy of the supervisor's renewal card shall be attached to the agreement form.]~~

~~[(d) The supervised experience documentation form must be completed by the applicant's supervisor and contain:]~~

~~[(1) the name of the applicant;]~~

~~[(2) the name, address, degree, licensure status, and credentials of the applicant's supervisor;]~~

~~[(3) the name and address of the agency or organization where the experience was completed;]~~

~~[(4) the inclusive dates of the supervised experience and the total number of hours of practice;]~~

~~[(5) the number of hours of weekly face-to-face supervision given to the applicant, the total number of supervisory hours received by the applicant in the experience, and the types of supervision used;]~~

~~[(6) the applicant's employment status during supervised experience;]~~

~~[(7) the types of clients seen and counseling methods used;]~~

~~[(8) the supervisor's evaluation of the applicant's counseling skills and competence for independent or private practice; and]~~

~~[(9) a statement that the supervised experience complies with the rules set out in Subchapter F of this chapter (relating to Experience Requirements for Licensure) and §681.73 of this title (relating to Application for Art Therapy Specialty Designation).]~~

~~(4) [(e)] graduate [Graduate] transcripts[: An applicant must have the official transcript(s) showing all relevant graduate work] sent directly to the board from the school(s), either by mail or e-transcript, where the applicant obtained the course work or an official transcript may be attached to the application in a sealed envelope from the college or university;[:]~~

~~(5) [(f)] [An applicant must submit] examination results from the National Board of Certified Counselors verifying a passing score on the National Counselor Exam [along with proof of completion of the Texas Jurisprudence Exam]. The National Counselor Exam must have been taken no more than five years prior to the date of application. If applying by reciprocity, the five year limit does not apply.~~

~~[The Texas Jurisprudence Exam must have been taken no more than two years prior to the date of application.]~~

~~(6) proof of completing the Texas jurisprudence exam within two years; and~~

~~(7) the supervised experience documentation form if applying from another jurisdiction.~~

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 4, 2016.

TRD-201600024

Glynda Corley

Chair

Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: February 14, 2016

For further information, please call: (512) 776-6972



SUBCHAPTER E. ACADEMIC REQUIREMENTS FOR LICENSURE

22 TAC §§681.81 - 681.83

STATUTORY AUTHORITY

The amendments are authorized by the Texas Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §503.202, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

The amendments affect Texas Occupations Code, Chapter 503.

§681.81. General.

(a) - (g) (No change.)

(h) A graduate degree and graduate coursework that was awarded or earned more than 10 years prior to the application date may not be used to fulfill the requirements for licensure unless the applicant has held a license issued by another state, ~~or~~ has been counseling in Texas in an exempt setting for at least five years prior to the application date or the board waives this provision. If the board waives this provision, it may require the applicant to comply with additional conditions.

§681.82. Academic Requirements.

(a) (No change.)

(b) The 48/60 semester hours must be designed to train a person to provide direct services to assist clients [individuals or groups] in a professional counseling relationship using a combination of mental health and human development principles, methods, and techniques to achieve the mental, emotional, physical, social, moral, educational, spiritual, or career-related development and adjustment of the client throughout the client's life.

(1) - (2) (No change.)

(c) If an applicant has been licensed as a professional counselor in a United States jurisdiction for the 5 years preceding the application, the academic requirements (including the practicum) will be considered to have been met. If licensed for any other period of 5 years, the board will determine whether academic requirements have been met.

(d) [(e)] Applicants must also have a supervised practicum experience that is primarily counseling in nature of at least 300 clock-hours which were a part of the required planned graduate program.

(1) At least 100 hours of the practicum must be direct client counseling contact.

(2) Academic credit or other acknowledgment of the practicum/internship must appear on the applicant's official graduate transcript.

(3) No practicum course intended primarily for practice in the administration and grading of appraisal or assessment instruments shall count toward the 300 clock-hour requirement.

§681.83. *Academic Course Content.*

(a) - (b) (No change.)

(c) As of August 1, 2017, the following courses to meet the 60 hour requirement shall include:

(1) - (2) (No change.)

(3) couples, marriage, or families; and

(4) [(3)] a course in psychopathology to include such content as criteria of psychiatric diagnosis, use of the current Diagnostic and Statistical Manual of Mental Disorders and the theories of psychopathology. The course should also include the basic knowledge of types of psychopharmacological medications. [Additional courses may also include:]

[(A) crisis counseling;]

[(B) couples, marriage, families, or parenting.]

(d) Passing the National Counselor Exam does not guarantee that Texas state licensure requirements have been satisfied.

(e) An applicant does not have the right to a hearing if his or her application for licensure is denied based on the applicant's failure to meet academic requirements.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 4, 2016.

TRD-201600025

Glynda Corley

Chair

Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: February 14, 2016

For further information, please call: (512) 776-6972



SUBCHAPTER F. EXPERIENCE REQUIREMENTS FOR LICENSURE

22 TAC §§681.91 - 681.93

STATUTORY AUTHORITY

The amendments are authorized by the Texas Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §503.202, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

The amendments affect Texas Occupations Code, Chapter 503.

§681.91. *Temporary License.*

(a) - (d) (No change.)

(e) An LPC Intern may have no more than 5 sites at any given time.

(f) [(e)] An LPC Intern must maintain a temporary license during his or her supervised experience.

(g) [(f)] An LPC Intern license will expire 60 months from the date of issuance.

(h) [(g)] An LPC intern who does not complete the required supervised experience hours during the 60-month time period must reapply for licensure. The person may obtain a new license by complying with the current requirements and procedures for obtaining an original license, including examination requirements.

(i) [(h)] Applicants who previously held licensure in Texas must reapply under requirements in place at the time of application.

[(i) Applicants who have completed the supervised experience and who have not passed the NCE at the time of application are not eligible for an initial or an additional temporary license. Such applicants may obtain a regular license by taking and passing the NCE.]

(j) - (l) (No change.)

§681.92. *Experience Requirements (Internship).*

(a) - (f) (No change.)

(g) The experience must consist primarily of the provision of direct counseling services within a professional relationship to clients [individuals, families, couples, or groups] by using a combination of mental health and human development principles, methods, and techniques to achieve the mental, emotional, physical, social, moral, educational, spiritual, or career-related development and adjustment of the client throughout the client's life.

(h) The LPC Intern must receive direct supervision consisting of a minimum of four hours per month of face-to-face or live Internet webcam supervision in individual (up to two Interns) or group (three or more) settings while [for each week] the intern is engaged in counseling unless an extended leave of one month or more is approved in writing by the board approved supervisor. No more than 50% of the total hours of supervision can be live Internet webcam supervision and no more than 50% of the total hours of supervision may be received in group supervision. [No more than 50% of the total hours of group supervision may be live Internet webcam supervision.]

(i) - (j) (No change.)

(k) For applications submitted on or before August 1, 2017, the [The] board may count excess practicum hours earned toward the experience requirements of this subchapter if:

(1) - (2) (No change.)

(3) no more than 400 hours can be counted for excess practicum with no more than half of the excessive practicum hours being counted as direct client contact.

(l) (No change.)

[(m) Experience received under a supervisor who is a licensee subject to a board disciplinary order shall not qualify as supervised experience for licensure purposes.]

(m) [(n)] A supervisor must submit the change of supervision form into the board office for approval before commencing supervision at a new site or with a new supervisor. Without an approved supervision form on file with the board supervised hours may not be counted toward licensure.

(n) [(o)] To upgrade from the LPC Intern status to full LPC, an LPC Intern must submit the supervised experience documentation form, proof of passing the Texas Jurisprudence exam within two years prior to upgrade and the upgrade fee if applicable.

§681.93. *Supervisor Requirements.*

(a) All internships physically occurring in the State of Texas must be completed under the supervision of a board approved supervisor. The applicant for supervisor status must have held the regular license in good standing for at least 60 [36] months from the date of issuance as of June 1, 2016. Prior to June 1, 2016, the applicant for supervisor status must have held the regular license in good standing for 36 months.

(b) (No change.)

(c) A supervisor under this section must have met the following requirements.

(1) A licensee seeking approval to be a supervisor must meet the requirements of subsection (a) of this section, successfully complete 40 clock-hours of training in the supervision of professional counseling or mental health services as set forth in this subsection; and shall submit a \$100 processing fee. Application for supervision status must be submitted within 2 years of completing the 40-hour supervision course or within 5 years of completing a doctoral level supervision course from an accredited university. The initial supervisor approval will expire on the day the licensee's regular license next expires. Renewal of supervisor approval will begin and expire on the same dates as for the regular license. A renewal application must be filed with the board, accompanied by a \$100 renewal processing fee. The 40 clock-hours of training shall be met through the following:

(A) (No change.)

(B) continuing education programs meeting the requirements of §681.142 of this title (relating to Types of Acceptable Continuing Education) of which 50% of the hours must be face-to-face instruction. The course must be taught by an LPC with supervisor status.

(2) - (3) (No change.)

(d) A supervisor shall keep a written record of each supervisory session in the file of the intern.

(1) The supervisory written record shall contain:

(A) fees and record of payment;

(B) the date and length of each supervisory session;

(C) the topics that were discussed during each supervisory session;

(D) identification of each supervisory session as an individual or a group session and interns who are in attendance;

(E) identification of each supervisory session as being conducted face-to-face or by live internet webcam;

(F) a record of any concerns the supervisor discussed with the intern; and

(G) current board approved site or sites.

(2) Records shall be kept 5 years past the last date of supervision.

(e) The supervisor must maintain a summary log of the indirect, direct, and supervision hours accrued by an intern in each week and a brief summary of the supervisory session. This log must be dated and initialed by both the supervisor and the intern.

[(d)] A board approved supervisor shall maintain and sign a record(s) to document the date of each supervision conference and document the LPC Intern's total number of hours of supervised experience accumulated up to the date of the conference. The record shall reflect the approved site where the hours were accrued and the content of the supervision.]

(f) [(e)] The full professional responsibility for the counseling activities of an LPC Intern shall rest with the intern's board approved supervisor(s). If the LPC Intern receives disciplinary action by the board, the supervisor may also be subject to disciplinary action.

(1) The supervisor shall ensure that the LPC Intern is aware of and adheres to board rules found in this chapter [Subchapter C of this chapter (relating to Code of Ethics)].

(2) A [a] relationship between the supervisor and the LPC Intern that impairs the supervisor's objective, professional judgment shall be avoided.

