

Texas Register

Volume 18, Number 31, April 23, 1993

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Texas Register



a section of the Office of the Secretary of State P.O. Box 13824 Austin, TX 78711-3824 (512) 463-5561 FAX (512) 463-5569

Secretary of State John Hannah, Jr.

Director Dan Procter

Assistant Director Dee Wright

Circulation/Marketing Jill S. Dahnert Roberta Knight

TAC Editor Dana Blanton

TAC Typographer Madeline Chrisner

Documents Section Supervisor Patty Webster

Document Editors Janiene Allen Robert Macdonald

Open Meetings Clerk Jamie Alworth

Production Section Supervisor Ann Franklin

Production Editors/Typographers Carla Carter Janice Rhea Mimi Sanchez

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How to Use the Texas Register

Information Available: The 10 sections of the Texas Register represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Sections - sections adopted by state agencies on an emergency basis.

Proposed Sections - sections proposed for adoption.

Withdrawn Sections - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Sections - sections adopted following a 30-day public comment period.

Open Meetings - notices of open meetings.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the Texas Register is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 18 (1993) is cited as follows: 18 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "18 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 18 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using Texas Register indexes, the Texas Administrative Code, section numbers, or TRD number.

Texas Administrative Code

The Texas Administrative Code (TAC) is the official compilation of all final state agency rules published in the Texas Register. Following its effective date, a rule is entered into the Texas Administrative Code. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the TAC. West Publishing Company, the official publisher of the TAC, releases cumulative supplements to each printed volume of the TAC twice each year.

The TAC volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals).

The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency. The Official TAC also is available on WESTLAW, West's computerized legal research service, in the TX-ADC database.

To purchase printed volumes of the TAC or to inquire about WESTLAW access to the TAC call West: 1-800-328-9352.

The Titles of the TAC, and their respective Title numbers are:

- 1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the TAC scheme, each section is designated by a TAC number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the Texas Administrative Code; TAC stands for the Texas Administrative Code; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the Texas Administrative Code, please look at the Table of TAC Titles Affected. The table is published cumulatively in the blue-cover quarterly indexes to the Texas Register (January 22, April 16, July 13, and October 12, 1993). In its second issue each month the Texas Register contains a cumulative Table of TAC Titles Affected for the preceding month. If a rule has changed during the time period covered by the table, the rule's TAC number will be printed with one or more Texas Register page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The Table of TAC Titles Affected is cumulative for each volume of the Texas Register (calendar year).

Update by FAX: An up-to-date Table of TAC Titles Affected is available by FAX upon request. Please specify the state agency and the TAC number(s) you wish to update. This service is free to Texas Register subscribers. Please have your subscription number ready when you make your request. For non-subscribers there will be a fee of \$2.00 per page (VISA, MasterCard). (512) 463-5561.

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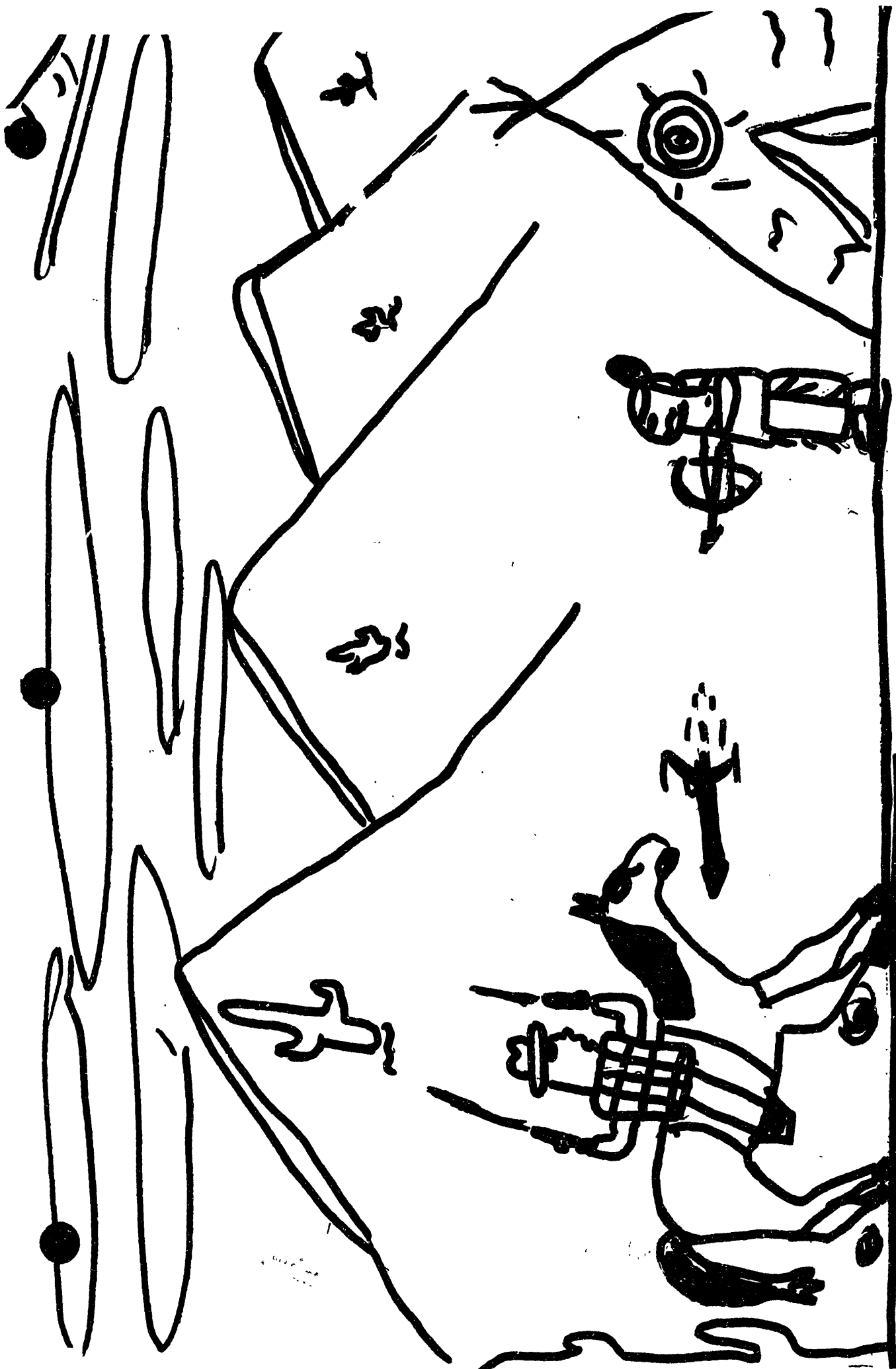
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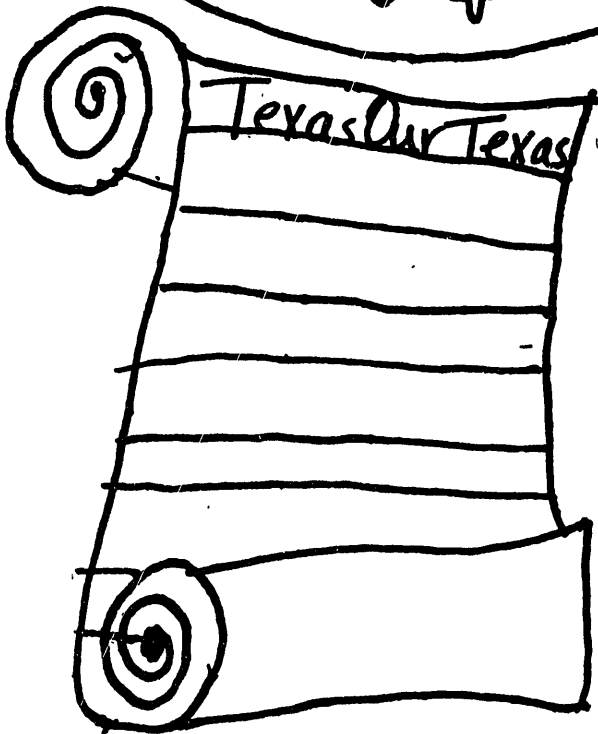
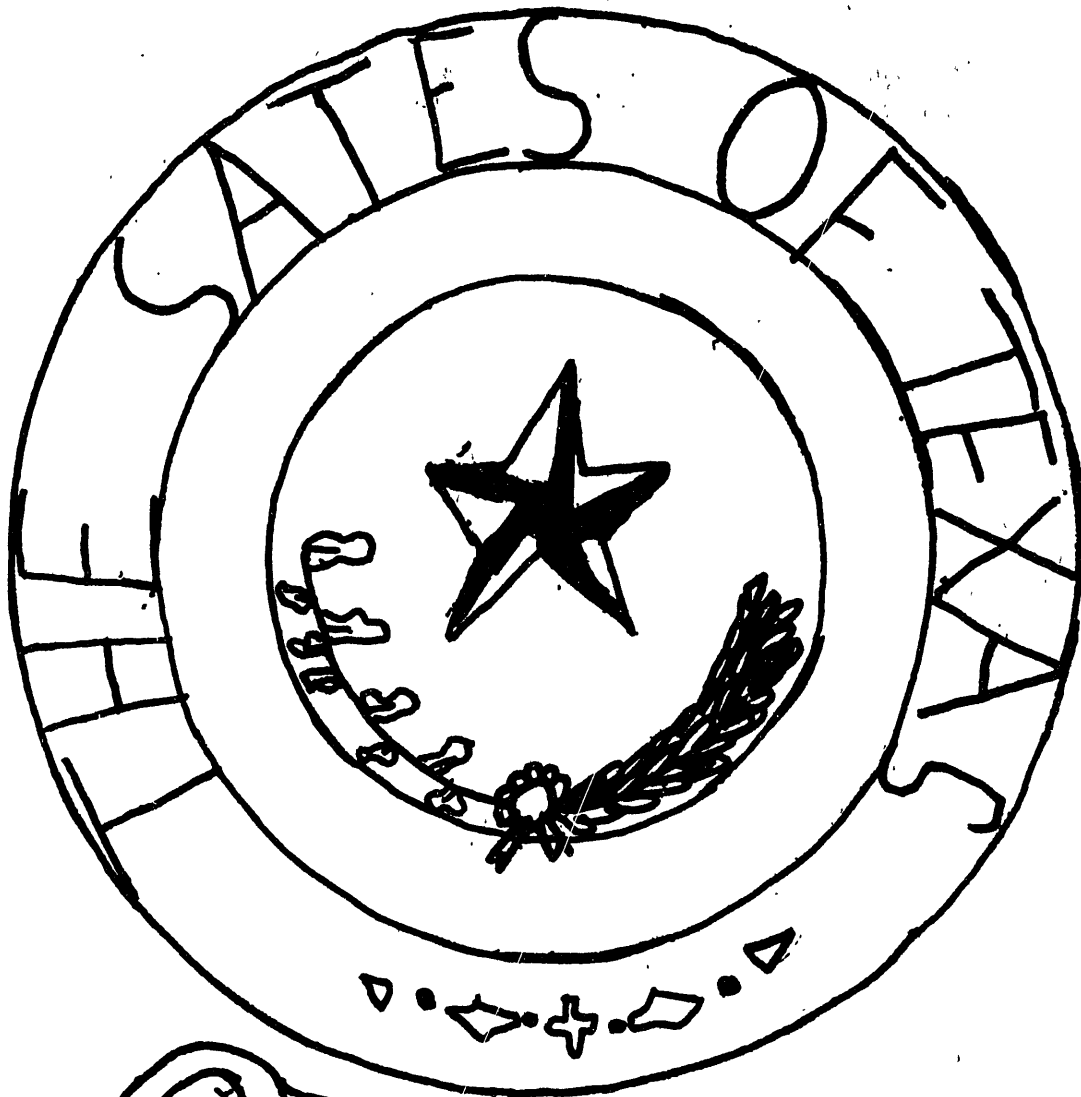
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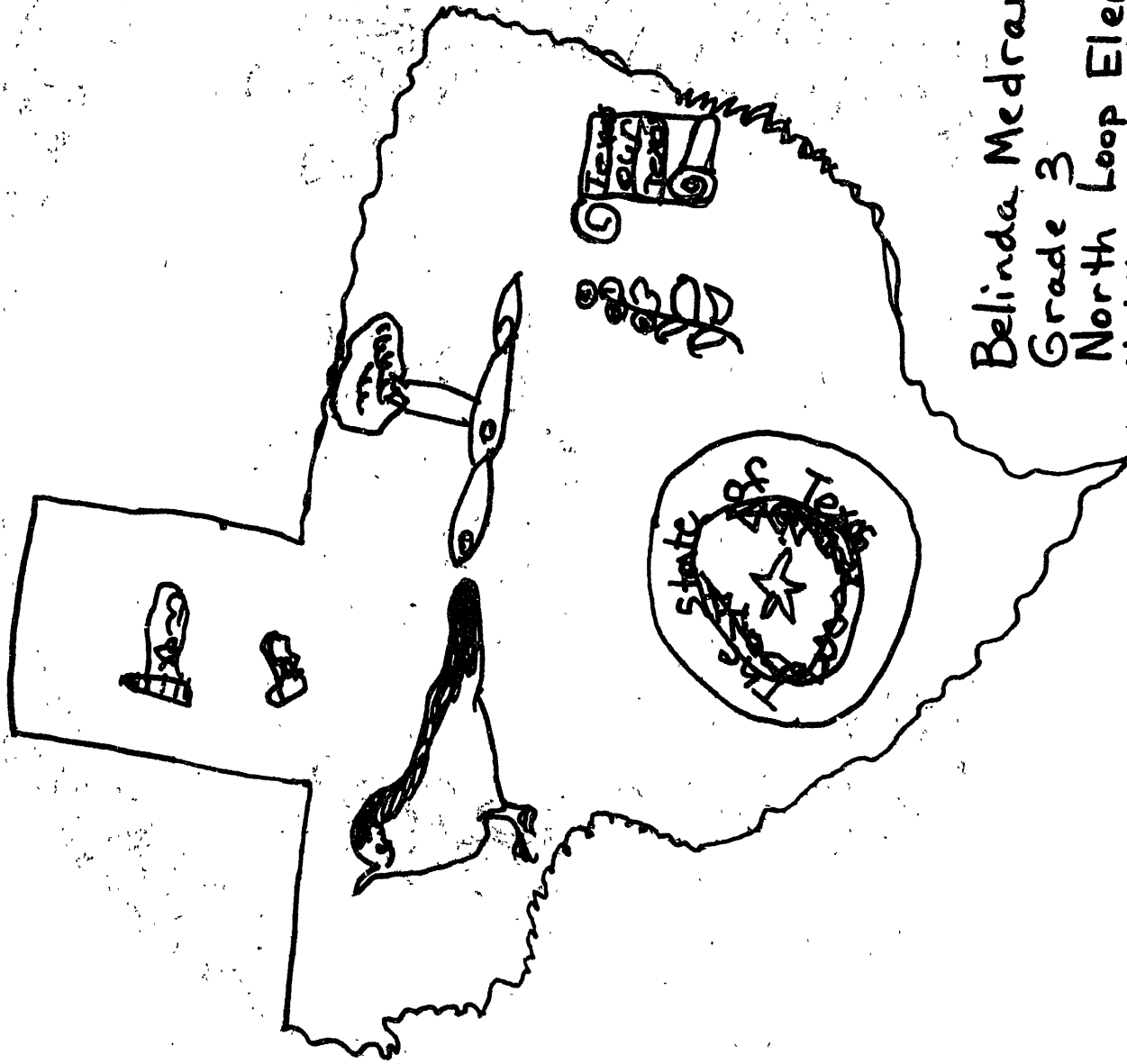
25 TAC §§145.321-145.335 2696



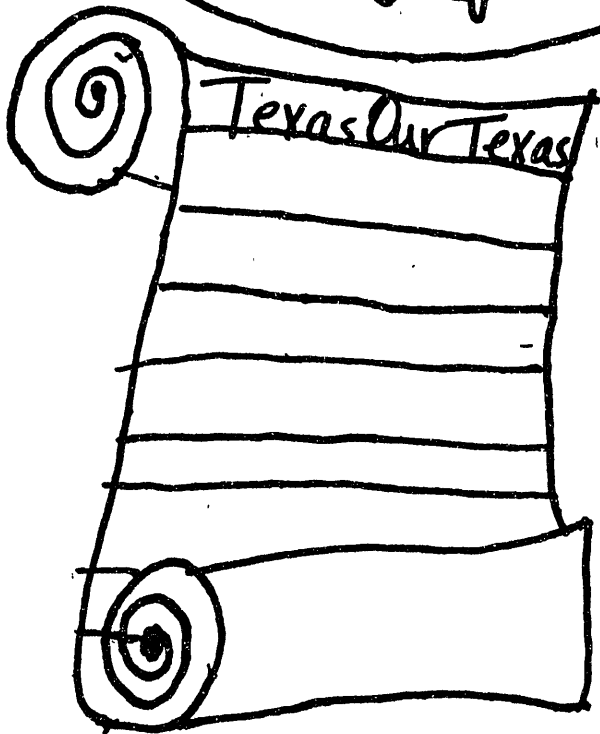
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Grade: 3
School: North Loop Elementary, Ysleta ISD



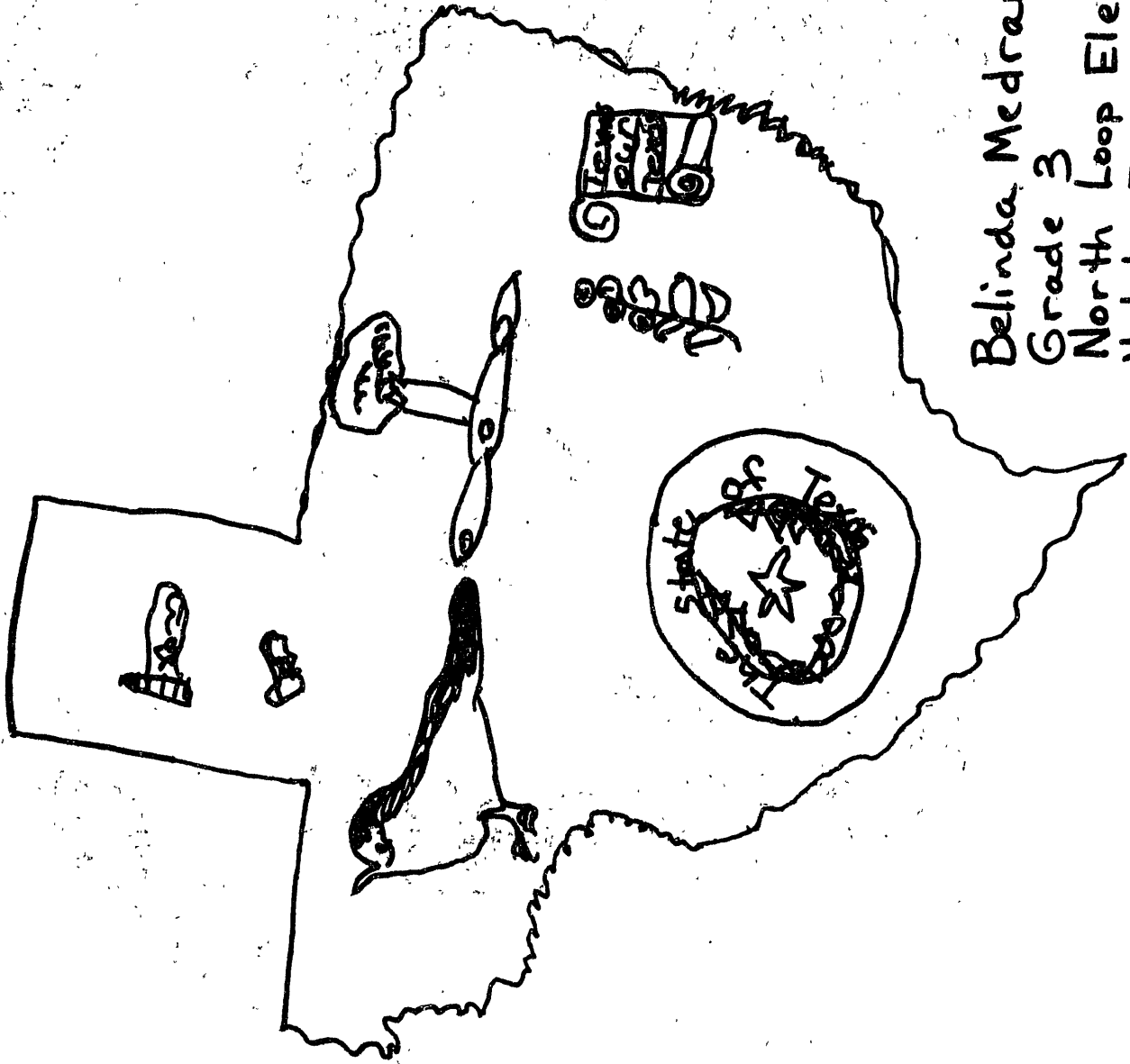
Jimmy Castro
Grade 3
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Ysleta Independent School Dist.
El Paso



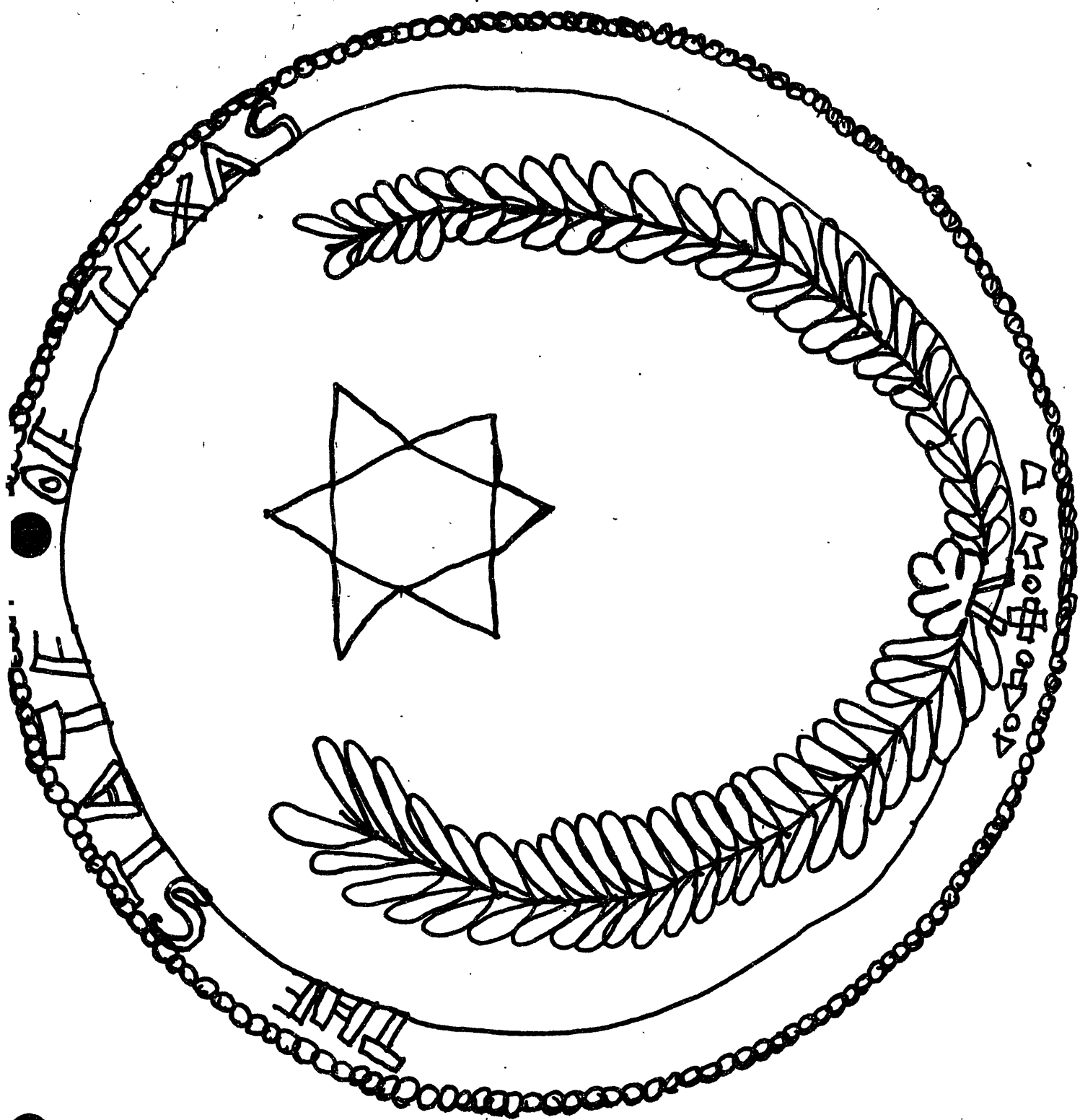
Belinda Medrano
Grade 3
North Loop Elementary
Ysleta Independent School District
El Paso



