

Complete

Minimum Standards

**Foster
Family
Homes**

STOCK CODE 0313-0

Texas Department of Human Resources

706 Banister Lane · P. O. Box 2960 · Austin, Texas 78769



February 12, 1980

JEROME CHAPMAN
Commissioner

BOARD MEMBERS

HILMAR G. MOORE
Chairman, Richmond

RAUL JIMENEZ
San Antonio

Wm. TERRY BRAY
Austin

Dear Program Provider:

The following set of minimum standards was developed by authority of the child care licensing law and as prescribed in the Administrative Procedure and Texas Register Act. All sets of standards went through a 60-day public review period for comments and suggestions from interested individuals during 1979.

The State Advisory Committee on Child Care Facilities was established by the child care licensing law. It is composed of parents, guardians, or custodians of children using child care facilities; members of child advocacy groups; operators of child care facilities; and experts in various professional fields relevant to child care and development. The Advisory Committee met to discuss and make recommendations on the minimum standards. They carefully studied and voted on drafts of the minimum standards submitted to them by Texas Department of Human Resources staff for their consideration.

Public hearings on the proposed minimum standards were held in Austin, Corpus Christi, El Paso, Arlington, Lubbock, Houston, San Antonio, McAllen, Abilene, Longview, Lufkin, and Beaumont to receive oral comment. Members of the Advisory Committee were present at the public hearings. Copies of all written comments received during the 60-day review period were available to the Advisory Committee.

The following persons are members of the State Advisory Committee on Child Care Facilities:

Mrs. Owanah Anderson, Wichita Falls
Mr. Karl Bozemen, Dallas
Mr. Manuel Gonzalez, San Antonio
Dr. Joan R. Hebel, Galveston
Mr. Wiley Henry, Houston
Ms. Ruth Hernandez, Austin
Mrs. Ruth L. McLemore, Arlington

Dr. Paul Scott, Dallas
Mrs. Jill Shaw, Houston
Mr. Danny Stone, Mesquite
Mr. Floyd Stumbo, Lubbock
Dr. Beverly Sutton, Austin
Mr. Lamont Waldrip, Boys Ranch
Mrs. Carol White, San Antonio
Mrs. Beverly Wood, Longview

The minimum standards, incorporating the comments and recommendations of the Advisory Committee and the public, were then submitted to the Texas Board of Human Resources. The Board Chairman is:

Mr. Hilmar G. Moore of Richmond

The Board members are:

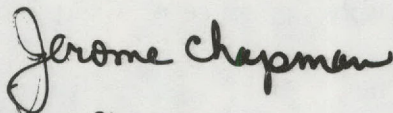
Mr. Raul Jimenez of San Antonio
Mr. William Terry Bray of Austin

After approval by the Board, the minimum standards were filed with the Secretary of State.

Many Texas citizens have been involved in the effort to develop reasonable minimum standards for child care facilities and child-placing agencies. The Department deeply appreciates their help and support in our mutual goal of ensuring safe child care for Texas children.

These minimum standards are effective February 28, 1980.

Sincerely,



Jerome Chapman

JC:cen

Attachments

**MINIMUM STANDARDS FOR
FOSTER FAMILY HOMES**

"Foster family home" means a child care facility which provides care for not more than six children for 24 hours a day.

MINIMUM STANDARDS FOR FOSTER FAMILY HOMES

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INTRODUCTION

Minimum Standards

Minimum standards which are used as the basis for regulating child care facilities and child-placing agencies are developed by the Texas Department of Human Resources with the assistance of child care providers, parents, lawyers, doctors, and child care professionals as required by the child care licensing law. The law sets guidelines for what must go into standards and requires that minimum standards be reviewed and commented on by the State Advisory Committee on Child Care Facilities. The licensing law and the Administrative Procedure and Texas Register Act require that proposed standards be distributed to providers for a 60-day review and comment period prior to adoption of the proposed standards as rules. Recommendations from providers and other interested groups are considered in formulating the final draft of standards which is prepared for filing as rules with the Secretary of State. Any interested person or agency may, at any time, request that standards be changed. Standards are a product of input from many people and groups and are designed to reflect what the citizens of Texas consider reasonable and minimum.

Exceptions to Minimum Standards

The child care licensing law permits child care providers to request waivers and variances for specific standards. A waiver is official permission not to meet a specific standard, granted only for economic reasons. A variance is official permission to meet the intent of a specific standard in a way other than that specified by the standard. It is used when a particular standard is not really applicable for a facility, and granted for good and just cause.

A waiver or variance can be requested when making application for a license, certificate, or registration or during the time the facility is regulated. The child care facility's licensing representative takes the request, and makes a recommendation to State Office about it. All waiver or variance requests are sent to State Office for decision. The health, safety, and well-being of the children in care are the main considerations in making a decision on a waiver or variance request.

Informal Administrative Reviews

An applicant, a licensee, a certification holder, or a person registered with the Department has the right, at any time, to request an informal review if he or she disagrees with the decision of a licensing representative. Child care providers are encouraged to first talk the situation over with the licensing representative. If this does not solve the problem, a day care provider may contact the day care licensing supervisor or the program director for day care licensing in their area. The licensing representative provides the name, address, and telephone number of the person to contact.

Persons who provide 24-hour care for children or place children in foster care or adoption contact the Director of Agency and Institutional Licensing, Texas Department of Human Resources, 706 Banister Lane, Austin, Texas 78769.

The child care provider may request the review orally or in writing. He or she explains the disagreement, and tells the Department whether or not they plan to have an attorney present. A member of the Department's licensing staff conducts the review. The reviewer examines the facts, and then makes a recommendation to uphold or change the decision of the licensing representative. The child care provider is promptly informed of the decision.

Appeals and Court Challenges

If the Department denies an application or revokes a license, certification, or registration, the provider is notified in writing what standards or provisions of the law are allegedly being violated and given instructions on how to request an appeal. The child care provider may request an appeal of the decision within 30 days of being notified.

If a request for appeal is granted, the Director of Licensing appoints an advisory review board made up of persons who hold the same kind of license as the person appealing the denial or revocation and a hearing is scheduled.

After an appeal hearing, the advisory review board makes recommendations to the Director of Licensing. A committee reviews the matter and makes a decision on the appeal. The committee is composed of the Director of Licensing, a person from the Licensing Branch who develops standards, and a representative from the Department in the region where the facility is located.

If a person who appeals a denial or revocation does not agree with the decision on the appeal, they may challenge it within 30 days after being notified of the decision. This is done by filing suit in a district court in Travis County or in the county where the facility is located.

1000 Foster Family

1100 Qualifications

1. Foster parents and any employees involved in child care shall be responsible, mature, healthy adults capable of meeting the needs of the children in care.

2. At least three references shall be obtained for foster parents and any employee involved in child care. Information obtained from references shall be written and filed whether the interview is done in person or by telephone.

3. No one who has been convicted within the preceding 10 years of any felony classified as an offense against the person or family, or of public indecency, or of violation of the Texas Controlled Substances Act, or of any misdemeanor classified as an offense against the person or family or of public indecency, may serve as a foster parent or as an employee of the foster home unless the Director of Licensing has ruled that proof of rehabilitation has been established. (See Appendix IX.)

4. Any foster parent or employee shall be reassigned or removed from any contact with children if any of the following are returned:

a. An indictment alleging commission of any felony classified as an offense against the person or family or of public indecency, or violation of the Texas Controlled Substances Act.

b. An indictment alleging commission of any misdemeanor classified as an offense against the person or family, or of public indecency.

c. An official criminal complaint accepted by a district or county attorney alleging commission of a misdemeanor classified as an offense against the person or family, or of public indecency.

Such reassignment or removal shall remain in effect pending resolution of the charges. Notification of such action shall be made to the Licensing Branch within 24 hours or the next working day. (See Appendix IX.)

5. Foster parents and any employees in the home shall have an examination for tuberculosis within 12 months before the home is used for children. Re-examination shall be in accordance

with recommendations of local public health authorities or the regional office of the Texas Department of Health. Children of foster parents shall meet the same requirements as those for the children in care.

6. The foster family shall provide the staff and services necessary to provide for the care and safety of children.

1200 Training

Each foster parent unit shall participate in at least 15 hours of in-service training annually. Training shall be documented and be approved by a person meeting the same requirements as the person making the intake study.

1300 Reports and Records

1. Any serious incident involving a child shall be reported immediately to the parents or managing conservator. Documentation of notification of the child's parents or managing conservator shall be included in the child's record.

2. The foster family home shall complete written incident reports concerning serious occurrences involving staff or children. Each report shall include the date and time of occurrence, the staff member or children involved, the nature of the incident, and the circumstances surrounding it. A copy of the report shall be filed at the foster family home, and shall be available for review to the staff of the Licensing Branch.

3. The following serious occurrences shall be reported to the Licensing Branch within 24 hours or the next working day: suicide attempts; incidents of cruel or abusive treatment; incidents which critically injure or permanently disable a child; and death of a child.

4. Absences without permission shall be reported to the parents or managing conservator when it is determined that the child is a runaway. Documentation of notification of the child's parents or managing conservator shall be included in the child's record.

5. Disasters or emergency situations which require closure of the foster home such as those caused by fire or severe weather, shall be reported to the Licensing Branch within 24 hours or the next working day.

1400 Other Requirements

1. An incorporated foster family home shall make available a copy of the Articles of Incorporation and Certificate of Incorporation for review by the Licensing Branch.

2. An incorporated foster family home shall provide the Department with the names, addresses, and titles of the officers and/or executive committee of the governing body. The Licensing Branch shall be notified of any changes.

3. The foster family home shall notify the Licensing Branch of:

a. Any changes in the foster family home which might affect the care of the children.

b. Any impending change that would necessitate a change in the conditions of the license, i.e. capacity, age range, sex, location, or name.

4. The foster family home's records shall be available and open for review by the Licensing Branch.

5. The foster family home shall allow the Department to visit and inspect the foster family home at all reasonable times. (*Chapter 42, Human Resources Code, Sec. 42.044.*)

6. The license shall be available at the foster family home.

7. The foster family home shall maintain complete financial records. These shall be on file at the facility. The Licensing Branch will check these records only on written notice from the Department's Director of Licensing.

2000 Admissions and Discharge

2100 Admission Policies

1. The foster family home shall have written admission policies which specify the age, sex, and type of children served. A copy of these policies must be submitted to the Licensing Branch when the signed application is submitted.

2. The foster family home shall only accept children who meet the conditions outlined in the home's policies.

a. The conditions of the license shall be observed.

b. If a change is adopted which necessitates a change in the conditions of the license, the foster family shall apply to the Department for a new license.

3. No child shall be denied admission to the foster family home because of race.

4. A foster family home shall not accept more children than the maximum number specified on the license or children whose age and sex are inconsistent with the conditions of the license.