(3) A supervisor may not be related within the second degree by affinity or within the third degree by consanguinity to the LPC Intern.

(4) If a supervisor determines that the LPC Intern may not have the counseling skills or competence to practice professional counseling under a regular license, the supervisor shall develop and implement a written plan for remediation of the LPC Intern which shall be reviewed and signed by the LPC Intern and maintained as part of the LPC Intern's file.

(5) A supervisor shall submit accurate documentation of supervised experience to the board within 30 days of completion of hours.

(6) It is the responsibility of the board approved supervisor to ensure the supervised hours of the LPC Intern were:

(A) earned after the temporary license was issued; and

(B) in not less than 18 months.

(g) [(f)] A supervisor whose license is expired, revoked or suspended is no longer an approved supervisor and hours accumulated under that person's supervision after expiration, revocation or suspension may not count as acceptable hours.

(h) [(g)] When a licensee's authority to supervise is revoked, suspended or expired, the licensee [A supervisor who becomes subject to a board disciplinary order is no longer an approved supervisor. The person] shall immediately inform all LPC Interns under their supervision of the board disciplinary order if applicable, and assist the LPC Interns in finding alternate supervision.

(i) [(h)] A supervisor may not be an employee of an LPC Intern.

(j) [(i)] The LPC Intern may compensate the supervisor for time spent in supervision if the supervision is not part of the supervisor's responsibilities as a paid employee of an agency, institution, clinic, or other business entity.

(k) [(j)] Upon a probated suspension, suspension or revocation of the LPC license, supervisory [Supervisory] status shall [may] be denied, revoked, or suspended [following a fair hearing for violation of the Act or rules. The fair hearing will be conducted under the fair hearing rules of the Department of State Health Services].

(l) [(k)] A supervisor whose supervisory status has expired may be required to refund all supervisory fees received after the expiration of the supervisory status to the intern(s) who paid the fees.

(m) [(4)] Supervision of the intern without being approved as a supervisor or after expiration of the supervisor status may be grounds for disciplinary action.

(n) [(m)] Supervisors who are in violation of board rules may be subject to an administrative penalty of up to \$5,000 per day depending on the level of severity and/or be required to refund all or a portion of the fees received by the supervisor to the intern.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 4, 2016.

TRD-201600026

Glynda Corley

Chair

Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: February 14, 2016

For further information, please call: (512) 776-6972



SUBCHAPTER G. LICENSURE EXAMINATIONS

22 TAC §681.102

STATUTORY AUTHORITY

The amendments are authorized by the Texas Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §503.202, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

The amendments affect Texas Occupations Code, Chapter 503.

§681.102. *Notice of Results.*

(a) (No change.)

(b) Non-electronically administered examinations may be requested as an Americans with Disabilities Act [ADA] accommodation; however, grading will not be immediately available upon completion of the examination.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 4, 2016.

TRD-201600027

Glynda Corley

Chair

Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: February 14, 2016

For further information, please call: (512) 776-6972



SUBCHAPTER I. REGULAR LICENSE RENEWAL; INACTIVE AND RETIREMENT STATUS

22 TAC §681.123, §681.125

STATUTORY AUTHORITY

The amendments are authorized by the Texas Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §503.202, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

The amendments affect Texas Occupations Code, Chapter 503.

§681.123. *License Renewal.*

(a) At least 30 days prior to the expiration of a regular license the board will send notice to the licensee at the [a licensee's] last known address that includes the expiration date of the license and instructions for renewing the license.

(b) - (e) (No change.)

§681.125. *Inactive Status.*

(a) - (c) (No change.)

(d) A person shall [may] remain subject to investigation and action under Subchapter K of this chapter (relating to Complaints and Violations) during the period of inactive status.

(e) - (f) (No change.)

(g) A person previously approved as a supervisor whose supervisor status has expired for 2 or more years or been inactive for 2 or more years and who wishes to resume the supervisor status or active license status may become a supervisor by again completing a board approved 40 hour supervisor course or equivalent and paying appropriate fees.

(h) The licensee may only remain on inactive status for 2 years or less. To remain on inactive status for longer than the 2 year period of time the licensee must obtain board approval.

(i) A temporary license cannot be placed on inactive status without prior board approval.

[(h) The licensee must renew the inactive status every two years.]

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 4, 2016.

TRD-201600028

Glynda Corley

Chair

Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: February 14, 2016

For further information, please call: (512) 776-6972



SUBCHAPTER J. CONTINUING EDUCATION REQUIREMENTS

22 TAC §§681.141 - 681.143

STATUTORY AUTHORITY

The amendments are authorized by the Texas Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under

the Texas Occupations Code, §503.202, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

The amendments affect Texas Occupations Code, Chapter 503.

§681.141. *General.*

(a) - (b) (No change.)

(c) A licensee must complete at least four hours of continuing education directly related to Texas LPC [counselor] ethics [issues] each renewal period. Completion of the Texas Jurisprudence Exam will count as one hour of continuing education in counselor ethics.

(d) - (e) (No change.)

(f) A licensee holding the supervisor status must complete 6 hours of continuing education in supervision every 2 [two] years. Three hours may be obtained by attending 3 hours or more of an applications/supervision committee meeting of the board.

§681.142. *Types of Acceptable Continuing Education.*

(a) Acceptable continuing education may include:

(1) - (3) (No change.)

(4) completion of an independent study program directly related to counseling and approved or offered by a nationally recognized professional organization in the mental health field or its state equivalent, approved or offered by an accredited college or university, or approved or offered by a board approved continuing education provider. Nine hours of the 24 required must be face-to-face;

(5) (No change.)

(6) attendees [attendee] at a complaints committee meeting of the board who are not [without being] a respondent [to] or complainant involved in a complaint may receive 3 hours of ethics credit. The hours obtained can be used for either ethics or supervision credit.

(b) Continuing education must fall within these approved content areas:

(1) - (4) (No change.)

(5) counseling methods or techniques;

(A) counseling individuals; ~~and~~

(B) groups; or

(C) couples, families, organizations or communities;

(6) - (10) (No change.)

§681.143. *Activities Unacceptable as Continuing Education.*

The board shall not give continuing education credit to a licensee for:

(1) (No change.)

(2) organizational activity such as serving as an officer in a professional organization or on committees or councils other than committees of the board [or as an officer in a professional organization];

(3) - (5) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 4, 2016.

TRD-201600029

Glynda Corley

Chair

Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: February 14, 2016

For further information, please call: (512) 776-6972



SUBCHAPTER K. COMPLAINTS AND VIOLATIONS

22 TAC §§681.161, 681.162, 681.166

STATUTORY AUTHORITY

The amendments are authorized by the Texas Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §503.202, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

The amendments affect Texas Occupations Code, Chapter 503.

§681.161. *Complaint Procedures.*

(a) - (d) (No change.)

(e) The executive director initially reviews the complaint to determine jurisdiction. If a complaint appears to be within the board's jurisdiction, the executive director shall decide whether to authorize sending a copy of the complaint to the respondent and requesting a response. If an investigation is conducted the investigator shall request a copy of the client's entire record. If a response is requested the licensee or person against whom an alleged violation has been filed must respond within 15 business days of the executive director's request.; which may include but not be limited to requesting that a copy of the client's records be attached to the response. If the executive director does not authorize written notification of the respondent, the complaint will be referred for an investigation and the assigned investigator will determine whether the respondent will be notified by letter, phone call, site visit, or some other appropriate means. If the complaint is against a person licensed by another board, the department staff will forward the complaint to that board not later than the 15th day after the date the agency determines that the information shall be referred to the appropriate agency as provided in Government Code, Chapter 774, relating to exchange of information between regulatory agencies.

(f) - (j) (No change.)

§681.162. *Disciplinary Action; Notices.*

(a) - (b) (No change.)

(c) If denial based on subsection (a) of this section, revocation, or suspension of a license is proposed, the board shall give written notice of the basis for the proposal and state that the licensee or applicant must request, in writing, a formal hearing within 15 working days of receipt of the notice, or the right to a hearing shall be waived and the license shall be denied, revoked, or suspended.

(d) - (e) (No change.)

§681.166. *Informal Disposition.*

(a) - (h) (No change.)

(i) The board's legal counsel shall [may] attend each informal conference. The complaints committee member or executive director may call upon the attorney at any time for assistance in the informal conference.

(j) - (v) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 4, 2016.

TRD-201600030

Glynda Corley
Chair

Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: February 14, 2016

For further information, please call: (512) 776-6972



SUBCHAPTER M. SCHEDULE OF SANCTIONS

22 TAC §681.202

STATUTORY AUTHORITY

The amendments are authorized by the Texas Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §503.202, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

The amendments affect Texas Occupations Code, Chapter 503.

§681.202. Relevant Factors.

When a licensee has violated the Act or this chapter, three general factors combine to determine the appropriate sanction which includes: the culpability of the licensee; the harm caused or posed; and the requisite deterrence. It is the responsibility of the licensee to bring exonerating factors to the attention of the complaints committee or the administrative law judge. Specific factors are to be considered as set forth in paragraphs (1) - (5) of this section.

(1) - (4) (No change.)

(5) Miscellaneous Factors. The following factors are identified:

(A) age and experience of the licensee at time of violation;

(B) presence or absence of prior or subsequent violations committed by the licensee;

(C) - (E) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 4, 2016.

TRD-201600031

Glynda Corley
Chair

Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: February 14, 2016

For further information, please call: (512) 776-6972



SUBCHAPTER N. PARENTING COORDINATION AND PARENTING FACILITATION

22 TAC §681.251

STATUTORY AUTHORITY

The amendments are authorized by the Texas Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §503.202, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

The amendments affect Texas Occupations Code, Chapter 503.

§681.251. Parenting Coordination.

(a) (No change.)

(b) A licensee, who serves as a parenting coordinator, has a duty to provide the following information in writing to the parties of the suit about the responsibility of the licensee and the role of the appointed court.

(1) [~~(b)~~] A licensee, who serves as a parenting coordinator, is not acting under the authority of a license issued by the board and is not engaged in the practice of professional counseling. The services provided by the licensee who serves as a parenting coordinator are not within the jurisdiction of the board, but rather the jurisdiction of the appointing court.