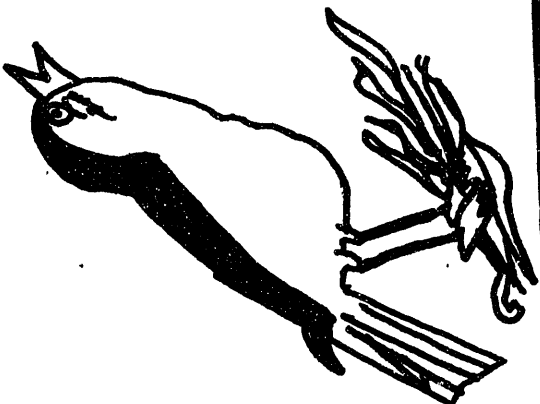
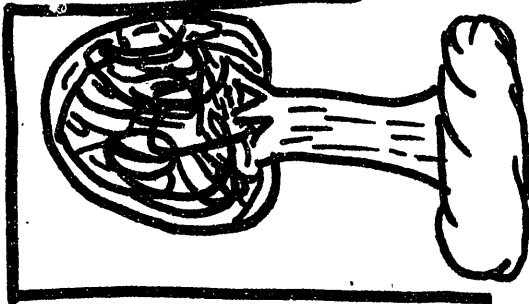
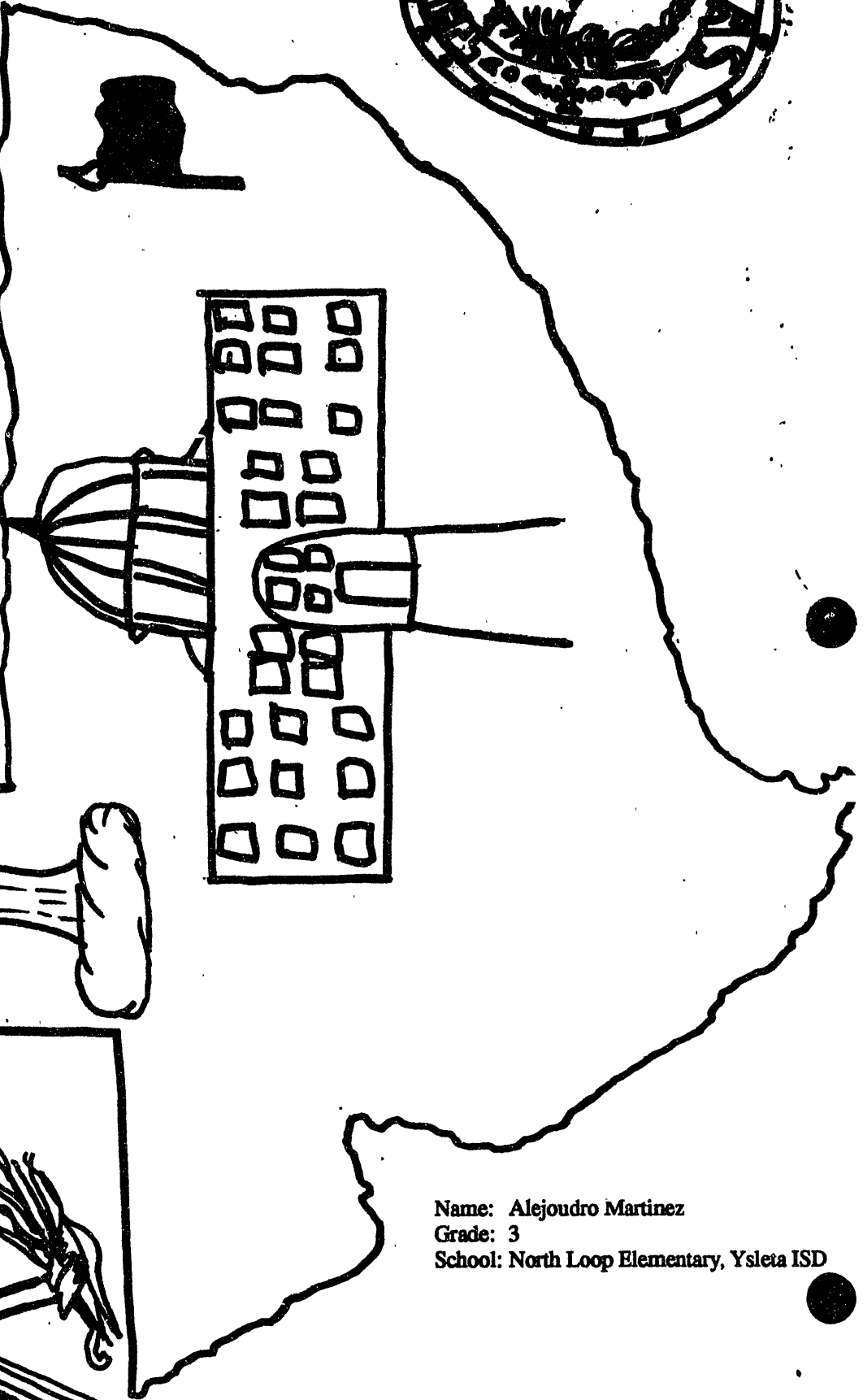
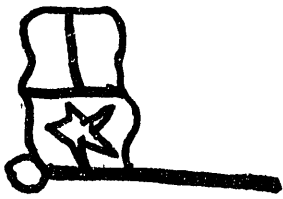
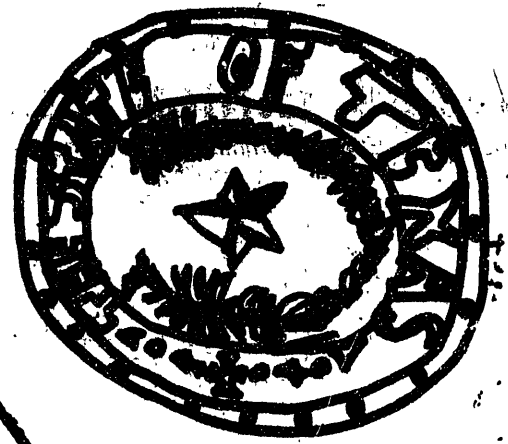
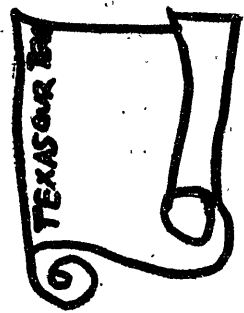
Jimmy Castro
Grade 3
North Loop Elementary
Ysleta Independent School Dist.
El Paso



Belinda Medrano
Grade 3
North Loop Elementary
Ysleta Independent School District
El Paso



Name: Rose Maria Gutierrez
Grade: 3
School: North Loop Elementary, Ysleta ISD



Name: Alejoudro Martinez
Grade: 3
School: North Loop Elementary, Ysleta ISD

Texas Ethics Commission

The Texas Ethics Commission is authorized by Texas Civil Statutes, Article 6252-9d.1, §1.29, to issue advisory opinions in regard to the following statutes: Texas Civil Statutes, Article 6252-9b; the Government Code, Chapter 302; the Government Code, Chapter 305; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39.

Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Texas Ethics Commission Opinions

AOR-171. The Texas Ethics Commission has been asked to consider the circumstances under which the commission may refund a lobby registration fee.

AOR-172. The Texas Ethics Commission has been asked to consider whether it is permissible for a hearings examiner employed by a state agency to accept transportation and meals in connection with a presentation to a group that may have contested cases pending before the state agency.

AOR-173. The Texas Ethics Commission has been asked to issue an advisory opinion in regard to employers' payment of travel expenses for members of the commission who are also registered lobbyists. Those commissioners do not claim reimbursement from the state for their travel expenses because their employers pay their travel expenses for commission meetings. The issue is whether a commissioner who is also a registered lobbyist must report such payment of travel expenses under the lobby statute.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

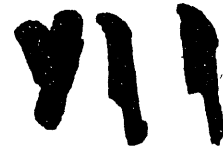
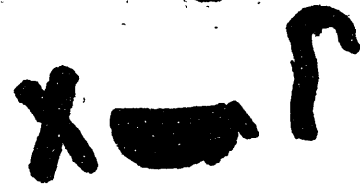
Issued in Austin, Texas, on April 15, 1993.

TRD-9321725 Sarah Woelk
Director, Advisory Opinions
Texas Ethics Commission

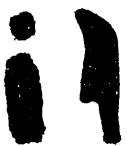
Filed: April 16, 1993

For further information, please call: (512)
463-5800





Female



male



Name: Erica Ontiveros
Grade: 6
School: North Loop Elementary, Ysleta

Proposed Sections

Before an agency may permanently adopt a new or amended section, or repeal an existing section, a proposal detailing the action must be published in the *Texas Register* at least 30 days before any action may be taken. The 30-day time period gives interested persons an opportunity to review and make oral or written comments on the section. Also, in the case of substantive sections, a public hearing must be granted if requested by at least 25 persons, a governmental subdivision or agency, or an association having at least 25 members.

Symbology in proposed amendments. New language added to an existing section is indicated by the use of bold text. [Brackets] indicate deletion of existing material within a section.

TITLE 4. AGRICULTURE Part I. Texas Department of Agriculture

Chapter 7. Pesticides

• 4 TAC §7.40

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Agriculture (the department) proposes the repeal of §7.40, concerning the classification of chlordane, heptachlor, aldrin, and dieldrin as state-limited-use pesticides. Chlordane, heptachlor, aldrin, and dieldrin are currently listed as state-limited use pesticides used for the control of subterranean termites. The department in a separate submission has proposed to remove these pesticides from its state-limited-use list since uses of these pesticides have been either cancelled or prohibited by the Environmental Protection Agency (EPA). The repeal of §7.40 is proposed to be consistent with proposed amendments to §7.24 and EPA directives.

Steve Bearden, assistant commissioner for pesticide programs, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Bearden also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal is to make Chapter 7 consistent with the EPA cancellation and prohibition of uses of the pesticides chlordane, heptachlor, aldrin, and dieldrin. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Steve Bearden, Assistant Commissioner for Pesticide Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*. The department plans to hold public hearings to receive public comment on the proposal. Notice of these hearings will be published in the *Texas Register*.

The repeal is proposed under the Texas Agriculture Code, §76.003, which authorizes the

department to regulate the time and conditions of use of state-limited-use pesticide; §76.004, which authorizes the department to adopt rules for carrying out the provisions of Chapter 76; and §76.104, which authorizes the department to adopt rules for application of pesticides.

§740. State-Limited-Use Pesticides for Control of Subterranean Termites.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on April 15, 1993.

TRD-9321794

Dolores Alvarado Hibbs
Chief Administrative Law
Judge
Texas Department of
Agriculture

Earliest possible date of adoption: May 24, 1993

For further information, please call: (512) 463-7583

TITLE 16. ECONOMIC REGULATION

Part II. Public Utility Commission of Texas

Chapter 23. Substantive Rules

Rate Design

• 16 TAC §23.23

The Public Utility Commission of Texas proposes an amendment to §23.23, concerning the statutory requirement that rates shall not be unreasonably preferential, prejudicial, or discriminatory. The proposed amendment contains the same language as the previous rule §23.23(b)(1). Due to the numbering of the sections in the new fuel rule, this section will be eliminated when the new fuel rule becomes effective.

Russell Trifovesti, Assistant General Counsel, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Trifovesti also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the adoption of rates that are not unreasonably

preferential, prejudicial, or discriminatory. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Mr. Trifovesti has determined that for each of the first five years the section is in effect, there will be no impact on employment in the geographical areas affected by implementing the requirements of the section.

Comments on the proposal (13 copies) may be submitted to John Renfrow, Secretary of the Commission, 7800 Shoal Creek Boulevard, Austin, Texas 78757. Comments should be submitted within 30 days after publication of the proposed section and should refer to Project Number 11862.

The amendment is proposed pursuant to the Public Utility Regulatory Act, §§16(a), 17(e), and 37, which provides the Public Utility Commission of Texas with the authority to make and enforce the rules reasonably required in the exercise of its powers and jurisdiction; exclusive original jurisdiction over rates, operations, and services not within the incorporated limits of a municipality exercising exclusive original jurisdiction; and all the authority and power of the State of Texas to insure compliance of public utilities with the obligations under the Public Utility Regulatory Act.

§23.23. Rate Design.

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

(e) Electric. Rates shall not be unreasonably preferential, prejudicial, or discriminatory, but shall be sufficient, equitable, and consistent in application to each class of customers, taking into consideration the need to conserve energy and resources.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on April 16, 1993.

TRD-9321808

John M. Renfrow
Secretary of the
Commission
Public Utility Commission
of Texas

Earliest possible date of adoption: May 24, 1993

For further information, please call: (512) 458-0100

TITLE 28. INSURANCE
Part I. Texas Department
of Insurance

Chapter 7. Corporate and
Financial Regulation

Subchapter R. Withdrawal Plan
Requirements and Procedures

• **28 TAC §§7.1801-7.1808**

The State Board of Insurance of the Texas Department of Insurance proposes new §§7.1801-7.1808, concerning withdrawal plan requirements and procedures for any insurer required to file a plan of withdrawal with the Commissioner pursuant to the Insurance Code, Article 21.49-2C. The new subchapter is necessary to provide orderly and uniform implementation of Article 21.49-2C enacted as part of House Bill 2 by the 72nd Texas Legislature. New §7.1801 outlines the purpose of new Subchapter R. New §7.1802 defines necessary words and terms. New §7.1803 defines what constitutes a "line of insurance." New §7.1804 provides for when a plan is required to be filed. The contents of the withdrawal plan filed by any insurer withdrawing from the business of insurance pursuant to Article 21.49-2C is specified in the new §7.1805. New §7.1806 provides information on submission and approval procedures. New §7.1807 requires a withdrawing insurer to continue to file annual statement data and other required statistical and data filings until all policyholder obligations for the withdrawn line are fulfilled. The requirements for a withdrawing insurer to resume writing insurance in Texas are specified in new §7.1808.

Sandra A. Autry, associate commissioner for the financial program, has determined that for the first five-year period the new sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections, and there will be no effect on local employment or local economy.

Ms. Autry also has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections will include timely notice of withdrawals of insurers from the business of insurance in this state, submission of orderly and complete withdrawal plans to the Commissioner by those insurers electing to withdraw from the business of insurance pursuant to the Insurance Code, Article 21.49-2C, and greater protection of the interests of persons in this state affected by withdrawing insurers. Ms. Autry has determined that there will be a cost to insurers as a result of compliance with the requirement that all affected Texas policyholders and certificateholders be notified of the withdrawal and that this cost will range from approximately \$.03 per notice to approximately \$1.03 per notice with an average cost of \$.53 per notice, depending on how many notices are mailed, whether the notice is included with another mailing, and whether the insurer has a fully automated system or a fully manual system for processing the mailout of the no-

notice. There will be no effect on small businesses.

Comments on the proposal must be submitted within 30 days after publication of the proposed sections in the *Texas Register* to Linda K. von Quintus-Dorn, Chief Clerk, Texas Department of Insurance, P.O. Box 149104, MC #113-2A, Austin, Texas 78715-9104. An additional copy of the comment is to be submitted to Sandra A. Autry, Associate Commissioner, Financial Program, MC #305-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Request for a public hearing on this proposal should be submitted separately to the Office of the Chief Clerk.

The new sections are proposed pursuant to the Insurance Code, Articles 21.49-2C, 1.24, 1.04(b), and 1.10; and Texas Civil Statutes, Article 6252-13a §4 and §5. The Insurance Code, Article 21.49-2C(g) authorizes the State Board of Insurance to adopt rules necessary to enforce the provisions of this article, which regulates withdrawal plans. Article 1.24 authorizes the board to make inquiries to any insurance company or agent in relation to the company's or agent's business condition, or any matter connected with its transactions which the board deems necessary for the public good or for the proper discharge of its duties. Article 1.04(b) authorizes the board to determine rules in accordance with the laws of this state. Article 1.10, §1 requires the board to see that all laws respecting insurance and insurance companies are faithfully executed. Texas Civil Statutes, Article 6252-13a, §4 and §5 authorize and require each state agency to adopt rules of practice setting forth the nature and requirement of available procedures and to prescribe the procedures for adoption of rules by a state administrative agency.

§7.1801. Purpose. The purpose of this subchapter is to provide orderly and uniform procedures, as required by law and dictated by sound public policy, for any authorized insurer filing a plan of withdrawal with the Commissioner of Insurance pursuant to the Insurance Code, Article 21.49-2C.

§7.1802. Definitions. The following words and terms when used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise.

Annual Statement—Annual statement most recently filed by the insurer with the Texas Department of Insurance.

Board—State Board of Insurance.

Commissioner—Commissioner of Insurance.

Department—Texas Department of Insurance.

Line of Insurance—Each line of business as specified in §7.1803 of this title (relating to What Constitutes a Line of Insurance).

Withdrawal—

(A) Substantial withdrawal occurs when an insurer on its own initiative reduces the company's total annual premium volume for a line of insurance, as defined in §7.1803 of this title (related to What Constitutes a Line of Insurance), by 75% or more, except when the insurer is transferring business from the insurer to a company within the same insurance holding company, as defined in the Insurance Holding Company System Regulatory Act, Article 21.49-1, §2 of the Insurance Code, and admitted to do business in this state.

(B) Total withdrawal occurs when an insurer on its own initiative no longer engages in the writing of a line of insurance, as defined in §7.1803 of this title except when the insurer is transferring business from the insurer to a company within the same insurance holding company system, as defined in the Insurance Holding Company System Regulatory Act, Article 21.49-1, §2 of the Insurance Code, and admitted to do business in this state.

§7.1803. What Constitutes a Line of Insurance.

(a) For purposes of this subchapter, a line of insurance is defined as each line of business as specified in paragraphs (1)(A)-(P) and (2)(A)-(QQ) of this subsection, and including any line written in by the insurer on the annual statement pages specified in this section, for which financial data was reported by the individual withdrawing insurer filing any of the annual statement pages specified in this section, or any duly promulgated equivalent pages, of the annual statement forms specified in this section, or any duly promulgated equivalent forms, and including any line of business that is duly promulgated to be added to the annual statement pages specified in this section or to any duly promulgated equivalent page.

(1) For an insurer that is required to file the Life and Accident and Health Annual Statement Form 1 or Form 1A, Texas State Page 19, Reporting Direct Business in the State of Texas During the Year, in addition to any line of insurance written in by the insurer, each of the following is a line of insurance:

(A) Ordinary Life;

(B) Group and Individual Credit Life;

(C) Group Life;

(D) Industrial Life;

(E) Ordinary Annuity;

(F) Group Annuity;
 (G) Ordinary Annuity and Other Fund Deposits;
 (H) Group Annuity and Other Fund Deposits;
 (I) Group Accident and Health;
 (J) Group and Individual Credit Accident and Health;
 (K) Collectively Renewable Accident and Health;
 (L) Noncancelable Accident and Health;
 (M) Guaranteed Renewable Accident and Health;
 (N) Non-renewable for Stated Reasons Only Accident and Health;
 (O) Other Accident Only Accident and Health; or
 (P) all Other Accident and Health.
 (2) For an insurer that is required to file the Fire and Casualty Annual Statement Form 2, page 14 Texas Supplement, Exhibit of Premiums and Losses (coded "14 TS"), in addition to any line written in by the insurer, each of the following is a line of insurance:
 (A) Fire;
 (B) Allied lines;
 (C) Earthquake;
 (D) Flood;
 (E) Farmowners multiple peril;
 (F) Homeowners multiple peril;
 (G) Texas commercial multiple peril (non-liability portion);
 (H) Growing crops (all other);

(I) Multiple peril crop;
 (J) Inland marine;
 (K) Ocean Marine;
 (L) Group accident and health;
 (M) Group credit accident and health;
 (N) Other credit accident and health;
 (O) Collectively renewable accident and health;
 (P) Non-cancellable accident and health;
 (Q) Guaranteed renewable accident and health;
 (R) Non-renewable for stated reasons only;
 (S) Other accidents only;
 (T) All other accident and health;
 (U) Workers' compensation;
 (V) Texas commercial multiple peril (liability portion);
 (W) Financial guaranty;
 (X) Medical malpractice liability (physicians—including surgeons and osteopaths);
 (Y) Medical malpractice liability (all other health care professionals);
 (Z) Medical malpractice liability—hospitals;
 (AA) Medical malpractice liability (all other health care facilities);
 (BB) Product liability;
 (CC) Other general liability;
 (DD) Fidelity;

(EE) Surety;
 (FF) Glass;
 (GG) Burglary and theft;
 (HH) Boiler and machinery;
 (II) Credit guaranty;
 (JJ) Mortgage guaranty;
 (KK) Aircraft (all perils);
 (LL) Private passenger auto no-fault personal injury protection;
 (MM) Other private passenger auto liability;
 (NN) Commercial auto no-fault personal injury protection;
 (OO) Other commercial auto liability;
 (PP) Private passenger auto physical damage; or
 (QQ) Commercial auto physical damage.

(b) Nothing in this section allows an insurer to cancel or non-renew any coverage that would violate any provisions contained in the policy of insurance itself.

§7.1804. When a Plan Is Required.

(a) Any authorized insurer must file with the Commissioner of Insurance a plan of orderly withdrawal before the insurer undertakes total or substantial withdrawal from a line of insurance.

(1) The insurer undertakes total withdrawal from a line of insurance when it takes any action on its own initiative that will result in the insurer's ceasing to write a line of insurance, as defined in §7.1803 of this title (relating to What Constitutes a Line of Insurance). An insurer will not be held to have acted on its own initiative in effecting a total withdrawal from a line of insurance when it acts pursuant to a Commissioner or Board disciplinary or administrative directive or order, or when the insurer acts pursuant to a directive of a supervisor, conservator, or receiver. If any out-of-state directive or order is not provided to the Commissioner within 30 days of the issuance of any such directive or

order, the insurer will be held to have acted on its own initiative.

(2) The insurer undertakes substantial withdrawal from a line of insurance when it takes any action on its own initiative that will result in reducing the insurer's total annual premium volume in Texas for the current calendar year for a line of insurance, as defined in §7.1803 of this title, by 75% or more of the total annual premium volume in Texas for the immediately preceding calendar year for such line of insurance. An insurer will not be held to have acted on its own initiative in effecting a substantial withdrawal from a line of insurance when it acts pursuant to a Commissioner or Board disciplinary or administrative directive or order, or when the insurer acts pursuant to a directive of a supervisor, conservator, or receiver. If any out-of-state directive or order is not provided to the Commissioner within 30 days of the issuance of any such directive or order, the insurer will be held to have acted on its own initiative.

(b) Exceptions. An insurer is not required to file a plan of orderly withdrawal when the insurer is transferring business from the insurer to a company within the same insurance holding company system, as defined in the Insurance Holding Company System Regulatory Act, Article 21.49-1, §2 of the Insurance Code, and admitted to do business in this state.

§7.1805. Contents of Withdrawal Plan.

(a) The withdrawing insurer shall file a plan of orderly withdrawal with the Commissioner of Insurance that is constructed to protect the interests of the people of this state. The plan must be signed by at least one officer of the insurer and, for each line of insurance being withdrawn or having total annual premium volume reduced by 75% or more, must contain the following:

(1) identification, in accordance with the line of insurance designations in §7.1803 of this title (relating to What Constitutes a Line of Insurance), of the line or lines of insurance being withdrawn or having total annual premium volume reduced by 75% or more;

(2) the date the insurer intends to begin and complete its withdrawal;

(3) an explanation of the reasons for the withdrawal;

(4) provisions for notifying all of the affected Texas policyholders and certificateholders of the dates of the beginning and completion of the total or substantial withdrawal and how the withdrawal will affect them, including but not limited to:

(A) a copy of the notice and an explanation of the manner in which the notice will be provided to policyholders and certificateholders; and

(B) either affirmation that such notice will be provided within 30 days of the approval of the withdrawal plan or a request to provide the notice at some other specified date or time, and such request must be approved by the Commissioner.