5. A foster family shall not care for more than six children.

A foster family home shall not care for more than two infants under 18 months old. If two infants are in the home, no more than two other children under six years old can be placed in the home. These numbers include the foster family's own children.

6. The foster parents shall not accept any individual 18 years old or older into the home who is not related to the foster family or the children in care.

2200 Intake Study

1. Except in an emergency placement, a foster family home shall not accept a child for care until an intake study has been made and a determination made that the placement meets the best interests of

the child and his or her family. In the case of an emergency placement, the intake study shall be completed in 30 days.

2. The intake study, shall be developed by a person qualified in one of the following ways:

a. A master's degree in social work from an institution accredited by the Council on Social Work Education and a minimum of one year of experience in children's or family services.

b. A graduate degree in a behavioral or social science from an accredited college or university and two years of experience in children's or family services.

c. A bachelor's degree in social work from an accredited college or university and two years of experience in children's or family services.

d. A bachelor's degree from an accredited college or university and three years of experience in children's or family services.

e. A bachelor's degree from an accredited college or university and current, direct supervision from a person meeting one of the above qualifications.

f. A licensed administrator. (*Chapter 43, Human Resources Code.*)

The name and qualifications of the person doing the intake study shall be documented.

3. The intake study shall include the following information:

a. A description of the child's family relationships and the family's circumstances which make placement in a foster home necessary.

b. The child's developmental and medical history, including current immunization record.

c. The parents' or managing conservator's expectations of placement.

- d. The child's understanding of placement.
- e. A description of the child's personality, behavior, and interests.
- f. The child's school history.
- g. Any history of previous placements outside the child's own home.
- h. A statement about the child's legal status.
- i. A statement of the child's individual needs.
- j. The immediate and long-range goals of the placement.
- k. The name of the family member or managing conservator who will carry primary responsibility for the relationship with the foster home and the child.

4. The foster parents shall review the intake study in order to determine whether admission to the foster family home is appropriate. The decision to accept the child is the responsibility of the foster parents.

5. There shall be a written placement agreement between the foster family home and the child's parents or managing conservator at the time of placement. A copy of this agreement shall be in the child's case record. The agreement shall include:

- a. Authorization for the foster family home to care for the child.
- b. Medical consent form signed by a person authorized to give consent by the *Texas Family Code, Chapter 35, Section 35.01*. (See Appendix II.)

6. Before admission, or at the time of placement, the foster family home shall provide written material to the child's parents or managing conservator which specifies:

- a. Rules regarding visits, mail, gifts, and telephone calls.

- b. Information on the nature and frequency of reports to the child's parents or managing conservator.

- c. The foster family home's policy on discipline.

- d. The foster family home's policy or program concerning religious training.

- e. The name of the person or office that parents or managing conservators can contact if they feel their child's rights have been violated.

- f. Information concerning trips.

- g. If the foster home has a school program, information concerning its accreditation, approval, or lack thereof by the Texas Education Agency.

7. The foster family home shall not care for a child unless the child has had a medical examination by a licensed physician within 30 days before admission or within 30 days after admission. Children being transferred from an agency who have had a medical examination within the past year are exempt. The medical examination shall be documented in the child's record.

8. Children shall be tested for tuberculosis according to the recommendations of local public health authorities or the regional office of the Texas Department of Health.

9. Children three years old or older shall have had a dental examination by a licensed dentist within six months prior to admission or arrangements shall be made for one within 30 days after admission. Children being transferred from an agency who have had a dental examination within the past year are exempt. Proof of dental examinations shall be in the child's record.

2300 Discharge

1. The following persons shall be involved in planning for the discharge of a child from the foster family home:

- a. The child.
- b. The child's parents or managing conservator.
- c. The foster parents.

2. The date and the circumstances of the release shall be recorded in the child's record. The name, address, and relationship of the person to whom the child is released shall be recorded.

3. A foster family home shall not discharge a child to any person or agency other than the parent or managing conservator, except on written authorization from the parent or managing conservator.

2400 Children's Records

1. The foster family home shall maintain accurate and current records for each child in care. In addition to other required documentation each child's record shall include:

- a. Name
- b. Date of birth
- c. Place of birth
- d. Sex
- e. Religion (if known)
- f. Race
- g. Names and addresses of parents, brothers, and sisters
- h. Names and addresses of other persons who have a significant relationship with the child
- i. Date of admission
- j. Birth certificate or other document which establishes identity, if available. Records without these documents shall reflect correspondence generated at least every three months to obtain such.
- k. A copy of the court order related to managing or possessory conservatorship
 - l. Date of discharge

2. The foster family home shall ensure that case records are kept confidential and inaccessible to unauthorized persons.

a. Information in case records shall not be disclosed for any purpose other than direct and authorized services to the child or the administration of the foster family home.

b. These records shall be at the foster family home and shall be available to the Licensing Branch for review.

3000 Foster Child

3100 Plan of Service

1. Within 30 days of admission an initial plan of service shall be developed by a person meeting the same requirements as the person making the intake study. The plan shall be developed by or together with the foster parents after conferring with the child and the child's parents or managing conservator. The plan shall be filed in the child's case record with copies or a summary given to the child's parents or managing conservator. The names of the persons participating in the formulation of the plan shall be listed in the child's record.

a. The plan of service shall specify the child's needs and the way these needs will be met.

b. The plan of service shall include the objectives of placement and the estimated length of stay.

c. The plan of service shall be shared with staff working with the child.

2. There shall be a conference every six months for the purpose of updating the plan. The conference shall include a person meeting the same requirements as the person developing the plan, the foster parents, the child and the child's parents or managing conservator. Results of the conference shall be filed in the child's case record.

a. The parents or managing conservator shall be notified in advance of the conference. Documentation of this notification shall be filed in the child's case record.

b. The updated plan shall note achieved or changed objectives. A copy or summary shall be given to the child's parents or managing conservator.

c. The names of persons participating in the conference shall be listed, and if all those listed in the standard were not included, a copy of the updated plan shall be sent for their response.

3. The foster family home shall obtain or provide professional consultation, treatment, and education for children with developmental disabilities and/or problems of adjustment in the social,

home, and/or school environment. Any record of specialized testing or treatment shall be documented in the child's record.

3200 Daily Care

1. The foster parents shall encourage and arrange for children to take part in recreational activities and other community affairs. Children shall be encouraged to form friendships with persons outside the foster family home.

2. The daily routine shall be developed in relation to children's needs.

3. The foster parents shall see that each child is supplied with his or her own clothing suitable to the child's age and size. It shall be comparable to the clothing of other children in the community. Children shall have some choice in selecting their clothing.

4. Children shall be given training in personal care, hygiene, and grooming. Each child shall be supplied with personal care, hygiene, and grooming equipment.

5. The foster parents shall provide supervised indoor and outdoor recreation and equipment so that every child may participate.

3300 Money

1. The foster parents shall provide children with guidance in money management.

2. Money earned by a child or received as a gift or allowance shall be his or her personal property.

3. A child shall not be required to use earned money to pay for room and board, unless it is a part of the plan of service and approved by the parents or managing conservator.

3400 Education, Work, and Training

1. The foster parents shall arrange an education appropriate for each child.
2. The foster parents shall provide for the educational and social needs of the children.
3. The foster parents shall distinguish between tasks which children are expected to perform as part of living together, jobs to earn spending money, and jobs performed for vocational training. These tasks shall not preclude leisure time and recreational activities.

3500 Children's Rights and Privileges

1. The foster family shall allow privacy for each child.
2. Contacts between the child and his or her family shall be allowed while the child is in care unless the rights of the parents have been terminated by court order or family contact is not in the child's best interest. The frequency of contact shall be based on the needs of the child, and shall be determined with the participation of his or her family or managing or possessory conservator. Any limitations shall be filed in the child's case record.
 - a. Children shall be allowed to send and receive mail and have telephone conversations with family members or the managing or possessory conservator unless the best interests of the child or a court order necessitates restrictions.
 - b. When contact with the family is requested by either the child or his or her family and the foster home determines contact is not in the child's best interest, the restrictions from communication shall be determined by a psychiatrist, licensed psychologist, social worker with a master's degree in social work or a licensed administrator. Reasons for the restrictions shall be documented in the child's record.

If contact continues to be requested and continued restrictions are necessary, these restrictions shall be evaluated monthly by one of the aforementioned persons, and reasons for the continued restrictions documented in the child's record.

c. If limits are put on communication or visits for practical reasons (such as expense), such limitations shall be determined with the participation of the child and his or her parents or managing or possessory conservator.

3. The foster family home shall have clearly written policies regarding visits, gifts, mail, and telephone calls between the child and his or her family or managing or possessory conservator. These policies shall be available for review by the Licensing Branch.

4. A child shall be allowed to bring personal possessions to the foster family home and to acquire possessions of his or her own. If limits are put on the kind of possessions a child may or may not receive, these shall be discussed with the child and his or her managing conservator.

5. The foster family shall not place a child in a position of having to acknowledge his or her dependency, destitution, or neglect. The foster parents shall not require a child to make statements regarding his or her background or dependence on the foster family home.

6. The foster parents shall not require a child to make public statements to acknowledge gratitude to the foster family.

7. Pictures, reports, or identification that humiliate, exploit, or invade the privacy of a child or his or her parents or managing conservator shall not be made public. The foster family shall not use reports or pictures from which children can be identified without written consent from the child's parents or managing conservator.

8. Discipline shall be consistent with the policies of the foster family home. The home shall provide copies of the discipline policies to the children's parents or managing conservators. The home shall also provide written information to the parents or managing conservators that identifies the person or office that parents or managing

conservators can contact if they feel their children's rights have been violated. Copies of the foster family home's discipline policy shall be submitted to the Department with each application for a license and resubmitted at any time a change is made in policy.

a. Only foster parents or adult caregivers shall discipline children.

b. Children shall not be subjected to cruel, harsh, unusual, or unnecessary punishment.

c. A record must be kept of the physical punishment administered to children and the imposition of restrictions to the foster home that exceed 24 hours.

d. Children shall not be subjected to verbal remarks that belittle or ridicule them or their families.

e. Children shall not be denied food, mail, or visits with their families as punishment.

f. Children must not be threatened with the loss of foster home placement as punishment.

g. Discipline must fit the needs of the child.

h. No child of any age shall ever be shaken.

i. If the policy of the foster family home permits spanking children less than five years old, spanking shall only be administered with an open hand on a child's buttocks or hands.

j. No form of discipline, control, or punishment shall administered to children that violates State laws that protect children from abuse and neglect.

9. Children shall not be placed in a locked room.

10. Physical holding as a form of restraint shall be used only when necessary to protect the child from injury to self or others. The use of physical holding and the length of time used shall be recorded in the child's case record. Mechanical restraints shall not be used.

3600 Medical and Dental Care

1. The foster family home shall have written procedures for obtaining medical and dental care.

a. Copies of these procedures shall be available for review by the Licensing Branch.

b. The foster family home shall make known to all staff members the policies and procedures to be followed in an emergency.

