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The following information is provided to individuals for the sole purpose of preparing to complete education courses which will allow that individual to complete the necessary education prerequisites required to become an “Assisted Living Manager.” This information was obtained from the “DADS” website on January 1, 2011. Individuals actively practicing as an “Assisted Living Manager” should check this DADS website to ensure that not revisions have been made to this material. All regulations are subject to being updates, changed, or deleted.

**REFERENCE MATERIALS**

- Health and Safety Code
- Texas Government Code
- Chapter 79
- Life Safety Code
- Disability Act
- Civil Rights Act
- Rehabilitation Act
- Family and Medical Leave Act
- Fair Housing Act
- TAC
- CFR
- NFPA
- National Fire Protection Association
- Texas Civil Statutes
- Human Resources Code
- Family Code
- Texas Open Records Act
SUBCHAPTER A, REV 10-2
§92.1 ~ PURPOSE AND APPLICATION
(a) The purpose of this chapter is to establish
(1) the criteria and application procedure for licensing an assisted living facility;
(2) the licensing standards with which an assisted living facility must comply and that serve as a
basis for licensure inspections, including:
   (A) operation and resident care standards; and
   (B) facility construction standards;
(3) the inspections and investigations DADS may conduct as a regulatory authority; and
(4) enforcement actions DADS may take against an assisted living facility.
(b) This chapter applies to an assisted living facility licensed or subject to being licensed in accordance
with Texas Health and Safety Code, Chapter 247. Assisted living services are driven by a philosophy
that emphasizes personal dignity and autonomy to age in place in a residential setting while receiving
increasing or decreasing levels of services as the person’s needs change.

§92.2 ~ DEFINITIONS
The following words and terms, when used in this chapter, have the following meaning, unless the
context clearly indicates otherwise.
(1) Accreditation Commission — has the meaning given in Texas Health and Safety Code, §247.032.
(2) Advance Directive — has the meaning given in Texas Health and Safety Code, §166.002.
(3) 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.
(4) 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.
(5) Applicant — A person applying for a license to operate an assisted living under Texas Health and
Safety Code, Chapter 247.
(6) 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.
(7) 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.
(8) 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).
(9) 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.
(10) Co-mingles — The laundering of apparel or linens of two or more individuals together.
(11) **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.

(12) **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.

(13) **DADS** — The Department of Aging and Disability Services.

(14) **DHS** — Formerly, this term referred to the Texas Department of Human Services; it now refers to DADS.

(15) **Dietitian** — A person who currently holds a license or provisional license issued by the Texas State Board of Examiners of Dietitians.

(16) **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.

(17) **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.

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

(19) **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.

(20) **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.

(21) **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.

(22) **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 noncompliance with one or more requirements of licensure has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident.
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.

Large Facility — A facility licensed for 17 or more residents.

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.

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.

Manager — The individual in charge of the day-to-day operation of the facility.

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.

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.

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

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


Ombudsman — has the meaning given in §85.2 of this title (relating to Definitions).

Person — Any individual, firm, partnership, corporation, association, or joint stock association, and the legal successor thereof.

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.

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.

Physician — A practitioner licensed by the Texas Medical Board.

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 nurse.
(39) **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.

(40) **Resident** — An individual accepted for care in a facility.

(41) **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.

(42) **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.

(43) **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.

(44) **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.

(45) **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.

(46) **Service Plan** — A written description of the medical care or the supervision and nonmedical care needed by a resident.

(47) **Short-Term Acute Episode** — An illness of less than 30 days duration.

(48) **Small Facility** — A facility licensed for 16 or fewer residents.

(49) **Staff** — Employees of an assisted living facility.

(50) **Standards** — The minimum conditions, requirements, and criteria established in this chapter with which a facility must comply to be licensed under this chapter.

(51) **Terminal Condition** — A medical diagnosis, certified by a physician, of an illness that will result in death in six months or less.

(52) **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.

(53) **Working Day** — Any 24-hour period, Monday through Friday, excluding state and federal holidays.

### §92.3 ~ Types of Assisted Living Facilities

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

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

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

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

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

4. must be able to demonstrate to DADS that they can meet the evacuation requirements described in §92.62(b) of this chapter.
(c) Type B. In a Type B facility, a resident may:
   (1) require staff assistance to evacuate;
   (2) require attendance during nighttime sleeping hours;
   (3) be incapable of following directions under emergency conditions; and
   (4) require assistance in transferring to and from a wheelchair, but must not be permanently bedfast.

(d) Type C. A Type C facility is a four-bed facility that:
   (1) has an active contract with DADS to provide adult foster care services as described in Chapter 48, Subchapter K of this title (relating to Minimum Standards for Adult Foster Care); and
   (2) must be contracted with DADS to provide adult foster care services before it can be licensed.

§92.4 ~ LICENSE FEES

(a) Basic fees.
   (1) Type A and Type B. The license fee is $200, plus $10 for each bed for which a license is sought, with a maximum of $1,500. The license fee for a one-year license issued in accordance with §92.15(b)(1) of this chapter (relating to Renewal Procedures and Qualifications) is $100, plus $5 for each bed for which a license is sought, with a maximum of $750. The fee must be paid with each initial application and with each renewal application.
   (2) Type C. The license fee is $100. The license fee for a one-year license issued in accordance with §92.15(b)(1) of this chapter is $50. The fee must be paid with each initial application and with each renewal application.
   (3) Increase in capacity. An approved increase in capacity is subject to an additional fee of $10 for each bed.

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

(c) Alzheimer's certification. In addition to the basic license fee described in subsection (a) of this section, a facility that applies for certification as an Alzheimer's facility under Subchapter C of this chapter (relating to Standards for Licensure) must pay an additional license fee. The additional fee is $200, except the additional fee for a facility renewing its Alzheimer's certification in accordance with §92.51(f)(1) of this chapter (relating to Licensure of Facilities for Persons with Alzheimer's Disease) is $100 for the first renewal beginning September 1, 2008.

(d) Trust fund fee.
   (1) If the amount in the assisted living facility trust fund, established under Texas Health and Safety Code, Chapter 242, Subchapter D, and Chapter 247, §247.003(b), is less than $500,000, DADS collects an annual fee from each facility. The fee is based on a monetary amount specified for each licensed unit of capacity or bed space, and is in an amount sufficient to provide not more than $500,000 in the trust fund. When the trust fund fee is collected, DADS sends written notice to each facility stating the amount of the fee and the date the fee is due. A facility must pay the amount of the fee within 90 days after the date the fee is due.
   (2) DADS may charge and collect a trust fund fee more than once a year if necessary to ensure that the amount in the assisted living facility trust fund is sufficient to make the disbursements required under Texas Health and Safety Code, §242.0965. When this subsequent trust fund fee is collected, DADS sends written notice to each facility stating the amount of the fee and the date the fee is due. A facility must pay the amount of the fee within 90 days after the date the fee is due.
   (3) Failure to pay the trust fund fee within 90 days after the date the fee is due as stated on the written notice described in paragraphs (1) and (2) of this subsection may result in an assessment of an administrative penalty under the administrative penalties described in Subchapter H, Division 9 of this chapter (relating to Administrative Penalties).
(e) Plan review fee. An applicant may submit building plans for a new building, an addition, the conversion of a building not licensed, or for the remodeling of an existing licensed facility for review by DADS architectural staff. If the applicant chooses to submit building plans for review, the applicant must pay a fee for the plan review according to the following schedule:

<table>
<thead>
<tr>
<th>Facility Type</th>
<th>New or Conversion</th>
<th>Addition or Remodeling</th>
<th>Alzheimer's Certification</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Single Story</td>
<td>Multiple Story</td>
<td></td>
</tr>
<tr>
<td>Small Type A</td>
<td>$ 900</td>
<td>$ 1,100</td>
<td>2% of construction costs</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Min $350</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Max 50% of the plan review fee for a new facility of the same type</td>
</tr>
<tr>
<td>Large Type A</td>
<td>17-80 beds: $1,100</td>
<td>17-80 beds: $1,650</td>
<td>2% of construction costs</td>
</tr>
<tr>
<td></td>
<td>81-120 beds: $1,650</td>
<td>81-120 beds: $2,150</td>
<td>Min $400</td>
</tr>
<tr>
<td></td>
<td>121+ beds: $14/bed</td>
<td>121+ beds: $18/bed</td>
<td>Max 50% of the plan review fee for a new facility of the same type</td>
</tr>
<tr>
<td>Small Type B</td>
<td>$ 1,100</td>
<td>$ 1,650</td>
<td>2% of construction costs</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Min $350</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Max 50% of the plan review fee for a new facility of the same type</td>
</tr>
<tr>
<td>Large Type B</td>
<td>17-80 beds: $1,600</td>
<td>17-80 beds: $2,100</td>
<td>2% of construction costs</td>
</tr>
<tr>
<td></td>
<td>81-120 beds: $2,150</td>
<td>81-120 beds: $2,650</td>
<td>Min $500</td>
</tr>
<tr>
<td></td>
<td>121+ beds: $18/bed</td>
<td>121+ beds: $22/bed</td>
<td>Max 50% of the plan review fee for a new facility of the same type</td>
</tr>
</tbody>
</table>

(f) Payment of fees. Payment of fees must be by check, cashier's check, or money order made payable to the Department of Aging and Disability Services. All fees are nonrefundable, except as provided in Texas Government Code, Chapter 2005, and in §92.13(d) of this chapter (relating to Time Periods for Processing All Types of License Applications).

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

1. the applicant:
   A. meets the criteria in §92.14 of this chapter (relating to Initial License Application Procedures and Requirements); or
   B. has a current license, and is completing construction that does not alter the capacity of the facility; and
2. the applicant submits the appropriate Life Safety Code fee listed in the following schedule:

<table>
<thead>
<tr>
<th>Facility Type</th>
<th>New or Conversion</th>
<th>Addition or Remodeling</th>
<th>Alzheimer's Certification</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Single Story</td>
<td>Multiple Story</td>
<td></td>
</tr>
<tr>
<td>Small Type A</td>
<td>$ 1,950</td>
<td>$ 2,250</td>
<td>3% of construction costs</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Min $1,110</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Max 75% of the plan review fee for a new facility of the same type</td>
</tr>
<tr>
<td>Large Type A</td>
<td>17-80 beds: $2,250</td>
<td>17-80 beds: $3,000</td>
<td>3% of construction costs</td>
</tr>
<tr>
<td></td>
<td>81-120 beds: $3,000</td>
<td>81-120 beds: $3,800</td>
<td>Min $1,200</td>
</tr>
<tr>
<td></td>
<td>121+ beds: $25/bed</td>
<td>121+ beds: $32/bed</td>
<td>Max 75% of the plan review fee for a new facility of the same type</td>
</tr>
<tr>
<td>Small Type B</td>
<td>$ 2,250</td>
<td>$ 3,000</td>
<td>3% of construction costs</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Min $1,100</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Max 75% of the plan review fee for a new facility of the same type</td>
</tr>
<tr>
<td>Large Type B</td>
<td>17-80 beds: $3,000</td>
<td>17-80 beds: $3,750</td>
<td>3% of construction costs</td>
</tr>
<tr>
<td></td>
<td>81-120 beds: $3,800</td>
<td>81-120 beds: $4,550</td>
<td>Min $1,350</td>
</tr>
<tr>
<td></td>
<td>121+ beds: $32/bed</td>
<td>121+ beds: $38/bed</td>
<td>Max 75% of the plan review fee for a new facility of the same type</td>
</tr>
</tbody>
</table>
(h) If, after DADS conducts two Life Safety Code inspections for a given application, and the applicant requests an additional inspection, then the applicant must pay a fee of $25 per bed, with a minimum payment of $1,000 for the third and each subsequent inspection pertaining to the same application.

§92.5 ~ HEALTH CARE PROFESSIONAL
(a) A health care professional may provide services to a resident within the professional's scope of practice; however, the facility must not provide ongoing services to a resident that are comparable to the services available in a nursing facility licensed under Texas Health and Safety Code, Chapter 242.
(b) A resident may contract with a home and community support services agency licensed under Chapter 142 or with an independent health professional to have health care services delivered to the resident at the facility.

§92.6 ~ GENERAL CHARACTERISTICS OF A RESIDENT
This section describes some general characteristics of a resident in an assisted living facility. A resident may:
1. exhibit symptoms of mental or emotional disturbance, but is not considered at risk of imminent harm to self or others;
2. need assistance with movement;
3. require assistance with bathing, dressing, and grooming;
4. require assistance with routine skin care, such as application of lotions or treatment of minor cuts and burns;
5. need reminders to encourage toilet routine and prevent incontinence;
6. require temporary services by professional personnel;
7. need assistance with medication, supervision of self-medication, or administration of medication;
8. require encouragement to eat or monitoring due to social or psychological reasons of temporary illness;
9. be hearing impaired or speech impaired;
10. be incontinent without pressure sores;
11. require an established therapeutic diet;
12. require self-help devices; and
13. need assistance with meals, which may include feeding.

SUBCHAPTER B, REV 10-2
§92.11 ~ CRITERIA FOR LICENSING
(a) A person must be licensed to establish or operate an assisted living facility in Texas.
(1) An assisted living facility is an establishment that:
   (A) furnishes, in one or more facilities, food and shelter to four or more persons who are unrelated to the proprietor of the establishment;
   (B) provides:
      (i) personal care services;
      (ii) administration of medication by a person licensed or otherwise authorized in this state to administer the medication; or
      (iii) services described in clauses (i) and (ii) of this subparagraph; and
   (C) may provide assistance with or supervision of the administration of medication.
(2) DADS considers one or more facilities to be part of the same establishment and, therefore, subject to licensure as an assisted living facility, based on the following factors:
   (A) common ownership;
   (B) physical proximity;
   (C) shared services, personnel, or equipment in any part of the facilities' operations; and
   (D) any public appearance of joint operations or of a relationship between the facilities.
(3) The presence or absence of any one factor in paragraph (2) of this subsection is not conclusive.
(b) To obtain a license, a person must follow the application requirements in this subchapter and meet the criteria for a license.

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

1. Affirmatively show that:
   - The building in which the facility is housed: meets local fire ordinances;
   - is approved by the local fire authority; and
   - meets DADS licensing standards in accordance with Subchapter D of this chapter (relating to Facility Construction) based on an onsite inspection;

2. Affirmatively show that the operation of the facility meets DADS licensing standards based on an on-site health inspection by DADS staff, which must include observation of the care of a resident; or

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

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

(f) DADS denies an application for an initial license or for the renewal of a license if:
   1. The applicant, license holder, controlling person, or any person required to submit background and qualification information has been debarred or excluded from the Medicare or Medicaid programs by the federal government or a state;
   2. A court has issued an injunction prohibiting the applicant, license holder, controlling person, or any person required to submit background and qualification information from operating a facility;
   or
   3. During the five years preceding the date of the application, a license to operate a health care facility, long-term care facility, assisted living facility, or similar facility in any state held by the applicant, license holder, controlling person, or any person required to submit background and qualification information has been revoked.

(g) A license holder or controlling person who operates a nursing facility or an assisted living facility for which a trustee was appointed and for which emergency assistance funds, other than funds to pay the expenses of the trustee, were used is subject to exclusion from eligibility for:
   1. The issuance of an initial license for a facility for which the person has not previously held a license; and
   2. The renewal of the license of the facility for which the trustee was appointed.