(5) provisions for meeting all of the insurer's contractual obligations, including but not limited to:

(A) notification of all affected agents of the insurer of the date the insurer intends to begin and complete the withdrawal;

(B) for fire and casualty insurers, a statement affirming the insurer's compliance with the provisions of the Insurance Code, Article 21.11-1, relating to cancellation of agency contracts;

(C) for insurers writing liability coverage as specified in the Insurance Code, Article 21.49-2A, a statement affirming the insurer's compliance with the provisions of Article 21.49-2A, relating to cancellation and nonrenewal of certain liability insurance coverage; and

(D) for insurers writing property and casualty coverage as specified in the Insurance Code, Article 21.49-2B, a statement affirming the insurer's compliance with the provisions of Article 21.49-2B, relating to cancellation and nonrenewal of certain property and casualty policies;

(6) provisions for providing service to the insurer's Texas policyholders and claimants;

(7) information on Texas business, including:

(A) for insurers filing total withdrawal plans, the premium volume and the number of policies and certificates and covered persons in Texas for each line to be withdrawn;

(B) for insurers filing substantial withdrawal plans, the total annual premium volume and number of policies and certificates and covered persons in Texas for each line in which the total annual premium volume in Texas is being reduced by 75% or more both before withdrawal is effected and after withdrawal is completed;

(C) estimate of what percentage of the Texas market the withdrawal constitutes;

(D) any information necessary to assist the Commissioner in determining whether a market availability problem is created by the total or substantial withdrawal, the extent of the problem, and what market assistance may be needed to alleviate the problem, including but not limited to the following:

(i) type of location and geographic area subject to the withdrawal if not statewide (identify type of area such as suburban, urban, rural, or list specific rating territories) and zip codes if entire state not included in withdrawal; and

(ii) if applicable, types of risks no longer being covered (for example, if no longer writing private passenger auto insurance coverage for single-car families or for persons without supporting business; or if no longer providing homeowner's insurance coverage for low-value homes, or in areas with high loss-ratios, or in areas with historically high exposure to natural disasters). The information listed in this clause is provided for purposes of example only and is not intended to be a comprehensive or exhaustive list.

(E) if an insurer is unable to provide the exact number of certificates and covered persons, the insurer shall provide estimates and explain how the estimates were determined;

(8) number of and estimated amount of all losses outstanding in Texas, including claims incurred but not reported;

(9) a plan to handle the losses specified in paragraph (7) of this subsection, including but not limited to:

(A) identification of what assets will be available for paying outstanding incurred but not reported claims, claims in the course of settlement, and associated loss adjustment expenses;

(B) identification of who specifically will administer the run-off of the business; and

(C) an actuarial opinion certifying that adequate reserves are available to pay outstanding claims;

(10) if Texas policyholders or certificateholders are to be reinsured, the filing of a reinsurance agreement pursuant to all statutory and regulatory requirements and, when applicable, the filing of an assumption certificate;

(11) provisions for meeting any applicable statutory obligations, including but not limited to:

(A) payment of any guaranty fund assessments;

(B) participation in any assigned risk plan, pool, fund, facility, or joint underwriting arrangement; and

(C) payment of any taxes;

(12) if the insurer has any responsibility for small-premium workers' compensation policies, provision of information on number of such policies assigned to the insurer by the Department and number of such policies actually written; and

(13) for insurers filing total withdrawal plans, affirmation that no new business will be solicited by the insurer in this state during or following the withdrawal period unless the insurer first complies with §7.1808 of this title (relating to Requirements to Resume Writing Insurance).

(b) The filing of a single consolidated withdrawal plan for all withdrawing insurance companies in the same holding company system, as defined in the Insurance Holding Company System Regulatory Act, Article 21.49-1, §2 of the Insurance Code, does not meet the requirements of this subchapter. A separate withdrawal plan must be filed for each insurance company intending to totally or substantially withdraw from a line or lines of insurance.

§7.1806. Plan Submission and Approval Procedures.

(a) Any insurer filing a plan of orderly withdrawal should submit the plan to the Texas Department of Insurance, Company License Section, Mail Code 305-5B, P.O. Box 149104, Austin, Texas 78714-9104.

(b) The withdrawal plan shall be deemed approved if the Commissioner has not held a hearing within 30 days after the complete plan is filed or has not denied approval within 30 days after the hearing.

(c) No plan shall be considered "filed" until such date as the withdrawing insurer has provided to the Commissioner all information and material necessary to constitute a completed plan of orderly withdrawal, as required under this subchapter.

(d) Within 10 business days of the Commissioner's receipt of the withdrawal plan, the insurer will be notified by letter either that the plan is sufficient to constitute a completed plan of orderly withdrawal that meets all of the requirements of this

subchapter or that the plan is insufficient to constitute a completed plan of orderly withdrawal that meets all of the requirements of this subchapter and what information and material must be provided in order for the insurer to have filed a completed plan of orderly withdrawal, as required under this subchapter.

§7.1807. Filing of Annual Financial Statement and Other Required Data and Information. Any insurer filing a total withdrawal plan or a substantial withdrawal plan shall continue to file all annual financial statement data, other required statistical and data filings, and any other Department-requested information applicable to any withdrawn line until all policyholder obligations for such line in this state are fulfilled. This section does not exempt an insurer from any filings or information requests required by the Department.

§7.1808. Requirements to Resume Writing Insurance. Any insurer totally or substantially withdrawing from writing any line of insurance in this state and required to file a plan of orderly withdrawal pursuant to the Insurance Code, Article 21.49-2C, may not resume writing the withdrawn line in this state without complying with all applicable statutory and regulatory provisions governing authorization to write such line of insurance in this state and receiving the written approval of the Commissioner to resume such writing.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on April 19, 1993.

TRD-9321818

Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of
Insurance

Earliest possible date of adoption: May 24, 1993

For further information, please call: (512) 463-6327

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 14. County Indigent Health Care Program

Subchapter C. Providing Services

• 40 TAC §14.202

The Texas Department of Human Services (DHS) proposes an amendment to §14.202, concerning exclusions and limitations, in its

County Indigent Health Care Program rule chapter. The purpose of the amendment is to change the provider billing time frame from 90 to 95 days to coincide with the Medicaid program billing schedule.

Burton F. Raiford, commissioner, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Raiford also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be consistency in DHS's mandatory billing time frames. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Questions about the content of the proposal may be directed to Bonnie Magers at (512) 338-6458 in DHS's Purchased Health Services. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-091, Texas Department of Human Services E-503, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendment is proposed under Texas Civil Statutes, Article 4438f, the Indigent Health Care and Treatment Act, Title 1, and the Human Resources Code, Title 2, Chapter 22, which provide the department with the authority to administer public assistance programs.

§14.202. Exclusions and Limitations.

(a) (No change.)

(b) General exclusions. Mandatory services do not include services and supplies that:

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

(5) are not billed by the provider and received by the county within 95 [90] days from the date of:

(A)-(B) (No change.)

(6)-(9) (No change.)

(c) -(g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on April 15, 1993.

TRD-9321674

Nancy Murphy
Section Manager, Policy
and Document Support
Texas Department of
Human Services

Proposed date of adoption: July 1, 1993

For further information, please call: (512) 450-3765

Chapter 15. Medicaid Eligibility

Subchapter E. Income

The Texas Department of Human Services (DHS) proposes amendments to §15.475 and §15.500, concerning deeming of income and nonvendor living arrangements. The purpose of the amendments is to expand and clarify rules on deeming and to add clarification regarding the preparation of a companion budget.

Burton F. Raiford, commissioner, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Raiford also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the section will be that deeming policy and companion budgets will be applied correctly and consistently, statewide. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Questions about the content of the proposal may be directed to Judy Coker at (512) 450-3227 in DHS's Long-Term Care Division. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-298, Texas Department of Human Services E-503, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

• 40 TAC §15.475

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

§15.475. Deeming of Income.

(a) The following requirements apply.

(1) (No change.)

(2) For the purposes of deeming, the household comprises the eligible individual, the spouse and any children of the couple (or either member of the couple); or the eligible child, the parent(s), and other children of the parent(s).

(3) Deeming only applies in household situations. Unless temporarily absent, only those individuals residing in the household are a part of the household for deeming purposes. An individual is not a member of the household for deeming purposes if he is absent from home for a period which is not a temporary

absence. A temporary absence exists when an individual (eligible individual or child, or ineligible spouse, parent, or child) leaves the household but intends to, and does, return in the same month or the following month. If the absence is temporary, deeming continues to apply.

(4)[(2)] The department exempts certain types of income that may be received by a client's ineligible spouse, ineligible parent, a parent's ineligible spouse, or any ineligible children living in the household. The following types of income are not deemed to the client:

(A)-(D) (No change.)

(E) cash or in-kind payments for social services provided by a federal, state, or local government program;

(F) amount of income of a dependent who is receiving SSI or AFDC. This income has already been considered in determining the dependent's need for SSI or AFDC;

(G) grant, scholarship, and fellowship funds used to pay tuition and fees at an educational institution (including vocational and technical schools). Any portion of a grant, scholarship, or fellowship used to pay any other expense, such as room, board, or books, cannot be exempt;

(H) home produce for home consumption;

(I) infrequent or irregular income;

(J) payments for foster care of a child if the child:

(i) is not eligible for SSI; and

(ii) was placed in the client's home by a public or private, non-profit child-placement or child-care agency;

(K) first \$400 of earnings per month, not to exceed \$1,620 a calendar year, of a child who is a student regularly attending school. This exemption applies until the child is 22;

(L) benefits received under Title XII of the Older Americans Act (Nutrition Program for the Elderly);

(M) value of meals and benefits provided under the Child Nutrition Act of 1966;

(N) value of meals provided under the National School Lunch Act as amended by Public Law 90-302 of 1968;

(O) payments made to natives from revenues originating under the Alaska Native Claims Settlement Act;

(P) per capita payments to members of an Indian tribe in settlement of claims against the United States under Public Law 93-134;

(Q) per capita judgement payments made to the Blackfeet Tribe of Montana and the Gros Ventre Tribe of the Fort Belknap Reservation, Montana under Public Law 92-254;

(R) benefits received from Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(S) salaries, value of meals, and travel allowances to participate in the Retired Senior Volunteer Program and in the Foster Grandparent Program of Title II of the Domestic Volunteer Service Act of 1973 (formerly Title VI of the Older Americans Act). Also included are payments from Title III of the same Act, which includes the Service Corps of Retired Executives (SCORE), the Active Corps of Executives (ACE), and the Action Cooperative Volunteer Program (ACV);

(T) payments by the Federal Disaster Assistance Administration authorized by the Disaster Relief Act, as amended;

(U) per capita judgement funds, paid under Public Law 94-540, to members of the Grand River Band of Ottawa Indians;

(V) value of any housing assistance payment paid on a house under the United States Housing Act of 1937, the National Housing Act, of the Housing and Urban Development Act of 1965, §101, or Title V of the Housing Act of 1949, as authorized by Public Law 94-375;

(W) income received by members of 21 designated Indian tribes from lands held in trust by the United

States under Public Law 94-114, §6. Although none of these tribes is located in Texas, tribal members may live in the state;

(X) home energy assistance, except food or clothing, under Public Laws 97-377 and 97-424. Home energy assistance is assistance in cash or in kind that is provided by a private, non-profit organization or a utility company;

(Y) agent Orange Settlement Fund or any other fund established in settlement of the Agent Orange product liability litigation. Public Law 101-239 excludes the payments from countable income and resources. The law covers both disability and death benefits and is retroactive as of January 1, 1989;

(Z) reparation payments received by Holocaust survivors from the Federal Republic of Germany. The payments may be made periodically or as a lump sum. The department accepts the client's signed statement of amounts involved and dates of payment;

(AA) payments from a state-administered fund to aid victims of crime;

(BB) payments a state or local government may make as relocation assistance;

(CC) compensation received under the Radiation Exposure Compensation Act for injuries resulting from exposure to radiation from nuclear testing and uranium mining.

(b) The following exceptions apply to deeming of income.

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

(3) In certain waiver programs, an ineligible spouse's or parent(s)' [a par-

ent's] income is not deemed to a client [child].

(4) Deeming does not apply when an eligible individual and ineligible spouse are living in an institution even when they are sharing a room. Deeming does apply in non-institutional care situations, such as adult foster care and personal care facilities, if payment for care does not include payment for medical services and/or supplies.

(5) When an ineligible spouse or parent becomes eligible, discontinue deeming beginning with the month the spouse or parent becomes eligible.

(6) When spouses separate or divorce, discontinue deeming beginning with the first of the month following the month of the event.

(7) When an ineligible parent(s) or child no longer lives in the same household, discontinue deeming beginning with the first month following the month in which either the parent(s) or child leaves the household.

(8) When a child attains age 18, discontinue deeming in the month following the month the child attained age 18.

(9) When an ineligible spouse or parent(s) dies, discontinue deeming beginning with the month following the month the spouse or parent(s) died.

(c) Deeming procedures begin:

(1) with the first month following the month of change when an ineligible spouse or parent(s) begins living in the same household with a client;

(2) in the first month that the spouse or parent(s) becomes ineligible when an eligible spouse or parent(s) becomes ineligible.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on April 19, 1993.

TRD-9321821

Nancy Murphy
Section Manager, Policy
and Document Support
Texas Department of
Human Services

Proposed date of adoption: July 1, 1993

For further information, please call: (512) 450-3765

◆ ◆ ◆
Subchapter F. Budgets and
Payment Plans

◆ ◆ ◆
• 40 TAC §15.500

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

§15.500. *Nonvendor Living Arrangements.*

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

(c) The department prepares a companion budget, using the full SSI federal benefit rate [payment standard] for an individual, if a client lives with his ineligible spouse during any part of a calendar month. The department prepares companion budgets for [the Social Security Act,] 1929(b)[(2)(B).] clients using the department's special income limit. The income of the ineligible spouse may be deemed available to the client (except for TP51J clients).

(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

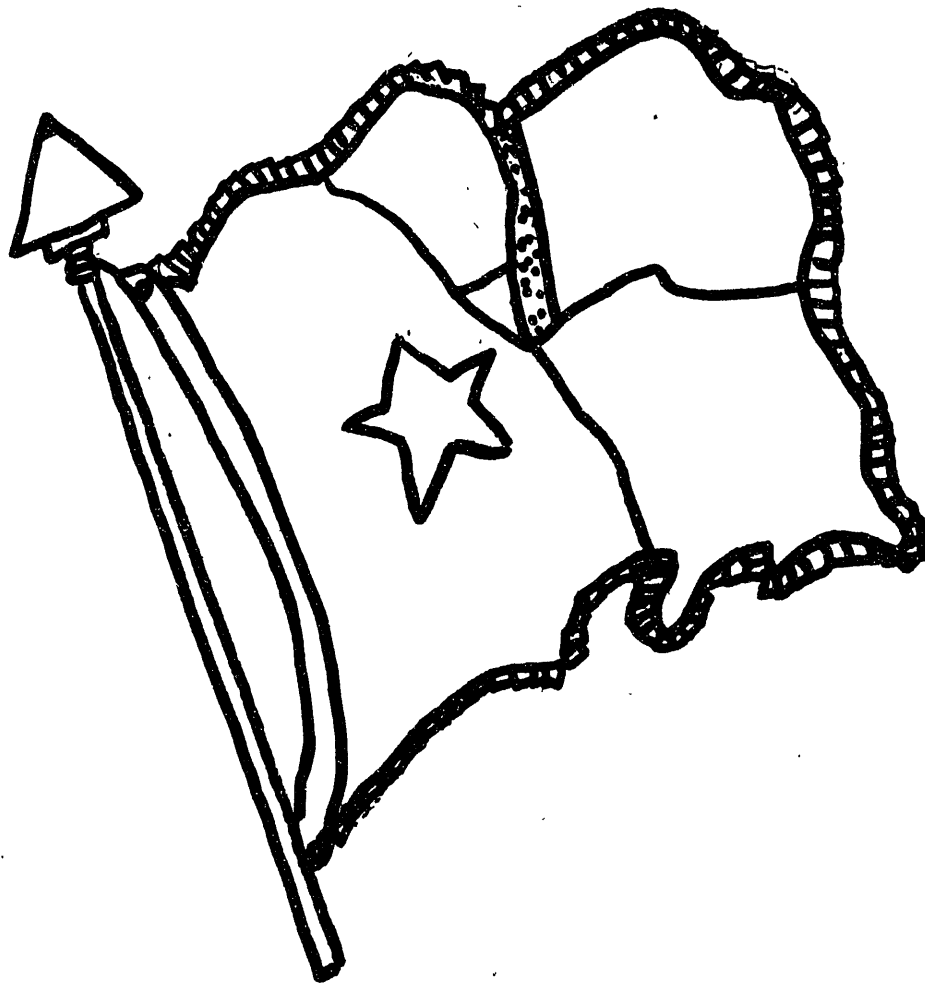
Issued in Austin, Texas, on April 19, 1993.

TRD-9321820

Nancy Murphy
Section Manager, Policy
and Document Support
Texas Department of
Human Services

Proposed date of adoption: July 1, 1993

For further information, please call: (512) 450-3765
◆ ◆ ◆



Name: Ricky Gonzalez
Grade: 3
School: North Loop Elementary, Ysleta ISD

Withdrawn Sections

An agency may withdraw proposed action or the remaining effectiveness of emergency action on a section by filing a notice of withdrawal with the *Texas Register*. The notice is effective immediately upon filing or 20 days after filing. If a proposal is not adopted or withdrawn six months after the date of publication in the *Texas Register*, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the *Texas Register*.

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 145. Nursing Facilities and Related Institutions

Subchapter B. Application Procedures

• 25 TAC §145.22

The Texas Department of Health has withdrawn from consideration for permanent adoption a proposed new to §145.22 which appeared in the October 20, 1992, issue of the *Texas Register* (17 TexReg 7309). The effective date of this withdrawal is April 9, 1993.

Issued in Austin, Texas, on April 9, 1993.

TRD-9321462

Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Effective date: April 9, 1993

For further information, please call: (512) 458-7236



Chapter 145. Long-Term Care

Subchapter H. Long-Term Care Services for the Elderly

• 25 TAC §145.121

The Texas Department of Health has withdrawn from consideration for permanent adoption a proposed repeal to §145.121 which appeared in the October 20, 1992, issue of the *Texas Register* (17 TexReg 7309). The effective date of this withdrawal is April 9, 1993.

Issued in Austin, Texas, on April 9, 1993.

TRD-9321495

Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Effective date: April 9, 1993

For further information, please call: (512) 458-7236



Chapter 146. Personal Care Facilities

Subchapter B. Application Procedures

• 25 TAC §146.20

The Texas Department of Health has withdrawn from consideration for permanent adoption a proposed new §146.20 which appeared in the October 20, 1992, issue of the *Texas Register* (17 TexReg 7400). The effective date of this withdrawal is April 16, 1993.

Issued in Austin, Texas, on April 16, 1993.

TRD-9321775

Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Effective date: April 16, 1993

For further information, please call: (512) 458-7236



Chapter 153. Adult Day Care and Adult Day Health Care Facilities

Subchapter B. Application Procedures

• 25 TAC §153.19

The Texas Department of Health has withdrawn from consideration for permanent adoption a proposed new §153.19 which appeared in the October 20, 1992, issue of the *Texas Register* (17 TexReg 7427). The effective date of this withdrawal is April 16, 1993.

Issued in Austin, Texas, on April 16, 1993.

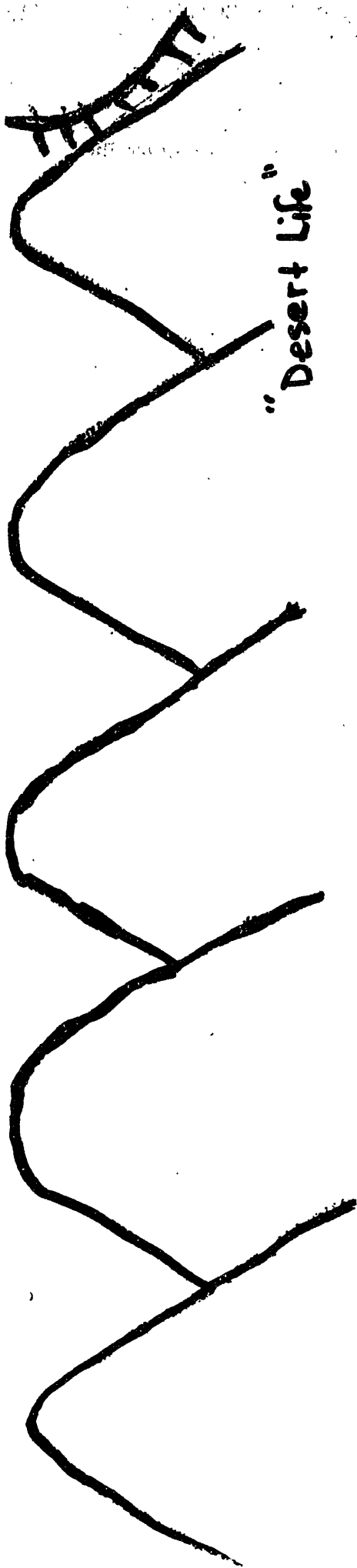
TRD-9321787

Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

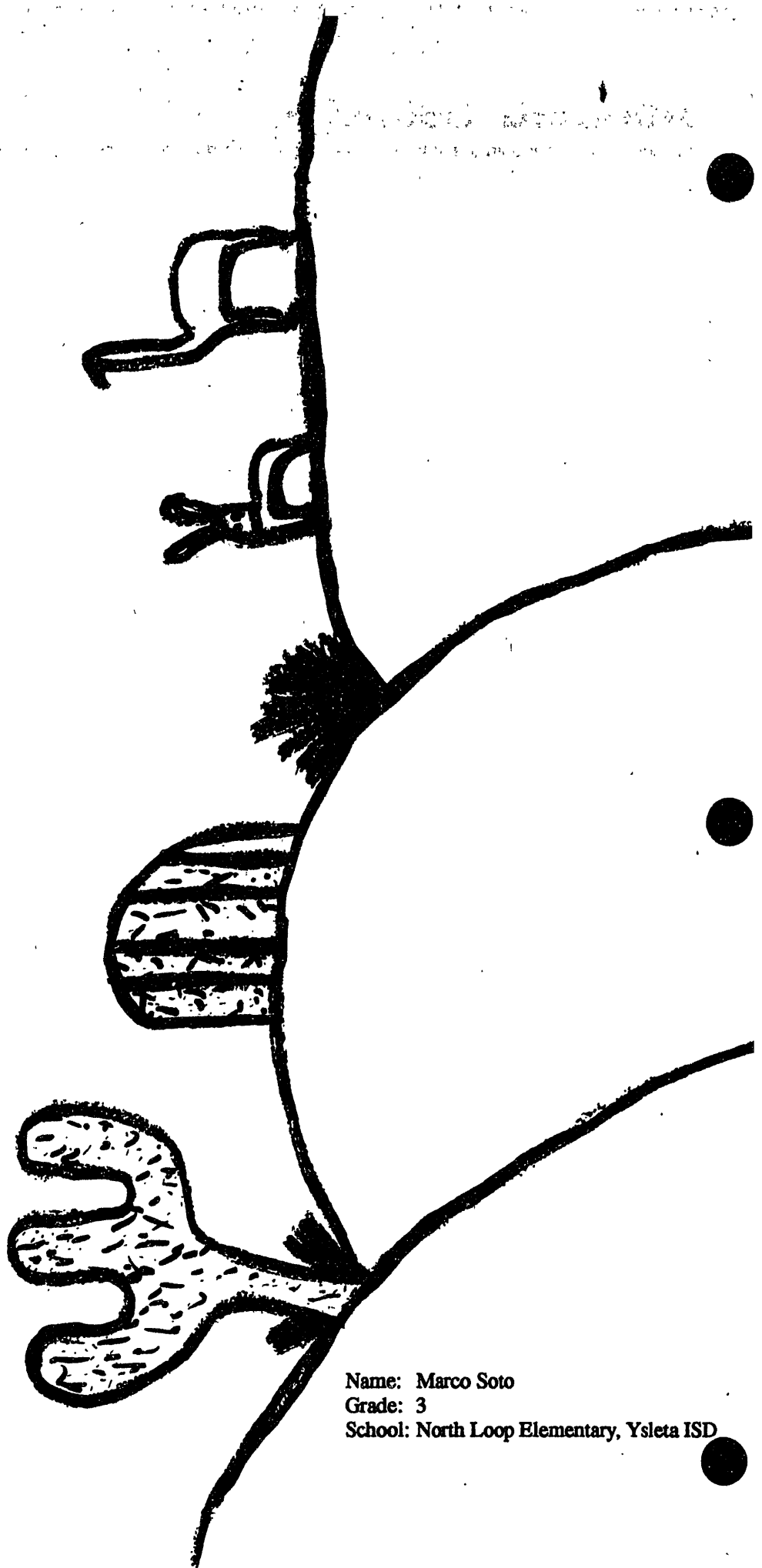
Effective date: April 16, 1993

For further information, please call: (512) 458-7236





"Desert Life"



Name: Marco Soto
Grade: 3
School: North Loop Elementary, Ysleta ISD

Adopted Sections

An agency may take final action on a section 30 days after a proposal has been published in the *Texas Register*. The section becomes effective 20 days after the agency files the correct document with the *Texas Register*, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 4. AGRICULTURE Part I. Texas Department of Agriculture

Chapter 17. Marketing and Development Division

TAP, Taste of Texas, Vintage Texas, and Texas Grown Promotional Marks

• 4 TAC §§17.51-17.56

The Texas Department of Agriculture adopts amendments to §§17.51-17.56, without changes to the proposed text as published in the January 15, 1993, issue of the *Texas Register* (18 TexReg 277).