(c) ~~A licensee, who serves as a parenting coordinator, has a duty to provide the information in subsection (b) of this section to the parties to the suit.~~

(2) [~~(d)~~] Records of a licensee serving as a parenting coordinator are confidential under Civil Practice and Remedies Code, §154.073. Licensees serving as a confidential parenting coordinator shall comply with the Civil Practice and Remedies Code, Chapter 154, relating to the release of information.

(3) [~~(e)~~] A licensee shall not provide professional counseling services to any person while simultaneously providing parenting coordination services. This section shall not apply if the court enters a finding that mental health services are not readily available in the location where the parties reside.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 4, 2016.

TRD-201600032

Glynda Corley
Chair

Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: February 14, 2016

For further information, please call: (512) 776-6972



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §§19.101, 19.204, 19.1911, and 19.1921 and new §19.1936, in Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification.

BACKGROUND AND PURPOSE

The purpose of the amendments and the new section is to implement §242.019, Texas Health and Safety Code (THSC), as added by House Bill (H.B.) 1337 of the 84th Legislature, Regular Session, 2015, regarding Guardianship Orders, and changes to §242.202(d) and §242.040, THSC, as added by H.B. 2588 of the 84th Legislature, Regular Session, 2015, regarding Alzheimer's Disclosure.

The proposal specifies the process a nursing facility (facility) must follow to request a copy of any court order and letters of guardianship appointing a guardian of a resident or a resident's estate from the resident's nearest relative or the person responsible for the resident's support and requires a facility to maintain a copy of the current court order and letters of guardianship appointing a guardian of a resident or resident's estate that the facility receives in response to a request in the resident's clinical records.

The proposal defines the term "Alzheimer's disease and related disorders" and requires a facility to include in the facility's Alzheimer's disclosure statement whether the facility is certified under THSC, §242.040, for the provision of specialized care and treatment of residents with Alzheimer's disease and related disorders. A facility must notify DADS before updating the information in the disclosure statement. The proposal also states when and to whom a facility must provide the disclosure statement.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §19.101 adds a definition for "Alzheimer's disease and related disorders."

The proposed amendment to §19.204 requires a facility's Alzheimer's disclosure statement to include information whether the facility is certified under THSC, §242.040, for the provision of specialized care and treatment of residents with Alzheimer's disease and related disorders, and requires a facility to notify DADS 30 days before making changes to the information required in the statement.

The proposed amendment to §19.1911 requires a facility to include a copy of the current court order and letters of guardianship appointing a guardian of a resident or a resident's estate received in response to a request made in accordance with §19.1936 in the resident's clinical record.

The proposed amendment to §19.1921 reorganizes for clarity subsection (f) regarding the Alzheimer's disease and related disorders disclosure statement requirement and adds that a facility must provide an updated disclosure statement to a resident, resident's responsible party, or legal guardian 30 days before the update is effective.

The proposed new §19.1936 requires a facility to request a copy of any current court order appointing a guardian and letters of guardianship for a resident or a resident's estate when a facility

admits an individual and when the facility becomes aware that a resident has a guardian. A facility must request an updated copy of court orders and letters of guardianship at each annual assessment. A facility must make at least one follow-up request within 30 days after a request if the facility does not receive a copy of the court orders and letters of guardianship or a response that there are no such documents. The facility must keep in the clinical records documentation of the results of a request and a copy of the current court order and letters of guardianship received.

FISCAL NOTE

David Cook, DADS Chief Financial Officer, has determined that, for the first five years the proposed rules are in effect, enforcing or administering the amendments and new section does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed rules will not have an adverse economic effect on small businesses or micro-businesses because there is no cost to an NF to comply with the proposed rules.

PUBLIC BENEFIT AND COSTS

Mary T. Henderson, DADS Assistant Commissioner for Regulatory Services, has determined that, for each year of the first five years the amendments and new section are in effect, the public benefit expected as a result of enforcing the amendments and new section is there will be clear communication to guardians about a resident's care and allegations of abuse, neglect, or exploitation. The public also will benefit from the adoption of a standard definition of Alzheimer's disease and related disorders and the requirement for a facility to disclose whether it is certified by DADS to provide specialized care and treatment of residents with Alzheimer's disease and related disorders.

Ms. Henderson anticipates that there will not be an economic cost to persons who are required to comply with the amendments and new section. The amendment and new section will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Sharon Wallace at (210) 619-8292 in DADS Long Term Care Regulatory Services. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-15R11, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030 or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to rulescomments@dads.state.tx.us. To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment

period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 15R11" in the subject line.

SUBCHAPTER B. DEFINITIONS

40 TAC §19.101

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS and Texas Health and Safety Code (THSC), §242.037, which authorizes rules for licensing of nursing facilities.

The amendment implements Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021; and THSC, §242.040.

§19.101. Definitions.

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

(1) Abuse--Negligent or willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical or emotional harm or pain to a resident; or sexual abuse, including involuntary or nonconsensual sexual conduct that would constitute an offense under Penal Code §21.08 (indecent exposure) or Penal Code Chapter 22 (assaultive offenses), sexual harassment, sexual coercion, or sexual assault.

(2) Act--Chapter 242 of the Texas Health and Safety Code.

(3) Activities assessment--See Comprehensive Assessment and Comprehensive Care Plan.

(4) Activities director--The qualified individual appointed by the facility to direct the activities program as described in §19.702 of this chapter (relating to Activities).

(5) Addition--The addition of floor space to an institution.

(6) Administrator--Licensed nursing facility administrator.

(7) Admission MDS assessment--An MDS assessment that determines a recipient's initial determination of eligibility for medical necessity for admission into the Texas Medicaid Nursing Facility Program.

(8) Affiliate--With respect to a:

(A) partnership, each partner thereof;

(B) corporation, each officer, director, principal stockholder, and subsidiary; and each person with a disclosable interest;

(C) natural person, which includes each:

(i) person's spouse;

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

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

(9) Agent--An adult to whom authority to make health care decisions is delegated under a durable power of attorney for health care.

(10) Alzheimer's disease and related disorders--Cognitive disorders as described by the Centers for Disease Control and Prevention (CDC) or as found in the most current volume of the Diagnostic and Statistical Manual of Mental Disorders (DSM).

(11) [(10)] Applicant--A person or governmental unit, as those terms are defined in the Texas Health and Safety Code, Chapter 242, applying for a license under that chapter.

(12) [(11)] APA--The Administrative Procedure Act, Texas Government Code, Chapter 2001.

(13) [(12)] Attending physician--A physician, currently licensed by the Texas Medical Board, who is designated by the resident or responsible party as having primary responsibility for the treatment and care of the resident.

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

(15) [(14)] Barrier precautions--Precautions including the use of gloves, masks, gowns, resuscitation equipment, eye protectors, aprons, face shields, and protective clothing for purposes of infection control.

(16) [(15)] Care and treatment--Services required to maximize resident independence, personal choice, participation, health, self-care, psychosocial functioning and reasonable safety, all consistent with the preferences of the resident.

(17) [(16)] Certification--The determination by DADS that a nursing facility meets all the requirements of the Medicaid or Medicare programs.

(18) [(17)] CFR--Code of Federal Regulations.

(19) [(18)] CMS--Centers for Medicare & Medicaid Services, formerly the Health Care Financing Administration (HCFA).

(20) [(19)] Complaint--Any allegation received by DADS other than an incident reported by the facility. Such allegations include, but are not limited to, abuse, neglect, exploitation, or violation of state or federal standards.

(21) [(20)] Completion date--The date an RN assessment coordinator signs an MDS assessment as complete.

(22) [(21)] Comprehensive assessment--An interdisciplinary description of a resident's needs and capabilities including daily life functions and significant impairments of functional capacity, as described in §19.801(2) of this chapter (relating to Resident Assessment).

(23) [(22)] Comprehensive care plan--A plan of care prepared by an interdisciplinary team that includes measurable short-term and long-term objectives and timetables to meet the resident's needs developed for each resident after admission. The plan addresses at least the following needs: medical, nursing, rehabilitative, psychosocial, dietary, activity, and resident's rights. The plan includes strategies developed by the team, as described in §19.802(b)(2) of this chapter (relating to Comprehensive Care Plans), consistent with the physician's prescribed plan of care, to assist the resident in eliminating, managing, or alleviating health or psychosocial problems identified through assessment. Planning includes:

(A) goal setting;

(B) establishing priorities for management of care;

(C) making decisions about specific measures to be used to resolve the resident's problems; and

(D) assisting in the development of appropriate coping mechanisms.

(24) [(23)] Controlled substance--A drug, substance, or immediate precursor as defined in the Texas Controlled Substance Act, Texas Health and Safety Code, Chapter 481, or the Federal Controlled Substance Act of 1970, Public Law 91-513.

(25) [(24)] Controlling person--A person with the ability, acting alone or in concert with others, to directly or indirectly, influence, direct, or cause the direction of the management, expenditure of money, or policies of a nursing facility or other person. A controlling person does not include a person, such as an employee, lender, secured creditor, or landlord, who does not exercise any influence or control, whether formal or actual, over the operation of a facility. A controlling person includes:

(A) a management company, landlord, or other business entity that operates or contracts with others for the operation of a nursing facility;

(B) any person who is a controlling person of a management company or other business entity that operates a nursing facility or that contracts with another person for the operation of a nursing facility;

(C) an officer or director of a publicly traded corporation that is, or that controls, a facility, management company, or other business entity described in subparagraph (A) of this 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 a nursing facility, is in a position of actual control or authority with respect to the nursing facility, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility.

(26) [(25)] Covert electronic monitoring--The placement and use of an electronic monitoring device that is not open and obvious, and the facility and DADS have not been informed about the device by the resident, by a person who placed the device in the room, or by a person who uses the device.

(27) [(26)] DADS--The Department of Aging and Disability Services.

(28) [(27)] Dangerous drugs--Any drug as defined in the Texas Health and Safety Code, Chapter 483.

(29) [(28)] Dentist--A practitioner licensed by the Texas State Board of Dental Examiners.

(30) [(29)] Department--Department of Aging and Disability Services.

(31) [(30)] DHS--This term referred to the Texas Department of Human Services; it now refers to DADS, unless the context concerns an administrative hearing. Administrative hearings were formerly the responsibility of DHS; they now are the responsibility of the Texas Health and Human Services Commission (HHSC).