(h) DADS may deny an application for an initial license or refuse to renew a license if an applicant, license holder, controlling person, or any person required to submit background and qualification information:
   1. Violates Texas Health and Safety Code, Chapter 247; a section, standard or order adopted under Chapter 247; or a license issued under Chapter 247 in either a repeated or substantial manner;
   2. Commissions an act described in §92.551(a)(2)-(7) of this chapter (relating to Administrative Penalties);
   3. Aids, abets, or permits a substantial violation described in paragraphs (1)-(2) of this subsection about which the person had or should have had knowledge;
   4. Fails to provide the required information, facts, or references;
   5. Provides the following false or fraudulent information:
      - Knowingly submits false or intentionally misleading statements to DADS;
      - Uses subterfuge or other evasive means of filing an application for licensure;
(C) engages in subterfuge or other evasive means of filing on behalf of another who is unqualified for licensure;
(D) knowingly conceals a material fact related to licensure; or
(E) is responsible for fraud;
(6) fails to pay the following fees, taxes, and assessments when due:
   (A) license fees as described in §92.4 of this chapter (relating to License Fees); or
   (B) franchise taxes, if applicable;
(7) during the five years preceding the date of the application, has a history in any state or other jurisdiction of any of the following:
   (A) operation of a facility that has been decertified or has had its contract canceled under the Medicare or Medicaid program;
   (B) federal or state long-term care facility, assisted living facility, or similar facility sanctions or penalties, including monetary penalties, involuntary downgrading of the status of a facility license, proposals to decertify, directed plans of correction, or the denial of payment for new Medicaid admissions;
   (C) unsatisfied final judgments, excluding judgments wholly unrelated to the provision of care rendered in long-term care facilities;
   (D) eviction involving any property or space used as a facility; or
   (E) suspension of a license to operate a health care facility, long-term care facility, assisted living facility, or a similar facility;
(8) violates Texas Health and Safety Code, §247.021 by operating a facility without a license; or
(9) has been convicted of an offense described in Chapter 99 of this title (relating to Criminal Convictions Barring Facility Licensure) during the time frames described in that chapter.

(i) For the grounds for denial of an application for an initial license or an application for renewal of a license set out in subsection (g)(8) of this section, DADS considers exculpatory information provided by an applicant, a license holder, a person with a disclosable interest, or a manager and may grant a license if DADS finds the applicant, license holder, person with a disclosable interest, affiliate, or manager able to comply with the rules in this chapter.

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

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

§92.12 ~ GENERAL APPLICATION REQUIREMENTS
(a) An application must be made on the form prescribed by and available from DADS.
(b) An applicant must complete the application in accordance with the instructions provided with the application. An application must be signed, dated, and notarized, and must contain the applicable license fee as described in §92.4 of this chapter (relating to License Fees).
(c) An application must include the written approval of the local fire authority that the facility and its operations meet local fire ordinances.
(d) If an applicant decides not to continue the application process for a license after submitting an application and license fee, the applicant must submit to DADS a written request to withdraw the application. DADS does not refund the license fee for an application that is withdrawn, except as provided in §92.13(d) of this subchapter (relating to Time Periods for Processing All Types of License Applications).
§92.13 ~ TIME PERIODS FOR PROCESSING ALL TYPES OF LICENSE APPLICATIONS
(a) DADS reviews an application for a license within 30 days after the date DADS' Licensing and Credentialing Section receives the application and notifies the applicant if additional information is needed to complete the application.
(b) DADS denies an application that remains incomplete 120 days after the date that DADS' Licensing and Credentialing Section receives the application.
(c) DADS issues a license within 30 days after DADS determines that the applicant and the facility have met all licensure requirements referenced in §92.14 of this subchapter (relating to Initial License Application Procedures and Requirements) or §92.15 of this subchapter (relating to Renewal Procedures and Qualification), as applicable.
(d) If DADS does not process an application in the time period stated, the applicant has a right to make a request to the program director for reimbursement of the license fees paid with the application.
   (1) If the program director does not agree that the established time period has been violated or finds that good cause existed for exceeding the established time period, the program director denies the request.
   (2) Good cause for exceeding the established time period exists if:
       (A) the number of applications to be processed exceeds by 15 percent or more the number processed in the same calendar quarter of the preceding year;
       (B) DADS must rely on another public or private entity to process all or a part of the application received by DADS, and the delay is caused by that entity; or
       (C) other conditions existed giving good cause for exceeding the established time period.
   (3) If the request for reimbursement is denied, the applicant may appeal to the DADS commissioner for resolution of the dispute. The applicant must send a written statement to the DADS commissioner describing the request for reimbursement and the reason for the request. The DADS commissioner will make a timely decision concerning the appeal and notify the applicant in writing of the decision.

§92.14 ~ INITIAL LICENSE APPLICATION PROCEDURES AND REQUIREMENTS
(a) An applicant must complete the DADS pre-licensure training course before submitting an application for an initial license. An applicant that is currently licensed under Texas Health and Safety Code, Chapter 247 is exempt from this requirement.
(b) An applicant for an initial license must submit an application in accordance with §92.12 of this subchapter (relating to General Application Requirements) and include the fees required in §92.4 of this chapter (relating to License Fees).
(c) DADS reviews an application for an initial license within 30 days after the date DADS' Licensing and Credentialing Section receives the application and notifies the applicant if additional information is needed to complete the application.
(d) The applicant must send written notice to DADS indicating that the facility is ready for a Life Safety Code (LSC) inspection. The written notice must be submitted with the application or within 120 days after DADS' Licensing and Credentialing Section receives the application. After DADS has received the written notice and the applicant has satisfied the application filing requirements in §92.11 of this subchapter (relating to Criteria for Licensing) and §92.12 of this subchapter, DADS staff conduct an on-site LSC inspection of the facility to determine if the facility meets the licensure requirements in Subchapter D of this chapter (relating to Facility Construction).
(e) If the facility fails to meet the licensure requirements within 120 days after the initial LSC inspection, DADS denies the application for a license.
(f) After a facility has met the licensure requirements in Subchapter D of this chapter (relating to Facility Construction) and has admitted at least one but no more than three residents, the applicant must send a written notice to DADS indicating the facility is ready for a health inspection.
   (1) DADS staff conduct an on-site health inspection to determine if the facility meets the licensure requirements for standards of operation and resident care in Subchapter C of this chapter (relating to Standards for Licensure).
(2) If the facility fails to meet the licensure requirements for standards of operation and resident care within 120 days after the initial health inspection, DADS denies the application for a license.

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

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

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

§92.15 ~ RENEWAL PROCEDURES AND QUALIFICATIONS

(a) A license issued under this chapter:

(1) expires two years after the date issued, except as provided by subsection (b) of this section;
(2) must be renewed before the license expiration date; and
(3) is not automatically renewed.

(b) A facility must submit an application for license renewal and a renewal license will be valid as follows:

(1) For two years beginning September 1, 2008, a 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 license before the expiration date on the license in accordance with this section. The facility's first renewal license issued beginning September 1, 2008, is valid for one year, and subsequent renewal licenses are valid for two years.

(2) A 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 license before the expiration date on the license in accordance with this section. The facility's renewal licenses are valid for two years.

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

(d) To renew a license, a license holder must submit an application for renewal with DADS before the expiration date. DADS considers the license holder has met the renewal application submission deadline if the license holder submits to DADS:

(1) a complete application for renewal no later than 45 days before the expiration of the current license;
(2) an incomplete application for renewal, with a letter explaining the circumstances that prevented the inclusion of the missing information, and DADS receives the incomplete application and the letter no later than 45 days before the expiration of the current license; or
(3) a complete application or an incomplete application with a letter explaining the circumstances which prevented the inclusion of the missing information to DADS, and DADS receives the application during the 45-day period ending on the date the current license expires, and the license holder pays the late fee established in §92.4(b) of this chapter (relating to License Fees) in addition to the basic renewal fee.

(e) If the application is postmarked on or before the submission deadline, the application is considered to be timely if it is received in DADS' Licensing and Credentialing Section, Regulatory Services Division, within 15 days after the date of the postmark, or within 30 days after the date of the postmark and the license holder proves to the satisfaction of DADS that the delay was due to the shipper. It is the license holder's responsibility to ensure that the application is timely received by DADS.

(f) For purposes of Texas Government Code, §2001.054, DADS considers that an individual has submitted a timely and sufficient application for the renewal of a license if the license holder's
application has met the submission deadlines in subsections (d) and (e) of this section. Failure to submit a timely and sufficient application will result in the expiration of the license.

(g) An application for renewal submitted after the expiration date of the license is considered to be an application for an initial license and must comply with the requirements for an initial license in §92.14 of this subchapter (relating to Initial License Application Procedures and Requirements).

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

(i) A license holder applying for a license renewal must affirmatively show that the facility meets DADS licensing standards based on an on-site inspection by DADS, which must include an observation of the care of a resident.

(j) If an applicant is relying on §92.11(c)(2) of this subchapter (relating to Criteria for Licensing) to comply with the requirements for licensure, the application for the renewal of a license must include a copy of the license holder’s required accreditation report from the accreditation commission.

(k) DADS may pend action on an application for the renewal of a license for up to six months if the facility has not met licensure requirements during an on-site inspection.

(l) The issuance of a license constitutes DADS’ official written notice to the facility of the approval of the application.

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

(n) Before denying an application for renewal of a license, DADS gives the license holder:
   (1) notice by personal service or by registered or certified mail of the facts or conduct alleged to warrant the proposed action; and
   (2) an opportunity to show compliance with all requirements of law for the retention of the license.

(o) To request an opportunity to show compliance, the license holder must send its written request to the director of the Enforcement Section, Regulatory Services Division. The request must:
   (1) be postmarked within 10 days after the date of DADS’ notice and be received in the office of the director of the Enforcement Section, Regulatory Services Division, within 10 days after the date of the postmark; and
   (2) contain specific documentation refuting DADS’ allegations.

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

(q) If DADS denies an application for the renewal of a license, the applicant may request:
   (1) an informal reconsideration by the Health and Human Services Commission; and
   (2) an administrative hearing to appeal the denial.

§92.16 ~ CHANGE OF OWNERSHIP

(a) A license is not transferable as part of a change of ownership as defined in §92.2 of this chapter (relating to Definitions).

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

(c) To avoid a facility operating while unlicensed, an applicant must submit an application for an initial license based on a change of ownership at least 30 days before the anticipated date of the sale or other transfer to the new owner. The effective date of the change of ownership cannot precede the date the application is received by DADS’ Licensing and Credentialing Section, Regulatory Services Division.
(d) DADS may assess an administrative penalty in accordance with Subchapter H, Division 9 of this chapter (relating to Administrative Penalties) against a person who fails to notify DADS before the effective date of the change of ownership.

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

(f) After reviewing the application for an initial license based on a change of ownership, DADS conducts an on-site health inspection to determine if the facility meets the standards for operation and resident care. If the facility is out of compliance with Life Safety Code licensure requirements in Subchapter D of this chapter (relating to Facility Construction), DADS also conducts an on-site Life Safety Code inspection of the facility.

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

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

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

§92.17 ~ Relocation

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

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

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

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

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

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

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

§92.18 ~ Increase in Capacity

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

(b) The license holder must submit an application for an increase in capacity in accordance with §92.12 (relating to General Application Requirements) and the fee required in §92.4 of this chapter (relating to License Fees).

(c) The license holder must arrange for an inspection of the facility by the local fire marshal and provide the signed fire marshal approval to DADS.

(d) After DADS' review of an application and after the applicant notifies DADS in writing that the facility is ready for a Life Safety Code (LSC) inspection, DADS staff conduct an on-site LSC inspection of the facility to determine if the facility meets the LSC licensure requirements in Subchapter D of this chapter (relating to Facility Construction).
(e) If the facility fails to meet the LSC licensure requirements within 120 days after the LSC inspection, DADS denies the application for an increase in capacity.

(f) After a facility has met LSC licensure requirements, DADS staff conduct an on-site health inspection to determine if the facility meets the licensure requirements for standards of operation and resident care in Subchapter C of this chapter (relating to Standards for Licensure).

(g) DADS issues a new license with an increased capacity within 30 days after DADS determines that all licensure requirements have been met. DADS may grant approval to occupy the increased capacity once DADS determines that all licensure requirements have been met.

(h) In order to meet the residents' health and safety needs in the event of a fire, natural disaster, or catastrophic event, DADS may grant approval to temporarily exceed a facility's licensed capacity provided the health and safety of residents are not compromised and the facility can meet the required health care service needs of all residents. A facility may exceed its licensed capacity under this circumstance, monitored by DADS, until residents can be transferred to a permanent location. DADS will issue authorization for the temporary increase in the facility's licensed capacity. The authorization to temporarily increase the capacity ends when the facility receives written notice from DADS ending the authorization.

§92.19 ~ DECREASE IN CAPACITY
(a) A license holder that wishes to decrease the licensed capacity of the facility must provide written notification to DADS' Licensing and Credentialing Section. The written notification must include the desired capacity for the new license.

(b) Upon receipt of the written notification, DADS issues a new license with the desired capacity as indicated in the written notification.

§92.20 ~ PROVISIONAL LICENSE
(a) DADS may issue a six-month provisional license in the case of a corporate change of ownership.

(b) DADS must issue a provisional license for a newly constructed facility if an applicant makes a request in writing for a provisional license and:
   (1) the facility is in compliance with resident care standards;
   (2) all approvals from local authorities having jurisdiction, including the fire marshal, health department and building inspector, have been obtained;
   (3) a complete license application is submitted within 30 days after receipt of all local approvals referenced in paragraph (2) of this subsection;
   (4) the license fee referenced in §92.4(a)(1) of this chapter (relating to License Fees) has been paid;
   (5) before facility construction begins, the license applicant submits working drawings and specifications to DADS for review; and
   (6) DADS verifies that the applicant constructed another facility in this state that complies with the Life Safety Code standards.

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

(d) A provisional license expires on the earlier of:
   (1) the 180th day after the effective date of the provisional license or the end of any extension period granted by DADS; or
   (2) the date a two-year license is issued to the provisional license holder.

(e) DADS conducts a Life Safety Code inspection of a facility as soon as reasonably possible after DADS issues a provisional license to the facility.

(f) After conducting a Life Safety Code inspection, DADS issues a license in accordance with Texas Health and Safety Code §247.023 to the provisional license holder if the facility passes the inspection and the applicant meets all requirements for a license.
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§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 Disabilities 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, 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. 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 inpatient 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) 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.
(4) Each facility must make available copies of the resident policies to staff and to residents and/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.

(5) 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 shall be 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) A facility is not required to move a resident who a DADS surveyor determines is inappropriately placed if the facility submits the following to DADS not later than the 10th working day after the date the facility is informed in writing of the specific basis of the surveyor's determination:
      (A) a written assessment from a physician that states the resident is appropriately placed. The assessment must address the resident's medical conditions and related nursing needs, ambulatory and transfer abilities, and mental status;
      (B) a written statement from the resident that he wishes to remain in the facility. If the resident lacks capacity to give a written statement, a family member or guardian may give a statement that he wishes the resident to remain in the facility; and
(C) a statement from the facility that the facility wishes the resident to remain in the facility.

(2) A facility that does not meet all requirements for the evacuation of a designated resident must apply for a waiver from DADS of all applicable requirements for evacuation not met with respect to the resident. Documentation must be submitted not later than the 10th working day after the date the facility is informed in writing of the specific basis of the surveyor's determination.

(A) Documentation. When an evacuation waiver is requested, the following documentation must be submitted to DADS in addition to the documentation required in paragraph (1)(A)-(C) of this subsection:

(i) a detailed plan that explains how the facility will meet the evacuation needs of the resident. The plan should include, for example,
   (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;
(ii) a copy of the facility floor plan that indicates the specific resident's room;
(iii) a copy of the facility's emergency evacuation plan;
(iv) copies of the facility fire drills for the last 12-month period;
(v) a copy of the DADS notice form to the local fire marshal, or state fire marshal, if applicable (authority having jurisdiction), advising that the facility is requesting a waiver of the change of capability of resident evacuation. The DADS form must contain the signature of the fire authority having jurisdiction;
(vi) a copy of the DADS notice form to the local fire suppression authority advising that the facility is requesting a waiver of the change of capability of resident evacuation. The DADS form must contain the signature of the fire suppression authority having jurisdiction;
(vii) a copy of a comprehensive assessment of the resident, completed within the last 60 days, that addresses the areas required by subsection (c) of this section, and the service plan, that addresses all aspects of the resident's care, particularly those areas identified by DADS. The facility must address the resident's medical condition(s) and related nursing needs, hospitalizations within the last 60 days, any significant change in condition in the last 60 days, specific staffing needs, and services that are provided by an outside provider; and
(viii) any other information that relates to the required fire safety features of the facility that will ensure the evacuation capability of any resident.