2. The foster family home shall comply with the following rules regarding the storage and administration of medications. (See Appendix IV for suggested guidelines in the storage and administration of medications.)

a. All medication shall be given by the foster parents or an adult staff member except when a child is participating in a medically approved self-medication program. Medication shall be given according to instructions on the label.

b. Prescription medication shall be in the original container labeled with the child's name, a date, instructions, and the physician's name.

c. All medications shall be kept out of the reach of children or in a locked storage area.

d. Medication requiring refrigeration shall be separated from food in a designated container.

e. Medication shall be disposed of when a child leaves the home or when the medication is out of date.

3. Each child shall have a medical examination every year by a licensed physician and receive treatment as needed. Documentation of the examination signed by a licensed physician shall be on file in the child's medical record.

4. All children shall have a dental examination at least once a year by a licensed dentist or dental hygienist working under the supervision of a licensed dentist. Documentation of the examination shall be filed in the child's medical record.

5. The foster home shall comply with laws, rules, and regulations regarding immunization of children. (*Chapter 42, Human Resources Code, Sec. 42.043.*) Current immunization records shall be maintained for each child at the home. (See Appendix V for immunization requirements.) Children's immunization records shall include the birthdate, the immunization status, the number of doses, and the dates each immunization was received. A machine or handwritten copy of the immunization record is acceptable. Handwritten copies shall bear the signature of the responsible staff member copying the information. Compliance with this standard shall be measured by the presence of one or more of the following in each child's record:

a. A written and dated record that the child has been immunized against diphtheria, tetanus, pertussis, polio, measles, mumps, and rubella. This record shall have a rubber stamp or signature of the physician or health personnel and shall specify the type, number of doses, and the dates given as required by law.

b. A written and dated statement from a licensed physician or other authorized health personnel that immunizations against at least one of the above mentioned diseases have begun. The immunization cycle shall be completed as soon as is medically feasible. A current immunization record shall be on file at the home.

c. A certificate signed by a physician, duly registered and licensed under the Medical Practice Act, stating the physician's opinion that the required immunization would be injurious to the health and well-being of the child or any member of his or her family or household.

d. An affidavit signed by the parent or managing conservator of the child stating that the vaccination or immunization conflicts with the tenets and practice of a recognized church or religious denomination of which the child is an adherent or member.

e. A written and dated statement for a child enrolled in a public school program signed by the parents or managing conservator stating that the child's immunization record is on file at the school the child attends and that all immunizations are current. The name of the school shall be included on the statement.

6. Current medical and dental records shall be maintained for each child including a record of each visit to the physician or dentist and recommended treatment. Treatment shall be provided as indicated.

3700 Nutrition

1. Children shall be provided food of adequate quality and in sufficient quantity to supply the nutrients needed for growth and development.

a. Children shall have at least three balanced meals daily as outlined in "Food for Fitness — A Daily Food Guide," developed by the United States Department of Agriculture. (See Appendix III.)

b. All milk and milk products shall be Grade A pasteurized or from sources approved by the Texas Department of Health.

4000 Foster Home

4100 Health and Safety

1. Documentation of current and approved fire, health, and safety inspections shall be on file at the foster family home. Copies of the inspection reports shall be submitted to the Licensing Branch when the signed application is submitted. The required annual inspections are:

a. Fire inspections which shall meet regulations set by the State Fire Marshal.

b. Health inspections which shall meet regulations set by the Texas Department of Health.

c. If local health and fire inspections are not available, Department fire and health checklists shall be completed.

4200 Environment

1. The home and yard shall be maintained, repaired, and cleaned so that they are not hazardous to health and safety.

a. Outdoor areas shall be well drained.

b. Windows and doors used for ventilation shall be screened.

c. Equipment and furniture shall be safe and sturdy.

d. Foster family homes shall ensure that children in care are provided adequate protection from flammable and poisonous substances.

e. Explosive materials, firearms, and projectiles (such as darts, arrows, and BB's) shall be stored out of children's reach.

2. Animals on the premises shall be vaccinated and treated as recommended by a licensed veterinarian to protect the health of the children. Documentation of vaccinations and treatment shall be on file at the home.

3. The foster parents shall take measures to keep the house and grounds free of rodents, insects, and stray animals.

4. Each child shall have his or her own bed, except that two children of the same sex may share a double bed. Beds shall be clean and comfortable.

5. Children shall not regularly sleep in a room with an adult. However, in the case of an infant under one year of age, it is permissible for the child to sleep in the room of the foster parent.

6. A child over six years old shall not share a bedroom with a person of the opposite sex.

7. A sleeping room shall have at least 40 square feet for every person. Bedrooms for single persons shall have at least 80 square feet.

8. Sketches showing room dimensions and the purpose of all rooms shall be submitted to the Licensing Branch when the signed application is submitted.

9. There shall be storage space for each child's clothing and personal belongings.

**APPENDIX I
HUMAN RESOURCES CODE, CHAPTER 42
REGULATION OF CHILD-CARE FACILITIES
(Child Care Licensing Law)**

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 42.001. PURPOSE. The purpose of this chapter is to protect the health, safety, and well-being of the children of the state who reside in child-care facilities by establishing statewide minimum standards for their safety and protection and by regulating the facilities through a licensing program. It is the policy of the state to ensure the protection of all children under care in child-care facilities and to encourage and assist in the improvement of child-care programs. It is also the intent of the legislature that freedom of religion of all citizens is inviolate, and nothing in this chapter gives a governmental agency authority to regulate, control, supervise, or in any way be involved in the form, manner, or content of religious instruction or the curriculum of a school sponsored by a religious organization.

Sec. 42.002. DEFINITIONS. In this chapter:

(1) "Child" means a person under 18 years of age.

(2) "Division" means the division designated by the department to carry out the provisions of this chapter.

(3) "Child-care facility" means a facility that provides care, training, education, custody, treatment, or supervision for a child who is not related by blood, marriage, or adoption to the owner or operator of the facility, for all or part of the 24-hour day, whether or not the facility is operated for profit or charges for the services it offers.

(4) "Child-care institution" means a child-care facility that provides care for more than 12 children for 24 hours a day, including facilities known as children's homes, halfway houses, residential treatment camps, emergency shelters, and training or correctional schools for children.

(5) "Foster group home" means a facility that provides care for 7 to 12 children for 24 hours a day.

(6) "Foster family home" means a facility that provides care for not more than six children for 24 hours a day.

(7) "Day-care center" means a facility that provides care for more than 12 children under 14 years of age for less than 24 hours a day.

(8) "Group day-care home" means a facility that provides care for 7 to 12 children under 14 years of age for less than 24 hours a day.

(9) "Registered family home" means a facility that regularly provides care in the caretaker's own residence for not more than six children under 14 years of age, excluding the caretaker's own children, and that provides care after school hours for not more than six additional elementary school siblings of the other children given care, but the total number of children, including the caretaker's own, does not exceed 12 at any given time.

(10) "Family day home" means a facility that provides care for not more than six children under 14 years of age for less than 24 hours a day not in the caretaker's own residence nor in the residence of one or more of the children.

(11) "Agency home" means a private home that provides care for not more than six children, that is used only by a licensed child-placing agency, and that meets division standards.

(12) "Child-placing agency" means a person other than the natural parents or guardian of a child who plans for the placement of or places a child in an institution, agency home, or adoptive home.

(13) "Facilities" includes child-care facilities and child-placing agencies.

(14) "State of Texas" or "state" does not include political subdivisions of the state.

(Sections 42.003-42.020 reserved for expansion)

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 42.021. DIVISION DESIGNATED. (a) The department shall designate a division within the department to regulate and license child-care facilities and child-placing agencies. The division shall enforce the provisions of this chapter and the rules and standards adopted by the department under this chapter and shall carry out other responsibilities the department may delegate or assign.

(b) The commissioner of the department shall appoint as director of the division a person who:

(1) meets the qualifications required of a child-care administrator by Chapter 43 of this code;

(2) holds a graduate degree in social science or law and has five years' administrative experience in a field related to child care; or

(3) has 10 years' experience in a field related to child care, at least 5 of which must be administrative.

(c) The department shall employ sufficient personnel and provide training for the personnel to carry out the provisions of this chapter.

(d) The director may divide the state into regions for the purpose of administering this chapter.

Sec. 42.022. STATE ADVISORY COMMITTEE. (a) The State Advisory Committee on Child-Care Facilities is composed of 15 citizens of this state appointed by the commissioner.

(b) Members of the committee serve for terms of two years.

(c) The members must represent the following groups:

(1) parents, guardians, or custodians of children who use the facilities;

(2) child advocacy groups;

(3) operators of the facilities; and

(4) experts in various professional fields that are relevant to child care and development.

(d) At least three members of the division staff shall meet with the committee, and the division shall provide staff necessary for the committee.

(e) The committee shall review rules and minimum standards for child-care facilities and child-placing agencies promulgated by state agencies, and shall advise the department, the division, the council, and state agencies on problems of child-care facilities and child-placing agencies.

(f) The committee shall receive and review the annual report of the division.

(g) The committee shall meet twice a year, and the members shall receive their actual travel expenses and the state per diem.

Sec. 42.023. ANNUAL REPORT. (a) The division shall send an annual report of its activities to the governor, lieutenant governor, and members of the legislature.

(b) The annual report shall include:

(1) a report by regions of applications for licensure or certification, of licenses issued, denied, suspended or revoked, or provisional licenses issued, denied, or revoked, of emergency closures and injunctions, and of the compliance of state-operated agencies with certification requirements;

(2) a summary of the amount and kind of in-service training and other professional development opportunities provided for division staff;

(3) a summary of training and other professional development opportunities offered to facilities' staffs; and

(4) a report of new administrative procedures, of the number of staff and staff changes, and of plans for the coming year.

(c) Copies of the annual report shall be available to any state citizen on request.

Sec. 42.024. ADMINISTRATIVE PROCEDURE. The Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) applies to all procedures under this chapter except where it is contrary to or inconsistent with the provisions of this chapter.

(Sections 42.025-42.040 reserved for expansion)

SUBCHAPTER C. REGULATION OF CHILD-CARE FACILITIES

Sec. 42.041. REQUIRED LICENSE. (a) No person may operate a child-care facility or child-placing agency without a license issued by the division.

(b) This section does not apply to:

(1) a state-operated facility;

(2) an agency home;

(3) a facility that is operated in connection with a shopping center, business, religious organization, or establishment where children are cared for during short periods while parents or persons responsible for the children are attending religious services, shopping, or engaging in other activities on or near the premises, including but not limited to retreats or classes for religious instruction;

(4) a school or class for religious instructions that does not last longer than two weeks and is conducted by a religious organization during the summer months;

(5) a youth camp licensed by the Texas Department of Health;

(6) a hospital licensed by the Texas Department of Mental Health and Mental Retardation or the Texas Department of Health;

(7) an educational facility accredited by the Central Education Agency or the Southern Association of Colleges and Schools that operates primarily for educational purposes in grades kindergarten and above;

(8) an educational facility that operates solely for educational purposes in grades kindergarten through at least grade two, that does not provide custodial care for more than one hour during the hours before or after the customary school day, and that is a member of an organization that promulgates, publishes, and requires compliance with health, safety, fire, and sanitation standards equal to standards required by state, municipal, and county codes;

(9) a kindergarten or preschool educational program that is operated as part of a public school or a private school accredited by the Central Education Agency, that offers educational programs through grades six, and that does not provide custodial care during the hours before or after the customary school day; and

(10) a registered family home.