(32) [(31)] Dietitian--A qualified dietitian is one who is qualified based upon either:

(A) registration by the Commission on Dietetic Registration of the Academy of Nutrition and Dietetics; or

(B) licensure, or provisional licensure, by the Texas State Board of Examiners of Dietitians. These individuals must have one year of supervisory experience in dietetic service of a health care facility.

(33) [(32)] Direct care by licensed nurses--Direct care consonant with the physician's planned regimen of total resident care includes:

- (A) assessment of the resident's health care status;
- (B) planning for the resident's care;
- (C) assignment of duties to achieve the resident's care;
- (D) nursing intervention; and
- (E) evaluation and change of approaches as necessary.

(34) [(33)] Distinct part--That portion of a facility certified to participate in the Medicaid Nursing Facility program.

(35) [(34)] Drug (also referred to as medication)--Any of the following:

(A) any substance recognized as a drug in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;

(B) any substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man;

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

(D) any substance intended for use as a component of any substance specified in subparagraphs (A) - (C) of this paragraph. It does not include devices or their components, parts, or accessories.

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

(37) [(36)] Emergency--A sudden change in a resident's condition requiring immediate medical intervention.

(38) [(37)] Executive Commissioner--The executive commissioner of the Health and Human Services Commission.

(39) [(38)] Exploitation--The illegal or improper act or process of a caregiver, family member, or other individual who has an ongoing relationship with a resident using the resources of the resident for monetary or personal benefit, profit, or gain without the informed consent of the resident.

(40) [(39)] Exposure (infections)--The direct contact of blood or other potentially infectious materials of one person with the skin or mucous membranes of another person. Other potentially infectious materials include the following human body fluids: semen, vaginal secretions, cerebrospinal fluid, peritoneal fluid, amniotic fluid, saliva in dental procedures, and body fluid that is visibly contaminated with blood and all body fluids when it is difficult or impossible to differentiate between body fluids.

(41) [(40)] Facility--Unless otherwise indicated, a facility is an institution that provides organized and structured nursing care and service and is subject to licensure under Texas Health and Safety Code, Chapter 242.

(A) For Medicaid, a facility is a nursing facility which meets the requirements of §1919(a) - (d) of the Social Security Act. A facility may not include any institution that is for the care and treatment of mental diseases except for services furnished to individuals age 65 and over and who are eligible as defined in Chapter 17 of this title (relating to Preadmission Screening and Resident Review (PASRR)).

(B) For Medicare and Medicaid purposes (including eligibility, coverage, certification, and payment), the "facility" is always the entity which participates in the program, whether that entity is comprised of all of, or a distinct part of, a larger institution.

(C) "Facility" is also referred to as a nursing home or nursing facility. Depending on context, these terms are used to represent the management, administrator, or other persons or groups involved in the provision of care of the resident; or to represent the physical building, which may consist of one or more floors or one or more units, or which may be a distinct part of a licensed hospital.

(42) [(41)] Family council--A group of family members, friends, or legal guardians of residents, who organize and meet privately or openly.

(43) [(42)] Family representative--An individual appointed by the resident to represent the resident and other family members, by formal or informal arrangement.

(44) [(43)] Fiduciary agent--An individual who holds in trust another's monies.

(45) [(44)] Free choice--Unrestricted right to choose a qualified provider of services.

(46) [(45)] Goals--Long-term: general statements of desired outcomes. Short-term: measurable time-limited, expected results that provide the means to evaluate the resident's progress toward achieving long-term goals.

(47) [(46)] Governmental unit--A state or a political subdivision of the state, including a county or municipality.

(48) [(47)] HCFA--Health Care Financing Administration, now the Centers for Medicare & Medicaid Services (CMS).

(49) [(48)] Health care provider--An individual, including a physician, or facility licensed, certified, or otherwise authorized to administer health care, in the ordinary course of business or professional practice.

(50) [(49)] Hearing--A contested case hearing held in accordance with the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the formal hearing procedures in 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act) and Chapter 91 of this title (relating to Hearings Under the Administrative Procedure Act).

(51) [(50)] HIV--Human Immunodeficiency Virus.

(52) [(51)] Incident--An abnormal event, including accidents or injury to staff or residents, which is documented in facility reports. An occurrence in which a resident may have been subject to abuse, neglect, or exploitation must also be reported to DADS.

(53) [(52)] Infection control--A program designed to prevent the transmission of disease and infection in order to provide a safe and sanitary environment.

(54) [(53)] Inspection--Any on-site visit to or survey of an institution by DADS for the purpose of licensing, monitoring, complaint investigation, architectural review, or similar purpose.

(55) [(54)] Interdisciplinary care plan--See the definition of "comprehensive care plan."

(56) [(55)] Involuntary seclusion--Separation of a resident from others or from the resident's room or confinement to the resident's room, against the resident's will or the will of a person who is legally authorized to act on behalf of the resident. Monitored separation from other residents is not involuntary seclusion if the separation is a therapeutic intervention that uses the least restrictive approach for the minimum amount of time, not exceed to 24 hours, until professional staff can develop a plan of care to meet the resident's needs.

(57) [(56)] IV--Intravenous.

(58) [(57)] Legend drug or prescription drug--Any drug that requires a written or telephonic order of a practitioner before it may be dispensed by a pharmacist, or that may be delivered to a particular resident by a practitioner in the course of the practitioner's practice.

(59) [(58)] Licensed health professional--A physician; physician assistant; nurse practitioner; physical, speech, or occupational therapist; pharmacist; physical or occupational therapy assistant; registered professional nurse; licensed vocational nurse; licensed dietitian; or licensed social worker.

(60) [(59)] Licensed nursing home (facility) administrator--A person currently licensed by DADS in accordance with Chapter 18 of this title (relating to Nursing Facility Administrators).

(61) [(60)] Licensed vocational nurse (LVN)--A nurse who is currently licensed by the Texas Board of Nursing as a licensed vocational nurse.

(62) [(61)] Life Safety Code (also referred to as the Code or NFPA 101)--The Code for Safety to Life from Fire in Buildings and Structures, Standard 101, of the National Fire Protection Association (NFPA).

(63) [(62)] Life safety features--Fire safety components required by the Life Safety Code, including, but not limited to, building construction, fire alarm systems, smoke detection systems, interior finishes, sizes and thicknesses of doors, exits, emergency electrical systems, and sprinkler systems.

(64) [(63)] Life support--Use of any technique, therapy, or device to assist in sustaining life. (See §19.419 of this chapter (relating to Advance Directives)).

(65) [(64)] Local authorities--Persons, including, but not limited to, local health authority, fire marshal, and building inspector, who may be authorized by state law, county order, or municipal ordinance to perform certain inspections or certifications.

(66) [(65)] Local health authority--The physician appointed by the governing body of a municipality or the commissioner's court of the county to administer state and local laws relating to public health in the municipality's or county's jurisdiction as defined in Texas Health and Safety Code, §121.021.

(67) [(66)] Long-term care-regulatory--DADS Regulatory Services Division, which is responsible for surveying nursing facilities to determine compliance with regulations for licensure and certification for Title XIX participation.

(68) [(67)] Manager--A person, other than a licensed nursing home administrator, having a contractual relationship to provide management services to a facility.

(69) [(68)] Management services--Services provided under contract between the owner of a facility and a person to provide for the

operation of a facility, including administration, staffing, maintenance, or delivery of resident services. Management services do not include contracts solely for maintenance, laundry, or food service.

(70) [(69)] MDS--Minimum data set. See Resident Assessment Instrument (RAI).

(71) [(70)] MDS nurse reviewer--A registered nurse employed by HHSC to monitor the accuracy of the MDS assessment submitted by a Medicaid-certified nursing facility.

(72) [(71)] Medicaid applicant--A person who requests the determination of eligibility to become a Medicaid recipient.

(73) [(72)] Medicaid nursing facility vendor payment system--Electronic billing and payment system for reimbursement to nursing facilities for services provided to eligible Medicaid recipients.

(74) [(73)] Medicaid recipient--A person who meets the eligibility requirements of the Title XIX Medicaid program, is eligible for nursing facility services, and resides in a Medicaid-participating facility.

(75) [(74)] Medical director--A physician licensed by the Texas Medical Board, who is engaged by the nursing home to assist in and advise regarding the provision of nursing and health care.

(76) [(75)] Medical necessity (MN)--The determination that a recipient requires the services of licensed nurses in an institutional setting to carry out the physician's planned regimen for total care. A recipient's need for custodial care in a 24-hour institutional setting does not constitute a medical need. A group of health care professionals employed or contracted by the state Medicaid claims administrator contracted with HHSC makes individual determinations of medical necessity regarding nursing facility care. These health care professionals consist of physicians and registered nurses.

(77) [(76)] Medical power of attorney--The legal document that designates an agent to make treatment decisions if the individual designator becomes incapable.

(78) [(77)] Medical-social care plan--See Interdisciplinary Care Plan.

(79) [(78)] Medically related condition--An organic, debilitating disease or health disorder that requires services provided in a nursing facility, under the supervision of licensed nurses.

(80) [(79)] Medication aide--A person who holds a current permit issued under the Medication Aide Training Program as described in Chapter 95 of this title (relating to Medication Aides--Program Requirements) and acts under the authority of a person who holds a current license under state law which authorizes the licensee to administer medication.

(81) [(80)] Misappropriation of funds--The taking, secretion, misapplication, deprivation, transfer, or attempted transfer to any person not entitled to receive any property, real or personal, or anything of value belonging to or under the legal control of a resident without the effective consent of the resident or other appropriate legal authority, or the taking of any action contrary to any duty imposed by federal or state law prescribing conduct relating to the custody or disposition of property of a resident.

(82) [(81)] Neglect--The failure to provide goods or services, including medical services that are necessary to avoid physical or emotional harm, pain, or mental illness.

(83) [(82)] NHIC--This term referred to the National Heritage Insurance Corporation. It now refers to the state Medicaid claims administrator.

(84) [(83)] Nonnursing personnel--Persons not assigned to give direct personal care to residents; including administrators, secretaries, activities directors, bookkeepers, cooks, janitors, maids, laundry workers, and yard maintenance workers.

(85) [(84)] Nurse aide--An individual who provides nursing or nursing-related services to residents in a facility under the supervision of a licensed nurse. This definition does not include an individual who is a licensed health professional, a registered dietitian, or someone who volunteers such services without pay. A nurse aide is not authorized to provide nursing or nursing-related services for which a license or registration is required under state law. Nurse aides do not include those individuals who furnish services to residents only as paid feeding assistants.