(B) Criteria. Each facility has specific characteristics that vary from other facilities, which prevents the specification of a universal emergency procedure. A facility must meet the following criteria to receive a waiver from DADS:

(i) The facility must have an emergency plan to meet the evacuation needs of the resident. The plan 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) inclusion of all possible locations of the fire origin area is included in the emergency plan;
   (V) the emergency plan addresses all possible locations of fire origin areas and the necessity for full evacuation of the building;
   (VI) the fire alarm signal is adequate;
   (VII) there is an effective method for warning residents and staff during a malfunction of the building fire alarm system;
   (VIII) the plan is effective for communicating the actual location of the fire to staff; and
(IX) the plan satisfies any other safety concerns that could have an effect on the residents' safety in the event of a fire.

(ii) The facility must show that the emergency plan will not have an adverse effect on other residents of the facility who have waivers of evacuation and other residents of the facility who have special needs that require staff assistance. In evaluating whether the emergency plan will have an adverse effect on other residents, DADS may also review the service plans provided by the facility.

(C) Determination. DADS will review the documentation submitted under this subsection to determine whether to grant or deny a request for a waiver under this section. DADS notifies the facility in writing of its determination not later than the 10th working day after the date the request is received in DADS regional office.

(D) Plan of Action. Upon notification that DADS has approved a waiver of evacuation, the facility must immediately initiate all provisions of the proposed plan of action. If the facility does not follow the proper plan of action, and there are health and safety concerns, DADS may cite the facility for immediate threat to the health or safety of a resident.

(E) Waiver Renewal. A waiver of evacuation from DADS will be reviewed by DADS 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 required in this section, the facility must discharge the resident.

(A) The resident is allowed 30 days after the date 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.

(C) DADS will not assess an administrative penalty against the facility because of the inappropriate placement.

(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.

(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.

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

(i) Personnel records. The facility must keep personnel records on all staff in a central location.

(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; or
         (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 shall 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 (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 lay person must be calculated by a qualified dietitian. 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 §§229.161-229.171 and §§229.173-229.175 (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 (Control of Communicable Diseases) shall 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.
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 tuberculosis, 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 mental health and mental retardation 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.

§92.51 ~ LICENSURE OF FACILITIES FOR PERSONS WITH ALZHEIMER’S DISEASE

(a) Any facility 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:
(1) the fee as described in §92.20(b) of this chapter (relating to License Fees)
(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 and 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 canceled 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) 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.

(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).
(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.

(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.

(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.

§92.54 ~ ADVERTISEMENTS, SOLICITATIONS, AND PROMOTIONAL MATERIAL
An assisted living facility must use its state-issued facility identification number in all advertisements, solicitations, and promotional materials, including yellow pages, brochures, and business cards.

SUBCHAPTER D, REV 10-2
§92.61 ~ INTRODUCTION AND APPLICATION
(a) Classification of facilities.
   (1) A small facility is a building(s) consisting of one or more floors providing sleeping accommodations for 16 or fewer residents exclusive of "live-in" houseparents, family or staff.
   (2) A large facility is a building(s) consisting of one or more floors providing sleeping accommodations for 17 or more residents exclusive of "live-in" staff.
(b) Applicability of requirements for construction and life safety.
   (1) All buildings or structures, new or existing, used as a licensed assisted living facility must be in accordance with these standards. Any exceptions are specifically mentioned.
   (2) For existing buildings and structures which are converted to assisted living occupancy, no residents will be admitted until all standards are met and approval for occupancy is granted by the licensing section of DADS.
   (3) A licensed nursing facility or licensed hospital, meeting Chapter 12 or Chapter 13 of National Fire Protection Association 101 (NFPA 101), may be considered as an assisted living occupancy without additional fire safety features as may be specified in this subchapter.
   (4) Buildings and structures must conform to the 1988 edition of NFPA 101, as published by the National Fire Protection Association, Inc., Batterymarch Park, Quincy, Massachusetts 02269, as follows. DADS has the option, for new construction only, of accepting compliance with later editions of the code, in their entirety, when required by local building authorities.
      (A) All Type A facilities and small Type B facilities must conform to Chapter 21.
(B) Type B large facilities must conform to Chapter 12. The requirements of limited care, as defined by the NFPA 101, may be used.

(C) Other chapters, sections, subsections, or paragraphs of the NFPA 101 such as Chapters 1 through 7 and Chapter 31, must apply as referenced or intended for their relation to Chapters 21, 12 and 18.

(D) Buildings which contain living units with independent cooking and bathroom facilities must conform with NFPA 101, Chapters 21 and 18, New Apartment Buildings, Option #2, "Buildings provided with a complete automatic fire detection and notification system," as a minimum.

(5) New construction is subject to local codes. The description of the occupancy may vary with local codes. In the absence of local codes or their enforcement for new construction, the department will require conformance to the fundamentals of the following codes:

(A) the Uniform Building Code, 1988 edition by the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601, 'R' Occupancy, Divisions 1 and 3 for Type A facilities, and 'I' Occupancy for Large Type B facilities;

(B) the Uniform Plumbing Code, 1988 edition, as published by the International Association of Plumbing and Mechanical Officials, 5032 Alhambra Avenue, Los Angeles, California 90032;

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

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

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

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

(8) The facility must meet the provisions and requirements concerning accessibility for individuals with disabilities in the following laws: the Americans with Disabilities Act of 1990 (Public Law 101-336; Title 42, United States Code, Chapter 126); Title 28, Code of Federal Regulations, Part 35; Texas Civil Statutes, Article 9102; and Title 16, Texas Administrative Code, Chapter 68. Plans for new construction, substantial renovations, modifications, and alterations must be submitted to the Texas Department of Licensing and Regulation (Attn: Elimination of Architectural Barriers Program) for accessibility approval under Article 9102.

§92.62 ~ General Requirements

(a) General. The concept of the National Fire Protection Association (NFPA) 101 Life Safety Code requirements for fire safety with regard to the residents, is based on evacuation capability. In accordance with Chapter 21 of this title (relating to Residential Board and Care Occupancies), Type A facilities are classified "slow" evacuation capability and Type B facilities are classified "impractical" evacuation capability.

(b) Evacuation procedures. Residents in Type A facilities must be able to demonstrate to DADS that they can travel from their living unit to a centralized space, such as lobby, living or dining room on the level of discharge within a 13-minute period without continuous staff assistance. Elevators cannot be used as an evacuation route.

(c) Operational features.

(1) All fires causing damage to the facility and/or equipment must be reported to DADS within 72 hours. Any fire causing injury or death to a resident must be reported immediately. A telephone report must be followed by a written report on a form which will be supplied by DADS.

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

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

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

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

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

(e) Construction.

(1) There must be separation from other occupancies. A common wall between an assisted living facility and another occupancy must be not less than a two-hour fire-rated partition. (The partition must be as defined by National Fire Protection Association Standards.) A licensed nursing facility or licensed hospital is not considered another occupancy for this purpose. An exception is where an unlicensed occupancy occurs in the same building or structure and is so intermingled that separate safeguards are impracticable. The means of egress, construction, protection and other safeguards must comply with the National Fire Protection Association (NFPA) 101 requirements of the licensed occupancy.

(2) Interior wall and ceiling surfaces must have as the finished surface or as substrate or sheathing a fire resistance of not less than that provided by 3/8” gypsum board (20 minute fire rating), unless approved otherwise by DADS. A sprinkler system will not substitute for the minimum construction requirements. An exception is Type B large facilities shall meet the construction requirements of NFPA 101, Chapter 12, §12-1.6.

(3) Flame spread rate requirements must be as specified in NFPA 101, §6-5. Flame spread is 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).

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

(A) Small Type A facilities can have smoke resisting doors, with self-closing or automatic closing devices, provided the interior finish is Class ‘B’ or better and there are two remote exit routes.
(B) Small Type A facilities that have 20-minute fire-rated doors (or 1-3/4" solid core wood), Class 'B' or better interior finish, and two remote exit routes are not required to be self-closing or automatic-closing.

(C) In Small and Large Type A facilities protected throughout by an approved automatic sprinkler system, doors to resident bedrooms are not required to be self-closing or automatic-closing, except a three story or larger building which does not meet construction requirements of NFPA 101, Chapter 12.

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

(5) Upper floors must have at least two separate approved stairs. Each stair must be arranged and located so that it is not necessary to go through another room (such as bedroom or bath) to reach the stair. All stairs must be provided with handrails and with normal lighting. Refer to NFPA 101 for Cass 'A' stair details. An exception is that for existing 16 beds or less: at least one main stair may be Class 'B'. Such stairs may be constructed of wood.

(6) All hazardous areas, as defined in the NFPA 101, Chapter 21 or 12, must be one-hour fire-separated or provided with sprinkler protection or both if considered severe. Gasoline, volatile materials, oil base paint, or similar products must not be stored in the building housing residents.

(7) Exit signs, with emergency power, must be provided in all large facilities and installed in accordance with NFPA 101, §5-10.

(8) Emergency lighting must be provided in all buildings with 25 or more rooms; in apartment buildings with 12 or more living units or which are 3 or more stories in height; and in all large facilities that are designed for Type B. The system must be installed in accordance with NFPA 101, §5-9.

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

(f) Fire alarm and sprinkler systems.

(1) Fire alarm and smoke detection system. An underwriter's laboratory (U.L.) listed manual fire alarm initiating system, with an interconnected automatic smoke detection and alarm initiation system, must be provided in accordance with the NFPA 101, §7-6. The operation of any alarm initiating device will sound an audible/visual alarm(s) at the site.

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

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

(ii) A facility constructed to meet NFPA 101, Chapter 12, need only meet §12-3.4.5.1. for smoke detector locations.

(B) The fire alarm control panel must be visible to staff at or near the staff area that is attended 24 hours per day. An exception to this requirement is a fire alarm control panel that is monitored by a device carried by the staff.

(C) The primary power source for the complete fire alarm system must be commercial electric and permanently wired for power on a dedicated circuit in accordance with the National Electrical Code.

(D) Emergency power source must be from approved storage batteries or on-site engine-driven generator set.

(E) The facility must have a written contract with a fire alarm firm which has been issued an Alarm Certificate of Registration(ACR) number from the Texas State Fire Marshal's Office to
perform the inspection, test and maintenance requirements of NFPA 72 semiannually. Inspections stipulated in the contract must be performed. The person performing the semiannual service must have an individual fire alarm license from the Texas State Fire Marshal's Office. All other NFPA 72 requirements should be performed and documented by a knowledgeable individual.

(F) Smoke detector sensitivity must be checked within one year after installation and every alternate year thereafter in accordance with NFPA 72. Documentation, including as-built installation drawings, operation and maintenance manuals, and a written sequence of operation, must be available for examination by DADS.

(G) In large facilities, the fire alarm panel must indicate as a separate zone, each floor and/or smoke compartment. Each zone must have an alarm and trouble indication.

(H) In large Type B facilities the fire alarm must automatically notify the fire department in accordance with NFPA 101, §7-6.4.

(I) Small Type A facilities, licensed for eight beds or less, may provide a manual fire alarm system, with smoke detection that complies with Household Fire Warning Equipment (NFPA 74), at a minimum.

(2) Sprinkler systems. When installed or required, sprinkler systems must be inspected, tested, and maintained in accordance with NFPA 25. The facility must have a written contract with a fire protection sprinkler firm, that has been issued a Sprinkler Certificate of Registration number (SCR) from the Texas State Fire Marshal's Office, to perform the required services semiannually. The facility must have documentation available to show that all the requirements of NFPA 25 have been met including the annual inspection, test, and maintenance by the registered fire sprinkler firm. The facility should retain one set of the fire sprinkler system plans and hydraulic calculations on the property.

(A) Small Type A facilities housing 16 or fewer residents may have a system that meets NFPA 13D requirements. Small Type B facilities housing 16 or fewer residents must be protected by a sprinkler system in compliance with NFPA 13 or NFPA 13D, with additional requirements for coverage in all habitable areas and closets as specified by NFPA 101, Chapter 21.

(B) Large Type B facilities must have a complete NFPA 13 system.

(C) Large Type A facilities may have an NFPA 13R system (up to and including three stories).

(g) Site and location.

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

(2) Any site or building conditions that are a fire hazard, health hazard, or physical hazard must have corrections made as determined by DADS.

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

(4) Ramps, walks, and steps must be of slip-resistant texture and uniform, without irregularities. Ramps must not exceed 1:12 slope, and must meet handicap standards for width. Guardrails, fences, or handrails must be provided where grades make an abrupt change in level.

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

(h) Sanitation and housekeeping.

(1) Waste water and sewage must be discharged into an approved sewerage system or an onsite sewerage facility approved by the Texas Natural Resource Conservation Commission or its authorized agent.
(2) The water supply must be of safe, sanitary quality, suitable for use, and adequate in quantity and pressure, and must be obtained from a water supply system, the location, construction, and operation of which are approved by DADS.

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

(4) Operable windows must be insect screened.

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

(6) All bathrooms, toilet rooms, and other odor-producing rooms or areas for soiled and unsanitary operations must be ventilated with operable windows or powered exhaust to the exterior for odor control. An exception is that small facilities may vent into an attic in accordance with the Uniform Building Code or local building code.

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

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

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

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

(11) A public/staff toilet, i.e. commode and lavatory, complying with accessibility standards is required for every large facility up to and including 60 beds. Facilities over 60 beds must have separate public and staff toilets in addition to the staff toilet(s) required for the dietary staff.

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

(i) General safety features.

(1) The facility must have an annual inspection by the local fire marshal as part of the renewal procedures listed in §92.15 of this title (relating to Renewal Procedures and Qualifications).

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

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

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

(5) In large facilities, all new floor carpet installed in public or common spaces after the initial inspection by the department must be Class I or II based on the "Critical Radiant Flux" ratings. Proper documentation must be provided.
(6) Open flame heating devices are prohibited. All fuel burning heating devices must be vented. Working fireplaces are acceptable if of safe design and construction and if screened or otherwise enclosed.

(7) There must be at least one telephone in the facility available to both staff and residents for use in case of an emergency. Emergency telephone numbers, including at least fire, police, ambulance, EMS, and poison control center, must be posted conspicuously at or near the telephone.

(8) An initial pressure test of facility gas lines from the meter must be provided. Additional pressure tests will be required when the facility has major renovations or additions where the gas service is interrupted. All gas heating systems must be checked prior to the heating season for proper operation and safety by persons who are licensed or approved by the State of Texas to inspect such equipment. A record of this service must be maintained by the facility. Any unsatisfactory conditions must be corrected promptly.

(9) Exterior and interior stairs must have handrails that are firmly secured to prevent falls.

(10) Cooling and heating must be provided for occupant comfort. Conditioning systems must be capable of maintaining the comfort ranges of 68 degrees Fahrenheit to 82 degrees Fahrenheit in resident-use areas. A facility constructed or licensed after August 1, 2004, must have a central air conditioning system, or a substantially similar air conditioning system, that is capable of maintaining a temperature suitable for resident comfort within areas used by residents. Heating, ventilating, and air conditioning (HVAC) equipment must comply with the provisions of NFPA 90A or 90B, as applicable. NFPA 90A requires automatic shut down upon activation of the fire alarm in HVAC systems of over 2,000 cubic feet per minute (cfm) capacity.

(11) The Illumination Engineering Society of North America recommendations must be followed to achieve proper illumination characteristics and lighting levels throughout the facility. Minimum illumination must be 10 footcandles in resident rooms during the day and 20 footcandles in corridors, staff stations, dining rooms, lobbies, toilets, bathing facilities, laundries, stairways and elevators during the day. Illumination requirements for these areas apply to lighting throughout the space and should be measured at approximately 30 inches above the floor anywhere in the room. Minimum illumination for medication preparation or storage areas, kitchens, and staff station desks must be 50 footcandles during the day. Illumination requirements for these areas apply to the task performed and should be measured on the tasks.