(c) A single license that lists addresses and the appropriate facilities may be issued to a child-care institution that operates noncontiguous facilities that are nearby and that are demonstrably a single operation as indicated by patterns of staffing, finance, administrative supervision, and programs.

Sec. 42.042. RULES AND STANDARDS. (a) The department shall make rules to carry out the provisions of this chapter.

(b) The department shall conduct a comprehensive review of all rules and standards at least every six years.

(c) The department shall provide a standard procedure for receiving and recording complaints and a standard form for recording complaints.

(d) The department shall provide standard forms for applications and inspection reports.

(e) The department shall promulgate minimum standards for child-care facilities covered by this chapter that will:

(1) promote the health, safety, and welfare of children attending a facility;

(2) promote safe, comfortable, and healthy physical facilities for children;

(3) ensure adequate supervision of children by capable, qualified, and healthy personnel;

(4) ensure adequate and healthy food service where food service is offered;

(5) prohibit racial discrimination by child-care facilities; and

(6) require procedures for parental and guardian consultation in the formulation of children's educational and therapeutic programs.

(f) In promulgating minimum standards for child-care facilities, the department shall recognize the various categories of facilities, including facilities offering specialized care, and the various categories of children and their particular needs. Standards for child-care institutions must require an intake study before a child is placed in an institution. The intake study may be conducted at a community mental health and mental retardation center.

(g) In promulgating minimum standards the department may recognize and treat differently the following child-care facilities: child-caring institutions, foster homes, day-care centers, group day-care homes, family day homes, registered family homes, and agency homes.

(h) The department shall promulgate minimum standards for child-placing agencies.

(i) Before adopting minimum standards, the division shall present the proposed standards to the State Advisory Committee on Child-Care Facilities for review and comment, and shall send a copy of the proposed standards to each licensee covered by the proposed standards at least 60 days before the standards take effect to provide the licensee an opportunity to review and to send written suggestions to the council and the department.

(j) The department may waive compliance with a minimum standard in a specific instance if it determines that the economic impact of compliance is sufficiently great to make compliance impractical.

(k) The department may not regulate or attempt to regulate or control the content or method of any instruction or curriculum of a school sponsored by a religious organization.

Sec. 42.043. RULES FOR IMMUNIZATIONS.

(a) The department shall make rules for the immunization of children admitted to facilities.

(b) The department shall require that each child at an appropriate age have a test for tuberculosis and be immunized against diphtheria, tetanus, poliomyelitis, rubella, and rubeola. The immunization must be effective on the date of first entry into the facility. However, a child may be provisionally admitted if the required immunizations have begun and are completed as rapidly as medically feasible.

(c) The Texas Department of Health shall make rules for the provisional admission of children to facilities and may modify or delete any of the immunizations listed in Subsection (b) of this section or require additional immunizations as a requirement for admission to a facility.

(d) No immunization may be required for admission to a facility if a person applying for a child's admission submits one of the following affidavits:

(1) an affidavit signed by a licensed physician stating that the immunization would be injurious to the health and well-being of the child or a member of the child's family or household; or

(2) an affidavit signed by the child's parent or guardian stating that the immunization conflicts with the tenets and practices of a recognized religious organization of which the applicant is an adherent or a member.

(e) Each facility shall keep an individual immunization record for each child admitted, and the records shall be open for inspection by the division at all reasonable times.

(f) The Texas Department of Health shall provide the immunizations required by this section to children in areas where there is no local provision of these services.

Sec. 42.044. INSPECTIONS. (a) An authorized representative of the division may visit a facility during operating hours to investigate, inspect, and evaluate.

(b) The division shall inspect all licensed or certified facilities at least once a year and may inspect other facilities as necessary. At least one of the annual visits must be unannounced and all may be unannounced.

(c) The division must investigate a facility when a complaint is received. The division representative must notify the facility's director or authorized representative when a complaint is being investigated and report in writing the results of the investigation to the director or the director's authorized representative.

(d) The division may call on political subdivisions and governmental agencies for assistance within their authorized fields.

Sec. 42.045. RECORDS. (a) A person who operates a licensed or certified facility shall maintain individual child development records, individual health records, statistical records, and complete financial records.

(b) A person who operates a licensed facility shall have an annual audit by a certified public accountant of the facility's books. A copy of the accountant's statement of income and disbursements must accompany an application for a license. This subsection does not apply to a facility that provides care for less than 24 hours a day or to an agency home.

Sec. 42.046. LICENSE APPLICATION. (a) An applicant for a license to operate a child-care facility or child-placing agency shall submit to the division a completed application on a form provided by the division.

(b) The division shall supply the applicant the application form and a copy of the appropriate minimum standards.

(c) After receiving an application, the division shall investigate the applicant and the plan of care for children.

(d) The division shall complete the investigation and decide on an application within two months after the date the division receives an application.

Sec. 42.047. CONSULTATIONS. (a) The department shall offer consultation to potential applicants, applicants, and license and certification holders about meeting and maintaining standards for licensing and certification and achieving programs of excellence in child care.

(b) The department shall offer consultation to prospective and actual users of facilities.

Sec. 42.048. ADVISORY OPINIONS. (a) The director of the division may give an advisory opinion on whether or not a planned facility or a planned change in an existing facility complies with the division's rules and minimum standards.

(b) A written opinion authorized by Subsection (a) of this section is binding on the division as a declaratory order if it is signed by the division director and the division representative administering this chapter in a division region, and if an applicant or license holder has acted in reliance on the opinion.

Sec. 42.049. LICENSING. (a) The division shall issue a license after determining that an applicant has satisfied all requirements.

(b) When issuing a license, the division may impose restrictions on a facility, including but not limited to the number of children to be served and the type of children to be served.

(c) The division may grant a variance of an individual standard set forth in the applicable standards for good and just cause.

(d) A license holder must display a license issued under this chapter in a prominent place at the facility.

(e) A license issued under this chapter is not transferable and applies only to the operator and facility location stated in the license application. A change in location or ownership automatically revokes a license.

(f) A biennial license must be issued if the division determines that a facility meets all requirements. The evaluation shall be based on a specified number of visits to the facility and a review of all required forms and records.

Sec. 42.050. LICENSE RENEWAL. (a) A license holder may apply for a new license in compliance with the requirements of this chapter and the rules promulgated by the division.

(b) The application for a new license must be completed and decided on by the division before the expiration of the license under which a facility is operating.

(c) The division shall evaluate the application for a new license to determine if all licensing requirements are met. The evaluation must include a specified number of visits to the facility and a review of all required forms and records.

Sec. 42.051. PROVISIONAL LICENSE. (a) The division shall issue a provisional license when a facility's plans meet the department's licensing requirements and one of the following situations exists:

- (1) the facility is not currently operating;
- (2) the facility is not licensed for the location stated in the application; or
- (3) there is a change in ownership of the facility.

(b) A provisional license is valid for six months from the date it is issued and is not renewable.

Sec. 42.052. CERTIFICATION AND REGISTRATION. (a) A state-operated child-care facility or child-placing agency must receive certification of approval from the division. The certification of approval must be renewed every two years.

(b) To be certified, a facility must comply with the department's rules and standards and any provisions of this chapter that apply to a licensed facility of the same category. The operator of a certified facility must display the certification in a prominent place at the facility.

(c) A registered family home must be registered with the division.

(d) To be registered with the division, a registered family home must comply with the department's rules and standards and any provision of this chapter that applies to a registered family home.

Sec. 42.053. AGENCY HOMES. (a) An agency home is considered part of the child-placing agency that operates the agency home for purposes of licensing.

(a) The operator of a licensed agency shall display a copy of the license in a prominent place in the agency home used by the agency.

(b) An agency home shall comply with all provisions of this chapter and all department rules and standards that apply to a child-care facility caring for a similar number of children for a similar number of hours each day.

(c) The division shall revoke or suspend the license of a child-placing agency if an agency home operated by the licensed agency fails to comply with Subsection (c) of this section.

(Sections 42.054-42.070 reserved for expansion)

SUBCHAPTER D. REMEDIES

Sec. 42.071. LICENSE SUSPENSION. (a) The division may suspend the license of a facility that has temporarily ceased operation but has definite plans for starting operations again within the time limits of the issued license.

(b) The division may suspend a facility's license for a definite period rather than deny or revoke the license if the division finds repeated non-compliance with standards that do not endanger the health and safety of children. To qualify for license suspension under this subsection, a facility must suspend its operations and show that standards can be met within the suspension period.

(c) The division shall revoke the license of a facility that does not comply with standards after a license suspension.

Sec. 42.072. LICENSE DENIAL OR REVOCATION. (a) The division shall deny or revoke the license or certification of approval of a facility that does not comply with the requirements of this chapter, the standards and rules of the department, or the specific terms of the license or certification.

(b) The division shall notify the person operating or proposing to operate a facility of the reasons for the denial or revocation and of the person's right to appeal the decision within 30 days after receiving the notice.

(c) A person who wishes to appeal a license denial or revocation shall notify the director by certified mail within 30 days after receiving the notice required in Subsection (b) of this section. The person shall send a copy of the notice of appeal to the assigned division representative.

(d) Within 14 days after the date the appeal notification was mailed, the director shall appoint an advisory review board to hear the appeal or notify the person requesting the appeal that the request is denied.

(e) Within 14 days after notifying a person that an advisory review board will hear the case, the director shall appoint five of the person's peers to the board and set a date for the hearing. The date for the hearing must be within 28 days after the date the board members are appointed.

(f) The advisory review board shall hear the appeal and render its opinion to the director within seven days after the last day of the hearing. The board members shall receive actual travel expenses and the state per diem for each day of the hearing.

(g) A committee composed of the director, the division representative responsible for establishing standards, and the division representative administering this chapter in the region where the facility in question is located shall review the opinion. The committee shall make a decision within 14 days after receiving the opinion and shall notify, by certified mail, the person who appealed.

(h) A person whose license has been denied or revoked may challenge the committee's decision by filing a suit in a district court of Travis County or the county in which the person's facility is located within 30 days after receiving the committee's decision. The trial shall be de novo.

(i) Records of the department's hearing shall be kept for one year after a committee decision is rendered. On request, and at the person's own expense, the division shall supply a copy of the verbatim transcript of the advisory board hearing to a person appealing a license denial or revocation in district court.