The amendments clarify the standards, requirements, and application and revocation procedures for the voluntary, TAP, Taste of Texas, and Texas Grown marketing promotions. In addition, the amendments add the Vintage Texas program. The amendment to §17.51 provides additional definitions, and clarifies existing definitions. The amendment to §17.52 describes the various programs, changes the contents of the program applications, and sets forth restrictions on the use of the promotional marks. The amendment to §17.53 increases the time period within which an initial determination must be made on an application from 15 to 30 days, and defines the date of notification. The amendment to §17.54 clarifies the circumstances under which an application may be denied. The amendment to §17.55 establishes a fee for the Vintage Texas program, omits the previous late fee provision, clarifies the annual registration procedures, and provides for automatic termination of registration for non-payment of annual registration fees. The amendment to §17.56 clarifies the procedures for termination of registration to use the promotional marks.

The amendments will function by providing for more efficient operation of the promotional mark programs.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Agriculture Code, §12.002, which provides the department with the authority to encourage the proper development of agriculture, horticulture, and related industries; §12.016, which provides the department with the authority to adopt rules as necessary for the administration of §12.002; and §12.0175, which provides that if the department establishes a program to promote products grown in the state or products made from

ingredients grown in the state, the department may set by rule and collect a fee from each producer that participates in the program.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on April 14, 1993.

TRD-9321695

Dolores Alvarado Hibbs
Chief Administrative Law
Judge
Texas Department of
Agriculture

Effective date: May 6, 1993

Proposal publication date: January 15, 1993

For further information, please call: (512) 463-7583

TITLE 22. EXAMINING BOARDS

Part XV. Texas State Board of Pharmacy

Chapter 281. General Provisions

• 22 TAC §§281.2, 281.4, 281.23-281.25, 281.28, 281.29, 281.32, 281.34, 281.35, 281.48, 281.62, 281.63, 281.70, 281.71

The Texas State Board of Pharmacy adopts amendments to §§281.2, 281.4, 281.23-281.25, 281.28, 281.29, 281.32, 281.34, 281.35, 281.48, 281.70, and 281.71 and new §281.62 and §281.63. Section 281.63 and amendments to §§281.24, 281.25, 281.35 are adopted with changes to the proposed text as published in the October 30, 1992 issue of the *Texas Register* (17 TexReg 7637). Sections 281.2, 281.4, 281.23, 281.23, 281.29, 281.31, 281.34, 281.35, 281.48, 281.62, 281.70, and 281.71 are adopted without changes and will not be republished. These amendments and new sections clarify the hearing procedures set forth in the Texas Pharmacy Rules with regard to the new State Office of Administrative Hearings; prohibit a pharmacist from selling, purchasing, trading prescription drug samples; and prohibit a pharmacy from selling, purchasing, trading, or possessing prescription drug samples, unless the pharmacy is owned by a charitable organization, city, state, or county government; is a part of a health care entity which primarily provides health care services to indigent or low income

patients; and dispenses or provides the samples to patients at no charge.

The agency received one comment concerning the amendments to 281.24 and 281.25. This commenter noted that the rules referenced the 1954 Internal Revenue Code and the correct reference should be the 1986 Internal Revenue Code. The Board agrees with this commenter and has amended the rules to correct this reference.

The new sections and amendments sections are adopted under the Texas Pharmacy Act, (Texas Civil Statutes, Article 4542a-1); §16, which gives the Texas State Board of Pharmacy (TSBP) authority to adopt rules for the proper administration and enforcement of the Texas Pharmacy Act; §17(a)(4) which gives TSBP the authority to enforce those provisions of the Act relating to the conduct or competence of pharmacists practicing in this state and the conduct of pharmacies operating in this state; and §17(b) which gives TSBP the authority to regulate the delivery or distribution of prescription drugs and devices.

§281.24. Grounds for Discipline for a Pharmacist License.

(a) For the purposes of the Act, §26(a), unprofessional conduct shall include, but not be limited to:

(1)-(26) (No change.)

(27) the sale, purchase, or trade or the offer to sell, purchase, or trade of:

•(A) prescription drug samples; provided however, this subdivision does not apply to:

(i) prescription drugs provided by a manufacturer as starter prescriptions or as replacement for such manufacturer's out-dated drugs;

(ii) prescription drugs provided by a manufacturer in replacement for such manufacturer's drugs that were dispensed pursuant to written starter prescriptions; or

(iii) prescription drug samples possessed by a pharmacy of a health care entity which provides health care primarily to indigent or low income patients at no or reduced cost and if:

(I) the samples are possessed in compliance with the Prescription Drug Marketing Act of 1987;

(II) the pharmacy is owned by a charitable organization described in the Internal Revenue Code of 1986, or by a city, state, or county government; and

(III) the samples are for dispensing or provision at no charge to patients of such health care entity.

(B) prescription drugs:

(i) sold for export use only;

(ii) purchased by a public or private hospital or other health care entity; or

(iii) donated or supplied at a reduced price to a charitable organization described in the Internal Revenue Code of 1986, §501(c)(3);

(C) subparagraph (B) of this paragraph does not apply to:

(i) the purchase or other acquisition by a hospital or other health care entity which is a member of a group purchasing organization or from other hospitals or health care entities which are members of such organization;

(ii) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug by an organization described in subparagraph (B)(iii) of this paragraph to a nonprofit affiliate of the organization to the extent otherwise permitted by law;

(iii) the sale, purchase or trade of a drug or an offer to sell, purchase, or trade a drug among hospitals or other health care entities which are under common control;

(iv) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug for emergency medical reasons including the transfer of a drug between pharmacies to alleviate temporary shortages of the drug arising from delays in or interruptions of regular distribution schedules;

(D) misbranded prescription drugs;

(E) prescription drugs beyond the manufacturer's expiration date; or

(28) (No change.)

(b)-(c) (No change.)

§281.25. Grounds for Discipline for a Pharmacy License. For the purposes of subdivision (9) of subsection (b) of §26 of

the Act, a pharmacy fails to establish and maintain effective controls against diversion of prescription drugs when:

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

(4) the pharmacy possesses or engages in the sale, purchase, or trade or the offer to sell, purchase, or trade:

(A) prescription drug samples; provided however, this subparagraph does not apply to:

(i) prescription drugs provided by a manufacturer as starter prescriptions or as replacement for such manufacturer's outdated drugs;

(ii) prescription drugs provided by a manufacturer in replacement for such manufacturer's drugs that were dispensed pursuant to written starter prescriptions; or

(iii) prescription drug samples possessed by a pharmacy of a health care entity which provides health care primarily to indigent or low income patients at no or reduced cost and if:

(I) the samples are possessed in compliance with the Prescription Drug Marketing Act of 1987;

(II) the pharmacy is owned by a charitable organization described in the Internal Revenue Code of 1986, or by a city, state, or county government; and

(III) the samples are for dispensing or provision at no charge to patients of such health care entity;

(B) prescription drugs:

(i) sold for export use only;

(ii) purchased by a public or private hospital or other health care entity; or

(iii) donated or supplied at a reduced price to a charitable organization described in the Internal Revenue Code of 1986, §501(c)(3) and possessed by a pharmacy other than one owned by the charitable organization;

(C) subparagraph (B) of this paragraph does not apply to:

(i) the purchase or other acquisition by a hospital or other health care entity which is a member of a group purchasing organization or from other hospitals or health care entities which are members of such organization;

(ii) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug by an organization described in subparagraph (B)(iii) of this paragraph to a nonprofit affiliate of the organization to the extent otherwise permitted by law;

(iii) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug among hospitals or other health care entities which are under common control;

(iv) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug for emergency medical reasons including the transfer of a drug between pharmacies to alleviate temporary shortages of the drug arising from delays in or interruptions of regular distribution schedules;

(E) prescription drugs beyond the manufacturer's expiration date unless removed from dispensing stock and quarantined.

§281.35. Admission of Facts or of Genuineness of Documents.

(a) Any time after an agency has properly served notice of its intention to institute adjudicative proceedings in a contested case, a party may deliver or cause to be delivered to any other party or his attorney of record a written request for the admission by such party of the genuineness of any relevant documents described in and exhibited with the request or of the truth of any relevant matters of fact set forth by the request. Copies of the documents shall be delivered with the request unless copies have already been furnished. Whenever a party is represented by an attorney of record, delivery of a request for admission shall be made to such party's attorney unless delivery to the party is ordered by the presiding officer. The request for admission shall state that it is made under this section and that each of the matters of which an admission is requested shall be deemed admitted unless, within a period designated in the request not less than 15 days after delivery thereof or within such further time as the presiding officer may allow on motion and notice, the party to whom the request is directed, delivers or causes to be delivered to the party requesting the admission or such party's attorney of record a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why the party cannot truthfully either admit or deny those matters. A true copy of a request for admissions or of a sworn statement in reply thereto, shall be filed promptly with the state office of administrative hearings or presiding officer by the party making such request or such sworn statement.

(b)-(c) (No change.)

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on April 15, 1993.

TRD-9321684 Fred S. Brinkley, Jr.,
R.Ph., M.B.A.
Executive
Director/Secretary
Texas State Board of
Pharmacy

Effective date: May 6, 1993

Proposal publication date: October 30, 1992

For further information, please call: (512) 832-0661

Chapter 295. Pharmacists

• 22 TAC §295.9

The Texas State Board of Pharmacy adopts new §295.9, concerning pharmacists' inactive licenses without changes to the proposed text as published in the October 30, 1992, issue of the *Texas Register* (17 TexReg 7640). This new rule sets out procedures for a pharmacist to place his or her license on inactive status if the pharmacist has not completed the required continuing education to renew the license and the pharmacist is not practicing pharmacy in Texas.

There were no comments received regarding adoption of the new section.

The new section is adopted under the Texas Pharmacy Act (Texas Civil Statutes, Article 4542a-1), §24B(a), which gives the Texas State Board of Pharmacy (TSBP) the authority to adopt a system for the placement on inactive status of a license held by a person who is licensed by the Board to practice pharmacy but who is not eligible to renew the license for failure to comply with the continuing education requirements and who is not engaged in the practice of pharmacy in this state; and §16(a) which gives TSBP the authority to adopt rules for the proper administration and enforcement of the Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on April 15, 1993.

TRD-9321685 Fred S. Brinkley, Jr.,
R.Ph., M.B.A.
Executive
Director/Secretary
Texas State Board of
Pharmacy

Effective date: May 6, 1993

Proposal publication date: October 30, 1992

For further information, please call: (512) 832-0661

Chapter 303. Destruction of Dangerous Drugs and Controlled Substances.

• 22 TAC §303.1

The Texas State Board of Pharmacy adopts an amendment to §303.1, concerning the destruction of drugs dispensed to patients in health care facilities, without changes to the proposed text as published in the October 30, 1992, issue of the *Texas Register* (17 TexReg 7641). The rule will allow the witnesses for the destruction, inventorying, and transfer to a waste disposal company of dispensed drugs to be both the facility administrator and either the Director of Nursing or Director of Nursing or Acting Director of Nursing.

There were no comments received regarding adoption of the amendment.

The amendment is adopted under the Texas Pharmacy Act (Texas Civil Statutes, Article 4542a-1) §17(b)(1), which gives the Texas State Board of Pharmacy (TSBP) the authority to regulate the delivery or distribution of prescription drugs and devices and §16(a), which gives TSBP the authority to adopt rules for the proper administration and enforcement of the Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on April 15, 1993.

TRD-9321686 Fred S. Brinkley, Jr.,
R.Ph., M.B.A.
Executive
Director/Secretary
Texas State Board of
Pharmacy

Effective date: May 6, 1993

Proposal publication date: October 30, 1992

For further information, please call: (512) 832-0661

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 145. Long-Term Care

Subchapter A. Federal Laws and Regulations Covering Nursing and Convalescent Homes

The Texas Department of Health (department) adopts to repeal existing §§145.1-145.2, 145.11-145.25, 145.31-145.43, 145.51-145.70, 145.81-145.90, 145.92-145.97, 145.101-145.102, 145.111, 145.131, 145.141-145.147, 145.161-145.174, 145.191-145.195, 145.211-145.217, 145.251-145.265, 145.271-145.285, 145.301-145.305, and 145.321-145.335, concern-

ing long term care. The repealed sections are being replaced, modified, and updated by the following adopted new sections and chapters in this title of the Texas Administrative Code: §111.4, concerning memorandum of understanding relating to long term care service for the elderly; Chapter 145, concerning nursing facilities and related institutions; Chapter 146, concerning personal care facilities; Chapter 152, concerning procedures for covering certification of nursing facilities, skilled nursing facilities, and intermediate care facilities for persons with mental retardation and related conditions which participate in medicare or medicaid under Titles XVIII and XIX of the Social Security Act; and Chapter 153, concerning minimum licensing standards for adult day care and adult day health care facilities. The proposed repeal of §145.91 was not adopted, because proposed new §145.235, which was to replace existing §145.91, is being repropoed with substantive changes; therefore existing §145.91 has been repropoed for repeal. The proposed repeal of §145.121 was not adopted because the MOU is under review at this time. The new sections and chapters that are adopted with changes to the proposed text are being published in this issue of the *Texas Register*.

The repeal of existing long term care rules and the adoption of new sections will improve the care of residents in nursing facilities and related institutions by deleting outdated rules.

No comments were received regarding adoption of the repeals.

• 25 TAC §145.1, §145.2

The repeals are adopted under the Health and Safety Code, Chapter 242, which provides the Board of Health (board) with authority to adopt standards concerning nursing facilities and related institutions; and §12.001, which provides the board with authority to adopt rules to implement every duty imposed on the board, the department and the commissioner of health.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on April 9, 1993.

TRD-9321463 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Effective date: September 1, 1993

Proposal publication date: October 20, 1992

For further information, please call: (512) 458-7236

Subchapter B. Minimum Standards for Nursing Homes

• 25 TAC §§145.11-145.25

The repeals are adopted under the Health and Safety Code, Chapter 242, which provides the Board of Health (board) with authority to adopt standards concerning nursing facilities and related institutions; and §12.001, which provides the board with authority to

adopt rules to implement every duty imposed on the board, the department and the commissioner of health.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on April 9, 1993.

TRD-9321464 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

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Proposal publication date: October 20, 1992

For further information, please call: (512)
458-7236

Subchapter C. Minimum Standards for Custodial Care Homes

• 25 TAC §§145.31-145.43

The repeals are adopted under the Health and Safety Code, Chapter 242, which provides the Board of Health (board) with authority to adopt standards concerning nursing facilities and related institutions; and §12.001, which provides the board with authority to adopt rules to implement every duty imposed on the board, the department and the commissioner of health.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on April 9, 1993.

TRD-9321465 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

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Proposal publication date: October 20, 1992

For further information, please call: (512)
458-7236

Subchapter D. Minimum Standards for Maternity Homes

• 25 TAC §§145.51-145.70

The repeals are adopted under the Health and Safety Code, Chapter 242, which provides the Board of Health (board) with authority to adopt standards concerning nursing facilities and related institutions; and §12.001, which provides the board with authority to adopt rules to implement every duty imposed on the board, the department and the commissioner of health.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on April 9, 1993.

TRD-9321466 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

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For further information, please call: (512)
458-7236

Subchapter E. Procedures on Long-Term Care Facilities

• 25 TAC §§145.81-145.90, 145.92-145.97

The repeals are adopted under the Health and Safety Code, Chapter 242, which provides the Board of Health (board) with authority to adopt standards concerning nursing facilities and related institutions; and §12.001, which provides the board with authority to adopt rules to implement every duty imposed on the board, the department and the commissioner of health.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on April 9, 1993.

TRD-9321467 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

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For further information, please call: (512)
458-7236

Subchapter F. Institutions Subject to Licensure Under Texas Civil Statutes, Article 4442c

• 25 TAC §§145.101, §145.102

The repeals are adopted under the Health and Safety Code, Chapter 242, which provides the Board of Health (board) with authority to adopt standards concerning nursing facilities and related institutions; and §12.001 which provides the board with authority to adopt rules to implement every duty imposed on the board, the department and the commissioner of health.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-9321468 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

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Proposal publication date: October 20, 1993

For further information, please call: (512)
458-7236

Subchapter G. Licensing and Medical Certification Standards for Nursing Homes

• 25 TAC §145.111

The repeal is adopted under the Health and Safety Code, Chapter 242, which provides the Board of Health (board) with authority to adopt standards concerning nursing facilities and related institutions; and §12.001 which provides the board with authority to adopt rules to implement every duty imposed on the board, the department and the commissioner of health.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on April 9, 1993.

TRD-9321469 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

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Proposal publication date: October 20, 1992

For further information, please call: (512)
458-7236

Subchapter I. Employee Orientation and Training in Nursing Homes and Custodial Care Homes

• 25 TAC §145.131

The repeal is adopted under the Health and Safety Code, Chapter 242, which provides the Board of Health (board) with authority to adopt standards concerning nursing facilities and related institutions; and §12.001 which provides the board with authority to adopt rules to implement every duty imposed on the board, the department and the commissioner of health.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on April 9, 1993.

TRD-9321470 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

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Proposal publication date: October 20, 1992

For further information, please call: (512)
458-7236

Subchapter J. Procedures Covering Certification and Termination of Certification of Long Term Care Facilities which Participate in the Title XIX Assistance Program

• 25 TAC §§145.141-145.147

The repeals are adopted under the Health and Safety Code, Chapter 242, which provides the Board of Health (board) with authority to adopt standards concerning nursing facilities and related institutions; and §12.001 which provides the board with authority to adopt rules to implement every duty imposed on the board, the department and the commissioner of health.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on April 9, 1993.

TRD-9321471 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Effective date: September 1, 1993

Proposal publication date: October 20, 1992

For further information, please call: (512) 458-7236

◆ ◆ ◆
Subchapter K. Grading System for Nursing Facilities

• 25 TAC §§145.161-145.174

The repeals are adopted under the Health and Safety Code, Chapter 242, which provides the Board of Health (board) with authority to adopt standards concerning nursing facilities and related institutions; and §12.001 which provides the board with authority to adopt rules to implement every duty imposed on the board, the department and the commissioner of health.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on April 9, 1993.

TRD-9321472 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

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Proposal publication date: October 20, 1992

For further information, please call: (512) 458-7236

Subchapter M. Minimum Licensing Standards for Adult Day Care and Adult Day Health Care Facilities

• 25 TAC §§145.191-145.195

The repeals are adopted under the Health and Safety Code, Chapter 242, which provides the Board of Health (board) with authority to adopt standards concerning nursing facilities and related institutions; and §12.001 which provides the board with authority to adopt rules to implement every duty imposed on the board, the department and the commissioner of health.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on April 9, 1993.

TRD-9321473 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

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Proposal publication date: October 20, 1992

For further information, please call: (512) 458-7236

◆ ◆ ◆
Subchapter N. Minimum Licensing Standards for Facilities Serving Persons with Mental Retardation in Texas

• 25 TAC §§145.211-145.217

The repeals are adopted under the Health and Safety Code, Chapter 242, which provides the Board of Health (board) with authority to adopt standards concerning nursing facilities and related institutions; and §12.001 which provides the board with authority to adopt rules to implement every duty imposed on the board, the department and the commissioner of health.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on April 9, 1993.

TRD-9321474 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

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Proposal publication date: October 20, 1992

For further information, please call: (512) 458-7236

Subchapter P. Medication Aides

• 25 TAC §§145.251-145.265

The repeals are adopted under the Health and Safety Code, Chapter 242, which provides the Board of Health (board) with authority to adopt standards concerning nursing facilities and related institutions; and §12.001 which provides the board with authority to adopt rules to implement every duty imposed on the board, the department and the commissioner of health.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on April 9, 1993.

TRD-9321475 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Effective date: September 1, 1993

Proposal publication date: October 20, 1992

For further information, please call: (512) 458-7236

◆ ◆ ◆
Subchapter S. Minimum Licensing Standards for Personal Care Facilities

• 25 TAC §§145.321-145.335

The repeals are adopted under the Health and Safety Code, Chapter 242, which provides the Board of Health (board) with authority to adopt standards concerning nursing facilities and related institutions; and §12.001 which provides the board with authority to adopt rules to implement every duty imposed on the board, the department and the commissioner of health.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on April 9, 1993.

TRD-9321478 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Effective date: September 1, 1993

Proposal publication date: October 20, 1992

For further information, please call: (512) 458-7236

◆ ◆ ◆
Subchapter Q. Planning and Construction for Nursing Homes

• 25 TAC §§145.271-145.285

The repeals are adopted under the Health and Safety Code, Chapter 242, which provides the Board of Health (board) with author-

ity to adopt standards concerning nursing facilities and related institutions; and §12.001 which provides the board with authority to adopt rules to implement every duty imposed on the board, the department and the commissioner of health.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on April 9, 1993.

TRD-9321476

Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Effective date: September 1, 1993

Proposal publication date: October 20, 1992

For further information, please call: (512) 458-7236

Subchapter R. Certification Standards for Alzheimer's and Related Disorders

• 25 TAC §145.301-145.305

The repeals are adopted under the Health and Safety Code, Chapter 242, which provides the Board of Health (board) with authority to adopt standards concerning nursing facilities and related institutions; and §12.001 which provides the board with authority to adopt rules to implement every duty imposed on the board, the department and the commissioner of health.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on April 9, 1993.

TRD-9321477

Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Effective date: September 1, 1993

Proposal publication date: October 20, 1992

For further information, please call: (512) 458-7236

Chapter 145. Nursing Facilities and Related Institutions

Subchapter D. Facility Construction

Construction Standards for Additions, Remodeling and New Nursing Facilities

• 25 TAC §§145.61-145.73

The new sections are adopted under the Health and Safety Code, Chapter 242, which provides the Texas Board of Health (board) with the authority to adopt rules concerning nursing facilities and related institutions; and

§12.001 which provides the Board with authority to adopt rules to implement every duty imposed on the board, the department, and the commissioner of health.

§145.61. Introduction and Application.

(a) This subchapter is written for, and shall apply to, new construction, including conversions, additions, and remodelings. The requirements of the Life Safety Code, Standard 101 of the National Fire Protection Association (NFPA), as required under Health and Safety Code, §242.039, and other applicable NFPA codes and standards referenced in NFPA 101 shall apply unless otherwise noted or modified in these sections. The provisions of the chapter or subchapter and the provisions of the New Health Care Occupancies of the Life Safety Code are applicable.

(1) Life Safety Code, NFPA 101, is a registered trademark of the National Fire Protection Association, Inc., Quincy, Massachusetts 02269.