(12) All buildings three floors or higher and in facilities that provide services, treatment, or social activities on floors above or below the level of discharge and which house mobility impaired residents must have a passenger elevator. The lowest level of discharge will be the first floor for determining floor level.

(13) Floor, ceiling, and wall finish materials must be complete and in place to provide a sanitary and structurally safe environment.

(14) All equipment requiring periodic maintenance, testing, and servicing must be reasonably accessible. Necessary equipment to conduct these services, such as ladders, specific tools, and keys, must be readily available on site. Access panels (20" x 20" minimum) must be provided for building maintenance and must be located for reasonable access to equipment or barriers installed in the attic or other concealed spaces.

(15) The facility must implement procedures, in accordance with the standards and recommendations of the Compressed Gas Association, that assure safe and sanitary use and storage of oxygen. Liquid oxygen containers must be certified by Underwriters Laboratory (UL) or other approved testing laboratory for compliance with NFPA 50 requirements. The facility is responsible for defining all potential hazards both graphically and verbally to all persons involved in the use of liquid oxygen and ensuring the liquid oxygen provider does also.

(j) Portable fire extinguishers. Portable fire extinguishers must be provided and maintained to comply with the provisions of the National Fire Protection Association (NFPA) 10. This includes such items as type of extinguishers (A, B, or C), location and spacing, mounting heights, monthly inspections by
staff, yearly inspections by a licensed agent (with any necessary servicing), and hydrostatic testing as recommended by the manufacturer.

(1) Extinguishers in resident corridors must be spaced so that travel distance is not more than 75 feet. The minimum size of extinguishers must be either 2½ gallon for water type or five pound for ABC type. In large facilities, at least one portable Underwriters Laboratory (U.L.) or factory mutual (F.M.)-approved five-pound Class B:C dry chemical fire extinguisher, rechargeable type, is required in each laundry, kitchen, and walk-in mechanical room.

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

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

(4) Extinguishers having a gross weight not exceeding 40 pounds must be installed so that the top of the extinguisher is not more than five feet above the floor. Extinguishers with a gross weight greater than 40 pounds must be installed so the top of the extinguisher is not more than 3½ feet above the floor. The clearance between the bottom of the extinguisher and the floor must not be less than four inches.

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

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

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

(k) Waste and storage containers.

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

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

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

(m) Resident accommodations.

(1) Resident bedrooms.

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

(B) Bedroom usable floor space for Type B facilities must be not less than 100 square feet per bed for a single-bed room and not less than 80 square feet per bed for a multiple-bed room. Bedrooms for persons with physical disabilities and/or mobility impairment must meet accessibility standards for access around the bed or beds, i.e., minimum of 3'-0" clear width for access aisles. A bedroom must not be less than ten feet in the smallest dimension unless specifically approved otherwise by DADS.
(C) In facilities that have living units consisting of separate living/dining spaces and bedrooms, 10% of the required bedroom square footage may be included as part of the living/dining space.

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

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

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

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

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

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

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

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

(2) Resident toilet and bathing facilities.

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

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

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

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

(E) Resident-use hot water for lavatories and bathing units will be maintained between 100 degrees Fahrenheit and 120 degrees Fahrenheit.
(F) Towels, soap, and toilet tissue must be available at all times for individual resident use.

(3) Resident living areas.
(A) Social-diversional spaces such as living rooms, day rooms, lounges, sun rooms, etc., must be provided and have appropriate furniture. A minimum of 120 square feet must be provided in at least one space regardless of number of residents. This space must have exterior windows providing a view of the outside.

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

<table>
<thead>
<tr>
<th># of Beds</th>
<th>Area per Bed Minimum</th>
</tr>
</thead>
<tbody>
<tr>
<td>04 - 16</td>
<td>15 sq ft (min 120 sq ft)</td>
</tr>
<tr>
<td>17 - 39</td>
<td>13 sq ft</td>
</tr>
<tr>
<td>40 - 59</td>
<td>12 sq ft</td>
</tr>
<tr>
<td>60+</td>
<td>10 sq ft</td>
</tr>
</tbody>
</table>

(C) Where a required way of exit (or a service way) is through such living or dining area, a pathway equal to the corridor width will normally be deducted for calculation purposes and discounted from that area. Such exit pathways must be kept clear of obstructions.

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

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

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

<table>
<thead>
<tr>
<th># of Beds</th>
<th>Area per Bed Minimum</th>
</tr>
</thead>
<tbody>
<tr>
<td>04 - 16</td>
<td>15 sq ft (min 120 sq ft)</td>
</tr>
<tr>
<td>17 - 39</td>
<td>13 sq ft</td>
</tr>
<tr>
<td>40 - 59</td>
<td>12 sq ft</td>
</tr>
<tr>
<td>60+</td>
<td>10 sq ft</td>
</tr>
</tbody>
</table>

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

(5) Storage areas. The facility must provide sufficient separate storage spaces or areas for the following:
(A) administration for records and office supplies;
(B) locked areas for medications and medical supplies. Poisons must be stored in a locked area and separate from all medications and preparation;
(C) equipment supplied by the facility for resident needs such as wheelchairs, walkers, beds, mattresses, etc.;
(D) cleaning supplies (janitorial needs);
(E) food storage;
(F) clean linens and towels if furnished by the facility;
(G) lawn and maintenance equipment, if needed;
(H) janitor(s) closet with deep sink and hot and cold water (large facilities only); and
(I) soiled linen storage or holding room(s), if the facility furnishes linen.

(6) Kitchen.
(A) The facility must have a kitchen or dietary area to meet the general food service needs of the residents. It must include provisions for the storage, refrigeration, preparation, and serving of food; for dish and utensil cleaning; and for refuse storage and removal. Exception: Food may be prepared off-site or in a separate building provided that the food is served at the proper temperature and transported in a sanitary manner.
(B) Kitchens (main/dietary) for facilities serving 17 or more non-employees per meal on a routine basis must be as follows.

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

(I) Consideration must be given to planning for the type of meals served, the overall building design, the food service equipment, arrangement, and the work flow involved in the preparation and delivery of food.

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

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

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

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

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

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

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

(viii) Janitorial facilities must be provided exclusively for the kitchen and must be located in the kitchen area. An exception is that Janitorial closets in existing facilities may be located outside of the kitchen area provided sanitary procedures are used to reduce the possibility of cross-contamination.

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

(x) Doors between kitchen and dining or serving areas must have ¼-inch fixed wire glass view panel mounted in a steel frame.

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

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

(xiii) A commercial range must be provided and equipped with a commercial range hood and exhaust designed and installed in accordance with NFPA 96. Small facilities with residential ranges may have residential range hoods, if they meet the Uniform Building Code (or local building code).

(xiv) Grease traps must be provided as required.
(C) Food storage areas for large facilities must be as follows.
   (i) Food storage areas must provide for storage of a four-day minimum supply of non-perishable foods at all times.
   (ii) Shelves must be adjustable wire type. An exception is that existing facilities with wood shelves may continue to use the shelves provided they are kept sealed and clean.
   (iii) Walls and floors must have a non-absorbent finish to provide a cleanable surface.
   (iv) Food must not be stored on the floor. Dollies, racks, pallets, or wheeled containers may be used to elevate foods not stored on shelving.
   (v) Dry foods storage must have an effective venting system to provide for positive air circulation.
   (vi) The maximum room temperature for food storage must not exceed 85 degrees Fahrenheit at any time. The measurement must be taken at the highest food storage level, but not less than five feet from the floor.
   (vii) Food storage areas may be located apart from the food preparation area as long as there is space adjacent to the kitchen for necessary daily usage.

(D) Auxiliary serving kitchens (not contiguous to food preparation/serving area) must be as follows.
   (i) Where service areas other than the kitchen are used to dispense foods, these must be designated as food service areas and must have equipment for maintaining required food temperatures while serving.
   (ii) Separate food service areas must have hand washing facilities as part of the food service area.
   (iii) Finishes of all surfaces, except ceilings, must be the same as those required for dietary kitchens or comparable areas.

(7) Laundry/linen services.
   (A) A large assisted living facility which co-mingles and processes laundry on-site in a central location must comply with the following.
      (i) The laundry must be separated and provided with sprinkler protection if located in the main building. (Separation must consist of a one-hour fire rated partition carried to the underside of the floor or roof deck above.) Access doors must be from the exterior or interior non-resident use areas, such as a small vestibule or service corridor.
      (ii) The laundry must be provided with the following physical features:
          (I) a soiled linen receiving, holding, and sorting room with a floor drain and forced exhaust to the exterior which must operate at all times there is soiled linen being held in this area. (This may be combined with the washer section.);
          (II) a general laundry work area which is separated by partitioning two areas—a washer section and a dryer section;
          (III) a storage area for laundry supplies;
          (IV) a folding area;
          (V) adequate air supply and ventilation for staff comfort without having to rely on opening a door that is part of the fire wall separation; and
          (VI) provisions to exhaust heat from dryers and to separate dryer make-up air from the habitable work areas of the laundry.
   (B) If linen is processed off the site, the following must be provided on the premises:
      (i) a soiled linen holding room (provided with adequate forced exhaust ducted to the exterior); and
      (ii) a clean linen receiving, holding, inspection, sorting or folding, and storage room(s).
   (C) Resident-use laundry, if provided, must utilize residential type washers and dryers. If more than three washers and three dryers are located in one space, the area must be one-hour fire separated or provided with sprinkler protection.
§92.63 ~ CONSTRUCTION AND INITIAL SURVEY OF COMPLETED CONSTRUCTION

(a) Construction phase.
(1) DADS Regulatory Services Division, Licensing Section in Austin, Texas, must be notified in writing of construction start.
(2) All construction must be done in accordance with minimum licensing requirements. It is the sponsor’s responsibility to employ qualified personnel to prepare the contract documents for construction of a new facility or remodeling of an existing facility. Contract documents for additions and remodeling and for the construction of an entirely new facility must be prepared by an architect licensed by the Texas State Board of Architectural Examiners. Drawings must bear the seal of the architect. Certain parts of contract documents (including final plans, designs, and specifications) must bear the seal of a licensed professional engineer approved by the Texas Board of Professional Engineers to operate in Texas or, as permitted by subsections (b)(12) and (15) of this section, signed by a Responsible Managing Employee or Alarm Planning Superintendent licensed by the State Fire Marshal’s Office. These certain parts include sheets and sections covering structural, electrical, mechanical, sanitary, and civil engineering.
(A) Remodeling is the construction, removal, or relocation of walls and partitions; the construction of foundations, floors, or ceiling-roof assemblies; or the expanding or altering of safety systems (including, but not limited to, sprinkler, fire alarm, and emergency systems).
(B) General maintenance and repairs of existing material and equipment, repainting, applications of new floor, wall, or ceiling finishes, or similar projects are not included as remodeling, unless as a part of new construction. DADS must be provided flame spread documentation for new materials applied as finishes.

(b) Contract documents.
(1) Site plan documents must include grade contours; streets (with names); North arrow; fire hydrants, fire lanes, utilities, public or private; fences; unusual site conditions, such as ditches, low water levels, other buildings on-site; and indications of buildings five feet or less beyond site property lines.
(2) Foundation plan documents must include general foundation design and details.
(3) Floor plan documents must include room names, numbers, and usages; doors (numbered) including swing; windows; legend or clarification of wall types; dimensions; fixed equipment; plumbing fixtures; and kitchen basic layout; and identification of all smoke barrier walls (outside wall to outside wall) or fire walls.
(4) For both new construction and additions or remodeling to existing buildings, an overall plan of the entire building must be drawn or reduced to fit on an 8½ inch by 11 inch sheet; submit two reduced plans for file record. See subsection (d)(3) of this section.
(5) Schedules must include door materials, widths, types; window materials, sizes, types; room finishes; and special hardware.
(6) Elevations and roof plan must include exterior elevations, including material note indications and any roof top equipment; roof slopes, drains, and gas piping, and interior elevations where needed for special conditions.
(7) Details must include wall sections as needed (especially for special conditions); cabinet and built-in work, basic design only; cross sections through buildings as needed; and miscellaneous details and enlargements as needed.
(8) Building structure documents must include structural framing layout and details (primarily for column, beam, joist, and structural frame building); roof framing layout (when this cannot be adequately shown on cross section); cross sections in quantity and detail to show sufficient structural design and structural details as necessary to assure adequate structural design, also calculated design loads.
(9) Electrical documents must include electrical layout, including lights, convenience outlets, equipment outlets, switches, and other electrical outlets and devices; service, circuiting, distribution, and panel diagrams; exit light system (exit signs and emergency egress lighting);
emergency electrical provisions (such as generators and panels); and similar systems (such as control panel, devices, and alarms); sizes and details sufficient to assure safe and properly operating systems; and a staff communication system.

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

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

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

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

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

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

(c) Initial survey of completed construction.

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

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

(3) After the completed construction has been surveyed by DADS and found acceptable, this information will be conveyed to the licensing officer of DADS as part of the information needed to issue a license to the facility. In the case of additions or remodeling of existing facilities, a revision or modification to an existing license may be necessary. Note that the building, grades, drives, and parking must essentially be 100% complete at the time of this initial visit for occupancy approval and licensing, including basic furnishings and operational needs. A facility may accept up to three residents between the time it receives initial approval from the architectural section and the time the license is issued.

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

(A) written approval of local authorities as called for in paragraph (1) of this subsection;
(B) record drawings of the fire detection and alarm system as installed, signed by an Alarm Planning Superintendent licensed by the State Fire Marshal's office or sealed by a licensed professional engineer.
professional engineer, including a sequence of operation, the owner's manuals and the manufacturer's published instructions covering all system equipment, a signed copy of the State Fire Marshal's Office Fire Alarm Installation Certificate, and, for software-based systems, a record copy of the site-specific software (excluding the system executive software or external programmer software) in a non-volatile, non-erasable, non-rewritable memory;

(C) documentation of materials used in the building which are required to have a specific limited fire or flame spread rating including special wall finishes or floor coverings, flame retardant curtains (including cubicle curtains), rated ceilings, etc. This must include a signed letter from the installer, in the case of carpeting, etc., verifying that the carpeting installed is named in the laboratory test document;

(D) record drawings of the fire sprinkler system as installed, signed by a Responsible Managing Employee, licensed by the State Fire Marshal's Office or sealed by a licensed professional engineer, including the hydraulic calculations, alarm configuration, aboveground and underground Contractor's Material and Test Certificate, all literature and instructions provided by the manufacturer describing the proper operation and maintenance of all equipment and devices in accordance with NFPA 25, Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems;

(E) service contracts for maintenance and testing of alarm systems, sprinkler systems, etc.;

(F) a copy of gas test results of the facility's gas lines from the meter;

(G) a written statement from an architect/engineer stating that, from periodic onsite observation visits, the facility as constructed is, to the best of his/her knowledge and belief, in substantial compliance with his/her construction documents, the Life Safety Code, DADS licensure standards, and local codes; and

(H) the contract documents specified in subsection (b) of this section.

(d) Nonapproval of new construction.

(1) If, during the initial on-site survey of completed construction, the surveyor finds certain basic requirements not met, he may recommend to the department that the facility not yet be licensed and approved for occupancy. Such basic items may include the following:

(A) construction which does not meet minimum code or licensure standards for basic requirements such as corridors being less than required width, ceilings installed at less than the minimum seven-foot six-inch height, resident bedroom dimensions less than required, and other such features which would disrupt or otherwise adversely affect the residents and staff if corrected after occupancy;

(B) no written approval by local authorities having jurisdiction, including the fire marshal, health department, and building inspector;

(C) fire protection systems not completely installed or not functioning properly, including, but not limited to, fire alarm systems, emergency power and lighting, and sprinkler systems;

(D) required exits not all usable according to NFPA 101 requirements;

(E) telephone not installed or not properly working;

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

(G) any other basic operational or safety feature which the surveyor, as the authority having jurisdiction, encounters which in his judgment would preclude safe and normal occupancy by residents on that day.