(86) [(85)] Nurse aide trainee--An individual who is attending a program teaching nurse aide skills.

(87) [(86)] Nurse practitioner--A person licensed by the Texas Board of Nursing as a registered professional nurse, authorized by the Texas Board of Nursing as an advanced practice nurse in the role of nurse practitioner.

(88) [(87)] Nursing assessment--See definition of "comprehensive assessment" and "comprehensive care plan."

(89) [(88)] Nursing care--Services provided by nursing personnel which include, but are not limited to, observation; promotion and maintenance of health; prevention of illness and disability; management of health care during acute and chronic phases of illness; guidance and counseling of individuals and families; and referral to physicians, other health care providers, and community resources when appropriate.

(90) [(89)] Nursing facility/home--An institution that provides organized and structured nursing care and service, and is subject to licensure under Texas Health and Safety Code, Chapter 242. The nursing facility may also be certified to participate in the Medicaid Title XIX program. Depending on context, these terms are used to represent the management, administrator, or other persons or groups involved in the provision of care to the residents; or to represent the physical building, which may consist of one or more floors or one or more units, or which may be a distinct part of a licensed hospital.

(91) [(90)] Nursing facility/home administrator--See the definition of "licensed nursing home (facility) administrator."

(92) [(91)] Nursing personnel--Persons assigned to give direct personal and nursing services to residents, including registered nurses, licensed vocational nurses, nurse aides, and medication aides. Unlicensed personnel function under the authority of licensed personnel.

(93) [(92)] Objectives--See definition of "goals."

(94) [(93)] OBRA--Omnibus Budget Reconciliation Act of 1987, which includes provisions relating to nursing home reform, as amended.

(95) [(94)] Ombudsman--An advocate who is a certified representative, staff member, or volunteer of the DADS Office of the State Long Term Care Ombudsman.

(96) [(95)] Optometrist--An individual with the profession of examining the eyes for defects of refraction and prescribing lenses for correction who is licensed by the Texas Optometry Board.

(97) [(96)] Paid feeding assistant--An individual who meets the requirements of §19.1113 of this chapter (relating to Paid Feeding Assistants) and who is paid to feed residents by a facility or who is used under an arrangement with another agency or organization.

(98) [(97)] PASARR or PASRR--Preadmission Screening and Resident Review.

(99) [(98)] Palliative Plan of Care--Appropriate medical and nursing care for residents with advanced and progressive diseases for whom the focus of care is controlling pain and symptoms while maintaining optimum quality of life.

(100) [(99)] Patient care-related electrical appliance--An electrical appliance that is intended to be used for diagnostic, therapeutic, or monitoring purposes in a patient care area, as defined in Standard 99 of the National Fire Protection Association.

(101) [(100)] Person--An individual, firm, partnership, corporation, association, joint stock company, limited partnership, limited liability company, or any other legal entity, including a legal successor of those entities.

(102) [(101)] Person with a disclosable interest--A person with a disclosable interest is any person who owns at least a 5.0 percent interest in any corporation, partnership, or other business entity that is required to be licensed under Texas Health and Safety Code, Chapter 242. A person with a disclosable interest does not include a bank, savings and loan, savings bank, trust company, building and loan association, credit union, individual loan and thrift company, investment banking firm, or insurance company, unless these entities participate in the management of the facility.

(103) [(102)] Pharmacist--An individual, licensed by the Texas State Board of Pharmacy to practice pharmacy, who prepares and dispenses medications prescribed by a physician, dentist, or podiatrist.

(104) [(103)] Physical restraint--See Restraints (physical).

(105) [(104)] Physician--A doctor of medicine or osteopathy currently licensed by the Texas Medical Board.

(106) [(105)] Physician assistant (PA)--

(A) A graduate of a physician assistant training program who is accredited by the Committee on Allied Health Education and Accreditation of the Council on Medical Education of the American Medical Association;

(B) A person who has passed the examination given by the National Commission on Certification of Physician Assistants. According to federal requirements (42 CFR §491.2) a physician assistant is a person who meets the applicable state requirements governing the qualifications for assistant to primary care physicians, and who meets at least one of the following conditions:

(i) is currently certified by the National Commission on Certification of Physician Assistants to assist primary care physicians; or

(ii) has satisfactorily completed a program for preparing physician assistants that:

(I) was at least one academic year in length;

(II) consisted of supervised clinical practice and at least four months (in the aggregate) of classroom instruction directed toward preparing students to deliver health care; and

(III) was accredited by the American Medical Association's Committee on Allied Health Education and Accreditation; or

(C) A person who has satisfactorily completed a formal educational program for preparing physician assistants who does not meet the requirements of paragraph (d)(2), 42 CFR §491.2, and has

been assisting primary care physicians for a total of 12 months during the 18-month period immediately preceding July 14, 1978.

(107) [(106)] Podiatrist--A practitioner whose profession encompasses the care and treatment of feet who is licensed by the Texas State Board of Podiatric Medical Examiners.

(108) [(107)] Poison--Any substance that federal or state regulations require the manufacturer to label as a poison and is to be used externally by the consumer from the original manufacturer's container. Drugs to be taken internally that contain the manufacturer's poison label, but are dispensed by a pharmacist only by or on the prescription order of a physician, are not considered a poison, unless regulations specifically require poison labeling by the pharmacist.

(109) [(108)] Practitioner--A physician, podiatrist, dentist, or an advanced practice nurse or physician assistant to whom a physician has delegated authority to sign a prescription order, when relating to pharmacy services.

(110) [(109)] PRN (pro re nata)--As needed.

(111) [(110)] Provider--The individual or legal business entity that is contractually responsible for providing Medicaid services under an agreement with DADS.

(112) [(111)] Psychoactive drugs--Drugs prescribed to control mood, mental status, or behavior.

(113) [(112)] Qualified surveyor--An employee of DADS who has completed state and federal training on the survey process and passed a federal standardized exam.

(114) [(113)] Quality assessment and assurance committee--A group of health care professionals in a facility who develop and implement appropriate action to identify and rectify substandard care and deficient facility practice.

(115) [(114)] Quality-of-care monitor--A registered nurse, pharmacist, or dietitian employed by DADS who is trained and experienced in long-term care facility regulation, standards of practice in long-term care, and evaluation of resident care, and functions independently of DADS Regulatory Services Division.

(116) [(115)] Recipient--Any individual residing in a Medicaid certified facility or a Medicaid certified distinct part of a facility whose daily vendor rate is paid by Medicaid.

(117) [(116)] Registered nurse (RN)--An individual currently licensed by the Texas Board of Nursing as a Registered Nurse in the State of Texas.

(118) [(117)] Reimbursement methodology--The method by which HHSC determines nursing facility per diem rates.

(119) [(118)] Remodeling--The construction, removal, or relocation of walls and partitions, the construction of foundations, floors, or ceiling-roof assemblies, the expanding or altering of safety systems (including, but not limited to, sprinkler, fire alarm, and emergency systems) or the conversion of space in a facility to a different use.

(120) [(119)] Renovation--The restoration to a former better state by cleaning, repairing, or rebuilding, including, but not limited to, routine maintenance, repairs, equipment replacement, painting.

(121) [(120)] Representative payee--A person designated by the Social Security Administration to receive and disburse benefits, act in the best interest of the beneficiary, and ensure that benefits will be used according to the beneficiary's needs.

(122) [(124)] Resident--Any individual residing in a nursing facility.

(123) [(122)] Resident assessment instrument (RAI)--An assessment tool used to conduct comprehensive, accurate, standardized, and reproducible assessments of each resident's functional capacity as specified by the Secretary of the U.S. Department of Health and Human Services. At a minimum, this instrument must consist of the Minimum Data Set (MDS) core elements as specified by the Centers for Medicare & Medicaid Services (CMS); utilization guidelines; and Care Area Assessment (CAA) process.

(124) [(123)] Resident group--A group or council of residents who meet regularly to:

(A) discuss and offer suggestions about the facility policies and procedures affecting residents' care, treatment, and quality of life;

(B) plan resident activities;

(C) participate in educational activities; or

(D) for any other purpose.

(125) [(124)] Responsible party--An individual authorized by the resident to act for him as an official delegate or agent. Responsible party is usually a family member or relative, but may be a legal guardian or other individual. Authorization may be in writing or may be given orally.

(126) [(125)] 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.

(127) [(126)] Restraints (chemical)--Psychoactive drugs administered for the purposes of discipline, or convenience, and not required to treat the resident's medical symptoms.

(128) [(127)] Restraints (physical)--Any manual method, or physical or mechanical device, material or equipment attached, or adjacent to the resident's body, that the individual cannot remove easily which restricts freedom of movement or normal access to one's body. The term includes a restraint hold.

(129) [(128)] RN assessment coordinator--A registered nurse who signs and certifies a comprehensive assessment of a resident's needs, using the RAI, including the MDS, as specified by DADS.

(130) [(129)] RUG--Resource Utilization Group. A categorization method, consisting of 34 categories based on the MDS, that is used to determine a recipient's service and care requirements and to determine the daily rate DADS pays a nursing facility for services provided to the recipient.

(131) [(130)] Secretary--Secretary of the U.S. Department of Health and Human Services.

(132) [(131)] Services required on a regular basis--Services which are provided at fixed or recurring intervals and are needed so frequently that it would be impractical to provide the services in a home or family setting. Services required on a regular basis

include continuous or periodic nursing observation, assessment, and intervention in all areas of resident care.

(133) [(132)] SNF--A skilled nursing facility or distinct part of a facility that participates in the Medicare program. SNF requirements apply when a certified facility is billing Medicare for a resident's per diem rate.

(134) [(133)] Social Security Administration--Federal agency for administration of social security benefits. Local social security administration offices take applications for Medicare, assist beneficiaries file claims, and provide information about the Medicare program.

(135) [(134)] Social worker--A qualified social worker is an individual who is licensed, or provisionally licensed, by the Texas State Board of Social Work Examiners as prescribed by the Texas Occupations Code, Chapter 505, and who has at least:

(A) a bachelor's degree in social work; or

(B) similar professional qualifications, which include a minimum educational requirement of a bachelor's degree and one year experience met by employment providing social services in a health care setting.

(136) [(135)] Standards--The minimum conditions, requirements, and criteria established in this chapter with which an institution must comply to be licensed under this chapter.