(2) These sections also describe minimum requirements for space use and other architectural and environmental aspects deemed necessary to provide a favorable environment for nursing facility residents.

(3) The definitions listed in §145.3 of this title (relating to Definitions) also apply to the sections in this subchapter.

(4) In addition to the Life Safety Code and the standards referenced therein, this subchapter is subject to the codes, standards, and requirements established by the following: Underwriters Laboratories, Inc. (UL); the American National Standards Institute, Inc. (ANSI); the National Electrical Code (NFPA 70); the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE); and the American Society for Testing Materials (ASTM). Various references to these entities will be made throughout these sections.

(b) Existing nursing facilities shall meet, as a minimum, the requirements of Existing Health Care Occupancies of the Life Safety Code, and the requirements concerning physical plant and environment in §145.41(n) of this title (relating to Standards for Nursing Facilities).

(c) Section 145.41(n) is a companion part of this subchapter. This subchapter must be referenced for new facilities for any requirements that may be in conflict with or exceed §145.41(n).

(d) All applicable local, state, or national codes and ordinances shall be met as determined by the authority having jurisdiction for those codes and ordinances and by the department. Any conflicts shall be made known to the department for appropriate resolution.

(e) The design of structural systems shall be done by or under the direction of a professional engineer who is currently registered by the Texas State Board of Registration for Professional Engineers. New facility construction and projects of unusual complexity require that plans and specifications be done by or under the direction of an architect currently registered by the Texas State Board of Architectural Examiners. Documents shall bear the legible seal of the architect and of the engineer(s).

(f) When an existing licensed facility plans building additions or remodeling which includes construction of additional resident beds, then the ratio of bathing units shall be reevaluated to meet minimum standards and the square footage of dining and living areas shall be reevaluated by the department at a minimum of 19 square feet per bed. Conversion of existing living, dining, or activity areas to resident bedrooms shall not reduce these functions to a total area of less than 19 square feet per bed. The dietary department shall be evaluated by the facility's registered or licensed dietitian or architect having knowledge in the design of food service operations. Such evaluation shall be provided to the department.

(g) No construction or demolition shall be started prior to submittal of final plans to the department for review and approval. See §145.65 of this title (relating to Exit Provisions) for remodeling safety requirements.

(h) No building shall be occupied by residents prior to inspection and approval to occupy by the department.

(i) Please note that §145.41 of this title specifies many requirements for procedures, policies, and services which should be studied for proper functional planning for resident services.

(j) Questions pertaining to architectural or code requirements should be directed to the department: Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3188 (Quality Standards Division, Architectural Section).

(k) The words "shall" or "must" are requirements. The word "should" is a recommendation which is expected to be followed unless there is valid reason not to do so.

(l) Nothing in these sections shall be construed as prohibiting a better type of building or construction, more space, services, features, or greater degree of safety than the minimum requirements specified herein.

§145.62. Location and Site.

(a) Site approval is normally required of the local health officer, building

department, and fire marshal having jurisdiction: Any conditions considered to be a fire, safety, or health hazard will be grounds for disapproval of the site by the department. New facilities shall not be built in an area designated as a floodplain of 100 years or less.

(b) Site grades shall provide for positive surface water drainage so that there will be no ponding or standing water on the designated site. This does not apply to local government requirements for engineered controlled run-off holding ponds, etc.

(c) A new building (or addition) shall be set back at least 10 feet from the property lines except as otherwise approved by the department.

(d) Exit doors from the building shall not open directly onto a drive for vehicular traffic, but shall be set back at least six feet from the edge of such drive (measured from the end of the building wall in the case of a recessed door) to prevent accidents due to lack of visual warning.

(e) Walks shall be provided as required from all exits and shall be of non-slip surfaces free of hazards. Walks shall be at least 48 inches wide except as otherwise approved. Ramps should be used in lieu of steps where possible for the handicapped and to facilitate bed or wheelchair removal in an emergency.

(f) Outdoor activity, recreational, and sitting spaces shall be provided and appropriately designed, landscaped, and equipped. Some shaded and/or covered outside areas are needed. Such areas shall be designed to accommodate residents in wheelchairs.

(g) Each facility shall have parking space to satisfy the needs of residents, employees, staff, and visitors. In the absence of a formal parking study, each facility shall provide for a ratio of at least one parking space for every four beds in the facility. This ratio may be reduced slightly in areas convenient to public parking facilities. Space shall be provided for emergency and delivery vehicles. No parking space shall block or inhibit egress from the outside exit doors. Parking spaces and drives shall be at least 10 feet away from windows in bedrooms and dining and living areas.

(h) Barriers shall be provided for resident safety from traffic or other site hazards by the use of appropriate methods such as fences, hedges, retaining walls, railings, or other landscaping. Such barriers shall not inhibit the free emergency egress to a safe distance away from the building.

(i) Open or enclosed courts with resident rooms or living areas opening upon them shall not be less than 20 feet in the smallest dimension unless otherwise ap-

proved by the department. Exceptions would be as follows.

(1) Nonparallel wings forming an acute angle may have a maximum of two such windows each side less than 20 feet but not less than 10 feet.

(2) Windows may be separated by a distance equal to the depth of the court but not less than 10 feet.

(3) For unusual or unique site conditions, courts with resident rooms opening upon them on one side only shall be not less than 10 feet in the smallest dimension, provided that the opposite wing does not contain a hazardous area and the wall has no openings which could transfer fire conditions to the resident room side.

(j) Auxiliary buildings located within 20 feet of the main building and which contain hazardous areas such as laundry and storage buildings shall meet the applicable Life Safety Code requirements for separation and construction or the buildings shall be moved to be 20 feet or farther away from the main building.

(k) Other buildings on the site shall meet the appropriate occupancy section or separation requirements of the Life Safety Code.

(l) Fire service and access shall be as follows.

(1) The facility shall be served by a paid or volunteer fire department. The fire department must provide written assurance to the department that the fire department can respond to an emergency at the facility within an appropriately prompt time for the travel conditions involved.

(2) The facility shall be served by an adequate water supply that is satisfactory and accessible for fire department use as determined by the fire department serving the facility and by the department.

(3) There shall be at least one readily accessible fire hydrant located within 300 feet of the building. The hydrant shall be on a minimum six inch service line, or else there shall be an approved equivalent (such as a storage tank). The hydrant, its location, and service line, or equivalent shall be as approved by the local fire department and the department.

(4) The building shall have suitable all-weather fire lanes for access as required by local fire authorities and the department. As a minimum, there shall be access to two sides of the building by an all-weather lane at least 10 feet wide. Fire lanes shall have at least 14 feet in clearance width above grade (two feet each side of the 10-foot roadbed) and be kept free of obstructions at all times. All-weather access lanes shall be no less than a properly constructed gravel lane.

§145.63. General Considerations.

(a) Services. Nursing facilities shall either contain the elements described in this section or the provider shall indicate the manner in which the needed services are to be made available. Each element provided in the facility must comply with the requirements of this subchapter. Appropriate modifications or deletions in space requirements may be made when services are shared or purchased.

(b) Sizes. The sizes of the various departments will depend upon program requirements and organization of services within the facility. Some functions requiring separate spaces or rooms in these minimum requirements may be combined provided that the resulting plan will not compromise the best standards of safety and of medical and nursing practices.

(c) Shared or combined services. Nursing facilities may be operated together with hospitals and may share administration, food service, recreation, janitor service, and physical therapy facilities, but must otherwise have clearly identifiable physical separations such as a separate wing or floor. Nursing facilities with different levels of care will require identifiable physical separations. Combined attendant or nurse stations and medication room areas will require some separating construction features.

(d) Exterior finishes. Unless otherwise approved by the department, the exterior finish material of buildings classified (per the National Fire Protection Association (NFPA) 220) as fire resistive or protected noncombustible shall be Class A in the Life Safety Code. All others shall be Class A or B in the Life Safety Code. Items of trim may be of combustible material subject to approval by the department. Roofing shall be Underwriter Laboratories (UL) listed as Class A or B.

(e) Interior finishes.

(1) Life Safety Code requirements for new construction shall be applicable for interior finish of walls, ceilings, and floors.

(2) Documentation of finishes, such as copies of lab test reports, material labels, etc., is required.

(f) Corridor travel distance. Corridor travel from the nurse station to the farthest resident room must assure prompt service to the resident. The normal travel for nursing efficiency is considered to be not over 85 feet and shall not exceed 150 feet.

(g) Accessibility for individuals with disabilities. The facility shall meet the provisions and requirements concerning ac-

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

(h) Handrails. Handrails shall be provided on each side of all resident use corridors. Handrails for other areas should be provided as needed to facilitate resident movement or egress. Design of handrails shall be in accordance with the American National Standards Institute (ANSI) A117.1. Such handrails may extend into the minimum required corridor width without widening the corridor (i.e., in an eight foot wide corridor, handrails may project up to 3 1/2 inches on each side). Reference §145.72(a)(8) and (9) of this title (relating to Miscellaneous Details) for handrail details.

§145.64. Architectural Space Planning and Utilization. For supplemental information to this section see §145.141 of this title (relating to Plans, Approvals, and Construction Procedures) for drawings and specifications required for review and construction purposes.

(1) Resident bedrooms. Each resident bedroom shall meet the following requirements.

(A) The maximum room capacity shall be four residents.

(B) No more than 25% of the total licensed beds shall be in bedrooms with more than two beds each.

(C) Minimum bedroom area, excluding toilet rooms, closets, lockers, wardrobes, alcoves, or vestibules, shall be 100 square feet in single occupancy rooms and 80 square feet per bed in multi-bed rooms.

(D) The minimum room dimension shall be 10 feet. The room shall be designed to provide at least 36 inches between beds and 24 inches between any bed and the adjacent (parallel) wall.

(E) Each room shall have at least one operable outside window arranged and located so that it can be easily opened from the inside without the use of tools or

keys. The maximum allowable sill height (to opening) shall not exceed 36 inches above the floor. All operative windows shall have insect screens. The minimum area of window(s) in each bedroom shall equal at least 16 square feet or 8.0% of the room area, whichever is larger.

(F) Each room shall have general lighting, bed reading lights, and night lighting. The night light shall be switched just inside the entrance to each resident room with a silent type switch. A durable nonglare (opaque front panel) reading light securely anchored to the wall, integrally wired, shall be provided for each resident bed. The switch shall be within reach of a resident in the bed.

(G) Two duplex (or a fourplex) grounding type receptacles shall be provided beside the head of each bed. Other walls shall have duplex receptacles as needed for TV, radio, razors, hairdryers, clocks, etc. and/or as required by the NFPA 70. National Electrical Code, NFPA 70, is a registered trademark of the National Fire Protection Association, Inc., Quincy, Massachusetts 02269.

(H) Each resident shall have access to a toilet room without entering the general corridor area. One toilet room shall serve no more than two resident rooms. The toilet room shall contain a water closet and a lavatory. The lavatory may be omitted from a toilet room which serves two bedrooms if each such resident room contains a lavatory. See paragraph (3)(A) of this section for baths and other toilet facility requirements.

(I) Each resident shall have a bed with a comfortable mattress, a bedside stand with at least two enclosed storage spaces, a dresser, and closet or wardrobe space providing privacy for clothing and personal belongings. Clothes storage space shall provide at least 22 inches of lineal hanging space per bed and have closable doors. Chairs and space shall be provided for use by residents and/or visitors.

(J) All beds shall have provisions for accepting castors with wheel-locking devices, and all bedfast resident beds shall have castors installed.

(K) Each room shall open onto an exit corridor and shall be arranged for convenient resident access to dining, living, and bathing areas.

(L) Visual privacy (such as cubicle curtains) shall be available for each

resident in multi-bed rooms. Design for privacy shall not restrict resident access to entry, lavatory, or toilet, nor shall it restrict bed evacuation or obstruct sprinkler flow coverage.

(M) At least one noncombustible wastebasket shall be provided in each bedroom.

(N) See the requirements in §145.71(d) (4) of this title (relating to Electrical Requirements) for nurse call systems.

(2) Nursing service areas. The service areas listed below shall be located in or readily available to each nursing unit. The size and disposition of each service area will depend upon the number and types of beds to be served. Each service area may be arranged and located to serve more than one nursing unit, but at least one such service area shall be provided on each nursing floor. The maximum distance from a resident room door to a nurse station shall be 150 feet.

(A) Nurse stations shall be provided with space for nurses' charting, doctors' charting, and storage for administrative supplies. Nurses' stations shall be located to provide a direct view of resident corridors. A direct view of resident corridors is acceptable if a person can see down the corridors from a point within 24 inches of the outside of the nurse station counter or wall.

(B) Lounge and toilet room(s) shall be provided for nursing staff.

(C) Lockers and/or security compartments shall be provided for the safekeeping of personal effects of staff. These shall be located convenient to the duty station of personnel or in a central location.

(D) Clean utility room(s) shall contain a work counter, sink with high neck faucet with lever controls, and storage facilities. It shall be part of a system for storage and distribution of clean and sterile supply materials.

(E) Soiled utility room(s) shall contain a water closet or equivalent flushing rim fixture, a sink large enough to submerge a bedpan with spray hose and high neck faucet with lever controls, work counter, waste receptacle, and linen receptacle. It shall be part of a system for collection and cleaning or disposal of soiled utensils or materials. A separate handwash sink shall be provided if the bedpan disin-

fecting sink cannot normally be used for handwashing.

(F) Provision shall be made for convenient and prompt 24-hour distribution of medication to residents. The medication preparation room shall be under the nursing staff's visual control and contain a work counter, refrigerator, sink with hot and cold water, and locked storage for biologicals and drugs and shall have a minimum area of 50 square feet. The minimum dimension shall be five feet six inches. An appropriate air supply shall be provided to maintain adequate temperature and ventilation for safe storage of medications. For purposes of storage of unrefrigerated medications, the room temperature shall be maintained between 59 degrees and 86 degrees F.

(G) Provision shall be made for separate closets or room for clean linens. Corridors shall not be used for folding or cart storage. Storage rooms shall be located and distributed in the building for efficient access to bedrooms.

(H) Soiled linen rooms shall be provided as required in paragraph (12) of this section.

(I) A nourishment station(s) is usually required in all but the smaller facilities and shall contain a sink equipped for handwashing, equipment for serving nourishment between scheduled meals, refrigerator, and storage cabinets. Ice for residents' service and treatment shall be provided only by icemaker units. This station may be furnished in a clean utility room.

(J) An equipment storage room shall be provided for equipment such as intravenous stands, inhalators, air mattresses, and walkers.

(K) Parking spaces for stretchers and wheelchairs shall be located out of the path of normal traffic.

(3) Residents' bathing and toilet facilities.

(A) Bathtubs or showers shall be provided at the rate of one for each 20 beds which are not otherwise served by bathing facilities within residents' rooms. At least one bathing unit shall be provided in each nursing unit. Each tub or shower shall be in an individual room or enclosure which provides space for the private use of the bathing fixture, for drying and dressing, and for a wheelchair and an attendant. Each general use bathing room (those not directly serving adjoining bedrooms) shall be provided with at least one water closet (in a stall, room, or area for privacy) and one lavatory. Such bathing room(s) shall be located conveniently to the bedroom area it serves and shall not be more than 100 feet from the farthest bedroom. See requirements in paragraph (1)(H) of this section for resident toilets at bedrooms. Each facility shall provide at least one whirlpool tub unit as one of the required bathing units.

(B) At least 50% of bathrooms and toilet rooms, fixtures, and accessories shall be designed and provided to meet criteria under the Americans with Disabilities Act for individuals with disabilities unless otherwise approved by the department.

(C) All rooms containing bathtubs, sitz baths, showers, and water closets, subject to occupancy by residents, shall be equipped with swinging doors and hardware which will permit access from the outside in any emergency.

(D) Bathing areas shall be provided with safe and effective auxiliary or supplementary heating. Bathing areas shall be free of drafts and shall have adequate exhaust ducted to the outside to minimize excess moisture retention and resulting mold and mildew problems.

(E) Tubs and showers shall be provided with slip proof bottoms.

(F) Lavatories and handwashing facilities shall be securely anchored to withstand an applied downward load of not less than 250 pounds on the front of the fixtures.

(G) Provision shall be made for sanitary hand drying at lavatories. There shall be paper towel dispensers, or separate towel racks separate toothbrush holders, etc.

(H) Mirrors shall be arranged for convenient use by residents in wheelchairs as well as by residents in a standing position and the minimum size shall be 15 inches in width by 30 inches in height, or tilt type.

(I) Rooms with toilets shall be provided with effective forced air exhaust ducted to the exterior to help remove odors. Ducted manifold systems are recommended for some multiple type installations.

(J) Floors, walls, and ceilings shall have nonabsorbent surfaces, be smooth, and easily cleanable.

(4) Sterilizing and disposal facilities.

(A) An effective system for sterilization of equipment and supplies shall be provided.

(B) Space and facilities shall be provided for the sanitary storage of waste by incineration, mechanical destruction, compaction, containerization, removal, or by a combination of these techniques.

(5) Resident living areas. Social-diversional spaces such as living rooms, dayrooms, lounges, sunrooms, etc., shall be provided on a sliding scale as follows:

Number of Beds

4-15
16-20
21-25
26-30
31-35
36-40
41-50
51-60
61 and over

Area Per Bed (Minimum)

18 square feet (Minimum 144 square feet)
17 square feet
16 square feet
15 square feet
14 square feet
13 square feet
12 square feet
11 square feet
10 square feet (Example: 100 beds = 1,000 square feet)

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

(B) Each resident living room and dining room shall have at least one outside window. The window area shall be equal to at least 8.0% of the total room floor area. Skylighting may be used to fulfill one-half of the 8.0% minimum area.

(C) See §145.61(f) of this title (relating to Introduction and Application) for bed capacity increases to existing facilities.

(D) Open or enclosed seating space shall be provided within view of the main nurse station that will allow furniture or wheelchair parking that does not obstruct the corridor way of egress.

(6) Dining space. Dining space shall be adequate for the number of residents served, but no less than 10 square feet per resident bed. See §145.61(f) of this title for bed capacity increases to existing facilities.

(7) Dietary facilities.

(A) Kitchens (main/dietary) shall be as follows.

(i) Kitchens will be evaluated on the basis of their performance in the sanitary and efficient preparation and serving of meals to residents. Consideration shall be given to planning for the type of meals served, the overall building design, the food service equipment, arrangement, and the work flow involved in the preparation and delivery of food. Plans shall include a large-scale detailed kitchen layout designed by a registered or licensed dieti-

tian or architect having knowledge in the design of food service operations.

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

(iii) Operational equipment shall be provided as planned and scheduled by the facility consultants for preparing and serving meals and for refrigerating and freezing of perishable foods, as well as equipment in, and/or adjacent to, the kitchen or dining area for producing ice.

(iv) Facilities for washing and sanitizing dishes and cooking utensils shall be provided. Such facilities shall be designed based on the number of meals served and the method of serving (permanent or disposable dishware, etc.). As a minimum, the kitchen shall contain a multi-compartment sink large enough to immerse pots and pans. In all facilities, a mechanical dishwasher is required for washing and sanitizing dishes. Separation of soiled and clean dish areas shall be maintained, including air flow.

(v) A vegetable preparation sink shall be provided. It shall be separate from the pot sinks.

(vi) A supply of hot and cold water shall be provided. Hot water for sanitizing purposes shall be 180 degrees Fahrenheit or the manufacturer's suggested temperature for chemical sanitizers. For mechanical dishwashers the temperature measurement is at the manifold.

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

(viii) Staff rest room facilities with lavatory shall be directly accessible to kitchen staff without traversing resident use areas. The rest room door shall not open directly into the kitchen (i.e., provide a vestibule).

(ix) Janitorial facilities shall be provided exclusively for the kitchen and shall be located in the kitchen area.

(x) Nonabsorbent smooth finishes or surfaces shall be used on kitchen floors, walls, and ceilings. Such surfaces shall be capable of being routinely cleaned and sanitized to maintain a healthful environment. Counter and cabinet surfaces, inside and outside, shall also have smooth, cleanable, relatively nonporous finishes.

(xi) Operable windows shall have insect screens provided.

(xii) Doors between kitchen and dining or serving areas shall have 1/4 inch fixed wire glass view panel mounted in a steel frame. Reference §145.68(d) of this title (relating to Hazardous Areas).

(xiii) See §145.68 of this title for hazardous area requirements.

(xiv) A garbage can or cart washing area with drain and hot water shall be provided.

(xv) Floor drains shall be provided in the kitchen and dishwashing areas.

(xvi) Vapor removal from cooking equipment shall be designed and installed in accordance with NFPA 96.

(xvii) Grease traps shall be provided as required.

(xviii) See §145.61(f) of this title for bed capacity increases to existing facilities.

(B) Food storage areas shall be as follows.

(i) Food storage areas shall provide for storage of a seven-day

minimum supply of nonperishable foods at all times.

(ii) Shelves shall be adjustable wire type. Walls and floors must have a nonabsorbent finish to provide a cleanable surface. No foods shall be stored on the floor; dollies, racks or pallets may be used to elevate foods not stored on shelving.

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

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

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

(C) Auxiliary serving kitchens (not contiguous to food preparation/serving area) shall be as follows.

(i) Where service areas other than the kitchen are used to dispense foods, these shall be designated as food service areas and shall have equipment for maintaining required food temperatures while serving.

(ii) Separate food service areas shall have hand-washing facilities as a part of the food service area.

(iii) Finishes of all surfaces, except ceilings, shall be the same as those required for dietary kitchens or comparable areas.

(8) Administrative and public areas.

(A) The following elements shall be provided in the public area.

(i) The entrance shall be at grade level, sheltered from the weather and able to accommodate wheelchairs. A drive-under canopy shall be provided for the protection of residents or visitors entering or leaving a vehicle. The latter may be a secondary entrance.

(ii) The lobby shall include:

(I) storage space for wheelchairs (if more than one is kept available);

(II) a reception and/or information area (may be obviously adjacent to lobby);

(III) waiting space(s);

(IV) public toilet facilities for individuals with disabilities (may be adjacent to lobby);

(V) public access telephone(s), at least one, shall be installed to meet standards under the Americans with Disabilities Act; and

(VI) drinking fountain(s). These may be provided in a common public area and at least one shall be installed to meet standards under the Americans with Disabilities Act.

(iii) A lobby may also be use-designed to satisfy a portion of the minimum area required for resident living room space.

(B) The following shall be provided in the administrative area:

(i) general or individual offices(s) for business transactions, medical and financial records, administrative and professional staff, and for private interviews relating to social service, credit, and admissions;

(ii) a multipurpose room for conferences, meetings, and health education purposes including facilities for showing visual aids; and

(iii) storage and work area for office equipment and supplies shall be provided and accessible to the staff using such items.

(C) Toilet facilities for the disabled shall be available in the building.

(9) Physical therapy facilities.

(A) Physical therapy facilities shall be provided if required by the treatment program and may include the following:

(i) treatment area(s) with space and equipment for thermotherapy, diathermy, ultrasonics, and hydrotherapy; provision for cubicle curtains around each individual treatment area; hand-washing facility(ies) (one lavatory or sink may serve more than one cubicle); and facilities for the collection of soiled linen and other material that may be used in the therapy;

(ii) an exercise area;

(iii) storage for clean linen, supplies, and equipment used in therapy;

(iv) residents' dressing areas, showers, lockers, and toilet rooms if

the therapy is such that these would be needed at the area;

(v) service sink located near therapy area; and

(vi) wheelchair and stretcher storage.

(B) The facilities stated in subparagraph (A)(iii)-(vi) of this paragraph may be planned and arranged for shared use by occupational therapy residents and staff if the treatment program reflects this sharing concept.

(10) Occupational therapy. Occupational therapy shall be provided if required by the treatment program. The following may be included:

(A) an activities area which shall include sink or lavatory and facilities for collection of waste products prior to disposal; and

(B) storage for supplies and equipment used in the therapy.

(11) Personal grooming area (barber/beauty shop). A separate room with appropriate equipment shall be provided for hair care and grooming needs of residents in facilities with over 60 beds.

(12) Laundry/linen services.

(A) On-site processing shall be as follows.