(2) If the surveyor encounters only less basic (and less important) deficiencies, licensure may be recommended based on an approved written plan of correction from the facility's administrator.

(3) Copies of reduced size floor plans on an 8½ inch by 11 inch sheet must be submitted in duplicate to the department for record/file use and for the facility's use and for facility's use for evacuation plan, fire alarm zone identification, etc. The plan must contain basic legible information such as scale, room usage names, actual bedroom numbers, doors, windows, and any other pertinent information.
§92.64 ~ PLANS, APPROVALS, AND CONSTRUCTION PROCEDURES

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

(1) Submittal of plans.

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

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

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

(D) Plans and specifications for conversions or remodeling must be complete for all parts and features involved.

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

(F) The review of plans and specifications by DADS is based on general utility, the minimum licensing standards, and conformance of the Life Safety Code, and is not to be construed as all-inclusive approval of the structural, electrical, or mechanical components, nor does it include a review of building plans for compliance with the Texas Accessibility Standards as administered and enforced by the Texas Department of Licensing and Regulation.

(G) Fees for plan review will be required in accordance with §92.20 of this title (relating to License Fees).

(2) Contract documents.

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

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

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

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

(E) Schedules must include door materials, widths, and types; window materials, sizes, and types; room finishes; and special hardware.
(F) Elevations and roof plan must include exterior elevations, including material note indications and any roof top equipment; roof slopes, drains, gas piping, etc., and interior elevations where needed for special conditions.

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

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

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

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

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

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

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

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

(3) Construction phase.

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

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

(4) Initial survey of completed construction.

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

(B) After DADS surveys the completed construction and finds it acceptable, DADS forwards this information to the Facility Enrollment Section as part of the information needed to issue a license to the facility. In the case of additions or remodeling of existing facilities, a revision or modification to an existing license may be necessary. Note that the building, including basic...
furnishings and operational needs, grades, drives, and parking must be essentially 100% complete at the time of this initial visit for occupancy approval and licensing. A facility may accept up to three residents between the time it receives initial approval from DADS and the time the license is issued unless a provisional license has been granted.

(C) The following documents must be available to DADS’s NFPA 101 inspecting surveyor at the time of the survey of the completed building:

(i) written approval of local authorities as required in subparagraph (A) of this paragraph;
(ii) written certification of the fire alarm system by the installing agency (Form FML-009) of the Texas State Fire Marshal;
(iii) documentation of materials used in the building which are required to have a specific limited fire or flame spread rating, including special wall finishes or floor coverings, flame retardant curtains (including cubicle curtains), rated ceilings, etc., and, in the case of carpeting, a signed letter from the installer verifying that the carpeting installed is named in the laboratory test document;
(iv) approval of the completed sprinkler system installation by the Texas Department of Insurance or designing engineer. A copy of the material list and test certification must be available;
(v) service contracts for maintenance and testing of alarm systems, sprinkler systems, etc.;
(vi) a copy of gas test results of the facility’s gas lines from the meter;
(vii) a written statement from an architect/engineer stating, to the best of his/her knowledge, the building was constructed in substantial compliance with the construction documents, the Life Safety Code, DADS licensure standards, and local codes; and
(viii) any other such documentation as needed.

(5) Nonapproval of new construction.

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

(i) substantial changes made during construction which were not submitted to DADS for review and which may require revised “as-built” drawings to cover the changes. This may include architectural, structural, mechanical, and electrical items as specified in paragraph (3)(B) of this section;
(ii) construction which does not meet minimum code or licensure standards, such as corridors being less than required width, ceilings installed at less than the minimum seven-foot six-inch height, resident bedroom dimensions less than required, and other such features which would disrupt or otherwise adversely affect the residents and staff if corrected after occupancy;
(iii) no written approval by local authorities;
(iv) fire protection systems, including, but not limited to, fire alarm systems, emergency power and lighting, and sprinkler systems, not completely installed or not functioning properly;
(v) required exits not all usable according to NFPA 101 requirements;
(vi) telephone not installed or not properly working;
(vii) sufficient basic furnishings, essential appliances, and equipment not installed or not functioning; and
(viii) any other basic operational or safety feature which would preclude safe and normal occupancy by residents on that day.

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

(C) Copies of reduced size floor plans on an 8 1/2 inch by 11 inch sheet must be submitted in duplicate to DADS for record/file use and for the facility’s use for evacuation plan, fire alarm zone identification, etc. The plan must contain basic legible information such as scale, room usage names, actual bedroom numbers, doors, windows, and any other pertinent information.
SUBCHAPTER E, REV 03-1

§92.81 ~ INSPECTIONS AND SURVEYS

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

(b) An inspection may be conducted by an individual surveyor or by a team, depending on the purpose of the inspection or survey, size of facility, and service provided by the facility, and other factors.

(c) To determine standard compliance which cannot be verified during regular working hours, night or weekend inspections may be conducted to cover specific segments of operation and will be completed with the least possible interference to staff and residents.

(d) Generally, all inspections, surveys, complaint investigations and other visits, whether routine or nonroutine, made for the purpose of determining the appropriateness of resident care and day-to-day operations of a facility will be unannounced; any exceptions must be justified.

(e) Certain visits may be announced, including, but not limited to, visits to determine conditions when certain emergencies arise, such as fire, windstorm, or malfunctioning or nonfunctioning of electrical or mechanical systems.

(f) The facility must make all books, records, and other documents maintained by or on behalf of a facility accessible to DADS upon request.
   (1) DADS is authorized to photocopy documents, photograph residents, and use any other available recording devices to preserve all relevant evidence of conditions found during an inspection, survey, or investigation that DADS reasonably believes threaten the health and safety of a resident.
   (2) Records and documents which may be requested and photocopied or otherwise reproduced include, but are not limited to, admission sheets, medication profiles, observation notes, medication refusal notes, and menu records.
   (3) When the facility is requested to furnish the copies, the facility may charge DADS at the rate not to exceed the rate charged by DADS for copies. Collection must be by billing DADS. The procedure of copying is the responsibility of the administrator or his designee. If copying requires removal of the records from the facility, a representative of the facility will be expected to accompany the records and assure their order and preservation.
   (4) DADS will protect the copies for privacy and confidentiality in accordance with recognized standards of medical records practice, applicable state laws, and DADS policy.

§92.82 ~ DETERMINATIONS AND ACTIONS PURSUANT TO INSPECTIONS

(a) DADS will determine if a facility meets the licensing rules, including both physical plant and facility operation requirements.

(b) Violations of regulations will be listed on an inspection checklist designed for the purpose of the inspection and will include a specific reference in the Assisted Living Standards for the violations cited.

(c) At the conclusion of an inspection, the inspector will perform an exit conference to advise the assisted living facility of the findings resulting from the inspection.

(d) At the exit conference, the inspector will provide a copy of the inspection checklist to the assisted living facility and list each violation discovered during the inspection, with specific reference to the standard violated.

(e) If, after the initial exit conference, additional violations are cited, the inspector will conduct an additional exit conference regarding the newly identified violations, with specific reference to the standard violated.

(f) The facility must submit an acceptable plan of correction to the regional director not later than 10 calendar days after receiving notice that the final exit conference has been completed. An acceptable plan of correction must address the following areas:
   (1) how corrective action will be accomplished for those residents affected by the violation(s);
(2) how the facility will identify other residents with the potential to be affected by the same violation(s);
(3) the measures that will be put into place or systemic changes made to ensure the violation(s) will not recur;
(4) how the facility will monitor its corrective actions to ensure that the violation(s) are being corrected and will not recur; and
(5) dates when corrective action will be completed.

(g) A clear and concise summary in nontechnical language of each licensure inspection, inspection of care, and/or complaint investigation will be provided by DADS. That summary will be in a form outlining significant violations noted at the time of the visit, but will not include names of residents, staff, or any other statement that would identify individual residents or other prohibited information under general rules of public disclosure. The summary will be provided to the facility at the time the report of contact or similar document is provided.

(h) If the provider and the inspector cannot resolve a dispute regarding a violation of regulations, the provider is entitled to an informal dispute resolution (IDR) at the regional level for all violations. For a violation which resulted in an adverse action, the provider is entitled to an IDR at either the regional or state office level.

(1) A written request and all supporting documentation must be submitted to the Regional Director, Long Term Care-Regulatory, for a regional IDR, or to Long Term Care-Regulatory, DADS, PO Box 149030 (E-343), Austin, TX 78714-9030, for a central office IDR, no later than the tenth calendar day after receipt of the official statement of violations.
(2) DADS will complete the IDR process no later than the 30th calendar day after receipt of a request from a facility.
(3) Violations deemed invalid in an IDR will be so noted in DADS's records.

SUBCHAPTER F, REV 03-1

§92.101 ~ DEFINITIONS OF "ABUSE," "NEGLECT," AND "EXPLOITATION"
For purposes of this subchapter, the definitions of "abuse," "neglect," and "exploitation" are those found in Chapter 48, Human Resources Code, and in reference to children, those found in the Family Code, §261.001.

§92.102 ~ ABUSE, NEGLECT, OR EXPLOITATION REPORTABLE TO DADS BY FACILITIES
(a) Any facility staff who has reasonable cause to believe that a resident is in a state of abuse, neglect, or exploitation must report the abuse, neglect, or exploitation to DADS's state office at 1-800-458-9858 and must follow the facility's internal policies regarding abuse, neglect, or exploitation.
(b) The following information must be reported to DADS:
   (1) name, age, and address of the resident;
   (2) name and address of the person responsible for the care of the resident, if available;
   (3) nature and extent of the elderly or disabled person's condition;
   (4) basis of the reporter's knowledge; and
   (5) any other relevant information.
(c) The facility must investigate the alleged abuse or neglect and send a written report of the investigation to DADS's state office no later than the fifth calendar day after the oral report.
(d) A facility may not retaliate against a person for filing a complaint, presenting a grievance, or providing in good faith information relating to personal care services provided by the facility.

§92.103 ~ COMPLAINT INVESTIGATION
(a) A complaint is any allegation received by DADS regarding abuse, neglect, or exploitation of a resident, or a violation of state standards.
(b) DADS must give the facility notification of the complaint received and a summary of the complaint, without identifying the source of the complaint.
§92.105 ~ INVESTIGATIONS OF COMPLAINTS
(a) In accordance with the memorandum of understanding (relating to Memorandum of Understanding Concerning Protective Services for the Elderly), between DADS and the Texas Department of Protective and Regulatory Services, DADS receives and investigates reports of abuse, neglect, and exploitation of elderly and disabled persons or other residents living in facilities licensed under this chapter.  
(b) DADS only investigates complaints of abuse, neglect, or exploitation when the act occurs in the facility, when the licensed facility is responsible for the supervision of the resident at the time the act occurs, or when the alleged perpetrator is affiliated with the facility. Other complaints of abuse, neglect, or exploitation not meeting this criteria must be referred to the Texas Department of Protective and Regulatory Services.  
(c) Complaint investigations must include a visit to the resident's facility and consultation with persons thought to have knowledge of the circumstances. If the facility fails to admit DADS staff for a complaint investigation, DADS will seek a probate or county court order for admission. Investigators may request of the court that a peace officer accompany them.  
(d) In cases concluded to be physical abuse, the written report of the investigation by DADS must be submitted to the appropriate law enforcement agency.  
(e) In cases concluded to be abuse, neglect, or exploitation of a resident with a guardian, the written report of the investigation by DADS must be submitted to the probate or county court which oversees the guardianship.  

§92.106 ~ GENERAL PROVISIONS
(a) Confidentiality. All reports, records, and working papers used or developed by DADS in an investigation are confidential and may be released only as provided in this subsection.  
(1) Completed written investigation reports on cases concluded to be abuse or neglect must be furnished to the district attorney and appropriate law enforcement agency. DADS also may release these reports to any other public agency DADS deems appropriate to the investigation.  
(2) Completed written investigation reports are open to the public, provided the report is deidentified. The process of deidentification means removing all names and other personally identifiable data, including any information from witnesses and others furnished to the department as part of the investigation.  
(3) The reporter and the facility will be notified of the results of the department's investigation of a reported case of abuse or neglect, whether the department concluded that abuse or neglect occurred or did not occur.  
(b) Immunity. A person who reports suspected instances of abuse or neglect, in the absence of bad faith or malicious conduct, will be immune from civil or criminal liability which might have otherwise resulted from making the report. Such immunity extends to participation in any judicial proceeding resulting from the report.  
(c) Privileged communications. In a proceeding regarding a report or investigation conducted under this subchapter, evidence must not be excluded on a claim of privileged communication except in the case of a communication between an attorney and a client.  
(d) Central registry. DADS maintains a central registry of reported cases of abuse and neglect at the central office in Austin.  

SUBCHAPTER G, REV 10-2
§92.123 ~ INVESTIGATION OF FACILITY EMPLOYEES
(a) A facility must comply with the provisions of Chapter 250 of the Health and Safety Code (relating to Criminal History Checks of Employees and Applicants for Employment in Certain Facilities Serving the Elderly or Persons with Disabilities).  
(b) Before a facility hires an employee, the facility must search the Employee Misconduct Registry (EMR) established under §253.007, Health and Safety Code, and DADS Nurse Aide Registry (NAR)
to determine if the individual is designated in either registry as unemployable. Both registries can be accessed on DADS Internet website.

(c) A facility is prohibited from hiring or continuing to employ a person who is listed in the EMR or NAR as unemployable.

(d) A facility must provide notification about the EMR to an employee in accordance with §93.3 of this title (relating to Employment and Registry Information).

(e) In addition to the initial search of the NAR and the EMR, a facility must conduct a search of the NAR and the EMR to determine if the employee is designated in either registry as unemployable as follows:
   (1) for an employee most recently hired before September 1, 2009, by August 31, 2011 and at least every twelve months thereafter;
   (2) for an employee most recently hired on or after September 1, 2009, at least every twelve months; and
   (3) keep a copy of the results of the initial and annual searches of the NAR and EMR in the employee's personnel file.

§92.124 ~ PROCEDURES FOR INSPECTION OF PUBLIC RECORDS

(a) Procedures for inspection of public records will be in accordance with the Texas Open Records Act, Texas Civil Statutes, Article 6252-17a, and as further described in this section.

(b) Long Term Care — Regulatory, DADS, will be responsible for the maintenance and release of records on licensed facilities, and other related records.

(c) The application for inspection of public records is subject to the following criteria.
   (1) The application must be made to Long Term Care - Regulatory, DADS, PO Box 149030 (E-349), Austin, Texas 78714-9030.
   (2) The requestor must identify himself/herself.
   (3) The requestor must give reasonable prior notice of the time for inspection and/or copying of records.
   (4) The requestor must specify the records requested.
   (5) On written applications, if DADS is unable to ascertain the records being requested, DADS may return the written application to the requestor for further specificity.
   (6) DADS must provide the requested records as soon as possible. However, if the records are in active use, or in storage, or time is needed for proper deidentification or preparation of the records for inspection, DADS must so advise the requestor and set an hour and date within a reasonable time when the records will be available.

(d) Original records may be inspected or copied, but in no instance will original records be removed from department offices.

(e) Records maintained by DADS are open to the public, with the following exceptions:
   (1) incomplete reports, audits, evaluations, and investigations made of, for, or by the department are confidential;
   (2) reports of abuse and neglect are confidential;
   (3) all names and related personal, medical, or other identifying information about a resident are confidential;
   (4) information about any identifiable person which is defamatory or an invasion of privacy is confidential;
   (5) information identifying complainants or informants is confidential;
   (6) itineraries of surveys and inspections are confidential; and
   (7) to implement this subsection, DADS may not alter or deidentify original records. Instead, DADS will make available for public review or release only a properly deidentified copy of the original record.

(f) Charging for copies of records must be in accordance with the following criteria.
(1) If the requestor simply wants to inspect records, the requestor will specify the records to be inspected and DADS will make no charge for this service, except where DADS determines that a charge is appropriate based on the nature of the request.