(j) A person may continue to operate a facility during an appeal of a license denial or revocation unless the division has sought injunctive relief under Section 42.074 or civil penalties under Section 42.075 of this code.

Sec. 42.073. CLOSING A FACILITY. (a) The division may close the facility and place the children attending the facility in another facility if the division finds violations of this chapter or violations of the department's rules and standards that create an immediate danger for children.

(b) A division representative who finds conditions described in Subsection (a) of this section shall immediately notify the director and request an immediate inspection of the facility by the director or the director's designee.

(c) The division shall report to the governor and the commissioner of the department when a state-operated facility is found in violation of this chapter or the department's rules and standards and the violation threatens serious harm to the children in the facility.

(d) Closing a facility under this section is an emergency measure. The division shall seek an injunction against continued operation of the facility after closing a facility under this section.

Sec. 42.074. INJUNCTIVE RELIEF. (a) When it appears that a person has violated, is violating, or is threatening to violate the licensing, certification, or registration requirements of this chapter or the department's licensing, certification, or registration rules and standards, the division may file a suit in a district court in Travis County or in the county where the facility is located for assessment and recovery of civil penalties under Section 42.075 of this code, for injunctive relief, including a temporary restraining order, or for both injunctive relief and civil penalties.

(b) The district court shall grant the injunctive relief the facts may warrant.

(c) At the division's request, the attorney general shall conduct a suit in the name of the State of Texas for injunctive relief, to recover the civil penalty, or for both injunctive relief and civil penalties as authorized by Subsection (a) of this section.

Sec. 42.075. CIVIL PENALTY. (a) A person is subject to a civil penalty of not less than \$50 nor more than \$100 for each day of violation and for each act of violation if the person:

(1) threatens serious harm to a child in a facility by violating a provision of this chapter or a department rule or standards;

(2) violates a provision of this chapter or a department rule or standard three or more times within a 12-month period; or

(3) places a public advertisement for an unlicensed facility.

(b) The civil penalty authorized by this section is cumulative and in addition to the criminal penalties and injunctive relief provided by this chapter.

Sec. 42.076. CRIMINAL PENALTIES. (a) A person who operates a child-care facility or child-placing agency without a license commits a Class B misdemeanor.

(b) A person who places a public advertisement for an unlicensed facility commits a Class C misdemeanor.

APPENDIX II

STATUTORY REFERENCES

I. LICENSING OF ADMINISTRATORS

Beginning January 1, 1974, no person may serve as a child care administrator of a child-caring institution unless he holds a child care administrator's license issued by the Texas Department of Human Resources.

A child care administrator means a person who supervises and exercises direct administrative control over a child-care institution and who is responsible for its programs and personnel, irrespective of whether or not the person has an ownership interest in the institution or shares duties with other persons. (*Chapter 43, Section 43.001(2) Human Resources Code*)

II. INJURY TO AN ADULT

(a) A person commits an offense if he:

(1) intentionally, knowingly, or recklessly causes bodily injury to another, including his spouse; or

(2) intentionally or knowingly threatens another with imminent bodily injury, including his spouse; or

(3) intentionally or knowingly causes physical contact with another when he knows or should reasonably believe that the other will regard the contact as offensive or provocative.

(b) An offense under this section is a Class A misdemeanor unless the offense is committed under Subsection (a)(2) or (a)(3) of this section, in which event it is a Class C misdemeanor. (*Texas Penal Code Annotated, Section 22.01*)

(See the full text of *Texas Penal Code Annotated, Sec. 32.01* for penalties.)

III. INJURY TO A CHILD

(a) A person commits an offense if he intentionally, knowingly, recklessly, or with criminal negligence by act or omission, engages in conduct that causes to a child who is 14 years of age or younger:

(1) serious bodily injury;

(2) serious physical or mental deficiency or impairment;

(3) disfigurement or deformity; or

(4) a bodily injury.

(b) An offense under Subsection (a)(1), (2), or (3) of this section is a felony of the second degree unless the conduct is engaged in recklessly or negligently in which event it shall be a felony of the third degree.

(c) An offense under Subsection (a)(4) of this section is a felony of the third degree unless the conduct is engaged in recklessly or negligently, in which event it shall be a Class A misdemeanor. (*Texas Penal Code Annotated, Section 22.04*)

IV. HARBORING A RUNAWAY CHILD

Section 25.07. Harboring Runaway Child.

(a) A person commits an offense if he knowingly harbors a child and he is criminally negligent about whether the child:

(1) is younger than 18 years; and

(2) has escaped from the custody of a peace officer, a probation officer, the Texas Youth Council, or a detention facility for children, or is voluntarily absent from the child's home without the consent of the child's parent or guardian for a substantial length of time or without the intent to return.

(b) It is a defense to prosecution under this section that the actor was related to the child within the second degree by consanguinity or affinity.

(c) It is a defense to prosecution under this section that the actor notified:

(1) the person or agency from which the child escaped or a law enforcement agency of the presence of the child within 24 hours after discovering that the child had escaped from custody; or

(2) a law enforcement agency or a person at the child's home of the presence of the child within 24 hours after discovering that the child was voluntarily absent from home without the consent of the child's parent or guardian.

(d) An offense under this section is a Class A misdemeanor. (*Texas Penal Code Annotated, Section 25.07*)

V. REPORTING CHILD ABUSE OR NEGLECT

Section 34.01. Persons Required to Report.

Any person having cause to believe that a child's physical or mental health or welfare has been or may be adversely affected by abuse or neglect shall report in accordance with Section 34.02 of this code.

Section 34.02. Contents of Report: To Whom Made. (a) Nonaccusatory reports reflecting the reporter's belief that a child has been or will be abused or neglected, or has died of abuse or neglect, has violated the compulsory school attendance laws on three or more occasions, or has, on three or more occasions, been voluntarily absent from his home without the consent of his parent or guardian for a substantial length of time or without the intent to return shall be made to:

- (1) Texas Department of Human Resources;
- (2) the agency designated by the court to be responsible for the protection of children; or
- (3) any local or state law enforcement agency.

(b) All reports must contain the name and address of the child, the name and address of the person responsible for the care of the child, if available, and any other pertinent information.

(c) All reports received by any local or state law enforcement agency shall be referred to the Texas Department of Human Resources or to the agency designated by the court to be responsible for the protection of children.

(d) An oral report shall be made immediately on learning of the abuse or neglect as prescribed in Subsection (a) of this section, and a written report shall be made within five days to the same agency or department. Anonymous reports, while not encouraged, will be received and acted on in the same manner as acknowledged reports.

Section 34.07. Failure to Report: Penalty.

(a) A person commits an offense if the person has cause to believe that a child's physical or mental health or welfare has been or may be further adversely affected by abuse or neglect and knowingly fails to report in accordance with Section 34.02 of this code.

(b) An offense under this section is a Class B misdemeanor.

(Chapter 34, Title 2, Texas Family Code)

VI. CONSENT TO MEDICAL TREATMENT

Section 35.01. Who May Consent. Any of the following persons may consent to medical treatment of a minor when the person having the power to consent as otherwise provided by law cannot be contacted and actual notice to the contrary has not been given by that person:

- (1) a grandparent;
- (2) an adult brother or sister;
- (3) an adult aunt or uncle;
- (4) an educational institution in which the minor is enrolled that has received written authorization to consent from the person having the power to consent as otherwise provided by law;
- (5) any adult who has care and control of the minor and has written authorization to consent from the person having the power to consent as otherwise provided by law; or
- (6) any court having jurisdiction of the child.

Section 35.02. Consent Form. (a) Consent to medical treatment under Section 35.01 of this code shall be in writing, signed by the person giving consent, and given to the doctor, hospital, or other medical facility that administers the treatment.

- (b) The consent must contain:
- (1) the name of the minor;
 - (2) the name of one or both parents, if known, and the name of the managing conservator or guardian of the person, if either has been appointed;
 - (3) the name of the person giving consent and his relation to the minor child;
 - (4) a statement of the nature of the medical treatment to be given; and
 - (5) the date on which the treatment is to begin.

35.03. Consent to Treatment by Minor.

(a) A minor may consent to the furnishing of hospital, medical, surgical, and dental care by a licensed physician or dentist if the minor:

- (1) is on active duty with the armed services of the United States of America;

(2) is 16 years of age or older and resides separate and apart from his parents, managing conservator, or guardian, whether with or without the consent of the parents, managing conservator, or guardian and regardless of the duration of such residence, and is managing his own financial affairs, regardless of the source of the income;

(3) consents to the diagnosis and treatment of any infectious, contagious, or communicable disease which is required by law or regulation adopted pursuant to law to be reported by the licensed physician or dentist to a local health officer;

(4) is unmarried and pregnant, and consents to hospital, medical, or surgical treatment, other than abortion, related to her pregnancy;

(5) is 18 years of age or older and consents to the donation of his blood and the penetration of tissue necessary to accomplish the donation; or

(6) consents to examination and treatment for drug addiction, drug dependency, or any other condition directly related to drug use.

(b) consent by a minor to hospital, medical, surgical, or dental treatment under this section is not subject to disaffirmance because of minority.

(c) consent of the parents, managing conservator, or guardian of a minor is not necessary in order to authorize hospital, medical, surgical, or dental care under this section.

(d) A licensed physician or dentist may, with or without the consent of a minor who is a patient, advise the parents, managing conservator, or guardian of the minor of the treatment given to or needed by the minor.

(e) A physician or dentist licensed to practice medicine or dentistry in the state or a hospital or medical facility shall not be liable for the examination and treatment of minors under this section except for his or its own acts of negligence.

(f) A physician, dentist, hospital, or medical facility may rely on the written statement of the minor containing the grounds on which the minor has capacity to consent to his own medical treatment under this section.

Section 35.04. Examination of Abused or Neglected Children. (a) Except as provided in Subsection (b) of this section, a licensed physician or dentist having reasonable grounds to believe that a child's physical or mental condition has been adversely affected by abuse or neglect may examine the child without the consent of the child, the child's parents, or other person authorized to consent for the child or his parents. The examination may include X-rays, blood tests, and penetration of tissue necessary to accomplish these tests.

(b) Unless consent is obtained as otherwise allowed by law, a physician or dentist may not examine a child:

(1) who is 16 years old or over and refuses to consent; or

(2) if consent is refused by an order of a court.

(c) A physician or dentist examining a child under the authority of this section is not liable for damages except those damages resulting from his negligence. (*Chapter 35, Title 2, Texas Family Code*)

VII. INTERSTATE PLACEMENT OF CHILDREN

Effective September 1, 1975, Texas became a member of the Interstate Compact on the Placement of Children by act of the 64th Legislature, Regular Session, 1975. The Texas Department of Human Resources has been designated as the agency in Texas to coordinate administration of the interstate compact. The Commissioner of the Department is the Compact Administrator.