(i) Due to the high incidence of fires in laundries, it is highly recommended that the laundry be in a separate building 20 feet or more from the main building. If the laundry is located within the main building it shall be separated by minimum one-hour fire construction to structure above, and sprinklered, and shall be located in a remote area away from resident sleeping areas. Access doors shall be from the exterior or interior nonresident use area such as a service corridor (not required exit) which is separated from the resident area.

(ii) If linen is to be processed on the site, the following shall be provided:

(I) a soiled linen receiving, holding, and sorting room with a rinse sink. This area shall have a floor drain and forced exhaust to the exterior which shall operate at all times there is soiled linen being held in the area;

(II) a laundry processing room with equipment which can process seven days needs within a regularly scheduled work week. Hand-washing facilities

shall be provided. The washer area shall have a floor drain;

(III) storage for laundry supplies;

(IV) a clean linen inspection and mending room or area and a folding area;

(V) a clean linen storage, issuing, or holding room or area;

(VI) a janitors' closet containing a floor receptor or service sink and storage space for housekeeping equipment and supplies; and

(VII) sanitizing (washing) facilities and a storage area for carts.

(iii) Soiled and clean operations shall be planned to maintain sanitary flow of functions as well as air flow. If carts containing soiled linens from resident rooms are not taken directly to the laundry area, intermediate holding rooms shall be provided and located convenient to resident bedroom areas.

(iv) Laundry areas shall have adequate air supply and ventilation for staff comfort without having to rely on opening a door that is part of the fire wall separation.

(v) Provisions shall be made to exhaust heat from dryers and to separate dryer make-up air from the habitable work areas of the laundry.

(B) For off-site linen processing, the following shall be provided on the premises:

(i) a soiled linen holding room (provided with adequate forced exhaust ducted to the exterior);

(ii) clean linen receiving, holding, inspection, sorting or folding, and storage room(s); and

(iii) sanitizing facilities and storage area for carts.

(C) Resident use laundry, if provided, shall be limited to not more than one residential type washer and dryer per laundry room. This room shall be classified as a hazardous area as in accordance with the Life Safety Code.

(13) General storage.

(A) A general storage room(s) shall be provided as needed to accommodate the facility's needs. It is recom-

mended that such area provide at least two square feet per resident bed. This area would be for such items as extra beds, mattresses, appliances, and other furnishing and supplies.

(B) Storage space with provisions for locking and security control should be provided for residents' personal effects which are not kept in his or her room.

(14) Janitors' closet. In addition to the janitors' closet called for in certain departments, a sufficient number of janitors' closets shall be provided throughout the facility to maintain a clean and sanitary environment. These shall contain a floor receptor or service sink and storage space for housekeeping equipment and supplies.

(15) Maintenance/engineering service and equipment areas. Space and facilities for adequate preventive maintenance and repair service must be provided. The following spaces are needed (it is suggested that these be part of a separate laundry building or area).

(A) A storage area for building and equipment maintenance supplies, tools, and parts shall be provided.

(B) A space for storage of yard maintenance equipment and supplies, including flammable liquids bulk storage, shall be provided separate from the resident occupied facility.

(C) A maintenance/repair workshop of at least 120 square feet and equipment to support usual functions is recommended.

(D) A suitable office or desk space for the maintenance person(s) is recommended (this may be located within the previously stated repair shop area) with space for catalogs, files, and records.

(16) Oxygen. The storage and use of oxygen and equipment shall meet applicable NFPA standards for oxygen, including NFPA 56F.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

§145.65. *Exit Provisions.* Exit provisions, including doors, corridors, stairways, and other exitways, locks, and other applicable items shall conform to the requirements of the Life Safety Code concerning means of egress and of this section in order to assure that residents can be rapidly and easily evacuated from the building at all times, or from one part of the building to a safe area of refuge in another part of the building.

(1) Bedroom space arrangement and doors and corridors shall be designed for evacuation of bedfast residents by means of rolling the bed to a safe place in the building or to the outside.

(2) Public assembly, common living rooms, dining rooms, etc., with a capacity of 50 or more persons or greater than 1,000 square feet shall have two means of exit remote from each other. Outswinging doors with panic hardware shall be provided for these exits.

(3) Exit doors and ways of egress shall be maintained clear and free for use at all times. Furnishings, equipment, carts, etc., shall not be left to block egress at any time.

(4) Steps in interior ways of egress are prohibited. If changes of elevation are necessary within ways of egress, approved ramps (maximum slope of 1:12) shall be used.

(5) Any remodeling, construction, additions, etc., of occupied buildings which involve exitways and exit doors shall be accomplished without compromising the exits or creating a dead end situation at any time. Acceptable alternate temporary exits may be approved, or resident(s) in the area involved may have to be relocated until construction blocking the exit is completed. Other basic safety features such as fire alarms, sprinkler systems, and emergency power shall also be maintained operational.

(6) Doors in means of egress shall be as follows.

(A) Locking hardware or devices which are capable of preventing or inhibiting immediate egress shall not be used in any room or area that can be occupied.

(B) A latch or other fastening device on an exit door shall be provided with a knob, handle, panic bar, or similar releasing device. The method of operation shall be obvious in the dark, without use of a key, and operable by a well known one-action operation that will easily operate with normal pressure applied to the door or to the device toward the exterior. Locking hardware which prevents unauthorized entry from the outside (only) is permissible. Permanently mounted hold-open devices to expedite emergency egress and prevent accidental lock-out shall be provided for exterior exit doors as well as self closing devices.

(C) No screen or storm door shall swing against the direction of exit travel where main doors are required to swing out.

(D) To aid in control of wandering residents, buzzers or other sounding devices may be used to announce the unauthorized use of an exit door. Other methods include approved emergency exit door locks or fencing (with gate) outside of exit doors which enclose a space large enough to allow the space to be an exterior area of egress and refuge away from the building.

(E) Inactive leaves of double doors may have easily accessible and easily operable bolts if the active leaf is 44 inches wide. Center mullions are prohibited.

(F) Resident baths or toilets having privacy locks will require that keys or devices for opening the doors are kept readily available to the staff.

(G) Folding or sliding doors shall not be used in exit corridors or exitways. Sliding glass doors may be used as secondary doors from residents' bedrooms to grade or to a balcony, or as secondary doors in certain other areas where the primary designated exit door requirements are met. Doors to bathroom and other resident-use areas shall be the side-hinged swinging type. Corridor doors to rooms shall swing into the room or be recessed so as not to extend into the corridor when open; doors ordinarily kept closed, however, may be excepted. Corridor door frames shall be steel in accordance with the Life Safety Code.

(7) Horizontal exits, if provided, shall be according to the Life Safety Code.

(8) Areas outside of exterior exit doors (exit discharge) shall be as follows.

(A) Provision shall be made to accommodate and facilitate continuation of emergency egress away from a building for a reasonable distance beyond the outside exit door, especially for movement of non-ambulatory residents in wheelchairs and beds. Any condition which may retard or halt free movement and progress outside the exit doors will not be allowed. Ramps shall be used outside the exit doors in lieu of steps whenever possible.

(B) The landing outside of each exit door shall be essentially the same elevation as the interior floor and level for a distance equal to the door width plus at least four feet. Generally, the difference in floor elevation at an exterior door shall not be over 1/2 inch with the outside slope not to exceed 1/4 inch per foot sloping away from the door for drainage on the exterior. In locations north of the +20 F Isothermal

Line as defined in the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Handbook of Fundamentals, the landing outside of all exit doors shall be protected from ice build-up which would prohibit the door from opening and be a slip hazard.

(C) Emergency egress lighting immediately outside of exit doors is required as a part of the building emergency lighting system. Photocell devices may be used to turn lights off during daylight hours.

(9) The requirements of emergency lighting system shall be in accordance with §145.71 of this title (relating to Electrical Requirements).

(10) Requirements for interior finishes of egress (flame spread of floor, walls, and ceiling finishes) shall be in accordance with the Life Safety Code. The interior finishes of other areas shall be in accordance with §145.63(e) of this title (relating to General Considerations).

§145.70. Mechanical Requirements. The design of the mechanical systems shall be done by or under the direction of a registered professional (mechanical) engineer approved by the Texas State Board of Registration for Professional Engineers to operate in Texas, and the parts of the plans and specifications covering mechanical design shall bear the legible seal of the engineer. Building services pertaining to utilities; heating, ventilating, and air-conditioning systems; vertical conveyors; and chutes shall be in accordance with the Life Safety Code. Required plumbing fixtures shall be in accordance with the Life Safety Code and §145.64 of this title (relating to Architectural Space Planning and Utilization) in specific use areas.

(1) Plumbing.

(A) All plumbing systems shall be designed and installed in accordance with the requirements of the plumbing code of the municipality. In the absence of a municipal code, a nationally recognized plumbing code shall be used, such as the Standard Plumbing Code of the Southern Building Code Congress International, Inc. Any discrepancy between an applicable code and these standards shall be called to the attention of the department for resolution.

(B) Supply systems shall assure an adequacy of hot and cold water. An average rule of thumb design for hot water for resident usage (at 110 degrees Fahrenheit) is to provide 6 1/2 gallons per hour per resident in addition to kitchen and laundry use.

(C) Water supply shall be from a department approved system or from a system regulated by an entity responsible for water quality in that jurisdiction as approved by the department.

(D) The sewage system shall connect to a department approved system or to a system regulated by an entity responsible for water quality in that jurisdiction as approved by the department.

(E) The minimum ratio of fixtures to residents shall be as required in §145.64(3) of this title.

(F) For design calculation purposes, resident-use hot water shall not exceed 110 degrees Fahrenheit at the fixture. (For purposes of conforming to licensure requirements, an operating system providing water from 100 degrees Fahrenheit to 115 degrees Fahrenheit will be acceptable.) Hot water for laundry and kitchen use shall be normally 140 degrees Fahrenheit except that dish sanitizing, if done by hot water, shall be 180 degrees Fahrenheit.

(G) Water closets raised to provide a seat height 17 inches to 19 inches from the floor is required for persons with disabilities.

(H) Showers for wheelchair residents shall not have curbs. Tub and shower bottoms shall have slip resistant surface. Shower and tub enclosures, other than curtains, shall be of tempered glass, plastic, and other safe materials.

(I) Drinking fountains shall not extend into exit corridors.

(J) Fixture controls easily operable by residents shall be provided (such as lever type).

(K) Plumbing fixtures for residents shall be vitreous china or porcelain finished cast iron or steel unless otherwise approved by the department. Bathing units constructed of class B fire rated fiberglass are acceptable for use.

(L) Hand-washing sinks for staff use are required in many areas throughout the facility in accordance with §145.64 of this title (relating to Architectural Space Planning and Utilization). Lavatories are required to be provided adjacent to water closets in each area.

(M) The soiled utility room shall be provided with a flushing device

such as a water closet with bedpan lugs, a spray hose with a siphon breaker or similar device, such as a high neck faucet with lever controls and a deep sink that is large enough to submerge a bedpan. A sterilizer for sanitizing may be used in place of a deep sink.

(N) Siphon breakers or back-flow preventers are required for any hose or pipe connection at a plumbing fixture that could be submerged causing back-flow cross-contamination. All potable water supply lines shall have back-flow prevention devices in accordance with water distribution regulations of the department.

(O) Clean-outs for waste piping lines shall be provided and located so that there is the least physical and sanitary hazard to residents. Where possible, clean-outs shall open to the exterior or areas which would not spread contamination during clean-out procedures.

(2) Heating, ventilating, and air-conditioning systems.

(A) Heating, ventilating, and air-conditioning systems shall be designed and installed in accordance with the Heating, Ventilating, and Air-Conditioning Guide of the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE), except as may be modified herein.

(B) Heating, ventilating, and air-conditioning systems shall meet the requirements of the Life Safety Code and NFPA 90A. The plans shall have a statement verifying that the systems are designed to conform to NFPA 90A. Requirements for conditions related to smoke compartmentation shall be in accordance with §145.66 of this title (relating to Smoke Compartmentation (Subdivision of Building Spaces)).

(C) Systems using liquefied petroleum gas fuel shall meet the requirements of the Railroad Commission of Texas and NFPA 54.

(D) The heating system shall be designed, installed, and functioning to be able to maintain a temperature of at least 75 degrees Fahrenheit for all areas occupied by residents. For all other occupied areas, the indoor design temperature shall be at least 72 degrees Fahrenheit. The cooling system shall be designed, installed, and functioning to be able to maintain a temperature of not more than 78 degrees Fahrenheit. Occupied areas generating high heat, such as kitchens, shall be provided with a sufficient cool air supply to maintain a temperature not ex-

ceeding 85 degrees Fahrenheit at the five-foot level (with doors kept closed as required by the Life Safety Code for hazardous areas). Supply air volume must be approximately equal to the air volume exhausted to the exterior for such areas.

(E) Air systems shall provide for mixing at least 10% outside air for the supply distribution. Blowers for central heating and cooling systems shall be designed so that they may run continuously.

(F) Floor furnaces, unvented space heaters, and portable heating units are not to be used. Heating devices or appliances must not be a burn hazard (to touch) to residents.

(G) A combustion fresh air inlet shall be provided to all gas or fossil fuel operated equipment in steel ducts or passages from outside the building in accordance with NFPA 54. Such rooms shall also be vented to the exterior to exhaust heated ambient air in the room. Combustion air will require one vent within 12 inches of the floor and one vent within 12 inches of the ceiling.

(H) The location and design of air diffusers, registers, return air grilles, etc., shall be such that residents are not in harmful or excessive drafts in their normal usage of the room.

(I) In areas requiring control of sanitation, the air flow shall be from the clean area to the dirty area. Air supply to food preparation areas shall not be from air which has circulated resident bedrooms, baths, etc.

(J) Air from unsanitary areas such as janitors closets, soiled linen soiled utility, and soiled area of laundry rooms, etc., shall not be returned and recirculated to other areas.

(K) Intakes for fresh outside air shall be located sufficiently distant from exhaust outlets or other areas or conditions which may contaminate or otherwise pollute the incoming fresh air. Fresh air inlets shall be appropriately screened to prevent entry of debris, rodents, animals, etc. Provision shall be made for access to such screens for periodic inspection and cleaning to eliminate clogging or air stoppage (see paragraph (3)(C)(i) of this section).

(L) Systems shall be designed as much as possible to avoid having ducts passing through fire walls or smoke barrier walls. All openings or duct penetra-

tions in such walls shall be provided with approved automatic dampers. Smoke dampers at smoke partitions shall close automatically upon activation of the fire alarm system to prevent the flow of air or smoke in either direction.

(M) Clear view panels shall be provided in the duct to check for proper operation of each smoke damper on a routine basis. View panels may also serve as access for maintenance or a separate access panel shall be provided. Access panels shall be provided (in ceiling or side wall) and location of dampers shall be identified on wall or ceiling of occupied area below.

(N) Fusible links are not approved for smoke dampers.

(O) Central air supply systems and/or systems serving means of egress shall automatically and immediately shut down upon activation of the fire alarm system. (An exception shall be approved engineered smoke removal systems.)

(P) Ducts shall be of metal or other approved noncombustible material. Cooling ducts shall be insulated against condensation drip.

(3) Ventilating and exhaust.

(A) General ventilating systems shall be in accordance with paragraph (2) of this subsection.

(B) Provisions for natural ventilation using windows or louvers shall be incorporated into the building design where possible and practical. Such windows or louvers shall have insect screens.

(C) Details for the ventilation system are set out in this subparagraph. All air-supply and air-exhaust systems shall be mechanically-operated. The ventilation rates shown in the table in clause (xi) of this subparagraph shall be considered as minimum acceptable rates and shall not be construed as precluding the use of higher ventilation rates.

(i) Outdoor air intakes shall be located as far as practical (but normally not less than 10 feet) from exhaust outlets or ventilating systems, combustion equipment stacks, medical vacuum systems, plumbing vent stacks, or from areas which may collect vehicular exhaust and other noxious fumes.

(ii) The ventilation systems shall be designed and balanced to provide the pressure relationship as shown in the table in clause (xi) of this subparagraph.

A final engineered system air balance report will be required for the completed system to be furnished and certified by the installer.

(iii) The bottoms of ventilation openings shall be not less than three inches above the floor of any room.

(iv) Doors protecting corridors or ways of egress shall not have air transfer grilles or louvers. Corridors shall not be used to supply air to or exhaust air from any room except that air from corridors may be used as make-up air to ventilate small toilet rooms, janitor's closets, and small electrical or telephone closets opening directly on corridors, provided that such ventilation can be accomplished by door undercuts not exceeding 3/4 inches.

(v) All exhausts shall be continuously ducted to the exterior. Ex-

hausting air into attics or other spaces is not permitted. Duct material shall be steel.

(vi) All central ventilation or air-conditioning systems shall be equipped with filters of sufficient efficiency to minimize dust and lint accumulations throughout the system and building including supply and return plenums and ductwork. Filters with efficiency rating of 80% or greater (based on ASHRAE) are recommended. Filters for individual room units shall be as recommended by the equipment manufacturer. Filters shall be easily accessible for routine changing or cleaning.

(vii) Static pressures of systems shall be within limits recommended by ASHRAE and the equipment manufacturer (upstream and downstream).

(viii) In geographic locations or interior room areas where extreme humidity levels are likely to occur for extended periods of time, apparatus for controlling humidity levels (preferably between 40-60%) are recommended to be installed as a part of central systems and with automatic humidistat controls.

(ix) Exhaust hoods, ducts, automatic extinguishers, etc., for kitchen cooking equipment shall be in accordance with NFPA 96.

(x) Forced air exhaust shall be provided in laundries, kitchens, and dishwashing areas to remove excess heat and moisture and to maintain air flow in the direction of clean to soiled areas.

(xi) Ventilation requirements for nursing areas shall be according to the following table:

Area Designation	Air Movement In Relation To Adjacent Area	Minimum Total Air Changes Per Hour	All Air Exhausted To Outside	Design Temperature
Patient Room	--	2	--	70/75
Examination and Treatment Room	--	4	No	70/75
Physical Therapy	In	4	No	70/75
Occupational Therapy	--	4	No	70/75
Soiled Work or Holding Room	In	6	Yes	--
Clean Work or Holding Room	Out	4	No	--
Toilet Rooms	In	10	Yes	--
Bath & Shower Rooms	--	10	No	70/75
Janitors' Closets	In	10	Yes	--

(xii) With relationship to adjacent areas, a positive air pressure shall be provided for clean utility rooms, clean linen rooms, and medication rooms. Conditioned supply air shall be introduced into these rooms.

(4) Sprinkler systems.

(A) Sprinkler systems shall be in accordance with NFPA 13 and this subchapter.

(B) The design and installation of sprinkler systems must meet any

applicable state laws pertaining to such systems and one of the following criteria.

(i) The sprinkler system plans and installation must be approved by the Texas Department of Insurance.

(ii) The sprinkler system must be designed by a qualified registered professional engineer approved by the Texas State Board of Registration for Professional Engineers to operate in Texas. The engineer shall supervise the installation and provide written approval of the completed installation.

(iii) The sprinkler system must be planned and installed in accordance with NFPA 13 by firms with certificates of

registration issued by the office of the state fire marshal that have at least one full-time licensed responsible managing employee (RME). The RME's license number and signature must be included on the prepared sprinkler drawings.

(C) The approved sprinkler plans shall be submitted to the department along with final construction plans for general appraisal, review, and record.

(D) Particular attention should be paid to adequate, safe, and reasonable freeze protection for all piping. The design of such freeze protection should

minimize the need for dependence on staff action or intervention to provide protection.

§145.71. Electrical Requirements.

(a) The design of the electrical systems shall be done by or under the direction of a registered professional electrical engineer approved by the Texas State Board of Registration for Professional Engineers to operate in Texas, and the parts of the plans and specifications covering electrical design shall bear the legible seal of the engineer. Requirements pertaining to utilities, heating, ventilating, and air conditioning systems, vertical conveyors, and chutes shall be in accordance with the Life Safety Code, Chapter 7, Building service and fire protection equipment.

(b) Requirements for fire protection systems shall be in accordance with §145.67 of this title (relating to Fire Protection Systems).

(c) Electrical systems shall meet the requirements of the NFPA 70.

(d) Specific requirements for lighting and outlets at resident bedrooms shall be in accordance with §145.64 of this title (relating to Architectural Space Planning and Utilization).

(1) Emergency electrical service.

(A) To provide electricity during an interruption of the normal electric supply, an emergency source of electricity shall be provided and connected to certain circuits for lighting and power.

(B) The source of this emergency electrical service shall be as follows:

(i) an emergency generating set when the normal service is supplied by one substation transmission line;

(ii) an emergency generating set or a central station transmission line when the normal electric supply is generated on the premises; or

(iii) from two separate substations or separate and independent utility companies.

(C) Emergency electrical connection service shall be provided to the distribution systems as required by the Life Safety Code and NFPA 99.

(i) Emergency systems shall include the following:

(I) illumination for means of egress, nurse stations, medication rooms, dining and living rooms, group bathing rooms (those not directly connected to

resident bedrooms), and areas immediately outside of exit door;

(II) exit signs and exit directional signs as required by the Life Safety Code;

(III) alarm systems including fire alarms activated by manual stations, water flow alarm devices of sprinkler systems, fire and smoke detecting systems, and alarms required for nonflammable medical gas systems if installed. Where hospital type functions are included in the nursing home facility, applicable standards shall apply;

(IV) task illumination and selected receptacles at the generator set location;

(V) selected duplex receptacles including such areas as resident corridors, nurse stations, and medication rooms including biologicals refrigerator;

(VI) nurse calling systems;

(VII) elevator cab lighting, control, and communication systems;

(VIII) equipment necessary for maintaining telephone service; and

(IX) paging or speaker systems if intended for communication during emergency. Radio transceivers where installed for emergency use shall be capable of operating for at least one hour upon total failure of both normal and emergency power.

(ii) Critical systems (delayed automatic or manual connections to critical systems) shall include the following.

(I) Heating equipment shall provide heating for general resident rooms. This will not be required if:

(-a-) the outside design temperature is higher than 20 degrees Fahrenheit (-6 degrees Celsius);

(-b-) the outside design temperature is lower than 20 degrees Fahrenheit (-6 degrees Celsius) and where selected room(s) is provided for the needs of all confined residents, then only such room(s) need to be heated; or

(-c-) the facility is served by a dual source of normal power.

(II) In instances where interruptions of power would result in elevators stopping between floors, throw over facilities shall be provided to allow the temporary operation of any elevator for the release of passengers.

(D) The emergency lighting shall be automatically in operation within 10 seconds after the interruption of normal electric power supply. Emergency service to receptacles and equipment may be delayed automatic or manually connected. Receptacles connected to emergency power shall have red face plates. Stored fuel capacity shall be sufficient for not less than four-hour operation of required generator.

(E) The design and installation of emergency motor generators must be in accordance with NFPA 37 and NFPA 99.

(i) Generators shall be a minimum of three feet from the combustible exterior building finish and a minimum of five feet from a building opening if located on the exterior of the building.

(ii) Generators located on the exterior of the building shall be provided with a noncombustible protective cover or be protected as per manufacturer's recommendations.

(iii) Motor generators fueled by public utility natural gas shall have the capability to be switched to an alternate fuel source in accordance with NFPA 70.

(F) The normal wiring circuit(s) for the emergency system shall be kept entirely independent of all other wiring and shall not enter the same raceways, boxes, or cabinets in accordance with NFPA 70.

(2) General lighting requirements are as follows.

(A) All spaces occupied by people, machinery, equipment, approaches to buildings, and parking lots shall have lighting.

(B) The quality, intensity, and type of lighting shall be adequate and appropriate to the space and all functions within the space.

(C) Minimum lighting levels can be found in the Illuminating Engineering Society (IES) Lighting Handbook, latest edition, and in the provisions concerning physical plant and environment in §145.41(n) of this title (relating to Standards for Nursing Facilities).

(D) Nursing unit corridors shall have general illumination with provisions for reduction of light levels at night.

(E) Exposed incandescent light bulbs (or other high heat generating lamps) in closets or other such spaces shall be provided with basket wire guards or other suitable shield to prevent contact of combustible materials with the hot bulb and to help prevent breakage.

(F) Exposed incandescent or fluorescent bulbs will not be permitted in food service or other areas where glass fragments from breakage may get into food, medications, linens, or utensils. All fluorescent bulbs will be protected with a shield or catcher to prevent bulb drop-out.

(3) Receptacles (convenience outlets).