(2) If the requestor wants to request copies of a record, the requestor will specify in writing the records to be copied on an appropriate DADS form, and DADS will complete the form by specifying the cost of the records which the requestor must pay in advance. Checks and other instruments of payment will be made payable to DADS.

(3) Any expenses for standard-size copies incurred in the reproduction, preparation, or retrieval of records must be borne by the requestor on a cost basis in accordance with costs established by the State Purchasing and General Services Commission or the department for office machine copies.

(4) For documents that are mailed, the department will charge for the postage at the time it charges for the reproduction. All applicable sales taxes will be added to the cost of copying records.

(5) When a request involves more than one facility, each facility will be considered a separate request.

(g) DADS will make a reasonable effort to furnish records promptly and will extend to the requestor all reasonable comfort and facility for the full exercise of the rights granted by the Open Records Act.

§92.125 ~ RESIDENT’S BILL OF RIGHTS AND PROVIDER BILL OF RIGHTS

(a) Resident's bill of rights.

(1) Each assisted living facility must post the resident's bill of rights, as provided by the department, in a prominent place in the facility and written in the primary language of each resident. A copy of the Resident's Bill of Rights must be given to each resident.

(2) A resident has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws of this state and the United States, except where lawfully restricted. The resident has the right to be free of interference, coercion, discrimination, and reprisal in exercising these civil rights.

(3) Each resident in the assisted living facility has the right to:

(A) be free from physical and mental abuse, including corporal punishment or physical and chemical restraints that are administered for the purpose of discipline or convenience and not required to treat the resident's medical symptoms. A provider may use physical or chemical restraints only if the use is authorized in writing by a physician or the use is necessary in an emergency to protect the resident or others from injury. A physician's written authorization for the use of restraints must specify the circumstances under which the restraints may be used and the duration for which the restraints may be used. Except in an emergency, restraints may only be administered by qualified medical personnel;

(B) participate in activities of social, religious, or community groups unless the participation interferes with the rights of others;

(C) practice the religion of the resident's choice;

(D) if mentally retarded, with a court-appointed guardian of the person, participate in a behavior modification program involving use of restraints, consistent with subparagraph (A) of this paragraph, or adverse stimuli only with the informed consent of the guardian;

(E) be treated with respect, consideration, and recognition of his or her dignity and individuality, without regard to race, religion, national origin, sex, age, disability, marital status, or source of payment. This means that the resident:

(i) has the right to make his/her own choices regarding personal affairs, care, benefits, and services;

(ii) has the right to be free from abuse, neglect, and exploitation; and

(iii) if protective measures are required, has the right to designate a guardian or representative to ensure the right to quality stewardship of his/her affairs;

(F) a safe and decent living environment;
(G) not be prohibited from communicating in his or her native language with other residents or employees for the purpose of acquiring or providing any type of treatment, care, or services;

(H) complain about the resident's care or treatment. The complaint may be made anonymously or communicated by a person designated by the resident. The provider must promptly respond to resolve the complaint. The provider must not discriminate or take other punitive action against a resident who makes a complaint;

(I) receive and send unopened mail, and the provider must ensure that the resident's mail is sent and delivered promptly;

(J) unrestricted communication, including personal visitation with any person of the resident's choice, including family members and representatives of advocacy groups and community service organizations, at any reasonable hour;

(K) make contacts with the community and to achieve the highest level of independence, autonomy, and interaction with the community of which the resident is capable;

(L) manage his or her financial affairs. The resident may authorize in writing another person to manage his/her money. The resident may choose the manner in which his/her money is managed, including a money management program, a representative payee program, a financial power of attorney, a trust, or a similar method, and the resident may choose the least restrictive of these methods. The resident must be given, upon request of the resident or the resident's representative, at least quarterly, an accounting of financial transactions made on his or her behalf by the facility should the facility accept his or her written delegation of this responsibility to the facility in conformance with state law;

(M) access the resident's records, which are confidential and may not be released without the resident's consent, except
   (i) to another provider, if the resident transfers residence; or
   (ii) if the release is required by another law;

(N) choose and retain a personal physician and to be fully informed in advance about treatment or care that may affect the resident's well-being;

(O) participate in developing his/her individual service plan that describes the resident's medical, nursing, and psychological needs and how the needs will be met;

(P) be given the opportunity to refuse medical treatment or services after the resident:
   (i) is advised by the person providing services of the possible consequences of refusing treatment or services; and
   (ii) acknowledges that he/she understands the consequences of refusing treatment or services;

(Q) unaccompanied access to a telephone at a reasonable hour or in case of an emergency or personal crisis;

(R) privacy, while attending to personal needs and a private place for receiving visitors or associating with other residents, unless providing privacy would infringe on the rights of other residents. This right applies to medical treatment, written communications, telephone conversations, meeting with family, and access to resident councils. If a resident is married and the spouse is receiving similar services, the couple may share a room;

(S) retain and use personal possessions, including clothing and furnishings, as space permits. The number of personal possessions may be limited for the health and safety of other residents;

(T) determine his or her dress, hair style, or other personal effects according to individual preference, except the resident has the responsibility to maintain personal hygiene;

(U) retain and use personal property in his or her immediate living quarters and to have an individual locked area (cabinet, closet, drawer, footlocker, etc.) in which to keep personal property;

(V) refuse to perform services for the facility, except as contracted for by the resident and operator;
(W) be informed by the provider no later than the 30th day after admission:
   (i) whether the resident is entitled to benefits under Medicare or Medicaid; and
   (ii) which items and services are covered by these benefits, including items or services for
       which the resident may not be charged;
(X) not be transferred or discharged unless:
   (i) the transfer is for the resident's welfare, and the resident's needs cannot be met by the
       facility;
   (ii) the resident's health is improved sufficiently so that services are no longer needed;
   (iii) the resident's health and safety or the health and safety of another resident would be
       endangered if the transfer or discharge was not made;
   (iv) the provider ceases to operate or to participate in the program that reimburses for the
       resident's treatment or care; or
   (v) the resident fails, after reasonable and appropriate notice, to pay for services;
(Y) not be transferred or discharged, except in an emergency, until the 30th day after the date
the facility provides written notice to the resident, the resident's legal representative, or a
member of the resident's family, stating:
   (i) that the facility intends to transfer or discharge the resident;
   (ii) the reason for the transfer or discharge;
   (iii) the effective date of the transfer or discharge;
   (iv) if the resident is to be transferred, the location to which the resident will be transferred;
       and
   (v) any appeal rights available to the resident;
(Z) leave the facility temporarily or permanently, subject to contractual or financial obligations;
(AA) have access to the service of a representative of the State Long Term Care Ombudsman
Program, Texas Department on Aging; and
(BB) execute an advance directive, under the Natural Death Act (Chapter 166, Health and Safety
Code) or designate a guardian in advance of need to make decisions regarding the
resident's health care should the resident become incapacitated.

(b) Provider's bill of rights.
(1) Each assisted living facility must post a providers' bill of rights in a prominent place in the facility.
(2) The providers' bill of rights must provide that a provider of assisted living services has the right to:
   (A) be shown consideration and respect that recognizes the dignity and individuality of the
       provider and assisted living facility;
   (B) terminate a resident's contract for just cause after a written 30-day notice;
   (C) terminate a contract immediately, after notice to the department, if the provider finds that a
       resident creates a serious or immediate threat to the health, safety, or welfare of other
       residents of the assisted living facility. During evening hours and on weekends or holidays,
       notice to DADS must be made to 1-800-458-9858;
   (D) present grievances, file complaints, or provide information to state agencies or other
       persons without threat of reprisal or retaliation;
   (E) refuse to perform services for the resident or the resident's family other than those
       contracted for by the resident and the provider;
   (F) contract with the community to achieve the highest level of independence, autonomy,
       interaction, and services to residents;
   (G) access patient information concerning a client referred to the facility, which must remain
       confidential as provided by law;
   (H) refuse a person referred to the facility if the referral is inappropriate;
   (I) maintain an environment free of weapons and drugs; and
   (J) be made aware of a resident's problems, including self-abuse, violent behavior, alcoholism,
       or drug abuse.
§92.126 ~ PUBLICATION OF RULES
Each facility will be notified of applicable new rules when the rules are filed with the Texas Register.

§92.127 ~ REQUIRED POSTINGS
Each facility must prominently and conspicuously post for display in a public area of the facility that is readily available to residents, employees, and visitors:
(1) the license issued under this chapter;
(2) a sign prescribed by the department that specifies complaint procedures established under these rules and specifies how complaints may be filed with the department;
(3) a notice in the form prescribed by the department stating that inspection and related reports are available at the facility for public inspection and providing the department's toll-free telephone number that may be used to obtain information concerning the facility;
(4) a copy of the most recent inspection report relating to the facility;
(5) Resident Bill of Rights;
(6) Provider Bill of Rights;
(7) the telephone number of the Office of the State Long Term Care Ombudsman; and
(8) the facility's normal 24-hour staffing patterns.

§92.129 ~ AUTHORIZED ELECTRONIC MONITORING (AEM)
(a) A facility must permit a resident, or the resident's guardian or legal representative, to monitor the resident's room through the use of electronic monitoring devices.
(b) A facility may not refuse to admit an individual and may not discharge a resident because of a request to conduct authorized electronic monitoring.
(c) DADS Information Regarding Authorized Electronic Monitoring form must be signed by or on behalf of all new residents upon admission. The form must be completed and signed by or on behalf of all current residents by October 1, 2004. A copy of the form must be maintained in the active portion of the resident's clinical record.
(d) A resident, or the resident's guardian or legal representative, who wishes to conduct AEM must request AEM by giving a completed, signed, and dated DADS Request for Authorized Electronic Monitoring form to the manager or designee. A copy of the form must be maintained in the active portion of the resident's clinical record.

(1) If a resident has the capacity to request AEM and has not been judicially declared to lack the required capacity, only the resident may request AEM, notwithstanding the terms of any durable power of attorney or similar instrument.
(2) If a resident has been judicially declared to lack the capacity required to request AEM, only the guardian of the resident may request AEM.
(3) If a resident does not have the capacity to request AEM and has not been judicially declared to lack the required capacity, only the legal representative of the resident may request AEM.

(A) A resident's physician makes the determination regarding the capacity to request AEM. Documentation of the determination must be made in the resident's clinical record.
(B) When a resident's physician determines the resident lacks the capacity to request AEM, a person from the following list, in order of priority, may act as the resident's legal representative for the limited purpose of requesting AEM:
   (i) a person named in the resident's medical power of attorney or other advance directive;
   (ii) the resident's spouse;
   (iii) an adult child of the resident who has the waiver and consent of all other qualified adult children of the resident to act as the sole decision-maker;
   (iv) a majority of the resident's reasonably available adult children;
   (v) the resident's parents; or
   (vi) the individual clearly identified to act for the resident by the resident before the resident became incapacitated or the resident's nearest living relative.
(e) A resident, or the resident's guardian or legal representative, who wishes to conduct AEM also must obtain the consent of other residents in the room, using DADS Consent to Authorized Electronic Monitoring form. When complete, the form must be given to the manager or designee. A copy of the form must be maintained in the active portion of the resident's clinical record. AEM cannot be conducted without the consent of other residents in the room.

(1) Consent to AEM may be given only by:
   (A) the other resident or residents in the room;
   (B) the guardian of the other resident, if the resident has been judicially declared to lack the required capacity; or
   (C) the legal representative of the other resident, determined by following the same procedure established under subsection (d)(3) of this section.

(2) Another resident in the room may condition consent on:
   (A) pointing the camera away from the consenting resident, when the proposed electronic monitoring is a video surveillance camera; and
   (B) limiting or prohibiting the use of an audio electronic monitoring device.

(3) AEM must be conducted in accordance with any limitation placed on the monitoring as a condition of the consent given by or on behalf of another resident in the room. The resident's roommate, or the roommate's guardian or legal representative, assumes responsibility for assuring AEM is conducted according to the designated limitations.

(4) If AEM is being conducted in a resident's room, and another resident is moved into the room who has not yet consented to AEM, the monitoring must cease until the new resident, or the resident's guardian or legal representative, consents.

(f) When the completed DADS Request for Authorized Electronic Monitoring form and DADS Consent to Authorized Electronic Monitoring form, if applicable, have been given to the manager or designee, AEM may begin.

(1) Anyone conducting AEM must post and maintain a conspicuous notice at the entrance to the resident's room. The notice must state that the room is being monitored by an electronic monitoring device.

(2) The resident, or the resident's guardian or legal representative, must pay for all costs associated with conducting AEM, including installation in compliance with life safety and electrical codes, maintenance, removal of the equipment, posting and removal of the notice, or repair following removal of the equipment and notice, other than the cost of electricity.

(3) The facility must meet residents' requests to have a video camera obstructed to protect their dignity.

(4) The facility must make reasonable physical accommodation for AEM, which includes providing:
   (A) a reasonably secure place to mount the video surveillance camera or other electronic monitoring device; and
   (B) access to power sources for the video surveillance camera or other electronic monitoring device.

(g) All facilities, regardless of whether AEM is being conducted, must post an 8 1/2-inch by 11-inch notice at the main facility entrance. The notice must be entitled "Electronic Monitoring" and must state, in large, easy-to-read type, "The rooms of some residents may be monitored electronically by or on behalf of the residents. Monitoring may not be open and obvious in all cases."

(h) A facility may:
   (1) require an electronic monitoring device to be installed in a manner that is safe for residents, employees, or visitors who may be moving about the room, and meets all local and state regulations;
   (2) require AEM to be conducted in plain view; and
   (3) place a resident in a different room to accommodate a request for AEM.

(i) A facility may not discharge a resident because covert electronic monitoring is being conducted by or on behalf of a resident. If a facility discovers a covert electronic monitoring device and it is no longer
covert as defined in §92.3 of this chapter (relating to Definitions), the resident must meet all the requirements for AEM before monitoring is allowed to continue.

(j) All instances of abuse or neglect must be reported to DADS, as required by §92.102 of this chapter (relating to Abuse, Neglect, or Exploitation Reportable to DADS by Facilities). For purposes of the duty to report abuse or neglect, the following apply:

(1) A person who is conducting electronic monitoring on behalf of a resident is considered to have viewed or listened to a tape or recording made by the electronic monitoring device on or before the 14th day after the date the tape or recording is made.

(2) If a resident, who has capacity to determine that the resident has been abused or neglected and who is conducting electronic monitoring, gives a tape or recording made by the electronic monitoring device to a person and directs the person to view or listen to the tape or recording to determine whether abuse or neglect has occurred, the person to whom the resident gives the tape or recording is considered to have viewed or listened to the tape or recording on or before the seventh day after the date the person receives the tape or recording.

(3) A person is required to report abuse based on the person's viewing of or listening to a tape or recording only if the incident of abuse is acquired on the tape or recording. A person is required to report neglect based on the person's viewing of or listening to a tape or recording only if it is clear from viewing or listening to the tape or recording that neglect has occurred.

(4) If abuse or neglect of the resident is reported to the facility and the facility requests a copy of any relevant tape or recording made by an electronic monitoring device, the person who possesses the tape or recording must provide the facility with a copy at the facility's expense. The cost of the copy must not exceed the community standard. If the contents of the tape or recording are transferred from the original technological format, a qualified professional must do the transfer.

(5) A person who sends more than one tape or recording to DADS must identify each tape or recording on which the person believes an incident of abuse or evidence of neglect may be found. Tapes or recordings should identify the place on the tape or recording that an incident of abuse or evidence of neglect may be found.

**SUBCHAPTER I, REV 08-1**

§92.801 ~ ACCESS TO RESIDENTS AND RECORDS BY THE LONG-TERM CARE OMBUDSMAN PROGRAM

(a) A resident has the right to be visited by, and a facility must provide immediate access to any resident to:

(1) a staff person of the Office of the State Long-Term Care Ombudsman (the Office) employed by DADS;
(2) a certified ombudsman; and
(3) an ombudsman intern.