(137) [(136)] State Medicaid claims administrator--The entity under contract with HHSC to process Medicaid claims in Texas.

(138) [(137)] State plan--A formal plan for the medical assistance program, submitted to CMS, in which the State of Texas agrees to administer the program in accordance with the provisions of the State Plan, the requirements of Titles XVIII and XIX, and all applicable federal regulations and other official issuances of the U.S. Department of Health and Human Services.

(139) [(138)] State survey agency--DADS is the agency, which through contractual agreement with CMS is responsible for Title XIX (Medicaid) survey and certification of nursing facilities.

(140) [(139)] Supervising physician--A physician who assumes responsibility and legal liability for services rendered by a physician assistant (PA) and has been approved by the Texas Medical Board to supervise services rendered by specific PAs. A supervising physician may also be a physician who provides general supervision of a nurse practitioner providing services in a nursing facility.

(141) [(140)] Supervision--General supervision, unless otherwise identified.

(142) [(141)] Supervision (direct)--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his sphere of competence. If the person being supervised does not meet assistant-level qualifications specified in this chapter and in federal regulations, the supervisor must be on the premises and directly supervising.

(143) [(142)] Supervision (general)--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his sphere of competence. The person being supervised must have access to the qualified person providing the supervision.

(144) [(143)] Supervision (intermittent)--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his sphere of competence, with initial direction and periodic inspection of the actual act of accomplishing

the function or activity. The person being supervised must have access to the qualified person providing the supervision.

(145) [(144)] *Texas Register*--A publication of the Texas Register Publications Section of the Office of the Secretary of State that contains emergency, proposed, withdrawn, and adopted rules issued by Texas state agencies. The Texas Register was established by the Administrative Procedure and Texas Register Act of 1975.

(146) [(145)] Therapeutic diet--A diet ordered by a physician as part of treatment for a disease or clinical condition, in order to eliminate, decrease, or increase certain substances in the diet or to provide food which has been altered to make it easier for the resident to eat.

(147) [(146)] Therapy week--A seven-day period beginning the first day rehabilitation therapy or restorative nursing care is given. All subsequent therapy weeks for a particular individual will begin on that day of the week.

(148) [(147)] Threatened violation--A situation that, unless immediate steps are taken to correct, may cause injury or harm to a resident's health and safety.

(149) [(148)] Title II--Federal Old-Age, Survivors, and Disability Insurance Benefits of the Social Security Act.

(150) [(149)] Title XVI--Supplemental Security Income (SSI) of the Social Security Act.

(151) [(150)] Title XVIII--Medicare provisions of the Social Security Act.

(152) [(151)] Title XIX--Medicaid provisions of the Social Security Act.

(153) [(152)] Total health status--Includes functional status, medical care, nursing care, nutritional status, rehabilitation and restorative potential, activities potential, cognitive status, oral health status, psychosocial status, and sensory and physical impairments.

(154) [(153)] UAR--HHSC's Utilization and Assessment Review Section.

(155) [(154)] Uniform data set--See Resident Assessment Instrument (RAI).

(156) [(155)] Universal precautions--The use of barrier and other precautions to prevent the spread of blood-borne diseases.

(157) [(156)] Unreasonable confinement--Involuntary seclusion.

(158) [(157)] Vaccine preventable diseases--The diseases included in the most current recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.

(159) [(158)] Vendor payment--Payment made by DADS on a daily-rate basis for services delivered to recipients in Medicaid-certified nursing facilities. Vendor payment is based on the nursing facility's approved-to-pay claim processed by the state Medicaid claims administrator. The Nursing Facility Billing Statement, subject to adjustments and corrections, is prepared from information submitted by the nursing facility, which is currently on file in the computer system as of the billing date. Vendor payment is made at periodic intervals, but not less than once per month for services rendered during the previous billing cycle.

(160) [(159)] Working day--Any 24-hour period, Monday through Friday, excluding state and federal holidays.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 4, 2016.

TRD-201600013

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: February 14, 2016

For further information, please call: (210) 619-8292

◆ ◆ ◆
**SUBCHAPTER C. NURSING FACILITY
LICENSURE APPLICATION PROCESS**

40 TAC §19.204

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code (THSC), §242.037, which authorizes rules for licensing of nursing facilities.

The amendment implements Texas Government Code, §531.0055; Texas Human Resources Code, §161.021; and THSC, §242.202(d).

§19.204. *Application Requirements.*

(a) Applications. All applications must be made on forms prescribed by and available from DADS.

(1) Each application must be completed in accordance with DADS instructions, and it must be signed and notarized.

(2) Changes to information required in the application must be reported to DADS, as required by §19.1918 of this title (relating to Disclosure of Ownership).

(b) General information required. An applicant must file with DADS an application which contains:

(1) for initial applications and change of ownership only, evidence of the right to possession of the facility at the time the application will be granted, which may be satisfied by the submission of applicable portions of a lease agreement, deed or trust, or appropriate legal document. The names and addresses of any persons or organizations listed as owner of record in the real estate, including the buildings and grounds, must be disclosed to DADS;

(2) a certificate of good standing issued by the Comptroller of Public Accounts; and

(3) for initial applications and change of ownership only, the certificate of incorporation issued by the secretary of state for a corporation or a copy of the partnership agreement for a partnership; and

(4) for a facility that [which] advertises, markets, or otherwise promotes that it provides services to residents with Alzheimer's disease and related disorders, a disclosure statement, using the departmental form, describing the nature of its care or treatment of residents with Alzheimer's disease and related disorders, as required by the Texas Health and Safety Code, §242.202.

(A) Failure to submit the required disclosure statement will result in an administrative penalty in accordance with §19.2112 of this title (relating to Administrative Penalties).

(B) The disclosure statement must contain the following information:

(i) the facility's philosophy of care for residents with Alzheimer's disease and related disorders;

(ii) whether the facility is certified under Texas Health and Safety Code §242.040 for the provision of specialized care and treatment of residents with Alzheimer's disease and related disorders;

(iii) [~~(ii)~~] the preadmission, admission, and discharge process;

(iv) [~~(iii)~~] resident assessment, care planning, and implementation of the care plan;

(v) [~~(iv)~~] staffing patterns, such as resident to staff ratios, and staff training;

(vi) [~~(v)~~] the physical environment of the facility;

(vii) [~~(vi)~~] resident activities;

(viii) [~~(vii)~~] program charges;

(ix) [~~(viii)~~] systems for evaluation of the facility's program;

(x) [~~(ix)~~] family involvement in resident care; and

(xi) [~~(x)~~] the telephone number for DADS [~~DADS~~] toll-free complaint line.

(C) The disclosure statement must be updated and submitted to DADS [~~as needed~~] to reflect changes in special services for residents with Alzheimer's disease or [~~a~~] related disorders [~~condition~~]. A facility must update the disclosure statement and submit the updated disclosure statement to DADS 30 days prior to the facility making changes to any of the information required by paragraph (4)(B) of this subsection.

(c) Requested information. An applicant or license holder must provide any information DADS requests within 30 days after the request.

(d) Exemptions. The provisions of this section do not apply to a bank, trust company, financial institution, title insurer, escrow company, or underwriter title company to which a license is issued in a fiduciary capacity.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 4, 2016.
TRD-201600014

Lawrence Hornsby
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: February 14, 2016
For further information, please call: (210) 619-8292

◆ ◆ ◆
SUBCHAPTER T. ADMINISTRATION

40 TAC §§19.1911, 19.1921, 19.1936

STATUTORY AUTHORITY

The amendments and new section are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code (THSC), §242.037, which authorizes rules for licensing of nursing facilities.

The amendments and new section implement Texas Government Code, §531.0055; Texas Human Resources Code, §161.021; and THSC, §242.019, and §242.202(d).

§19.1911. *Contents of the Clinical Record.*

(a) A resident's clinical record must meet all documentation requirements in the Texas Health and Human Services Commission rule at 1 TAC §371.214 (relating to Resource Utilization Group Classification System).

(b) The clinical record of each resident must contain:

(1) a face sheet that contains the attending physician's current mailing address and telephone numbers;

(2) sufficient information to identify and care for the resident, to include at a minimum:

(A) full name of resident;

(B) full home/ mailing address;

(C) social security number;

(D) health insurance claim numbers, if applicable;

(E) date of birth; and

(F) clinical record number, if applicable;

(3) a record of the resident's assessments, including 15 months of MDS records;

(4) the comprehensive, interdisciplinary plan of care and services provided (see also §19.802 of this chapter (relating to Comprehensive Care Plans));

(5) a permanency plan, for residents younger than 22 years of age;

(6) the results of any Preadmission Screening and Resident Review [~~conducted by DADS~~];

(7) signed and dated clinical documentation from all health care practitioners involved in the resident's care, with each page identifying the name of the resident for whom the clinical care is intended;

(8) any directives or medical powers of attorney as described in §19.419 of this chapter (relating to Advance Directives);

(9) discharge information in accordance with §19.803 of this chapter (relating to Discharge Summary (Discharge Plan of Care)) and a physician discharge summary, to include, at least, dates of admission and discharge, admitting and discharge diagnoses, condition on discharge, and prognosis, if applicable;

(10) at admission or within 14 days after admission, documentation of an initial medical evaluation, including history, physical examination, diagnoses and an estimate of discharge potential and rehabilitation potential, and documentation of a previous annual medical examination;

(11) authentication of a hospital diagnosis, which may be in the form of a signed hospital discharge summary, a signed report from the resident's hospital or attending physician, or a transfer form signed by the physician;

(12) the physician's signed and dated orders, including medication, treatment, diet, restorative and special medical procedures, and routine care to maintain or improve the resident's functional abilities (required for the safety and well-being of the resident), which must not be changed either on a handwritten or computerized physician's order sheet after the orders have been signed by the physician unless space allows for additional orders below the physician's signature, including space for the physician to sign and date again;

(13) arrangements for the emergency care of the resident in accordance with §19.1204 of this chapter (relating to Availability of Physician for Emergency Care);

(14) observations made by nursing personnel according to the time frames specified in §19.1010 of this chapter (relating to Nursing Practices); and

(15) items as specified on the MDS assessment; and

(16) current information, including:

(A) PRN medications and results;

(B) treatments and any notable results;

(C) physical complaints, changes in clinical signs and behavior, mental and behavioral status, and all incidents or accidents;

(D) flow sheets, which may include bathing, restraint observation or release documentation, elimination, fluid intake, vital signs, ambulation status, positioning, continence status and care, and weight;

(E) a record of dietary intake, including deviations from normal diet, rejection of substitutions, and physician's ordered snacks or supplemental feedings;

(F) a record of the date and hour a drug or treatment is administered; ~~and~~

(G) documentation of a special procedure performed for the safety and well-being of the resident; ~~and~~[-]

(17) a copy of the current court order and letters of guardianship appointing a guardian of a resident or a resident's estate that the facility received in response to the request made in accordance with §19.1936 of this subchapter (relating to Guardianship Orders for a Nursing Facility Resident).