The Interstate Compact on the Placement of Children was established to insure protection for children being placed across state lines. The compact establishes a system for responsible planning by which both the sending and receiving authorities in compact states are able to make informed decisions on the suitability of the proposed placement and to establish appropriate jurisdictional responsibility.

No child may be placed for care by a public agency or private person or agency from Texas into another compact state, nor from another compact state into Texas without prior approval of the compact administrators or deputy compact administrators of both states, with the following exceptions:

1. A child brought or sent to another state by his parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and left with any such relative or nonagency guardian in the receiving state, or

2. A child placed in an institution providing care for the mentally ill, mentally defective or providing care for the epileptic child, or

3. A child placed in any institution primarily educational in character, or

4. A child placed in any hospital or other medical facility, or

5. A child placed under the provisions of another interstate compact or any other agreement which has the force of law.

The Commissioner may not approve the placement of a child in this state without the concurrence of the individuals with whom the child is proposed to be placed or the head of an institution with which the child is proposed to be placed.

The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and the receiving state. Such violations may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place or care for children. (*Chapter 45, Subchapter B, Human Resources Code*)

Also by Act of the 65th Legislature, Regular Session, 1975 non-compact states are required to secure the approval of the Commissioner prior to the placement of a child into Texas with the following exceptions:

1. A child brought or sent by his parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and left with any such relative or nonagency guardian in the receiving state, or

2. A child placed in any institution primarily educational in character, or

3. A child placed in any hospital or other medical facility, or

4. A child placed under the provisions of another interstate compact or any other agreement which has the force of law.

No child care facility in this state may receive a child for placement unless the placement conforms to requirements of this subchapter. A child care facility in this state which violates Subsection (e) of Section 42.002 of this code is guilty of a Class B misdemeanor. Upon conviction, the court shall revoke any license to operate as a child care facility or child-care institution issued the facility by the Texas Department of Human Resources. (*Chapter 45, Subchapter A, Human Resources Code*)

VIII. PROVISIONS GENERALLY APPLICABLE TO SCHOOL DISTRICTS

Section 21.031(e). Admission of Certain Children Placed in Foster Care.

A child placed in foster care by an agency of the State or a political subdivision shall be permitted to attend the public free schools in the district in which the foster parents reside free of charge to the foster parents or the agency. No durational residency requirement may be used to prohibit such a child from fully participating in any activity sponsored by the school district.

Section 21.0311. Tuition For Certain Children From Other States. Notwithstanding any other provisions of this code, a child who resides at a child-caring institution and whose maintenance expenses are paid in whole or in part by another state may not be admitted to a public school unless the child-caring institution pays tuition for the child equal to the actual cost of educating a child enrolled in a similar educational program in the district.

The State Board of Education shall establish formulas governing the calculation of tuition rates. All tuition charges shall be submitted to the commissioner of education for approval.

The attendance of the child shall not be counted for purposes of allocating state funds to the district.

(*Chapter 21, Texas Education Code*)

IX. HEALTH REGULATIONS

SWIMMING POOL CONSTRUCTION AND MAINTENANCE

The following law and standards are available from the Texas Department of Health, Literature and Forms Unit, 1100 West 49th Street, Austin, Texas 78756:

Texas Sanitation and Health Protection Law (Texas Revised Civil Statutes Annotated, Article 4477-1 with amendments).

"Design Standards for Swimming Pool Construction."

"A Training Course in Swimming Pool Operation."

WATER SAFETY

A digest of the Texas Water Safety Act is available from the Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744.

APPENDIX III

DAILY FOOD GUIDE

This information provides a detailed interpretation of the nutrition standard of the **Texas Minimum Standards for Child-Caring Institutions.**

It is based on **Food for Fitness—A Daily Food Guide** prepared by the Agricultural Research Service and published as Leaflet No. 424, U.S. Department of Agriculture, Superintendent of Documents, Washington, D. C. It has been reprinted and is available from the Texas State Department of Health, 410 East 5th, Austin, Texas 78701.

In the **Daily Food Guide** which follows, foods within each group have similar but not identical food value. Each day choose at least the minimum number of servings from each of the broad **Food Groups: Meat Group, Bread—Cereal Group, Vegetable—Fruit Group, Milk Group and Other Foods.** Servings may differ—small for young children, large (or seconds) for very active adults or teen-agers.

MEAT GROUP

Each day serve four ounces of cooked, lean meat, or a combination of meats and meat alternates having a protein value equal to four ounces of cooked lean meat.

Amounts

Four ounces of raw lean meat are to be counted as three ounces of cooked meat

Either of these is equal in protein value to one ounce cooked lean meat*

Any one of these is equal in protein value to one ounce cooked lean meat

Meats

Lean beef
Veal
Lamb
Pork
Variety meats: heart, liver, kidney

Poultry, example:
1 small drumstick
Processed meats, example:
1 all-meat frankfurter

Meat Alternates

1 egg
2 tablespoons peanut butter
1/2 cup, when cooked, of dried peas, lentils, beans, textured vegetable protein
1 thin slice cheddar cheese** (1 oz.)
1/2 cup cottage cheese**

*The Department considers that one ounce of cooked fish is equal in protein value to one ounce of cooked lean meat.

**If cheese is counted as meat, it should not be counted as milk.

BREAD-CEREAL GROUP

Each day provide four or more servings of breads and cereals which are whole grain, enriched or restored.

Count any one of these as one serving

1 slice bread
1 roll, muffin or biscuit
5 saltine crackers
2 graham crackers
1 tortilla
1 ounce ready to eat cereal
1/2 to 3/4 cup cooked oatmeal, cornmeal, grits, rice, macaroni, noodles or spaghetti
2-3 enriched cookies

VEGETABLE-FRUIT GROUP

Each day provide four or more servings of vegetables and fruits including one good source or two fair sources of Vitamin C.

At least one serving every other day should be a good source of Vitamin A.

The remaining servings each day may be any vegetable or fruit including those valuable for Vitamins C and A.

Amounts

Count any one of these as one serving of Vitamin C

Count any two of these as one serving of Vitamin C

collards* or other leafy greens*

Count any one of these as one serving of Vitamin A

Count any one of these as one serving

Good Sources of Vitamin C:

1 medium orange
1/2 grapefruit
1/2 cup orange juice, grapefruit or blended citrus juices**
1/2 cantaloupe*
3/4 cup strawberries
1/2 cup cooked broccoli* or brussel sprouts*

Fair Sources of Vitamin C:

1 medium tomato raw* or 1/2 cup cooked*, or 1/2 cup juice*
1 tangerine or 1/2 cup tangerine juice
1/2 cup cauliflower, raw cabbage, cooked rutabaga, turnip greens*, collards* or other leafy greens*
1 medium potato, sweet* or white
1/2 medium green pepper

Good Sources of Vitamin A:

1/2 cup sweet potatoes, carrots, pumpkin or winter squash
1/2 cup collards, brocolli, turnip greens, or other dark leafy greens
5 apricot halves
1/4 medium cantaloupe

Other Vegetables and Fruits:

Other vegetables not listed above
1 medium apple
1 banana
1 peach, etc.
1/2 cup other fruit or vegetable

*If the food chosen for Vitamin C is also a good source of Vitamin A, the additional serving of Vitamin A food may be omitted.

**Fruit juice fortified with Vitamin C may be substituted for fruit juice naturally high in Vitamin C. Fruit flavored drinks shall not be substituted for fruit juice or fruit.

MILK GROUP

Each day serve the specified amounts of fresh milk or combinations of fresh milk and milk products having a total calcium value equal to the specified amounts of fresh milk.

Specified Amounts

- 2 to 3 cups of fresh milk for children under 9 years of age
- 3 or more cups of fresh milk for children 9-12 years of age
- 4 or more cups of fresh milk for teen-agers
- 2 or more cups of fresh milk for adults

Amounts

Any one of these
is equal to the
calcium value of
1/2 cup fresh milk

Any one of these
is equal to the
calcium value of
1/4 cup fresh milk

Milk Products

1/4 cup undiluted evaporated milk
2 tablespoons nonfat dry milk
1/2 cup custard or milk pudding
1/2 cup cream soup made with milk
1/2 cup milk used on cereal

1/2 cup ice cream
1 thin slice cheddar cheese* (1 oz.)
1/2 cup cottage cheese*

*If cheese is counted as milk, it should not be counted as meat.

OTHER FOODS

Serve butter, margarine, fats, oils, sugar, or unenriched refined grain products as needed to complete meals and to provide additional food energy and other food values.

Bacon and cream cheese are counted as fats because they contain very little protein. Either one tablespoon of cream cheese or one slice of crisp bacon is equivalent to one teaspoon of margarine or butter.

APPENDIX IV

PROCEDURAL GUIDE FOR PHARMACEUTICAL SERVICES IN THE CHILD-CARING INSTITUTION

A. A pharmacist consultant is recommended for a Child-Caring Institution to assist in the development of pharmacy services.

B. Definitions:

1. Non-legend — a drug which does not require a prescription from a prescribing practitioner for purchase. A non-legend drug may also be referred to as an OTC (Over the Counter) drug. Although a prescription may be written for a non-legend drug, it does not make the drug legend.

2. Legend — a drug which bears the following inscription on the label of its container: "Federal Law prohibits dispensing without a prescription." A prescription from a licensed practitioner is required for purchase of a legend drug.

C. Physical Facilities:

1. It is necessary that the door leading to the medication room or cabinet medication storage area be equipped with a locking device.

2. The medication room or cabinet medication storage area must have a separate cabinet, box, or drawer to store poisons and drugs "for external use only."

3. The facility must have a method of storing medications requiring refrigeration.

4. Any suitable location within the medication room or cabinet medication storage area may be used for storage of non-legend drugs.

5. A medication cabinet containing a locking device and located within the locked drug room may contain separate boxes, drawers, or sections for poisons, medications for "external use only", and medications covered by Section II of the Controlled Substances Act. In this case it is not necessary for each of the boxes, drawers, or sections to have a separate locking device.

6. The facility should have emergency drugs and equipment developed by the professional medical staff. (First Aid)

7. The facility should have a medication station which contains forms suitable for maintaining adequate records of all medications administered to patients by the authorized individuals. (Examples of these forms are shown in Exhibit 1.)

8. The medication area must be clean and orderly.

D. Medication Labels:

1. Must be legible, unsoiled and complete.

2. Must contain the following information:

- a. Patient's full name
- b. Prescribing physician's name
- c. Pharmacy prescription file number
- d. Name and strength of the drug
- e. Date of issue (date the prescription was filled or refilled)
- f. Expiration date of all time-dated drugs
- g. Name, address, and telephone number of pharmacy issuing the drug
- h. Warning labels as applicable (Examples: "refrigerate, external use only, not for I.V. use.")

3. Labeling errors must be reported to the issuing pharmacist immediately by the nurse or authorized individual.

E. Storage of Medication:

1. Medication must be stored in the original containers as received from the pharmacy.

2. Preparation for the administration of a single dose of medication must be done immediately prior to the administration of the medication, i.e., preparing individual doses of medication for the next day's use is not allowed.