(b) A facility must allow a certified ombudsman and a staff person of the Office access:

(1) to the medical and social records of a resident, if the certified ombudsman or the staff person has the consent of the resident or the legally authorized representative of the resident;
(2) to the medical and social records of a resident 60 years of age or older, in accordance with the Older Americans Act, §712(b); and
(3) to the administrative records, policies, and documents of the facility to which the facility residents or general public have access.
SUBCHAPTER H, REV 09-1
DIVISION 1, GENERAL INFORMATION
§92.151 When may DADS take an enforcement action?
DADS may take enforcement action when a facility is in violation of:
(1) the sections of this chapter;
(2) the Health and Safety Code, Chapter 247;
(3) an order adopted under Chapter 247; or
(4) a license issued under Chapter 247.

§92.152 What enforcement actions may DADS take?
DADS may:
(1) suspend a license;
(2) order immediate closing of all or part of the facility;
(3) revoke a license;
(4) refer the violation to the Office of the Attorney General for involuntary appointment of a trustee, injunction, or for the assessment of civil penalties; or
(5) assess administrative penalties.

DIVISION 2, ACTIONS AGAINST A LICENSE: SUSPENSION
§92.201 When may DADS suspend a facility's license?
DADS may suspend a facility's license when the applicant, license holder, or a controlling person violates:
(1) the Health and Safety Code, Chapter 247; a section, standard or order adopted under Chapter 247; or a license issued under Chapter 247 in a repeated or substantial manner; or
(2) §92.551(2)-(5) of this chapter (relating to When is an administrative penalty assessed?).

§92.202 Does DADS provide notice of a license suspension and the opportunity for a hearing to the applicant, license holder, or a controlling person?
Yes.

§92.203 May DADS suspend a license at the same time another enforcement action is occurring?
Yes.

§92.204 How does DADS notify a license holder of a proposed suspension?
DADS notifies a license holder by certified mail.

§92.205 What information does DADS provide the license holder concerning a proposed suspension?
DADS provides the license holder with the facts or conduct alleged to warrant the suspension.

§92.206 Does the license holder have an opportunity to show compliance with all requirements for keeping the license before DADS begins proceedings to suspend a license?
Yes.

§92.207 How does a license holder request an opportunity to show compliance?
A license holder must send a written request for an opportunity to show compliance to the Director of Long Term Care-Regulatory.
§92.208 How much time does a license holder have to request an opportunity to show compliance?
A request for an opportunity to show compliance must be postmarked within 10 calendar days of the date of DADS's notice and must be received in the Director of Long Term Care-Regulatory's office within 10 calendar days of the postmark.

§92.209 What must the request for an opportunity to show compliance contain?
The request must contain specific documentation showing how the facts or conduct that support the proposed suspension are incorrect.

§92.210 How does DADS conduct the opportunity to show compliance?
DADS's review is limited to documentation submitted by the license holder and information used by DADS as the basis for its proposed action. The review is not conducted as an adversary hearing.

§92.211 Does DADS give the license holder a written affirmation or reversal of the proposed action?
Yes.

§92.212 How does DADS notify a license holder of its final decision to suspend a license?
DADS notifies the facility by certified mail.

§92.213 May the facility request a formal hearing?
Yes.

§92.214 How long does a license holder have to request a formal hearing?
The license holder has 15 calendar days from receipt of the certified mail notice to request a hearing.

§92.215 If a license holder does not appeal, when does the suspension take effect?
The suspension takes effect after the deadline for an appeal passes.

§92.216 If a license holder appeals, when does the suspension take effect?
The status of the license remains in effect until after the appeal is complete.

§92.217 May a facility operate during a suspension?
A facility may continue to operate as long as the suspension is under appeal.

§92.218 How long is the suspension?
The suspension remains in effect until DADS determines that the reason for the suspension no longer exists, but no longer than the license expiration date.

§92.219 How does DADS decide to remove the suspension?
DADS conducts an on-site inspection.

§92.220 Must the license be returned to DADS during a license suspension?
Yes.

DIVISION 3, ACTIONS AGAINST A LICENSE: REVOCATION
§92.251 When may DADS revoke a license?
DADS may revoke a license when the applicant, license holder, or a controlling person:
(1) violates section §92.551(2)-(5) of this chapter (relating to When is an administrative penalty assessed?);
(2) violates the Health and Safety Code, Chapter 247; a section, standard or order adopted under Chapter 247; or a license issued under Chapter 247 in a repeated or substantial manner;
(3) submits false statements on a license application;
(4) submits false statements on license application attachments;
§92.252 Does DADS provide notice of a license revocation and opportunity for a hearing to the applicant, license holder, or controlling person?
Yes.

§92.253 May DADS take more than one enforcement action at a time against a license?
Yes.

§92.254 How will DADS notify a license holder of a proposed revocation?
DADS will notify a license holder by certified mail.

§92.255 What information does DADS provide the license holder concerning a proposed revocation?
DADS provides the license holder with the facts or conduct alleged to warrant the revocation.

§92.256 Does the license holder have an opportunity to show compliance with all requirements for keeping the license before DADS begins proceedings to revoke a license?
Yes.

§92.257 How does a license holder request an opportunity to show compliance?
A license holder must send a written request for an opportunity to show compliance to the Director of Long Term Care-Regulatory.

§92.258 How much time does a license holder have to request an opportunity to show compliance?
A request for an opportunity to show compliance must be postmarked within 10 calendar days of the date of DADS’s notice and must be received in the Director of Long Term Care-Regulatory’s office within 10 calendar days of the postmark.

§92.259 What must the request for the opportunity to show compliance contain?
The request must contain specific documentation showing how the facts or conduct that support the proposed revocation are incorrect.

§92.260 How does DADS conduct the opportunity to show compliance?
DADS’s review is limited to documentation submitted by the license holder and information used by DADS as the basis for its proposed action. The review is not conducted as an adversary hearing.

§92.261 Does DADS give the license holder a written affirmation or reversal of the proposed action?
Yes.

§92.262 Does the license holder have an opportunity for a formal hearing?
Yes.
§92.263 How long does a license holder have to request a formal hearing?
The license holder has 15 calendar days from receipt of the certified mail notice to request a hearing.

§92.264 When does the revocation take effect if the license holder does not appeal?
The revocation takes effect after the deadline for an appeal passes.

§92.265 When does the revocation take effect if the license holder appeals the revocation?
The status of the license remains in effect until after the appeal is complete.

§92.266 May a facility operate during a revocation?
A facility may continue to operate, as long as the revocation is under appeal.

§92.267 What happens to a license if it is revoked?
If revoked, the license must be returned to DADS.

DIVISION 4, ACTIONS AGAINST A LICENSE: TEMPORARY RESTRAINING ORDERS AND INJUNCTIONS

§92.301 Why would DADS refer a facility to the Office of the Attorney General or local prosecuting authority for a temporary restraining order or an injunction?
DADS refers a facility to the Office of the Attorney General or local prosecuting authority for a temporary restraining order or an injunction when:
(1) a violation creates an immediate threat or threat to the health and safety of residents;
(2) a facility is operating without a license; or
(3) DADS is denied entry to a facility that is alleged to be operating without a license.

§92.302 To whom does DADS refer a facility that is operating without a license?
DADS refers a facility that is operating without a license to the:
(1) district attorney;
(2) county attorney;
(3) city attorney; or
(4) Attorney General.

DIVISION 5, ACTIONS AGAINST A LICENSE: EMERGENCY LICENSE SUSPENSION AND CLOSING ORDER

§92.351 When may DADS suspend a license or order an immediate closing of all or part of a facility?
DADS may suspend a license or order an immediate closing of all or part of a facility when:
(1) the facility is operating in violation of the licensure rules; and
(2) the violation creates an immediate threat to the health and safety of a resident.

§92.352 How does DADS notify a facility of a license suspension or immediate closing of all or part of a facility?
A notice is hand-delivered to a facility staff member.

§92.353 When does an order suspending a license or closing all or part of a facility go into effect?
The order goes into effect immediately upon receipt of the hand-delivered written notice or on a later date specified in the order.

§92.354 How long is an order suspending a license or closing all or part of a facility valid?
An order is valid for 10 calendar days after the effective date of the order.
§92.355 May a license holder request a hearing?
Yes.

§92.356 Where can a license holder find information about administrative changes?
Information about administrative hearings is located in Chapter 79, Subchapter Q of this title (relating to Formal Appeals).

§92.357 Does a request for an administrative hearing suspend the effectiveness of the order?
No.

§92.358 Does anything happen to a resident's rights or freedom of choice during an emergency relocation?
No.

§92.359 Who does DADS notify if all or part of a facility is closed?
If all or part of a facility is closed, DADS notifies:
(1) the local health department director;
(2) the city or county health authority; and
(3) representatives of the appropriate state agencies.

§92.360 Who must a facility notify if all or part of the facility is closed?
A facility must notify each resident's:
(1) guardian or responsible party; and
(2) attending physician.

§92.361 Who decides where to relocate a resident?
The resident, the resident's guardian, or the resident's responsible person may designate a preference for a specific facility or for other arrangements.

§92.362 Who arranges the relocation?
DADS arranges to relocate residents to other facilities in the area.

§92.363 Is a resident's preference considered?
Yes.

§92.364 What requirements must the facility a resident chooses for relocation meet?
The following apply when a facility is chosen for relocation:
(1) The facility must be in good standing with DADS.
(2) If the facility is certified under Titles XVIII and XIX of the Social Security Act, it must be in good standing under its contract.
(3) The facility must be able to meet the needs of the resident.

§92.365 Is a receiving facility allowed to temporarily exceed its licensed capacity?
Yes.

§92.366 Under what conditions is a receiving facility allowed to temporarily exceed its licensed capacity?
DADS may grant a waiver to a receiving facility to temporarily exceed its licensed capacity to prevent substantial transportation of a resident.

§92.367 What requirements must a facility meet to obtain a temporary waiver?
To be eligible for a temporary waiver to exceed its licensed capacity, a facility must:
(1) not compromise the health and safety of residents; and
(2) meet the increased demands for direct care personnel and dietary services.
§92.368 **How long can a facility have a temporary waiver?**
A facility may have a temporary waiver until residents can be transferred to a permanent location.

§92.369 **Does DADS monitor a facility with a temporary waiver?**
Yes.

§92.370 **What records, reports, and supplies are sent to the receiving facility for transferred residents?**
The following reports, records, and supplies must be sent to the receiving institution for each transferred resident:

1. A copy of the current physician's orders for:
   (A) medication;
   (B) treatment;
   (C) diet; and
   (D) special services required;
2. Personal information, such as name and address of next of kin, guardian, or responsible party;
3. Attending physician;
4. Medicare and Medicaid identification number, if applicable;
5. Social security number;
6. Other identification information as deemed necessary and available;
7. A copy of the resident's current comprehensive assessment and service plan;
8. All medications dispensed in the resident's name that have current physician's orders. Medications must be inventoried and transferred with the resident. Medications past expiration date or discontinued by physician order must be inventoried for disposition in accordance with state law. Only current prescription medications taken on a regular or as-needed basis may be transferred with the resident;
9. The resident's personal belongings, clothing, and toilet articles. The closing facility must make an inventory of personal property and valuables; and
10. Resident trust fund accounts maintained by the closing facility. All items must be properly inventoried and receipts obtained for audit purposes by the appropriate state agency.

§92.371 **May a resident return to the closed facility if it reopens within 90 calendar days?**
Yes.

§92.372 **Do the relocated residents have any special admission rights at the closed facility?**
If the closed facility is allowed to reopen within 90 calendar days, the relocated residents have the first right to return to the facility.

§92.373 **What options does a relocated resident have?**
Relocated residents may choose to:

1. Return to the reopened facility;
2. Stay in the receiving facility, if the facility is not exceeding its licensed capacity; or
3. Choose other accommodations.

§92.374 **Are relocated residents who return to the facility considered new admissions?**
Yes. Any relocated resident who returns to the facility must be treated as a new admission. All procedures regarding new admissions apply.

**DIVISION 6, ACTIONS AGAINST A LICENSE: CIVIL PENALTIES**

§92.401 **When may DADS refer a facility to the Office of the Attorney General for assessment of civil penalties?**
DADS may refer a facility for a violation that threatens the health and safety of a resident.
§92.402 What is the amount of the civil penalty that can be assessed for operating without a license?
A civil penalty of $1,000 to $10,000 per day may be assessed for operating without a license.

DIVISION 7, TRUSTEES: INVOLUNTARY APPOINTMENT OF A TRUSTEE
§92.451 When may DADS petition a court for the involuntary appointment of a trustee to operate a facility?
DADS may petition a court for the involuntary appointment of a trustee to operate a facility when one or more of the following conditions exist:
1. the facility is operating without a license;
2. the facility's license has been suspended or revoked;
3. an imminent threat to the health and safety of the residents exists, and license suspension or revocation procedures are pending against the facility;
4. an emergency exists that presents an immediate threat to the health and safety of the residents; or
5. the facility is closing, whether voluntarily or through an emergency closure order, and arrangements for relocation of the residents to other licensed institutions have not been made before closure.

§92.452 When may DADS disburse emergency assistance funds?
DADS may disburse emergency assistance funds when a court order is given.

§92.453 Must a facility reimburse DADS for emergency assistance funds?
Yes.

§92.454 When is reimbursement for emergency assistance funds due to DADS?
Reimbursement is due not later than one year after the date the trustee received the funds.

§92.455 Who is responsible for reimbursement?
The owner of the facility at the time the trustee was appointed is responsible for reimbursement.

§92.456 What happens if a facility does not reimburse DADS in one year?
A license holder is referred to the Office of the Attorney General. DADS also may decide the facility is not eligible for a Medicaid provider contract.

DIVISION 8, TRUSTEES: APPOINTMENT OF A TRUSTEE BY AGREEMENT
§92.501 May a facility request the appointment of a trustee to assume operation of a facility?
Yes.

§92.502 Who may make the request?
A person holding a controlling interest in a facility may request that DADS assume the operation of the facility through the appointment of a trustee.

§92.503 What are the requirements for a trustee agreement?
An agreement must:
1. specify all terms and conditions of the trustee's appointment and authority; and
2. preserve all legal rights of the residents.

§92.504 When does an agreement for a trustee terminate?
An agreement for a trustee terminates at a time specified in the agreement or upon receipt of notice of intent to terminate sent by DADS or by the person holding a controlling interest in the facility.
§92.505  What happens if the controlling person wants to terminate the agreement, but DADS determines termination of the agreement is not in the best interest of the residents?
DADS petitions a court for an involuntary appointment of a trustee under the terms of §92.451 of this chapter (relating to When may DADS petition a court for the involuntary appointment of a trustee to operate a facility?).

§92.506  When DADS appoints a trustee, is the facility always required to pay assessed civil money penalties?
Yes.

DIVISION 9, ADMINISTRATIVE PENALTIES
§92.551  Administrative Penalties
(a) Assessment of an administrative penalty. DADS may assess an administrative penalty if a license holder:
   (1) violates:
      (A) Texas Health and Safety Code, Chapter 247;
      (B) a rule, standard, or order adopted under Texas Health and Safety Code, Chapter 247; or
      (C) a term of a license issued under Texas Health and Safety Code, Chapter 247;
   (2) makes a false statement of material fact that the license holder knows or should know is false:
      (A) on an application for issuance or renewal of a license;
      (B) in an attachment to the application; or
      (C) with respect to a matter under investigation by DADS;
   (3) refuses to allow a DADS representative to inspect:
      (A) a book, record, or file that a facility must maintain; or
      (B) any portion of the premises of a facility;
   (4) willfully interferes with the work of a DADS representative or the enforcement of this chapter;
   (5) willfully interferes with a DADS representative preserving evidence of a violation of Texas Health and Safety Code, Chapter 247; a rule, standard, or order adopted under Texas Health and Safety Code, Chapter 247; or a term of a license issued under Texas Health and Safety Code, Chapter 247;
   (6) fails to pay an administrative penalty not later than the 30th calendar day after the penalty assessment becomes final; or
   (7) fails to notify DADS of a change of ownership before the effective date of the change of ownership.
(b) Criteria for assessing an administrative penalty. DADS considers the following in determining the amount of an administrative penalty:
   (1) the gradations of penalties established in subsection (d) of this section;
   (2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the situation, and the hazard or potential hazard created by the situation to the health or safety of the public;
   (3) the history of previous violations;
   (4) deterrence of future violations;
   (5) the license holder's efforts to correct the violation;
   (6) the size of the facility and of the business entity that owns the facility; and
   (7) any other matter that justice may require.
(c) Late payment of an administrative penalty. A license holder must pay an administrative penalty within 30 calendar days after the penalty assessment becomes final. If a license holder fails to timely pay the administrative penalty, DADS may assess an administrative penalty under subsection (a)(6) of this section, which is in addition to the penalty that was previously assessed and not timely paid.
(d) Administrative penalty schedule. DADS uses the schedule of appropriate and graduated administrative penalties in this subsection to determine which violations warrant an administrative penalty.