§19.1921. General Requirements for a Nursing Facility.

(a) The facility must admit and retain only residents whose needs can be met through service from the facility staff, or in cooperation with community resources or other providers under contract.

(b) Individuals who have met the requirements of Chapter 17 of this title (relating to Preadmission Screening and Resident Review (PASRR) and have mental or physical diseases, or both, that endanger other residents may be admitted or retained if adequate rooms and care are provided to protect the other residents.

(c) The term "hospital" may not be used as part of the name of a nursing facility unless it has been classified and duly licensed as a hospital by the appropriate state agency.

(d) A facility that ceases operation, temporarily or permanently, voluntarily or involuntarily, must provide notice to the residents and residents' relatives or responsible parties of closure. See §19.2310 of this chapter (relating to Nursing Facility Ceases to Participate) for additional notice requirements that apply to a Medicaid or Medicare certified facility.

(1) If the closure is voluntary, within one week after the date on which the decision to close is made, the facility must send written notice to residents' relatives or responsible parties stating that the closure will occur no earlier than 60 days after receipt of the notice.

(2) If the closure is involuntary, the facility must make the notification, whether orally or in writing, immediately on receiving notice of the closure.

(e) Each licensed facility must conspicuously and prominently post the information listed in paragraphs (1) - (13) of this subsection in an area of the facility that is readily available to residents, employees, and visitors. The posting must be in a manner that each item of information is directly visible at a single time. In the case of a licensed section that is part of a larger building or complex, the posting must be in the licensed section or public way leading to it. Any exceptions must be approved by DADS. The following items must be posted:

(1) the facility license;

(2) a complaint sign provided by DADS giving the toll-free telephone number;

(3) a notice in a form prescribed by DADS that inspection and related reports are available at the facility for public inspection;

(4) a concise summary prepared by DADS of the most recent inspection report;

(5) a notice of DADS toll-free telephone number 1-800-458-9858 to request summary reports relating to the quality of care, recent investigations, litigation or other aspects of the operation of the facility that are available to the public;

(6) a notice that DADS can provide information about the nursing facility administrator at 512-438-2015;

(7) if a facility has been ordered to suspend admissions, a notice of the suspension, which must be posted also on all doors providing public ingress to and egress from the facility;

(8) the statement of resident rights provided in §19.401 of this chapter (relating to Introduction) and any additional facility requirements involving resident rights and responsibilities;

(9) a notice that employees, other staff, residents, volunteers, and family members and guardians of residents are protected from discrimination or retaliation as provided by the Texas Health and Safety Code, §260A.014 and §260A.015; and that the facility has available for public inspection a copy of the Texas Health and Safety Code, Chapter 260A;

(10) a prominent and conspicuous sign for display in a public area of the facility that is readily available to the residents, employees, and visitors and that includes the statement: CASES OF SUS-

PECTED ABUSE, NEGLECT, OR EXPLOITATION SHALL BE REPORTED TO THE DEPARTMENT OF AGING AND DISABILITY SERVICES BY CALLING 1-800-458-9858;

(11) for a facility that advertises, markets, or otherwise promotes that it provides services to residents with Alzheimer's disease and related disorders, a disclosure statement describing the nature of its care or treatment of residents with Alzheimer's disease and related disorders in accordance with §19.204(b)(4) of this chapter (relating to Application Requirements);

(12) at each entrance to the facility, a sign that states that a person may not enter the premises with a concealed handgun and that complies with Government Code §411.204; and

(13) daily for each shift, the current number of licensed and unlicensed nursing staff directly responsible for resident care in the facility. In addition, the nursing facility must make the information required to be posted available to the public upon request.

(f) A facility that advertises, markets, or otherwise promotes that it provides services to residents with Alzheimer's disease and related disorders must give:

(1) the ~~[required department]~~ disclosure statement required by §19.204(b)(4) of this chapter (related to Application Requirements) to an individual:

(A) ~~[(1)]~~ with Alzheimer's disease and [or a] related disorders [disorder], seeking placement as a resident;

(B) ~~[(2)]~~ attempting to place another individual as a resident with Alzheimer's disease or a related disorder; and [or]

(C) ~~[(3)]~~ seeking information about the facility's care or treatment of residents with Alzheimer's disease and [or a] related disorders; and [disorder].

(2) at least 30 days before the update is effective, an updated disclosure statement required by §19.204(b)(4)(C) to a resident, responsible party, or legal guardian.

(g) The reports referenced in subsection (e)(3) of this section must be maintained in a well-lit, accessible location and must include:

(1) a statement of the facility's compliance record that is updated at least bi-monthly and reflects at least one year's compliance record, in a form required by DADS; and

(2) if a facility has been cited for a violation of residents' rights, a copy of the citation, which must remain in the reports until any regulatory action with respect to the violation is complete and DADS has determined that the facility is in full compliance with the applicable requirement.

(h) The facility must inform the resident or responsible party or both upon the resident's admission that the inspection reports referenced in subsection (e)(3) of this section are available for review.

(i) A facility must provide the telephone number for reporting cases of suspected abuse, neglect, or exploitation to an immediate family member of a resident of the facility upon the resident's admission to the facility.

(j) A copy of the Texas Health and Safety Code, Chapters 242 and 260A, must be available for public inspection at the facility.

(k) Within 72 hours after admission, the facility must prepare a written inventory of the personal property a resident brings to the facility, such as furnishings, jewelry, televisions, radios, sewing machines, and medical equipment. The facility does not have to inventory the res-

ident's clothing; however, the operating policies and procedures must provide for the management of resident clothing and other personal property to prevent loss or damage. The facility administrator or his or her designee must sign and retain the written inventory and must give a copy to the resident or the resident's responsible party or both. The facility must revise the written inventory to show if property is lost, destroyed, damaged, replaced, or supplemented. Upon discharge of the resident, the facility must document the disposition of personal effects by a dated receipt bearing the signature of the resident or the resident's responsible party or both. See §19.416 of this chapter (relating to Personal Property).

(l) Each facility must comply with the provisions of the Texas Health and Safety Code, Chapter 250 (relating to Nurse Aide Registry and Criminal History Checks of Employees and Applicants for Employment in Certain Facilities Serving the Elderly or Persons with Disabilities).

(m) Before a facility hires an unlicensed employee, the facility must search the employee misconduct registry (EMR) established under §253.007, Texas Health and Safety Code, and the DADS nurse aide registry (NAR) to determine whether the individual is designated in either registry as unemployable. Both registries can be accessed on the DADS Internet website.

(n) A facility is prohibited from hiring or continuing to employ a person who is listed in the EMR or NAR as unemployable.

(o) 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).

(p) In addition to the initial search of the EMR and NAR, a facility must:

(1) conduct a search of the NAR and EMR to determine if an employee of the facility is listed as unemployable in either registry as follows:

(A) for an employee most recently hired before September 1, 2009, by August 31, 2011, and at least every 12 [twelve] months thereafter; and

(B) for an employee most recently hired on or after September 1, 2009, at least every twelve months; and

(2) keep a copy of the results of the initial and annual searches of the NAR and EMR in the employee's personnel file.

(q) A facility must upload to the DADS website, at <http://fives.dads.state.tx.us/choose.asp>, a statement of all facility requirements involving resident rights and responsibilities that are not described in §19.401(b) of this chapter. The facility must promptly upload a revised statement if the facility changes its requirements.

§19.1936. Guardianship Orders for a Nursing Facility Resident.

(a) A facility must request a copy of any current court order appointing a guardian and letters of guardianship for a resident or a resident's estate from the resident's nearest relative or the person responsible for the resident's support.

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

(1) when a 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 subsections (b) and (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 and letters of guardianship.

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

(1) documentation of the results of the request for the court order and letters of guardianship; and

(2) 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 subsections (b), (c), and (d) of this section.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 4, 2016.

TRD-201600015

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: February 14, 2016

For further information, please call: (210) 619-8292



CHAPTER 92. LICENSING STANDARDS FOR ASSISTED LIVING FACILITIES

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §§92.2, 92.41, 92.51, and 92.53 and new §92.42, in Chapter 92, Licensing Standards for Assisted Living Facilities.

BACKGROUND AND PURPOSE

The purpose of the amendments and new section is to implement §247.070, Texas Health and Safety Code (THSC), as added by House Bill (H.B.) 1337 of the 84th Legislature, Regular Session, 2015, regarding Guardianship Orders, and changes to §247.026 and §247.029, THSC, as added by H.B. 2588 of the 84th Legislature, Regular Session, 2015, regarding Alzheimer's Disclosure.

The proposal specifies the process an assisted living facility (ALF) must follow to request a copy of any court order appointing a guardian of a resident or a resident's estate from the resident's nearest relative or the person responsible for the resident's support and requires an ALF to maintain a copy of any court order appointing a guardian of a resident or resident's estate in the resident's records.

The proposal defines the term "Alzheimer's disease and related disorders" and requires an ALF to include in the facility's Alzheimer's disclosure statement whether the facility is certified under Texas Health and Safety Code (THSC), §247.029, to provide personal care services to residents with Alzheimer's disease and related disorders. An ALF must update the disclosure statement to reflect changes in special services provided to residents with Alzheimer's disease and related disorders.

The proposal also amends §92.41 to reflect an updated cite for a Texas Department of State Health Services (DSHS) food-safety rule contained in §92.41(m). The amendment will aid DADS in enforcing the provisions of §92.41.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §92.2 adds a definition for "Alzheimer's Assisted Living Disclosure Statement form" and "Alzheimer's disease and related disorders."

The proposed amendment to §92.41 requires an ALF to keep a copy of the most recent court order appointing a guardian of a resident and letters of guardianship in the resident's records.

The proposed amendment to §92.41 also updates a repealed cite for a DSHS rule contained in §92.41.