3. Storage of drugs must be in their required place, i.e., drugs requiring refrigeration must be stored within the refrigerator.

4. Transferring between containers of medication is illegal, i.e., pouring medication from a large container to a small one. Transferring medication from one patient's container to another patient's container (borrowing) is also illegal.

5. Discontinued medications are to be turned in to the administrator's office within 90 days of the date of discontinuance to be disposed of in accordance with Federal and State laws.

6. Medications which have passed an expiration date are to be turned in to the administrator's office immediately to be disposed of in accordance with Federal and State laws.

Proper records of disposition of these medications must be kept.

7. Medications of deceased patients are to be turned in to the administrator's office immediately to be disposed of in accordance with Federal and State laws. Proper records of the disposition of these medications are to be kept. Should there be a delay because of charge personnel (director of nurses and/or medication nurse) not being available for immediate removal of medication, documentation of the interim period should be made.

8. The administrator is responsible for inventory and storage of discontinued medications, medications which have passed an expiration date, and medications of deceased patients. When the home has an accumulation of such medications, these medications shall be disposed of in accordance with Federal and State laws.

F. Order Procedure for Medications:

1. If a specific amount of medication or the time for discontinuance is not specified, the medication will not be renewed except on the orders of the treating physician. A "prn" refill order or an indefinite order must be reviewed regularly every six months.

2. The nurse or the authorized individual and the patient's physician will review each patient's medication as part of the treatment plan. This review will take place as deemed appropriate by the nurse or authorized individual, approximately every 30 days.

G. Administration of Medication:

1. The nursing station must have readily available items necessary for the proper administration of the medication.

2. In the interest of patient care, all medications should be administered by authorized personnel only. It must be the duty of the person responsible for administering the medication to ascertain that the medication is, in fact, taken by the patient.

3. Each dose administered should be properly recorded and initialed in the clinical record by the individual administering the dose. (For examples of such records, see Exhibit 1.)

4. Medications prescribed for one patient must not be administered to any other patient. (Borrowing is prohibited.)

5. Medication errors and drug reactions:

a. Such errors and reactions must be immediately reported to the patient's physician and to the consultant or issuing pharmacist.

b. Any entry of the incident and the subsequent reporting thereof should be made in the patient's record.

H. All legend pharmaceuticals are to be prescribed by the treating physician.

I. Sample medications are not allowed unless properly labeled and administered.

J. An "external use only" drug is any drug that if administered to a patient either by mouth or by injection may cause harm or death to the patient. Ear drops, nose drops, ointments, ophthalmic preparations, lotions, suppositories, etc., are all classified as "external use only" drugs.

**APPENDIX V
CHILD-CARE FACILITY
IMMUNIZATION REQUIREMENTS
EFFECTIVE 9/1/79**

Age Group	Immunization Required
Under 2 mos.	No immunizations required.
2 mos. to 4 mos.	1 dose of oral polio vaccine (OPV). 1 dose of diphtheria-tetanus-pertussis (DTP) vaccine.
4 mos. to 6 mos.	2 doses of OPV. 2 doses of DTP vaccine.
6 mos. to 18 mos.	2 doses of OPV. 3 doses of DTP vaccine.
18 mos. to 5 yrs.	3 doses each of OPV and DTP vaccine. 1 dose each of measles(1), rubella(2), and mumps(3) vaccines.
5 yrs. and older	3 doses each of OPV(4) and DTP(5) vaccine. 1 dose each of measles(1), rubella(2), and mumps(3) vaccines.

NOTES:

1. As a part of the child's immunization record, a written physician-verified history of measles illness is acceptable in lieu of vaccine. Effective September 1, 1979, children through age twelve years are required to have received measles vaccine since the first birthday or provide a written physician-verified history of measles illness. On the first of September of each following year, children one year older must also meet these requirements, and by September 1, 1985, all children through 18 years of age will be included. See the table below.

Measles Vaccine Requirements By Effective Dates
For Children in Child-Care Facilities

<u>Effective Dates</u>	<u>Ages in Years*</u>
September 1, 1979	Thru 12
September 1, 1980	Thru 13
September 1, 1981	Thru 14
September 1, 1982	Thru 15
September 1, 1983	Thru 16
September 1, 1984	Thru 17
September 1, 1985	Thru 18

*Ages of children in child-care facilities on the effective date.

2. Rubella vaccine is not required after the twelfth birthday. A history of rubella illness is not acceptable.
3. As a part of the child's immunization record, a written physician-verified history of mumps illness is acceptable in lieu of vaccine. Effective September 1, 1979, children less than eight years of age are required to have received mumps vaccine or provide a written physician-verified history of mumps illness. On the first of September each following year, children one year older must also meet this requirement. By September 1, 1990, all children through 18 years of age will be included. See the table below.

Mumps Vaccine Requirements by Effective Dates for
Children 18 Months Through 18 Years of Age
In Child-Care Facilities

<u>Effective Dates</u>	<u>Ages in Years*</u>
September 1, 1979	Thru 7
September 1, 1980	Thru 8
September 1, 1981	Thru 9
September 1, 1982	Thru 10
September 1, 1983	Thru 11
September 1, 1984	Thru 12
September 1, 1985	Thru 13
September 1, 1986	Thru 14
September 1, 1987	Thru 15
September 1, 1988	Thru 16
September 1, 1989	Thru 17
September 1, 1990	Thru 18

*Ages of children in child-care facilities on the effective date.

4. At least three doses of oral polio vaccine (OPV) are required, provided at least one dose has been received on or after the fourth birthday. A dose of OPV given during the calendar month prior to the fourth birthday is also acceptable. No further doses of OPV are required.

Some children or students may be enrolled who have received inactivated polio vaccine (IPV). These students are in full compliance when an initial series of four doses are completed and a booster dose within three years of the fourth dose has been received. A booster dose is required every three years thereafter. If the child, upon medical advice, starts receiving OPV, then the total requirement for OPV must be met.

5. At least three doses of DTP and/or Td vaccine are required, provided at least one dose has been received on or after the fourth birthday. A dose of DTP or Td given during the calendar month prior to the fourth birthday is also acceptable.

In addition to the minimum of three DTP or Td doses with one dose since the fourth birthday, children twelve years of age and older must have a last dose within the past ten years. (A Td booster is required ten years after the administration of the immunization that meets the requirement for the "dose since the fourth birthday." Example: If the last dose of DTP was received at age five, the ten-year Td booster is due at age 15.)

6. An **annual report of the immunization status** by age group of all children shall be submitted on the request of the Texas Department of Health.

**APPENDIX VI
ALTERNATIVES TO PHYSICAL PUNISHMENT**

1. Children should have good behavior recognized and encouraged.

2. Children should be taught by example through use of fair and consistent rules. The atmosphere should be relaxed. Discipline should be relevant to the behavior involved.

3. Children should be supervised by persons showing an attitude of understanding and firmness.

4. Children should be given clear directions and provided guidance on the child's level of understanding.

5. Children should be held firmly if their behavior is such as to harm themselves or others.

6. Children should be redirected by stating alternatives when their behavior is unacceptable. (Example: "Blocks are for building, not throwing — try throwing this ball.")

7. Children should be helped to understand why their conduct is unacceptable and what is acceptable in a given situation.

APPENDIX VII

MINIMUM STANDARDS FOR HABILITATIVE FAMILY HOMES (EXCLUSIVELY SERVING MENTALLY RETARDED CHILDREN)

I. Personnel

Staffing

1. The habilitative family home must provide staff necessary to ensure the health and safety of the children in its care.

When children of different ages, developmental levels, or social needs are grouped together for any purpose, there must be sufficient staff supervision to prevent the children from abusing or mistreating one another.

2. The habilitative family home must have a psychologist available for diagnosis, treatment, and consultation.

a. He or she must be a psychologist as defined by the Psychologists' Certification and Licensing Act. (Texas Revised Civil Statutes Annotated, Article 4512c)

b. If the psychologist is not on the staff of the habilitative family home, the psychologist must document that his or her services are available on at least a continuing consulting basis.

II. Admission

Admission Policies

1. The habilitative family home must not offer, at the same time and in the same home, two types of care that conflict with the best interests of the children, the use of staff, or the use of the home.

2. No child can be admitted to a home exclusively serving mentally retarded children unless that child is below average in intellectual functioning and also has deficits in adaptive behavior. (See Appendix VII, pages 42-44, for descriptions of these concepts.)

a. Intellectual functioning must be determined by standardized tests for all children.

b. The level of adaptive behavior must be determined by published scales or by a licensed psychologist who has experience with mental retardation.

III. Child Care, Development, and Training

A. Plan of Service

1. Each child's intellectual functioning must be re-evaluated at least annually by a person professionally qualified to provide psychological services, until the child is 10 years old and every two years thereafter.

This person must be a psychologist as defined by the Psychologists' Certification and Licensing Act. (Texas Revised Civil Statutes Annotated, Article 4512c)

2. Special emotional, physical, and social needs of the child must be identified and professional consultation and treatment obtained.

3. An educational or training plan which encourages normalization shall be developed according to the child's intellectual and social functioning. Where possible, the child shall be linked to special educational and remedial resources in the community in order to provide the child appropriate stimulation, encourage self-help skills, ego growth, and successful experiences.

4. The service plan including the child's needs and how they will be met must be recorded in the child's record.

B. Daily Care

1. The daily schedule must be developed to meet children's needs and relate to the normalization principle. The schedule must show understanding of normal child development and the use of time to enhance the child's physical, emotional, and social development in order to help the developmentally disabled child obtain an existence as normal as possible. The child's surroundings and experiences must reflect normal patterns of community living as closely as possible, as appropriate to the special needs of the child.

2. Food service practices for children, including nonmobile children, must encourage self-help and development.

a. Children must eat or be fed in the dining area, unless there are medical orders to the contrary.

b. Infants must be held during feedings, unless there are medical orders to the contrary.

3. The home must provide supervised indoor and outdoor recreation so that every child can participate.

Training programs for nonambulatory children must include physical fitness development that prescribes a variety of body positions and changes in environment, unless there are medical orders to the contrary. A minimum of one hour per day of stimulation must be provided for each child.

C. Transportation

1. The children shall be accompanied by a sufficient number of staff to adequately meet their needs.

2. Special provisions shall be made for transporting nonambulatory children. When necessary, this shall include locks for wheel chairs and hydraulic lifts.