(e) Administrative penalty assessed against a resident. DADS does not assess an administrative penalty against a resident, unless the resident is also an employee of the facility or a controlling person.

(f) Proposal of administrative penalties.

(1) DADS issues a preliminary report stating the facts on which DADS concludes that a violation has occurred after DADS has:
   (A) examined the possible violation and facts surrounding the possible violation; and
   (B) concluded that a violation has occurred.

(2) DADS may recommend in the preliminary report the assessment of an administrative penalty for each violation and the amount of the administrative penalty.

(3) DADS provides a written notice of the preliminary report to the license holder not later than 10 calendar days after the date on which the preliminary report is issued. The written notice includes:
   (A) a brief summary of the violation;
   (B) the amount of the recommended administrative penalty;
   (C) a statement of whether the violation is subject to correction in accordance with subsection (g) of this section and, if the violation is subject to correction, a statement of:
      (i) the date on which the license holder must file with DADS a plan of correction for approval by DADS; and
      (ii) the date on which the license holder must complete the plan of correction to avoid assessment of the administrative penalty; and
   (D) a statement that the license holder has a right to an administrative hearing on the occurrence of the violation, the amount of the penalty, or both.

(4) Not later than 20 calendar days after the date on which a license holder receives a written notice of the preliminary report, the license holder may:
   (A) give DADS written consent to the preliminary report, including the recommended administrative penalty; or
   (B) make a written request to the Texas Health and Human Services Commission (HHSC) for an administrative hearing.

(5) If a violation is subject to correction under subsection (g) of this section, the license holder must submit a plan of correction to DADS for approval not later than 10 calendar days after the date on which the license holder receives the written notice described in paragraph (3) of this subsection.

(6) If a violation is subject to correction under subsection (g) of this section, and after the license holder reports to DADS that the violation has been corrected, DADS inspects the correction or takes any other step necessary to confirm the correction and notifies the facility that:
   (A) the correction is satisfactory and DADS will not assess an administrative penalty; or
   (B) the correction is not satisfactory and a penalty is recommended.

(7) Not later than 20 calendar days after the date on which a license holder receives a notice under paragraph (6)(B) of this subsection (notice that the correction is not satisfactory and recommendation of a penalty), the license holder may:
   (A) give DADS written consent to DADS' report, including the recommended administrative penalty; or
   (B) make a written request to HHSC for an administrative hearing.

(8) If a license holder consents to the recommended administrative penalty or does not timely respond to a notice sent under paragraph (3) of this subsection (written notice of the preliminary report) or paragraph (6)(B) of this subsection (notice that the correction is not satisfactory and recommendation of a penalty):
   (A) the commissioner or the commissioner's designee assesses the recommended administrative penalty;
   (B) DADS gives written notice of the decision to the license holder; and
(C) the license holder must pay the penalty not later than 30 calendar days after the written notice given in subparagraph (B) of this paragraph.

(g) Opportunity to correct.

(1) A license holder has an opportunity to correct a violation, except a violation described in paragraph (2) of this subsection, to avoid paying an administrative penalty, if the license holder corrects the violation not later than 45 calendar days after the date the facility receives the written notice described in subsection (f)(3) of this section.

(2) A license holder does not have an opportunity to correct a violation:
   (A) that DADS determines results in serious harm to or death of a resident;
   (B) described by subsection (a)(2)-(7) of this section;
   (C) related to advance directives as described in §92.41(g);
   (D) that is the second or subsequent violation of:
      (i) a right of the same resident under §92.125 of this chapter (relating to Resident’s Bill of Rights and Provider Bill of Rights); or
      (ii) the same right of all residents under §92.125 of this chapter; or
   (E) a violation that is written because of an inappropriately placed resident, except as described in §92.41(f) of this chapter (relating to Inappropriate Placement).

(3) Maintenance of violation correction.
   (A) A license holder that corrects a violation must maintain the correction. If the license holder fails to maintain the correction until at least the first anniversary of the date the correction was made, DADS may assess and collect an administrative penalty for the subsequent violation.
   (B) An administrative penalty assessed under this paragraph is equal to three times the amount of the original administrative penalty that was assessed but not collected.
   (C) DADS is not required to offer the license holder an opportunity to correct the subsequent violation.

(h) Hearing on an administrative penalty. If a license holder timely requests an administrative hearing as described in subsection (f)(3) or (f)(7) of this section, the administrative hearing is held in accordance with HHSC rules at 1 TAC Chapter 357, Subchapter I (relating to Hearings under the Administrative Procedure Act).

(i) DADS may charge interest on an administrative penalty. The interest begins the day after the date the penalty becomes due and ends on the date the penalty is paid in accordance with Texas Health and Safety Code, §247.0455(e).

(j) Amelioration of a violation.

(1) In lieu of demanding payment of an administrative penalty, the commissioner may allow a license holder to use, under DADS’ supervision, any portion of the administrative penalty to ameliorate the violation or to improve services, other than administrative services, in the facility affected by the violation. Amelioration is an alternate form of payment of an administrative penalty, not an appeal, and does not remove a violation or an assessed administrative penalty from a facility’s history.

(2) A license holder cannot ameliorate a violation that DADS determines constitutes immediate jeopardy to the health or safety of a resident.

(3) DADS offers amelioration to a license holder not later than 10 calendar days after the date a license holder receives a final notification of the recommended assessment of an administrative penalty that is sent to the license holder after an informal dispute resolution process but before an administrative hearing.

(4) A license holder to whom amelioration has been offered must:
   (A) submit a plan for amelioration not later than 45 calendar days after the date the license holder receives the offer of amelioration from DADS; and
   (B) agree to waive the license holder’s right to an administrative hearing if DADS approves the plan for amelioration.
(5) A license holder’s plan for amelioration must:
   (A) propose changes to the management or operation of the facility that will improve services to
       or quality of care of residents;
   (B) identify, through measurable outcomes, the ways in which and the extent to which the
       proposed changes will improve services to or quality of care of residents;
   (C) establish clear goals to be achieved through the proposed changes;
   (D) establish a time line for implementing the proposed changes; and
   (E) identify specific actions the license holder will take to implement the proposed changes.

(6) A license holder’s plan for amelioration may include proposed changes to:
   (A) improve staff recruitment and retention;
   (B) offer or improve dental services for residents; and
   (C) improve the overall quality of life for residents.

(7) DADS may require that an amelioration plan propose changes that would result in conditions that
    exceed the requirements of this chapter.

(8) DADS approves or denies a license holder’s amelioration plan not later than 45 calendar days
    after the date DADS receives the plan. If DADS approves the amelioration plan, any pending
    request the license holder has submitted for an administrative hearing must be withdrawn by the
    license holder.

(9) DADS does not offer amelioration to a license holder:
   (A) more than three times in a two-year period; or
   (B) more than one time in a two-year period for the same or a similar violation.

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<tr>
<td>(a) Employees</td>
<td>$ 350 $ 550</td>
<td>$ 750 $ 950</td>
</tr>
<tr>
<td>(b) Social Services</td>
<td>$ 200 $ 300</td>
<td>$ 400 $ 500</td>
</tr>
<tr>
<td>(c) Resident Assessment</td>
<td>$ 400 $ 550</td>
<td>$ 600 $ 750</td>
</tr>
<tr>
<td>(d) Resident Policies</td>
<td>$ 250 $ 350</td>
<td>$ 450 $ 550</td>
</tr>
<tr>
<td>(e) Admission Policies</td>
<td>$ 300 $ 400</td>
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</tr>
<tr>
<td>(f) Inappropriate Placement</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>(g) Advance Directives</td>
<td>$ 500 $ 500</td>
<td>$ 500 $ 500</td>
</tr>
<tr>
<td>(h) Resident Records</td>
<td>$ 200 $ 300</td>
<td>$ 400 $ 500</td>
</tr>
<tr>
<td>(i) Personnel Records</td>
<td>$ 200 $ 300</td>
<td>$ 400 $ 500</td>
</tr>
<tr>
<td>(j) Medications</td>
<td>$ 400 $ 500</td>
<td>$ 600 $ 700</td>
</tr>
<tr>
<td>(k) Accident, Injury, of Acute Illness</td>
<td>$ 400 $ 500</td>
<td>$ 600 $ 700</td>
</tr>
<tr>
<td>Administrative Penalty Schedule</td>
<td>Small Facility (4 - 16 beds)</td>
<td>Large Facility (17+ beds)</td>
</tr>
<tr>
<td>----------------------------------</td>
<td>-----------------------------</td>
<td>---------------------------</td>
</tr>
<tr>
<td>(l) Resident Finances</td>
<td>$200 $300</td>
<td>$400 $500</td>
</tr>
<tr>
<td>(m) Food &amp; Nutrition Services</td>
<td>$400 $550</td>
<td>$700 $850</td>
</tr>
<tr>
<td>(n) Infection Control</td>
<td>$400 $550</td>
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</tr>
<tr>
<td>(o) Access to Residents</td>
<td>$150 $200</td>
<td>$250 $300</td>
</tr>
<tr>
<td>(p) Restraints</td>
<td>$700 $800</td>
<td>$900 $1,000</td>
</tr>
<tr>
<td>(q) Accreditation Status</td>
<td>$700 $800</td>
<td>$900 $1,000</td>
</tr>
<tr>
<td>§92.51 Licensure of Facilities Persons with Alzheimer’s</td>
<td>$200 $300</td>
<td>$400 $500</td>
</tr>
<tr>
<td>§92.53 Stds for Certified Alzheimer’s ALFs</td>
<td>$400 $500</td>
<td>$600 $700</td>
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<tr>
<td>§92.54 Advertisements</td>
<td>$250 $350</td>
<td>$450 $550</td>
</tr>
<tr>
<td>§92.61 Facility Construction Application</td>
<td>$300 $400</td>
<td>$500 $600</td>
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<tr>
<td>§92.62 General Requirements</td>
<td>$350 $450</td>
<td>$550 $650</td>
</tr>
<tr>
<td>§92.81 Inspections &amp; Surveys</td>
<td>$300 $400</td>
<td>$500 $600</td>
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<tr>
<td>§92.82 Determinations &amp; Actions</td>
<td>$200 $300</td>
<td>$400 $500</td>
</tr>
<tr>
<td>§92.102 Abuse, Neglect, Exploitation</td>
<td>$700 $800</td>
<td>$900 $1,000</td>
</tr>
<tr>
<td>§92.123 Investigation of Employees</td>
<td>$450 $550</td>
<td>$650 $750</td>
</tr>
<tr>
<td>§92.125(a) Residents Bill of Rights</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(1) Post/Provide Copy of Bill</td>
<td>$100 $150</td>
<td>$200 $250</td>
</tr>
<tr>
<td>(2) Right to Exercise Civil Rights</td>
<td>$150 $200</td>
<td>$250 $300</td>
</tr>
<tr>
<td>(3) Each Resident has the right to:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(A) Be free from abuse, punishment, restraints for discipline/convenience</td>
<td>$700 $800</td>
<td>$900 $1,000</td>
</tr>
<tr>
<td>(B) Participate in activities</td>
<td>$150 $200</td>
<td>$250 $300</td>
</tr>
<tr>
<td>(C) Religion of choice</td>
<td>$150 $200</td>
<td>$250 $300</td>
</tr>
<tr>
<td>(D) If mentally retarded participate in behavior modification with guardian consent</td>
<td>$150 $200</td>
<td>$250 $300</td>
</tr>
<tr>
<td>(E) Treated with respect, dignity</td>
<td>$200 $250</td>
<td>$300 $350</td>
</tr>
<tr>
<td>(F) Safe/decent living environment</td>
<td>$100 $150</td>
<td>$200 $250</td>
</tr>
<tr>
<td>(G) Communicate in native language</td>
<td>$100 $150</td>
<td>$200 $250</td>
</tr>
<tr>
<td>(H) Complain about care/treatment</td>
<td>$200 $250</td>
<td>$300 $350</td>
</tr>
<tr>
<td>(I) Receive/send mail</td>
<td>$100 $150</td>
<td>$200 $250</td>
</tr>
<tr>
<td>(J) Unrestricted communication</td>
<td>$150 $200</td>
<td>$250 $300</td>
</tr>
<tr>
<td>(K) Make community contacts</td>
<td>$100 $150</td>
<td>$200 $250</td>
</tr>
<tr>
<td>(L) Manage financial affairs</td>
<td>$100 $150</td>
<td>$200 $250</td>
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</tbody>
</table>
## Administrative Penalty Schedule

<table>
<thead>
<tr>
<th>Administrative Penalty</th>
<th>Small Facility (4 - 16 beds)</th>
<th>Large Facility (17+ beds)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>One Facility</td>
<td>Multiple Facilities</td>
</tr>
<tr>
<td>(M) Access resident records</td>
<td>$100</td>
<td>$150</td>
</tr>
<tr>
<td>(N) Choose own physician</td>
<td>$100</td>
<td>$150</td>
</tr>
<tr>
<td>(O) Develop individual service plan</td>
<td>$100</td>
<td>$150</td>
</tr>
<tr>
<td>(P) Opportunity to refuse medical treatment</td>
<td>$100</td>
<td>$150</td>
</tr>
<tr>
<td>(Q) Unaccompanied access to phone</td>
<td>$100</td>
<td>$150</td>
</tr>
<tr>
<td>(R) Privacy</td>
<td>$100</td>
<td>$150</td>
</tr>
<tr>
<td>(S) Retain personal possessions</td>
<td>$100</td>
<td>$150</td>
</tr>
<tr>
<td>(T) Determine personal preference</td>
<td>$100</td>
<td>$150</td>
</tr>
<tr>
<td>(U) Retain personal property</td>
<td>$100</td>
<td>$150</td>
</tr>
<tr>
<td>(V) Refuse to perform services</td>
<td>$100</td>
<td>$150</td>
</tr>
<tr>
<td>(W) Informed about Medicare/Medicaid</td>
<td>$100</td>
<td>$150</td>
</tr>
<tr>
<td>(X) Not to be transferred/discharged</td>
<td>$300</td>
<td>$350</td>
</tr>
<tr>
<td>(Y) Not to be transferred/discharged without written notice</td>
<td>$300</td>
<td>$350</td>
</tr>
<tr>
<td>(Z) Leave the facility</td>
<td>$100</td>
<td>$150</td>
</tr>
<tr>
<td>(AA) Access Ombudsman Program</td>
<td>$100</td>
<td>$150</td>
</tr>
<tr>
<td>(BB) Execute advance directive</td>
<td>$200</td>
<td>$250</td>
</tr>
<tr>
<td>§92.127 Required Postings</td>
<td>$250</td>
<td>$350</td>
</tr>
<tr>
<td>§92.129 AEM</td>
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<td>$150</td>
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<tr>
<td>§92.351 - §92.374 Emergency License Suspension &amp; Closing Order</td>
<td>$150</td>
<td>$250</td>
</tr>
<tr>
<td>§92.551 Administrative Penalties</td>
<td>$400</td>
<td>$500</td>
</tr>
</tbody>
</table>