The proposed new §92.42 adds requirements regarding an ALF's responsibility to acquire guardianship records and letters of guardianship for a resident who has a court-appointed guardian and a resident for whom a guardian is appointed after the resident enters an assisted living facility. The proposed new section also explains which guardianship documents a facility must request, when the facility must request the documents, how often the facility must request the documents, and where the facility must keep the documents.

The proposed amendment to §92.51 updates the reference to §92.4(c) and deletes disclosure information found in §92.51(c)(1) - (2). This information is addressed in the proposed new §92.53(d). Also, the proposal deletes obsolete information in §92.51(f).

The proposed amendment to §92.53 adds subsection (d), which requires an ALF to use the Alzheimer's Assisted Living Disclosure Statement form to clarify whether an ALF is licensed under THSC §247.029 for the provision of personal care services to residents with Alzheimer's disease and related disorders. The subsection also requires an ALF to update this form as needed to reflect changes in special services provided to residents with Alzheimer's disease and related disorders.

FISCAL NOTE

David Cook, DADS Chief Financial Officer, has determined that, for the first five years the proposed rules are in effect, enforcing or administering the amendments and new section does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed rules will not have an adverse economic effect on small businesses or micro-businesses because there is no cost to nursing facilities or assisted living facilities to comply with the proposed rules.

PUBLIC BENEFIT AND COSTS

Mary T. Henderson, DADS Assistant Commissioner for Regulatory Services, has determined that, for each year of the first five years the proposed amendments and new section are in effect, the public benefit expected as a result of enforcing the proposed amendments and new section is there will be clear communication to guardians about a resident's care and allegations of abuse, neglect, or exploitation. The public also will benefit from the adoption of a standard definition of Alzheimer's disease and related disorders and the requirement for a facility to disclose whether it is certified by DADS to provide personal care and ser-

vices to residents with Alzheimer's disease and related disorders.

Ms. Henderson anticipates that there will not be an economic cost to persons who are required to comply with the amendments and new section. The proposed amendment and new section will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Sharon Wallace at (210) 619-8292 in DADS Long Term Care Regulatory Services. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-15R11, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030 or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to rulescomments@dads.state.tx.us. To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 15R11" in the subject line.

SUBCHAPTER A. INTRODUCTION

40 TAC §92.2

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS and Texas Health and Safety Code (THSC), §247.025, which authorizes the licensing of assisted living facilities.

The amendment implements Texas Government Code, §531.0055; Texas Human Resources Code, §161.021; and THSC, §247.029.

§92.2. 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 §261.401(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) Advance directive--Has the meaning given in Texas Health and Safety Code, §166.002.

(4) 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.

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

(6) Alzheimer's disease and related disorders--Cognitive disorders as described by the Centers for Disease Control and Prevention (CDC) or as found in the most current volume of the Diagnostic and Statistical Manual of Mental Disorders (DSM).

(7) [~~5~~] 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.

(8) [~~6~~] Applicant--A person applying for a license to operate an assisted living facility under Texas Health and Safety Code, Chapter 247.

(9) [~~7~~] 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.

(10) [~~8~~] 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.

(11) [~~9~~] 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).

(12) [(40)] Change of ownership--A change of ownership is:

(A) a change of sole proprietorship that is licensed to operate a facility;

(B) a change of 50 percent or more in the ownership of the business organization that is licensed to operate the facility;

(C) a change in the federal taxpayer identification number; or

(D) relinquishment by the license holder of the operation of the facility.

(13) [(41)] Commingles--The laundering of apparel or linens of two or more individuals together.

(14) [(42)] 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.

(15) [(43)] Covert electronic monitoring--The placement and use of an electronic monitoring device that is not open and obvious, and the facility and DADS have not been informed about the device by the resident, by a person who placed the device in the room, or by a person who uses the device.

(16) [(44)] DADS--The Department of Aging and Disability Services.

(17) [(45)] DHS--Formerly, this term referred to the Texas Department of Human Services; it now refers to DADS.

(18) [(46)] Dietitian--A person who currently holds a license or provisional license issued by the Texas State Board of Examiners of Dietitians.

(19) [(47)] Disclosure statement--A DADS 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.

(20) [(48)] 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.

(21) [(49)] 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 §261.401(2), 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.

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

(23) [(21)] 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.

(24) [(22)] 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).

(25) [(23)] 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.

(26) [(24)] 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.

(27) [(25)] Immediate threat--There is considered to be an immediate threat to the health or safety of a resident, or a situation is considered to put the health or safety of a resident in immediate jeopardy, if there is a situation in which an assisted living facility's non-compliance with one or more requirements of licensure has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident.

(28) [(26)] 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.

(29) [(27)] Large facility--A facility licensed for 17 or more residents.

(30) [(28)] 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.

(31) [(29)] 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 DADS or any other state, federal or local authority.

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

(33) [(31)] 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.

(34) [(32)] Manager--The individual in charge of the day-to-day operation of the facility.

(35) [(33)] 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.

(36) [(34)] 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.

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

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

(39) [(37)] 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, §261.401(3), 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.

(40) [(38)] 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.

(41) [(39)] Ombudsman--Has the meaning given in §85.2 of this title (relating to Definitions).

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

(43) [(41)] Person with a disclosable interest--Any person who owns 5.0 percent interest in any corporation, partnership, or other business entity that is required to be licensed under Texas Health and Safety Code, Chapter 247. A person with a disclosable interest does not include a bank, savings and loan, savings bank, trust company, building and loan association, credit union, individual loan and thrift company, investment banking firm, or insurance company unless such entity participates in the management of the facility.

(44) [(42)] 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.

(45) [(43)] Physician--A practitioner licensed by the Texas Medical Board.

(46) [(44)] 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.

(47) [(45)] 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.

(48) [(46)] Resident--An individual accepted for care in a facility.

(49) [(47)] 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.

(50) [(48)] 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.

(51) [(49)] 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.

(52) [(50)] 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.

(53) [(51)] 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.

(54) [(52)] Service plan--A written description of the medical care, supervision, or nonmedical care needed by a resident.

(55) [(53)] Short-term acute episode--An illness of less than 30 days duration.

(56) [(54)] Small facility--A facility licensed for 16 or fewer residents.

(57) [(55)] Staff--Employees of an assisted living facility.

(58) [(56)] Standards--The minimum conditions, requirements, and criteria established in this chapter with which a facility must comply to be licensed under this chapter.

(59) [(57)] Terminal condition--A medical diagnosis, certified by a physician, of an illness that will result in death in six months or less.

(60) [(58)] 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.

(61) [(59)] Vaccine Preventable Diseases--The diseases included in the most current recommendations of the Advisory Committee on Immunization Practices of the CDC [Centers for Disease Control and Prevention].

(62) [(60)] Working day--Any 24-hour period, Monday through Friday, excluding state and federal holidays.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 4, 2016.

TRD-201600016

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: February 14, 2016

For further information, please call: (210) 619-8292



SUBCHAPTER C. STANDARDS FOR LICENSURE

40 TAC §§92.41, 91.42, 91.51, 92.53

STATUTORY AUTHORITY

The amendments and new section are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS, and Texas Health and Safety Code (THSC), §247.025, which authorizes the licensing of assisted living facilities.

The amendments and new section implement Texas Government Code, §531.0055; Texas Human Resources Code, §161.021; and THSC, §247.026 and §247.070.

§92.41. *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; and

(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 [§§229.161 - 229.171 and §§229.173 - 229.175] (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.

§92.42. 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 the current court order:

(1) appointing a guardian for a resident or a resident's estate; and

(2) letters of guardianship for a resident.

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

(1) when a 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) and (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.

§92.51. Licensure of Facilities for Persons with Alzheimer's Disease.

(a) Any facility that [which] advertises, markets, or otherwise promotes that the facility or a distinct part of the facility provides specialized care for persons with Alzheimer's disease or related disorders

must be certified under this subchapter. Use of advertising terms such as "medication reminders or assistance," "meal and activity reminders," "escort service," or "short-term memory loss, confusion, or forgetfulness" will not trigger a requirement for certification as an Alzheimer's facility.

(b) The facility must be licensed as a Type B facility.

(c) Application for certification must be made on forms prescribed by DADS and must include the fee as described in §92.4(c) of this chapter (relating to Licensing Fees).[:]

[(1) the fee as described in §92.20(b) of this chapter (relating to License Fees); and]

[(2) a disclosure statement, using DADS' form, describing the nature of its care or treatment of residents with Alzheimer's disease and related disorders, which includes the pre-admission process, the admission process, discharge and transfer, planning and implementation of care, change in condition issues, staff training on dementia care, the physical environment, and staffing. The disclosure statement must be updated and submitted to DADS as needed to reflect changes in special services for residents with Alzheimer's disease or related disorders.]

(d) The facility must not exceed the maximum number of residents specified on the certificate.

(e) A certificate must be posted in a prominent location for public view.

(f) A certificate is valid for two years from the effective date of approval by DADS[, except as provided in paragraph (1) of this subsection].

[(1) For two years beginning September 1, 2008, an Alzheimer's facility with a facility identification number that ends in an odd number (1, 3, 5, 7, or 9) must submit an application to renew its certification as an Alzheimer's facility in accordance with this section. The facility's first renewal certificate issued beginning September 1, 2008, is valid for one year, and subsequent renewal certificates are valid for two years.]

[(2) An Alzheimer's facility with a facility identification number that ends in an even number (0, 2, 4, 6, or 8) must submit an application to renew its certification as an Alzheimer's facility in accordance with this section. The facility's renewal certificates are valid for two years.]

(g) A certificate will be cancelled upon change of ownership and if DADS finds that the certified unit or facility is not in compliance with applicable laws and rules. A facility must remove a cancelled certificate from display and advertising, and the certificate must be surrendered to DADS upon request.

§92.53. *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 disclosure statement form and update it as needed to reflect changes in special services the facility provides to residents with Alzheimer's disease or related disorders.

(e) [(d)] 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 disclosure statement with the family or responsible party.

(2) The facility must give the required DADS disclosure statement to any individual seeking information about the facility's care or treatment of residents with Alzheimer's disease or a related disorder.

(f) [(e)] 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) [(f)] 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) [(g)] 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) [(H)] 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 §5-2.1.6 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.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 4, 2016.

TRD-201600017

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: February 14, 2016

For further information, please call: (210) 619-8292