D. Children's Rights

1. The habilitative family home must have written policies regarding methods used for control and discipline of children. The policies must be available to foster parents and adult caregivers. The home must also provide written information to the parents or managing conservators that identifies the person or office that parents or managing conservators can contact if they feel their children's rights have been violated. Copies of the discipline policy must be submitted to the Department with each application for a license and at any time a change is made in the policy. Discipline must be consistent with the policies of the home and must not be physically or emotionally damaging.

a. Only foster parents or adult caregivers can discipline children.

b. Children must not be subjected to cruel, harsh, unusual, or unnecessary punishment.

c. A record must be kept of the imposition of restrictions to the habilitative family home that exceed 24 hours.

d. Children must not be subjected to verbal remarks that belittle or ridicule them or their families.

e. Children must not be denied food, mail, or family visits as punishment.

f. Children must not be threatened with the loss of foster home placement as punishment.

g. Any discipline or control must fit the needs of each child.

h. Children must not be punished by shaking, striking, or spanking.

2. Physical holding for restraint or mechanical restraints can be used only to protect the child from injury to self or others.

a. In an emergency, only physical holding can be used unless a physician orders mechanical restraint. The nature of the emergency must be documented.

b. The need for restraint, the type of restraint used, and the length of time the restraint was used must be recorded in the child's record.

c. If physical holding for restraint is to be used other than in an emergency, it must be used only upon the orders of a licensed physician.

d. An order for physical restraint must designate the type of restraint, the circumstances, and the duration of its use.

E. Medical Care

1. All seizures, injuries, and abnormal occurrences must be recorded. The time of occurrence, type of incident, action taken, and person involved must be recorded.

2. Mind altering and behavior modifying medications shall be administered according to the physician's directions. Each dose administered shall be documented in the child's medical record. Documentation shall include the medication given, the time, the dosage, and the name of the person administering the medication. The appropriateness of continuing the medication shall be evaluated by the prescribing physician on at least a quarterly basis.

IV. Buildings, Grounds, and Equipment

A. Health and Safety

When nonambulatory children or children subject to seizures are swimming, there must be at least one foster parent or adult caregiver or volunteer for each such child in the swimming area in addition to the lifeguard on duty.

B. Environment

1. Nonambulatory children and those subject to seizures must not use the top bunk of bunk beds.

2. When a physician or other health professional recommends special equipment for physically handicapped children, the habilitative home shall provide this equipment.

A. DEGREES OR LEVELS OF RETARDATION*

LEVEL OF ADAPTIVE BEHAVIOR	INTELLIGENCE QUOTIENT		LEVEL OF RETARDATION	EDUCATIONAL TERM
	Stanford-Binet and Cattell (Standard deviation 16)	Wechsler Scales (standard deviation 15)		
I	68-52	69-55	Mild	Educable
II	51-36	54-40	Moderate	Trainable
III	35-20	39-25 (Extrapolated)	Severe	
IV	19 & below	24 & below (Extrapolated)	Profound	

*Adapted from Definitions of the American Association on Mental Deficiency

B. LEVELS OF ADAPTIVE BEHAVIOR

The following is a system of classifying mentally retarded persons on the basis of what they are actually able to do rather than on the basis of test scores which predict or imply a general level of competence. There are four levels of Adaptive Behavior: "IV" represents the lowest or most severely retarded, and "I" represents the highest or least retarded. Notice that the person's age is taken into account in determining his or her level of Adaptive Behavior. At different ages, we are interested in different types of behavior. From age 0-6, we examine the person's early maturation and development (the development of his ability to walk and to speak; the learning of simple self-help skills; etc.). Between the ages of 6 and 21, we are interested in the person's progress in training and education programs. During his adult years, 21+, we concentrate on social and vocational adequacy (performance of work skills and management of own personal affairs).

ADAPTIVE BEHAVIOR LEVELS	PRE-SCHOOL AGE, 0-5, Maturation and Development	SCHOOL AGE, 6-21, Training and Education	ADULT, 21 and Over, Social and Vocational Adequacy
IV – PROFOUND Level of Care ICF-MR VI	Gross retardation; minimal capacity for functioning in sensorimotor areas; needs nursing care.	Obvious delays in all areas of development; shows basic emotional responses; may respond to skillful training in use of legs, hands, and jaws; needs close supervision.	May walk, need nursing care, have primitive speech, usually benefits from regular physical activity; incapable of self maintenance, needs close supervision
III – SEVERE Level of Care ICF-MR V or VI	Marked delay in motor development; little or no communication skill; may respond to training in elementary self-help, e.g., self-feeding.	Usually walks barring specific disability; has some understanding of speech and some response; can profit from systematic habit training.	Can conform to daily routines and repetitive activities; needs continuing direction and supervision in protective environment.

II - MODERATE
Level of Care
ICF-MR V or I

Noticeable delays in motor development, especially in speech; responds to training in various self-help activities. Poor social awareness - can be managed with moderate supervision.

Can learn simple communication, elementary health and safety habits, and simple manual skills; can progress in functional reading or arithmetic, with special education to the 4th grade level.

Can perform simple tasks under sheltered conditions; participates in simple recreation; travels alone in familiar places; can be capable of self-maintenance in unskilled or semi-skilled occupations - needs supervision when under mild social or economic stress.

I - MILD
Level of Care
ICF-MR I

Often not noticed as retarded by casual observer, but is slower to walk, feed self and talk than most children.

Can acquire practical skills and useful reading and arithmetic to the 6th grade level with special education. Can be guided toward social conformity.

Can usually achieve social and vocational skills adequate to self maintenance; may need occasional guidance and support when under unusual social or economic stress.

APPENDIX VIII

MINIMUM STANDARDS FOR THERAPEUTIC FAMILY HOMES (EXCLUSIVELY SERVING EMOTIONALLY DISTURBED CHILDREN)

I. Personnel

A. Staffing

The therapeutic family home must provide staff necessary to ensure the proper care, treatment, and safety of the residents.

a. The therapeutic family home must have a person responsible for the treatment program who has a master's degree in a behavioral science or a related field, and who has had at least three years of experience working with children having problems of adaptation.

b. The therapeutic family home must arrange to obtain services of a professional consultant team who has responsibility for supervising and reviewing the needs and treatment of residents. Documentation of the services provided by these professionals and the frequency of services shall be made. This professional team must include:

(1) A licensed physician who is a psychiatrist or a physician who specializes in children with psychiatric disorders.

(2) A psychologist as defined by the Psychologists' Certification and Licensing Act. (Texas Revised Civil Statutes Annotated, Article 4512c)

(3) A social worker with a master's degree in social work from a school accredited by the Council of Social Work Education.

B. Training

Foster parents or paraprofessional staff must participate in at least 50 hours of documented in-service training annually, unless they have a master's degree in one of the behavioral sciences. The content of training must include understanding the needs of residents, residents' families, and State licensing standards. Training must be approved by a person meeting the same requirements as the person making the intake study. Staff having master's degrees shall document 15 hours of formalized professional growth experience annually.

II. Admission

Admission Policies

1. A written psychiatric or psychological diagnostic evaluation obtained within six months prior to admission must be included in each resident's record.

2. The therapeutic family home shall not accept residents for placement whose behavioral patterns and current needs indicate the need for placement in a closed setting.

III. Child Care, Development, and Training

A. Plan of Service

1. A diagnostic assessment and treatment plan must be developed and recorded in the resident's case record within 30 days of admission.

a. Diagnosis, prognosis, and estimated length of treatment must be entered in the case record.

b. The assessment must include and document the physical, psychological, developmental/chronological age, family, social, educational, and recreational needs of the resident.

c. The treatment plan must specify how the needs of the resident will be met.

d. The objectives of treatment must be specific. The treatment plan must include specific instructions and must be shared with other adult caregivers.

2. The name of the person responsible for meeting the resident's needs must be recorded in the case record. Specific persons must be responsible for the following:

a. The diagnostic assessment and treatment plan.

b. Carrying out the treatment plan.

c. Ensuring that each resident's personal needs are met.

3. A conference must be held to review the treatment plan at least every three months. This conference must include a representative of the therapeutic family home, the child, and at least one of the professionals required by Standard I-A, b.

a. The review, all pertinent information, and persons involved in the review must be documented in the case record.

b. When a treatment plan has been reviewed, appropriate information must be shared with the parents or managing conservator and the resident. This must be documented in the case record.

4. A complete revised treatment plan shall be developed annually by the therapeutic home and reviewed by the professional team. The plan shall include a discharge plan.

B. Community Relationships

The therapeutic family home must provide opportunities for residents to participate in community life. Opportunities shall include recreational and social activities outside the home, as well as informal educational activities and cultural experiences.

C. Residents' Rights

1. The therapeutic family home must have written policies regarding methods used for control and discipline of children. The policies must be available to appropriate staff. The home must also provide written information to the parents or managing conservators that identifies the person or office that parents or managing conservators can contact if they feel their children's rights have been violated. Copies of the home's discipline policy must be submitted to the Department with each application for a license and resubmitted at any time a change is made in policy. Discipline must be consistent with the policies of the home and must not be physically or emotionally damaging.

a. Only foster parents or adult caregivers can discipline residents.

b. Residents must not be subjected to cruel, severe, unusual, or unnecessary punishment.

c. A record must be kept of the imposition of restrictions to the therapeutic family home that exceed 24 hours.

d. Residents must not be subjected to verbal remarks that belittle or ridicule them or their families.

e. Residents must not be denied food, mail, or family visits as punishment.

f. Residents must not be threatened with the loss of foster home placement as punishment. Potential moving to a more restrictive setting must be presented as an opportunity for healthier growth.

g. Any discipline or control must fit the needs of each resident.

h. Residents must not be punished by shaking, striking, or spanking.

2. Physical restraint can be used only in an emergency and when necessary to protect the resident from injury to self or others.

When physical restraint is used, the circumstances, including the length of time the restraint was used, must be documented in the resident's record.

3. A resident must not be placed alone in a locked room.

D. Medical

Mind altering and behavior modifying medications shall be administered according to the physician's directions. Each dose administered shall be documented in the child's medical record. Documentation shall include the medication given, the time, the dosage, and the name of the person administering the medication. The appropriateness of continuing the medication shall be evaluated by the prescribing physician on at least a quarterly basis.

**APPENDIX IX
CRIMINAL OFFENSES FROM THE TEXAS PENAL CODE**

The following constitute criminal offenses included in the *Texas Penal Code*:

Title 5. Offenses Against the Person

Murder
Capital murder
Voluntary manslaughter
Criminally negligent homicide
False imprisonment
Kidnapping
Aggravated kidnapping
Rape
Aggravated rape
Sexual abuse
Aggravated sexual abuse
Homosexual conduct
Public lewdness
Indecent exposure
Rape of a child
Sexual abuse of a child
Indecency with a child
Assault
Aggravated assault
Deadly assault on a peace officer
Injury to a child
Reckless conduct
Terroristic threat
Aiding suicide

Title 6. Offenses Against the Family

Bigamy
Incest
Interference with child custody
Enticing a child
Criminal nonsupport
Sale or purchase of a child
Solicitation of a child
Harboring a runaway child

Title 43. Public Indecency

Prostitution
Promotion of prostitution
Aggravated promotion of prostitution
Compelling prostitution
Obscene display or distribution
Obscenity
Sale, distribution or display of harmful
material to a minor
Sexual performance by a child

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