(A) Receptacles at bedrooms shall be in accordance with §145.64(1)(G).

(B) Duplex receptacles for general use shall be installed in corridors spaced not more than 50 feet apart and within 25 feet of ends of corridors.

(C) Receptacles shall be provided for essential needs such as medication refrigerators and life support systems or equipment. At least one outlet in each resident corridor shall be provided with emergency electrical service. All receptacles on emergency circuits shall be clearly, distinctly, and permanently identified, such as using a red face plate and/or a small label that says "Emergency."

(D) Receptacles in the remainder of the building shall be sufficient to serve the present and future needs of the residents and equipment.

(E) Location of receptacles (horizontally and vertically) should be carefully planned and coordinated with the expected designed use of furnishings and equipment to maximize their accessibility and to minimize conditions such as beds or chests being jammed against plugs used in the outlets.

(F) Exterior receptacles shall be approved waterproof type.

(G) Ground fault interruption protection shall be provided at appropriate locations such as at whirlpools and

other wet areas in accordance with the National Electrical Code.

(4) Nurse call systems.

(A) A nurse call system consists of power units, annunciator control units, corridor dome stations, emergency call stations, bedside call stations, and activating devices. The units shall be compatible and laboratory listed for the system and use intended.

(B) Each resident bedroom shall be served by at least one calling station and each bed shall be provided with a call switch. Two call switches serving adjacent beds may be served by one calling station. Each call entered into the system shall activate a corridor dome light above the bedroom/bathroom/toilet corridor door, a visual signal at the nurses station which indicates the room from which the call was placed, and a continuous or intermittent continuous audible signal of sufficient amplitude to be clearly heard by nursing staff. The amplitude or pitch of the audible signal shall not be such that it is irritating to residents or visitors. The system shall be designed such that calls entered into the system may be cancelled only at the calling station. Intercom type systems shall be installed only after approved by the Texas Department of Health.

(C) Nurse calling systems which provide two-way voice communication shall be equipped with an indicating light at each calling station which lights and remains lighted as long as the voice circuit is operating.

(D) A nurse call emergency switch(es) shall be provided for resident use at each resident's toilet, bath, and shower. Such switches shall be usable by residents using the fixtures and by a collapsed resident lying on the floor.

§145.73. *Elevators.* All buildings having residents' facilities (such as bedrooms, dining rooms, or recreation areas) or resident services (such as diagnostic or therapy) located on other than the main entrance floor shall have at least one electric or electrohydraulic elevator and shall comply with standards adopted under the American National Standards Institute (ANSI) Code, §A17.1.

(1) Number of elevators.

(A) At least one hospital-type elevator shall be installed where one to 60 resident beds are located on any floor other than the main entrance floor.

(B) At least two (one of which shall be hospital-type) elevators shall be installed where 61 to 200 resident beds are located on floors other than the main entrance floor, or where the major inpatient services are located on a floor other than those containing resident beds. Elevator service may be reduced for those floors which provide only partial inpatient services.

(C) At least three (one of which shall be hospital-type) elevators shall be installed where 201 to 350 resident beds are located on floors other than the main entrance floor or where the major inpatient services are located on a floor other than those containing resident beds. Elevator service may be reduced for those floors which provide only partial inpatient services.

(D) For facilities with more than 350 resident beds, the number of elevators shall be determined from a study of the facility plan and the estimated vertical transportation requirements.

(2) Cars and platforms. Cars of hospital-type elevators shall have inside dimensions that will accommodate a resident bed and attendants and shall be at least five feet wide by seven feet six inches deep. The car door shall have a clear opening of not less than three feet eight inches.

(3) Leveling. Elevators shall be equipped with an automatic leveling device of the two-way automatic maintaining type with an accuracy of 1/2 inch.

(4) Operation. Elevators, except freight elevators, shall be equipped with a two-way special service switch to permit cars to bypass all landing button calls and be dispatched directly to any floor.

(5) Accessibility provisions. Elevator controls, alarm buttons, and telephones, etc., shall be accessible to and usable by individuals with disabilities as required under the Americans with Disabilities Act.

(6) Protection from fire. Elevator call buttons, controls, and door safety stops shall be of a type that will not be activated by heat or smoke. Door openings shall meet the requirements of the Life Safety Code for protection of vertical openings.

(7) Field inspection and tests. Inspections and tests shall be made and the owner shall be furnished written certification that the installation meets the requirements set forth in this section and all applicable safety regulations and codes.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on April 9, 1993.

TRD-9321482 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

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For further information, please call: (512)
834-6770

◆ ◆ ◆
Construction Standards for Facilities Serving Persons with Mental Retardation or Related Conditions

• **25 TAC §§145.92-145.105**

The new sections are adopted under the Health and Safety Code, Chapter 242, which provides the Board of Health (board) with the authority to adopt rules concerning nursing facilities and related institutions; and §12.001 which provides the Board with authority to adopt rules to implement every duty imposed on the board, the department and the commissioner of health.

§145.92. Introduction, Application, and General Requirements.

(a) Scope. The requirements of this section are applicable to both new and existing facilities unless stated otherwise.

(b) Purpose.

(1) The concept of requirements for fire safety with regard to the residents is based on evacuation capability as published by National Fire Protection Association (NFPA) in NFPA 101 Life Safety Code. These standards are written with the premise that the residents will be capable of self-evacuation without continuous staff assistance. Residents that are not normally capable of self-evacuation nor capable of negotiating stairs unassisted shall not be housed above or below the floor of exit discharge unless the facility meets the construction requirements of NFPA 101, Chapter 12 titled "New Health Care Occupancies" for large facilities, or the "impractical" requirements for small facilities as found in NFPA 101, Chapter 21 titled "Residential Board and Care Occupancies." Examples of residents who may not be capable of self-evacuation are as follows:

(A) a person with a physical disability of a nature that he/she is not capable of maneuvering in a wheelchair, walker, etc., unaided;

(B) a person with a mental disability who will not take or cannot understand instructions from a staff member; or

(C) a person that is taking medication before bedtime which will make it difficult for a staff member to arouse the person quickly.

(2) The method of determining the evacuation capability of residents under NFPA 101, Chapter 21, is by rating each resident and each staff member to determine an "E" score. If the "E" score is 1.5 or less, the evacuation capability of the facility is prompt; greater than 1.5 to five is slow; greater than five is impractical. The worksheets to be completed are located in NFPA 101, 1985 Edition, Appendix F.

(3) The "E" score will determine which NFPA 101 features are to be installed and maintained in the facility. These features include construction, fire alarm systems, smoke detector systems, interior finish, sprinkler systems, separation of bedrooms, and egress from the building.

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

(1) Addition—The addition of floor space.

(2) Large facilities—Facilities with 17 or more resident beds.

(3) Department—Texas Department of Health.

(4) Life safety features—Fire safety components required by NFPA 101 such as building construction, fire alarm systems, smoke detection systems, interior finishes, sizes and thicknesses of doors, exits, emergency electrical systems, sprinkler systems, etc.

(5) Remodeling—The altering of the structure, e.g., removal or addition of walls or partitions, floors, ceiling, roof.

(6) Renovation—The restoration to a former better state by cleaning, repairing, or rebuilding, e.g., routine maintenance, repairs, equipment replacement, painting.

(7) Small facilities—Facilities with 16 or fewer resident beds.

(d) Construction.

(1) New construction is any construction work which began on or after October 3, 1988. The provisions of NFPA 101, Chapter 12 are applicable for large facilities, and Chapter 21 for small facilities.

(2) An existing facility is one which was operating with a license as a facility for persons with mental retardation and related conditions before October 3, 1988, and has not subsequently become un-

licensed. The provisions of NFPA 101, Chapter 13 titled "Existing Health Care Occupancies," are applicable for large facilities, and Chapter 21 for small facilities.

(3) No construction work, including the addition or removal of walls, doors, and windows, shall be started prior to having plans approved by the architectural section of the department. Alterations or new installations of building services equipment, such as mechanical and electrical systems, generators, fire alarm, and detection systems, etc., shall be accomplished in conformance with the requirements for new construction as required by NFPA 101.

(4) Site approval, as required by the local health officer, building department, and/or fire marshal having jurisdiction, shall be obtained. Any conditions considered to be a fire, safety, or health hazard will be grounds for disapproval of the site by the department unless applied in an arbitrary or discriminating manner.

(5) Facilities that renovate need not submit plans for approval, but shall provide documentation for the flame spread rate of any new materials applied as an interior finish.

(6) Life safety features and equipment that have been installed in existing buildings and are now in excess of that required by NFPA 101 must continue to be maintained or shall be removed at the direction of the department.

(7) When an existing licensed facility plans building additions or remodeling, which includes construction of additional resident beds, then the ratio of bathing units shall be reevaluated to meet minimum standards and the square footage of dining and living areas shall be reevaluated by the department. Conversion of existing living, dining, or activity areas to resident bedrooms shall not reduce these functions to an area less than required by minimum standards.

(8) Buildings shall be of recognized permanent type construction. They shall be structurally sound with regard to actual or expected dead, live, and wind loads according to applicable building codes.

(9) Each building shall be classified as to the building construction type for fire resistance rating purposes in accordance with NFPA 220 Standard on Types of Building Construction, and NFPA 101.

(e) Applicable codes and standards. Facilities shall meet the requirements of NFPA 101, 1985 edition, and any other codes and standards of NFPA listed in this section, except as may be otherwise approved or required by the department.

(1) If the municipality has a building code and a plumbing code, then those codes shall govern in those areas of construction. Where local codes or ordinances are applicable, the most restrictive parts concerning the same subject item shall apply unless otherwise determined by the authority having jurisdiction for local codes and the department.

(2) In the absence of such governing municipal codes, nationally recognized codes shall be used, such as the Standard Building Code and the Standard Plumbing Code, both of the Southern Building Code Congress International, Inc. Such nationally recognized codes, when used, shall all be publications of the same group or organization to assure the intended continuity.

(3) Heating, ventilating, and air-conditioning systems shall be designed and installed in accordance with NFPA 90A Standard for the Installation of Air Conditioning and Ventilating Systems, and NFPA 90B Standard for the Installation of Warm Air Heating and Air Conditioning Systems, as applicable, and the American Society of Heating, Ventilating, and Air-Conditioning Engineers (ASHRAE), except as may be modified in this subchapter.

(4) Electrical and illumination system shall be designed and installed in accordance with NFPA 70 National Electrical Code, and the Lighting Handbook of the Illuminating Engineering Society of North America (IES) except as may be modified in this subchapter.

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

(f) General requirements.

(1) The facility shall provide and maintain furnishings and decorations that meet the needs of the residents.

(2) The building, grounds, and equipment shall be maintained in good repair, operational, sanitary, and free of hazards.

(3) There shall be at least one telephone (other than a pay phone) in the facility, accessible to residents for use in

making calls to summon help in case of emergency.

(4) The facility must have:

(A) floors that are free of irregularities and are substantially level;

(B) floors that have a resilient, nonabrasive, and slip-resistant surface;

(C) nonabrasive carpeting, if the area used by residents is carpeted and serves residents who lie on the floor or ambulate with parts of their bodies, other than feet, touching the floor; and

(D) exposed floor surfaces and floor coverings that promote mobility in areas used by residents and promote maintenance of sanitary conditions.

(5) Walls and ceilings shall be cleanable and in good repair.

(6) Walls and floors shall be kept free of cracks. The joint between the walls and floors is to be maintained so as to be free of spaces which might harbor insects, rodents, or vermin.

(7) An adequate supply of hot water shall be provided. The hot water system for resident use shall be capable of being regulated to not exceed 110 degrees Fahrenheit at the fixtures.

(8) Draperies, curtains (including cubicle curtains), and other similar furnishings and decorations shall be flame resistant in accordance with NFPA 701 Standard Methods of Fire Tests for Flame Resistant Textiles and Films. Documentation shall be kept on file in the facility.

(9) Wastebaskets shall be of noncombustible material.

(10) An initial pressure test of facility gas lines from the meter shall be provided. Additional pressure tests will be required when the facility has major renovations or additions where the gas service is interrupted. All gas heating systems shall be checked for proper operation and safety prior to the heating season. Any unsatisfactory conditions shall be corrected promptly.

(11) The IES recommendations shall be followed to achieve proper illumination characteristics and lighting levels throughout the facility. Minimum illumination shall be 10 foot candles in resident rooms during the day and 20-foot candles in corridors, staff stations, dining rooms, lobbies, toilets, bathing facilities, laundries, stairways, and elevators during the day. Illumination requirements for these areas apply to lighting throughout the space and should be measured at approximately 30 inches above the floor anywhere in the

room. Minimum illumination for medication preparation or storage areas, kitchens, and staff station desks shall be 50-foot candles during the day. Illumination requirements for these areas apply to the task performed and should be measured on the tasks.

(12) In addition to the required illumination (normal and emergency), the facility shall keep on hand and readily available to night staff, no less than one working flashlight.

(13) Combustible attic areas larger than 3,000 square feet must be divided into compartments not exceeding 3,000 square feet or the attic area must be sprinkled. The separating barrier shall be at least one layer of 1/2-inch gypsum board on one side of support members.

§145.93. Site and Grounds.

(a) General (All Facilities).

(1) Site grades shall provide for positive surface water drainage so that there will be no ponding or standing water at or near the building such as would present a hazard to health or provide a breeding site or harborage for disease vectors.

(2) Outdoor activity, recreational, and sitting spaces shall be provided and be accessible to all residents.

(3) Each facility shall have parking space to satisfy the needs of residents, employees, staff, and visitors.

(4) Protection shall be provided for resident safety on facility grounds by the use of appropriate methods, such as fences, hedges, retaining walls, railings, or other landscaping. Such protection shall not inhibit the free emergency egress to a safe distance away from the building.

(5) All outside areas, grounds, adjacent buildings, etc., on the site shall be maintained in good condition and kept free of rubbish, garbage, untended growth, and other conditions which may constitute a fire or health hazard.

(b) Additional site conditions (large facilities only).

(1) Auxiliary buildings located on the site within 20 feet of the main licensed structure and which contain hazardous operations or contents, such as laundries or storage buildings, shall meet the same code requirements for safety as the main licensed structure, or the building shall be moved to be 20 feet or farther away from the main building.

(2) Other buildings on the site shall meet the appropriate occupancy section or separation requirements of National Fire Protection Association (NFPA) 101 Life Safety Code.

(3) A new building (or addition) shall be set back at least 10 feet from the property lines except as otherwise approved by the department.

(4) Exit doors from the building shall not open directly onto a drive for vehicular traffic, but shall be set back at least six feet from the edge of such drive (measured from the end of building wall in the case of a recessed door) to prevent accidents due to lack of visual warning. These doors are to have automatic or self-closures.

(5) Walks shall be provided from all exits and shall be of non-slip surfaces free of hazards. Walks shall be at least 48 inches wide except as otherwise approved. Ramps should be used in lieu of steps where grade change is 21 inches or less, and where possible, for persons with physical disabilities and/or mobility impairment, and to facilitate bed or wheelchair removal in an emergency.

(6) Open or enclosed courts with resident rooms or living areas opening upon them shall not be less than 20 feet in the smallest dimension unless otherwise approved by the department.

(7) There shall be at least one approved readily accessible fire hydrant located within 300 feet of the building. The hydrant shall be on a minimum six-inch service line, or else there shall be an approved equivalent (such as a storage tank). The hydrant, its location, and service line, or equivalent shall be approved by the local fire department and the department.

(8) The building shall have suitable fire lanes for access as required by local fire authorities and the department.

§145.97. Portable Fire Extinguishers.

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

(b) Types of extinguishers.

(1) Portable type ABC or B:C chemical extinguishers shall not be located in resident corridors. Extinguishers in resident corridors shall be 2 1/2 gallon pressurized water or other type approved by the department and spaced so that travel distance is not more than 75 feet.

(2) At least one portable UL or Factory Mutual (FM)-approved five-pound

class B:C dry chemical fire extinguisher, rechargeable type, is required in each laundry, kitchen, and walk-in mechanical room.

(3) Portable B:C chemical extinguishers provided in hazardous areas shall be located as close as possible to the exit door opening and nearest the latch (knob) side.

§145.99. Architectural Space Planning.

(a) Large facilities.

(1) Ancillary resident space. The minimum total ancillary resident-use space shall be not less than 35 square feet per bed. Ancillary space includes areas for living, dining, recreation, therapy, training, and other such program areas. It does not include bedrooms, passageways, offices, kitchens, laundries, etc. (more than 35 square feet per bed is usually needed in facilities with less than 60 beds). Facilities which have, or anticipate having, large proportions (approximately 65% or greater) of nonambulatory and/or bedfast residents shall provide at least 50 square feet of ancillary space per bed unless otherwise approved by the department. Areas providing less space than called for in this paragraph cannot be approved except on an individual basis where clearly justified.

(2) Resident bedrooms.

(A) Bedrooms shall be arranged and equipped for adequate personal care and for comfort and privacy. Bedrooms shall have full height walls that extend from floor to ceiling with doors. (Partial partitions or furnishings are not a substitute.) An exception is that existing facilities constructed prior to October 3, 1988, that have partial partitions in lieu of full-height walls, need not install the full-height walls unless there are major renovations or conversions.

(B) Bedrooms shall provide at least 80 square feet for a single occupancy (one bed) and 60 square feet per bed for multiple occupancy. (Note: room configuration and usability is taken into consideration and there may be instances where the minimum square footage will not be acceptable.) The minimum room dimension shall be at least eight feet for a single room and at least 10 feet for a multiple-bed room, unless otherwise approved by the department. An exception is that multi-occupancy bedrooms for persons in wheelchairs shall have 70 square feet per wheelchair occupant bed.

(C) No more than four beds shall be in any one bedroom. An exception is that the department may grant a variance from the limit of four residents per room only if a physician who is a member of the

interdisciplinary team and who is a qualified mental retardation professional:

(i) certifies that each resident to be placed in a bedroom housing more than four residents is so severely medically impaired as to require direct and continuous monitoring during sleeping hours; and

(ii) documents the reasons why housing in a room of only four or fewer residents would not be medically feasible.

(D) In the bedrooms and for each resident there shall be a bed with a comfortable mattress and appropriate bedding, functional furniture appropriate to residents' needs, and closet space providing security and privacy for clothing and personal belongings. Closet space shall provide at least 24 inches of lineal hanging space per bed (in certain cases, such as for infants, exceptions may be made). Married couples may share a bed.

(E) Each bedroom shall have at least one outside wall with an operable window giving outside exposure. Unless approved otherwise by the department, the window sill of the required window shall be no higher than 36 inches from the floor and shall be at or above outside grade level. Other window requirements shall be as called for in the National Fire Protection Association (NFPA) 101. The window area for bedrooms shall be equal to at least 10% of the total room floor area.

(F) If a bedroom is below grade level, it must have a window that is usable as a second means of escape by the resident(s) occupying the room. The window shall be no more than 36 inches (measured to the window sill) above the floor.

(G) All resident bedrooms shall open onto an exit corridor, living area, or public area and shall be arranged for convenient resident access to dining, living, and bathing areas.

(3) Social-diversional spaces.

(A) Living rooms, day rooms, lounges, etc., must be provided on a sliding scale as follows (as part of the minimum required ancillary space):

Number of Beds

- 1-15
- 16-20
- 21-25
- 26-30
- 31-35
- 36-40
- 41-50
- 51-60
- 61 and over

Area Per Bed (Minimum)

- 18 square feet (Minimum 144 square feet)
- 17 square feet
- 16 square feet
- 15 square feet
- 14 square feet
- 13 square feet
- 12 square feet
- 11 square feet
- 10 square feet (Example: 100 beds = 1,000 square feet)

(B) Where a required way of exit is through a living area, a pathway equal to the corridor width will normally be deducted from that area. Such exit pathways must be kept clear of obstructions.

(C) Each living room and dining room shall have at least one outside window. Normally, resident classrooms and training areas should also have an outside window unless otherwise approved by the department.

(4) Dining space. Dining space shall provide at least 15 square feet per resident bed for single-shift feeding. If procedure is approved for feeding in two shifts, at least eight square feet per resident bed shall be provided.

(5) Training spaces (academic, behavioral, occupational, physical, and speech therapy, etc.). Classroom type space is anticipated for most training activities. The number and size of such spaces will be evaluated on an individual facility basis and according to program policies and procedures. Generally, training rooms should provide at least 20 square feet per resident trainee within the room except that no training room should be less than 80 square feet. For purposes of calculation, space should be provided for at least one-third of the total population at any one time (i.e., plan space for 33 residents in a 100-bed facility).

(6) Kitchens (main/dietary).

(A) Kitchens shall be evaluated on the basis of their performance in the sanitary and efficient preparation and serving of meals to residents. Consideration shall be given to planning for the type of meals served, the overall building design, the food service equipment, arrangement, and the work flow involved in the preparation and delivery of food. Plans for construction of new facilities shall contain a detailed kitchen layout prepared by, or un-

der the direction of, a registered or licensed dietitian.

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

(C) Kitchens shall be provided with operational equipment as planned and scheduled by the facility's consultants for preparing and serving meals and for refrigerating and freezing of perishable foods, as well as equipment in, and/or adjacent to, the kitchen or dining area for producing ice.

(D) Kitchens shall be provided with facilities for washing and sanitizing dishes and cooking utensils. Such facilities will be provided for the number of meals served and the method of serving (permanent or disposable dishware, etc.). As a minimum, the kitchen shall contain a compartmented sink large enough to immerse pots and pans. Separation of soiled and clean dish areas shall be maintained, including air flow. A mechanical dishwasher shall be provided.

(i) The dishwasher must be utilized to sanitize dishes and utensils and must meet requirements specified under §229.166(a)(4) of this title (relating to Cleaning, Sanitization, and Storage of Equipment and Utensils), or

(ii) Dishes and utensils will be manually sanitized in accordance with §229.166(a)(3)(E) of this title (relating to Cleaning, Sanitization, and Storage of Equipment and Utensils) prior to placement in the dishwasher.

(E) Kitchens shall be provided with a supply of hot and cold water.

Hot water for sanitizing purposes shall be 180 degrees Fahrenheit or the manufacturer's suggested temperature for chemical sanitizers, as specified for the system in use. For mechanical dishwashers the temperature measurement is at the manifold.

(F) Kitchens shall be provided with at least one hand-washing lavatory or hand-sanitizing device. Hand-washing lavatories shall be provided with hot and cold running water, soap, and individual towels, preferably paper towels; common use towels shall not be used.

(G) In new construction, staff restroom facilities with a lavatory shall be accessible to kitchen staff without traversing resident use areas. The restroom door shall not open directly into the kitchen (e.g., provide a vestibule).

(H) In new construction, janitorial facilities shall be provided exclusively for the kitchen and shall be located in and entered from the kitchen.

(I) Nonabsorbent smooth finishes or surfaces shall be used on kitchen floors, walls, and ceilings. Such surfaces shall be capable of being sanitized to maintain a healthful environment.

(J) All operable window openings shall be screened. Doors opening to the outside of the building shall have self-closing devices.

(7) Food storage areas (main/kitchen).

(A) In new construction, food storage areas shall be planned on the basis of the number and type of resident meals to be served. The size and layout of dry foods storage shall be prepared by or designed under the direction of a licensed or registered dietitian.

(B) Food storage areas shall provide for storage of a four-day minimum supply of nonperishable foods at all times.

(C) Shelves shall be movable metal or sealed lumber, and walls must be finished with a nonabsorbent finish to provide a cleanable surface.

(D) Dry food storage shall have an approved venting system to provide for positive air circulation.

(E) The maximum room temperature for food storage shall not exceed 85 degrees Fahrenheit at all times. The measurement shall be taken at the five-foot level.

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

(8) Food services areas.

(A) Where service areas other than the kitchen are used to dispense foods, these shall be designated as food service areas and shall have equipment for maintaining required food temperatures while serving.

(B) Separate food service areas shall have hand-washing facilities as a part of the food service area. An employee toilet shall be provided.

(C) Finishes of all surfaces except ceilings shall be the same as those required for dietary kitchens.

(9) Other spaces.

(A) Bathing units (tubs or showers) shall be provided at a minimum ratio of one per 15 beds. Waterclosets and lavatories shall be provided at a minimum ratio of one per eight beds. Bathing and toilet facilities should be of a type appropriate to the resident's varying needs and disabilities, and designed for privacy within the bathroom.

(B) Adequate storage space must be provided for equipment, carts, wheelchairs, etc., so as to eliminate the problem of such items being left or stored in corridors, or overcrowding bedroom space.

(b) Small facilities.

(1) Bedrooms.

(A) Bedrooms shall be arranged and equipped for adequate personal care and for comfort and privacy. Bedrooms shall have full height walls that extend from floor to ceiling with doors. (Partial partitions or furnishings are not a substitute.)

(B) Bedrooms shall provide at least 80 square feet for a single occupancy (one bed) and 60 square feet per bed for multiple occupancy. (Note: room configuration and usability is taken into consideration and there may be instances where the minimum square footage will not be acceptable.) The minimum room dimension shall be at least eight feet for a single room and at least 10 feet for a multiple-bed room, unless otherwise approved by the department. An exception is that multi-occupancy bedrooms for persons in wheelchairs shall have 70 square feet per wheelchair occupant bed.

(C) No more than four beds shall be in any one bedroom. An exception is that the department may grant a variance from the limit of four residents per room only if a physician who is a member of the interdisciplinary team and who is a qualified mental retardation professional:

(i) certifies that each resident to be placed in a bedroom housing more than four residents is so severely medically impaired as to require direct and continuous monitoring during sleeping hours; and

(ii) documents the reasons why housing in a room of only four or fewer residents would not be medically feasible.

(D) In the bedrooms and for each resident there shall be a bed with a comfortable mattress and appropriate bedding, functional furniture appropriate to residents' needs, and closet space providing security for personal clothing and belongings. Closet space shall provide at least 24 inches of lineal hanging space per bed (in certain cases, such as for infants, exceptions may be made). Married couples may share a bed.

(E) Unless there is a door in the bedroom leading directly outside to grade level or an outside stair, every bedroom shall have at least one outside window that can be readily opened from the inside and provides a clear opening of at least 5.7 square feet (minimum width of 20 inches; minimum height of 24 inches). The bottom of the opening shall be not more than 44 inches above the floor. Minimum dimensions for operable window section are 20 inches wide by 41.2 inches in height, or 24 inches in height by 34.2 inches wide to

provide the minimum 5.7 feet of opening.

(F) Bedroom doors shall be 20-minute fire rated or 1 3/4-inch solid bonded core wood. These doors shall have automatic closures and latch in their frames. Exceptions are as follows.

(i) Doors need only be smoke resistant and do not need automatic closure if the building has an approved sprinkler system throughout.

(ii) Doors need only be smoke resistant with automatic closures if the facility is classified "prompt" level of evacuation difficulty.

(G) Each small facility shall have at least two remotely located means of escape that do not involve windows. The arrangement shall be such that there is a primary means of escape from each sleeping room that provides a path of travel to the outside without traversing any corridor or other space exposed to unprotected vertical openings or common living spaces, such as living rooms and kitchens. Exceptions are as follows:

(i) A second means of escape or alternate protection is not required:

(I) if the bedroom has a door leading directly to the outside of the building, at or to grade level; or

(II) if the building is protected with an approved sprinkler system meeting National Fire Protection Association (NFPA) 13 Standard for Installation of Sprinkler Systems or NFPA 13D Standard for Installation of Sprinkler Systems in One- and Two-family Dwellings and Mobile Homes standards.

(ii) Separated primary means of escape is not necessary if the building is single story; has 1 3/4-inch solid bonded core doors to bedrooms or smoke resistant doors with closures; 20-minute fire protection for the structure; Class A or B interior finish; bedroom windows of proper size; total smoke detection coverage of habitable spaces, including loft areas that are tied into the manual fire alarm system; and two remote means of escape.

(2) Living room space. Living room space shall provide at least 15 square feet per resident (with a minimum of 120 square feet regardless of number of residents). Living space can include one or more rooms or areas provided that the first such area is at least 80 square feet each.

(3) Dining space. Dining space must be large enough to accommodate all residents at one sitting, and shall provide at least 15 square feet per resident. Living and

dining space may be in one room or area providing a combined total of 30 square feet per resident (15 square feet living plus 15 square feet dining per resident).

(4) Bathrooms. Bathrooms shall provide for individual privacy. Water closets and lavatories shall be provided at a minimum ratio of one for each five residents. There shall be at least one tub or shower for each eight residents. At least one bathroom (with water closets, lavatory, and tub or shower) shall be provided on each sleeping floor accessible to the residents of that floor.

(5) Kitchen. The facility shall have a kitchen to meet the general food service needs of the residents. It shall include provisions for the storage, refrigeration, preparation, and serving of food; for dish and utensil cleaning; and for refuse storage and removal. A mechanical dishwasher shall be provided.

(6) Office. An office or other space shall be available for private individual counseling and for the safekeeping of files and records.

(7) Stairs. Buildings of two or more stories require at least two separate approved exit stairs from the upper floors. Usable space under the stairs is not allowed unless fire separated or protected in accordance with NFPA 101 Life Safety Code. Open interior stairways which constitute an "unprotected vertical opening" to a required exit passageway on the upper floor must be provided with a barrier (wall and door) at either the lower or upper level to prevent the rapid rise of fire or smoke originating on the lower level from rendering the upstairs passageway to the second stair impassable.

(8) Fire rating. Interior wall and ceiling surfaces shall have, as the finished surface or a substrate or sheathing, a fire resistance of not less than 20 minutes, similar to that provided by 3/8-inch gypsum board.

§145.101. Electrical, Heating, Ventilating, and Air-conditioning Systems (HVAC)—All Facilities.

(a) Cooling and heating shall be provided, as necessary, for resident comfort. Heating systems in resident use areas shall be capable of maintaining a minimum temperature of 68 degrees Fahrenheit, and cooling of 81 degrees Fahrenheit maximum, with humidity in the normal comfort range.

(b) The facility shall be well ventilated through the use of windows, mechanical ventilation, or a combination of both. Rooms and areas which do not have outside windows and which are used by residents or personnel shall be provided with functioning mechanical ventilation to change the air

on a basis commensurate with the room usage.

(c) Air systems shall provide for the induction and mixing of at least 10% outside fresh air into the facility unless otherwise approved by the department (i.e., 100% continuous recirculation of interior air in most areas is not acceptable), or the system shall be designed to meet American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE).

(d) Operable outside windows shall be provided with insect screens that prevent insect entry.

(e) Rooms such as baths, toilets, soiled linen, trash or garbage rooms, soiled utilities, janitor's closets, and other such areas which produce odors, fumes, excessive moisture, etc., shall be provided with an exhaust system ducted to the exterior, meeting nationally recognized standards for capacity and function.

(f) Electrical and mechanical systems shall be safe and in working order. The department may require the facility sponsor or licensee to submit evidence to this effect, consisting of a written report by the local fire marshal, city/county building official having jurisdiction, or a registered professional engineer.

(g) Use of electrical appliances, devices, and lamps shall be such as not to overload circuits.

(h) Portable heaters and open-flame heating devices are prohibited. All fuel burning devices shall be vented. Working fireplaces are acceptable if of safe design and construction, and if screened or otherwise suitably enclosed.

§145.105. Safety Operations.

(a) Disaster plan. The facility must have a written plan with procedures to be followed in an internal or external disaster and for the care of casualties.

(1) The facility must maintain the plan and procedures within the facility in a location known and accessible to all staff. The facility must ensure that the plan and procedures are reviewed when changes in administration, construction, or emergency phone numbers are made.

(2) The facility must include in the disaster plan evacuation routes and procedures to be followed in the event of fire, explosion, or other disaster. The plan must also include procedures for the prompt transfer of casualties, medical records, medications, and for the notification of appropriate persons.

(3) All employees must be familiar with the disaster plan and must be instructed in the location and use of the

facility's alarm systems, fire-fighting equipment, and procedures.

(4) The facility must post emergency evacuation routes prominently throughout the facility. An exception is that in small one-story buildings where all exits are obvious, the department may not require the posting of evacuation routes.

(5) The fire alarm and sprinkler systems shall be inspected and tested at least once every three months by a licensed agent. Each such quarterly inspection and test shall be of the complete system including smoke dampers, individual sprinkler heads, etc. A standard report form of the inspection shall be completed by the agent and kept on file by the facility. The report shall include the signature of the person making the inspection and the date of the inspection. The facility shall maintain a current contract on file for the services of the inspecting company. An exception is that small facilities are only required to have semiannual inspections in lieu of quarterly inspections.

(6) All fires shall be reported to the department within 72 hours. However, any fire causing injury or death shall be reported immediately. A telephone report shall be followed by a written report on a form which is available from the department.

(b) Fire/evacuation drills.

(1) The facility must have a fire safety plan within the disaster plan. A comprehensive fire drill report form shall be completed for each rehearsal of the fire safety plan.

(2) The facility must hold fire evacuation drills at least every quarter for each shift of personnel (12 per year) and under varied times and conditions.

(3) Any direct care staff, including relief staff, must participate in the initial fire drill within 10 days of their employment at the facility. An exception is that facilities meeting NFPA 101, Chapter 12 titled "New Health Care Occupancies" or Chapter 13 titled "Existing Care Occupancies," or meeting the impractical evacuation category of Chapter 21 titled "Residential Board and Care," are not required to conduct fire drills within 10 days of employment.

(4) The facility must:

(A) actually evacuate residents during at least one evacuation drill each year on each shift;

(B) make special provisions for the evacuation of the physically handicapped, such as fire chutes and mattress loops with poles;

(C) write and file a report and evaluation of each drill and list details, date, time, who participated, and any problems that occurred; and

(D) investigate all accidents and take corrective action to prevent similar accidents in the future.

(5) Drills for other emergencies, such as severe weather, bomb-threats, etc., shall be covered in the facility's policies and disaster plan with drills held according to the policy.

(c) Smoking regulations. Smoking policies shall be formulated and adopted by the facility. The policies shall comply with all applicable codes, regulations, and standards, including local ordinances. It is the responsibility of the facility to inform residents, staff, visitors, and other affected parties of smoking policies through distribution and/or posting. The facility is responsible for enforcement of smoking regulations.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on April 9, 1993.

TRD-9321483

Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

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For further information, please call: (512) 834-6770

Construction Standards for Maternity Facilities

• 25 TAC §145.131, §145.132

The new sections are adopted under the Health and Safety Code, Chapter 242, which provides the Board of Health (board) with the authority to adopt rules concerning nursing facilities and related institutions; and §12.001 which provides the Board with authority to adopt rules to implement every duty imposed on the board, the department and the commissioner of health.

§145.131. Introduction and Application.

(a) Classification of facilities.

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

(2) A large facility is a building(s) consisting of one or more floors pro-

viding sleeping accommodations for 17 or more residents exclusive of "live-in" staff.

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

(1) All buildings or structures, new or existing, used as a licensed maternity facility shall be in accordance with these standards. Any exceptions are specifically mentioned.

(2) For existing buildings and structures which are converted to maternity occupancy, no residents will be admitted until all standards are met and approval for occupancy is granted by the licensing officer of the department.

(3) A licensed nursing facility or licensed hospital, meeting Chapter 12 or 13 of National Fire Protection Association 101 (NFPA 101), may be considered as a maternity occupancy without additional fire safety features as may be specified herein.

(4) Buildings and structures shall conform to the 1985 edition, of NFPA 101, as published by the National Fire Protection Association, Inc., Batterymarch Park, Quincy, Massachusetts 02269, as follows.

(A) Type A small facilities shall conform to Chapter 21.

(B) Type A large facilities shall conform to Chapter 21.

(C) Type B small ("Impractical") shall conform to Chapter 21 for facilities that provide postpartum care.

(D) Type B large ("Impractical") shall conform to Chapters 21 and 12 (limited care, as defined by the NFPA 101, requirements may be used) for facilities that provide postpartum care.

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

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

(5) New construction shall be subject to local codes. (The description of the occupancy may vary with local codes.) In the absence of local codes or their enforcement for new construction, the depart-

ment will require conformance to the fundamentals of the following codes:

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

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

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

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

(6) An existing building (facility with residents at time of initial inspection) either occupied as a maternity facility at the time of initial inspection by the department or converted to occupancy as a maternity facility shall meet all local requirements pertaining to that building for that occupancy. The department shall require the facility sponsor or licensee to submit evidence that local requirements are satisfied. When local laws, codes or ordinances are more stringent than these standards for maternity, the more stringent requirements shall govern.

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

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

§145.132. General Requirements.

(a) General. The concept of the National Fire Protection Association (NFPA)

101 requirements for fire safety with regard to the residents, is based on evacuation capability. These standards are written with the premise that the residents will be capable of self-evacuation without continuous staff assistance. Residents that are not normally capable of self-evacuation nor are capable of negotiating stair unassisted, shall not be housed above or below the floor of exit discharge unless the facility meets the construction requirements of NFPA 101, Chapter 12, Health Care Occupancies for Large Facilities and the "impractical" requirements for small facilities as found in NFPA 101, Chapter 21. Examples of residents who may not be capable of self-evacuation are as follows:

(1) a person with a physical disability of a nature that he or she is not capable of maneuvering in a wheelchair, walker, etc., unaided;

(2) a person who will not take or cannot understand instructions from a staff member; or

(3) a person who is taking medication which will make it difficult for a staff member to arouse the person quickly.

(b) Evacuation procedures. Residents who are housed in buildings that are licensed as small or large Type A facilities, shall be able to demonstrate to the authority having jurisdiction (AHJ) that they can travel from their living unit to a centralized space, such as lobby, living, or dining room on the level of discharge within a 13 minute period without continuous staff assistance. Elevators shall not be used as an evacuation route.

(c) Operational features.

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

(2) Fire drills shall be conducted at least four times a year on each shift. The drills may be announced in advance to the residents. The drills shall involve the participation of the staff in accordance with the emergency plan. Residents shall be informed of evacuation procedures and locations of exits. All fire drills shall be documented indicating brief description of drill, any problems encountered, date, time, and staff who participated.

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

(4) The facility shall post an emergency evacuation floor plan. An exception is that small, one-story facilities are not required to post such plans.

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

(d) Construction.

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

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

(3) Flame spread rate requirements shall be as specified in NFPA 101. Flame spread is the rate of fire travel along the surface of a material. (This is different than other requirements for time-rated "burn through" resistance ratings, such as one-hour rated.) Flame spread ratings are Class A (0-25), Class B (26-75), and Class C (76-200). See NFPA 101, §6-5, Interior Finishes.

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

(A) Small Type A facilities can have smoke resisting doors with automatic closures provided the interior finish is Class 'B' or better and there are two remote exit routes.

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

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

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

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

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

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

(e) Fire alarm and sprinkler systems.

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

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

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

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

(B) The fire alarm control panel shall be visible to staff at or near the staff area that is attended 24 hours a day.

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

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

(E) The facility shall have a written contract with a fire alarm company or person licensed by the State of Texas to maintain the alarm system semiannually.

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

(G) In large Type B facilities the fire alarm shall automatically notify the fire department in accordance with NFPA 101, Section 7-6.4.

(2) Sprinkler systems. When installed or required, sprinkler systems shall meet the following criteria.

(A) Facilities housing 16 or fewer residents may have a system that meets NFPA 13D requirements.

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

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

(f) Site and location.

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

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

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

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

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

(g) Sanitation and housekeeping.

(1) Waste water and sewage shall be discharged into a state-approved municipal sewerage system; any exception shall be as approved by the department.

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

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

(4) Operable windows shall be insect screened.

(5) An ongoing pest control program shall be provided by facility staff or by contract with a licensed pest control

company. The least toxic and least flammable effective chemicals shall be used.

(6) All bathrooms, toilet rooms, and other odor-producing rooms or areas for soiled and unsanitary operations shall be ventilated with operable windows or powered exhaust to the exterior for odor control. Exception: Existing small facilities may vent into an attic provided that the attic is vented.

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

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

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

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

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

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

(h) General safety features.

(1) Electrical and mechanical systems shall be safe and in working order. The department may require the facility sponsor or licensee to submit evidence to this effect, consisting of a report from the fire marshal, city/county building official having jurisdiction, licensed electrician, or a registered professional engineer.

(2) All draperies and other window coverings in public or common areas, and in bedrooms and/or living units in which smoking is permitted shall be flame resistant.

(3) All new floor carpet installed in public or common spaces after the initial inspection by the department shall be Class I or II based on the "Critical Radiant Flux" ratings. Proper documentation must be provided.

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

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

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

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

(8) Cooling and heating shall be provided for occupant comfort. Conditioning systems shall be capable of maintaining the comfort ranges of 68 degrees Fahrenheit to 82 degrees Fahrenheit in resident-use areas.

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

(10) All buildings three floors or higher and in facilities that provide services, treatment, or social activities on floors

above or below the level of discharge and which house mobility impaired residents shall have a passenger elevator. The lowest level of discharge will be the first floor for determining floor level.

(11) The building shall be kept in good repair; electrical, heating, and cooling systems shall be maintained in a safe manner. Use of electrical appliances, devices, and lamps shall be such as not to overload circuits or cause excessive lengths of extension cords.

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

(i) Portable fire extinguishers.

(1) At least one portable UL or factory mutual (FM)-approved five-pound Class B:C dry chemical fire extinguisher, rechargeable type, is required in each laundry, kitchen and walk-in mechanical room. ABC type extinguishers shall not be used in kitchens. An exception is that in small facilities, ABC type extinguishers will be acceptable for these spaces.

(2) Portable UL or FM-approved 2-1/2 gallon stored-pressure water-type fire extinguishers (Class A) must be provided in areas serving resident bedrooms. One such unit shall be located within 75 feet of any resident bedroom door. Acidic base (ABC) and dry chemical types are not acceptable.

(3) Extinguishers must be readily accessible. Units must be installed on hangers or brackets, mounted in special cabinets, or set on appropriate shelves. Operating instructions shall face outward. Mounting heights shall not exceed five feet above the floor for extinguishers weighing 40 pounds or more.

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

(5) With reference to paragraph (3) of this subsection, alternative locations and arrangements for fire extinguishers may be as approved by the department for small facilities, facilities consisting of separated small building units, or unusual building arrangements.

(6) Metal wastebaskets of substantial gauge or any UL or FM approved

containers must be provided in all areas where smoking is permitted. Garbage, waste, or trash containers provided for kitchens, janitor closets, laundries, mechanical or boiler rooms, general storage, and similar places must be made of metal or any UL or FM approved material, having a close fitting cover. Disposable plastic liners may be used in these containers for sanitation.

(j) Accessibility provisions.

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

(2) A minimum of 5.0% of the resident living units of large facilities shall meet the accessibility provisions.

(k) Resident accommodations.

(1) Resident bedrooms.

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

(B) Bedroom usable square footage for Type B facilities shall be not less than 100 square feet per bed for a single-bed room and not less than 80 square feet per bed for a multiple-bed room. Bedrooms for persons with physical disabilities and/or mobility impairment shall meet accessibility standards for access around the bed or beds, i.e., minimum of three feet clear width for access aisles.

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

(D) No more than four beds shall be in a bedroom, and not more than 50% of the beds shall be in bedrooms of three or more.

(E) Each bedroom shall have at least one operable window with outside exposure. The window sill shall be no higher than 44 inches from the floor and shall be at or above grade level. The win-

dow will be operable from the inside, without the use of tools or special devices, and provide an operable section with a clear opening of not less than 5.7 square feet (minimum width of 20 inches by 41.2 inches high and minimum height of 24 inches by 34.2 inches wide). Windows required for evacuation will not be blocked by bars, shrubs, or any obstacle that would impede evacuation. Exceptions are as follows:

(i) In large Type B facilities, the window sill height from the floor shall be no more than 36".

(ii) In large Type B facilities, the bedroom window size shall not be less than 8.0% of the bedroom floor area.

(iii) In small existing facilities, if the window is not required for the secondary means of escape, the window size and sill height requirements will not apply provided the primary means of escape for each sleeping room is not exposed to the common living spaces, such as the living room, dining room, and kitchen and the bedroom has an operable window for view and ventilation.

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

(G) All resident rooms shall open upon an exit, corridor, living area, or

public area and shall be arranged for convenient resident access to dining and recreation areas.

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

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

(2) Resident toilet and bathing facilities.

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

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

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

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

(E) Resident-use hot water for lavatories and bathing units will be maintained between 100 degrees Fahrenheit and 125 degrees Fahrenheit.

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

(3) Resident living areas.

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

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

<u>Number of Beds</u>	<u>Area Per Bed (Minimum)</u>
04-16	15 square feet (Minimum 120 square feet)
17-39	13 square feet
40-59	12 square feet
60 and over	10 square feet

(4) Resident dining areas.

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

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

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

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

Number of Beds

4-16
17-39
40-59
60 and over

Area Per Bed (Minimum)

15 square feet (Minimum 120 square feet)
13 square feet
12 square feet
10 square feet

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

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

(A) administration for records and office supplies;

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

(C) equipment supplied by the facility for resident needs such as wheelchairs, walkers, beds, mattresses, etc.;

(D) cleaning supplies (janitorial needs);

(E) food storage;

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

(G) lawn and maintenance equipment, if needed;

(H) janitor(s) closet with deep sink and hot and cold water (large facilities only); and

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

(6) Office. There shall be at least one office space to carry on the business needs of the facility. Larger facilities may require more than one such room.

(7) Kitchen.

(A) The facility shall have a kitchen or dietary area to meet the general food service needs of the residents. It shall include provisions for the storage, refrigeration,

preparation, and serving of food; for dish and utensil cleaning; and for refuse storage and removal. Exception: Food may be prepared off-site or in a separate building provided that the food is served at the proper temperature and transported in a sanitary manner.

(B) Kitchens (main/dietary) for large facilities shall be as follows.

(i) Kitchens will be evaluated on the basis of their performance in the sanitary and efficient preparation and serving of meals to residents and comply with the requirements of §§229.161-229.173 of this title (relating to Food Service Sanitation).

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

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

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

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

(iv) A vegetable preparation sink shall be provided. It shall be separate from the pot sinks.

(v) A supply of hot and cold water shall be provided. Hot water for

sanitizing purposes shall be 180 degrees Fahrenheit or the manufacturer's suggested temperature for chemical sanitizers.

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

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

(viii) Janitorial facilities shall be provided exclusively for the kitchen and shall be located in the kitchen area. Exception: Janitorial closets in existing facilities may be located outside of the kitchen area provided sanitary procedures are used to reduce the possibility of cross-contamination.

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

(x) Doors between kitchen and dining or serving areas shall have 1/4-inch fixed wire glass view panel mounted in a steel frame.

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

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

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

(xiv) Grease traps shall be provided as required.

(C) Food storage areas for large facilities shall be as follows.

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

(ii) Shelves shall be adjustable wire type. Exception: Existing facilities with wood shelves may continue to use the shelves provided they are kept sealed and clean.

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

(iv) No foods shall be stored on the floor. Dollies, racks, pallets, or wheeled containers may be used to elevate foods not stored on shelving.

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

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

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

(D) Auxiliary serving kitchens (not contiguous to food preparation/serving area) shall be as follows.

(i) Where service areas other than the kitchen are used to dispense foods, these shall be designated as food service areas and shall have equipment for maintaining required food temperatures while serving.

(ii) Separate food service areas shall have handwashing facilities as part of the food service area.

(iii) Finishes of all surfaces, except ceilings, shall be the same as those required for dietary kitchens or comparable areas.

(8) Laundry/linen services.

(A) A large maternity facility which co-mingles and processes laundry on-site in a central location shall comply with the following.

(i) The laundry shall be separated and provided with sprinkler protection if located in the main building. (Separation shall consist of a one-hour fire rated

partition carried to the underside of the floor or roof deck above.) Access doors shall be from the exterior or interior non-resident use areas, such as a small vestibule or service corridor.

(ii) The laundry shall be provided with the following physical features:

(I) a soiled linen receiving, holding, and sorting room with a floor drain and forced exhaust to the exterior which shall operate at all times there is soiled linen being held in this area. (This may be combined with the washer section.);

(II) a general laundry work area which is separated by partitioning two areas—a washer section and a dryer section;

(III) a storage area for laundry supplies;

(IV) a folding area;

(V) adequate air supply and ventilation for staff comfort without having to rely on opening a door that is part of the fire wall separation; and

(VI) provisions to exhaust heat from dryers and to separate dryer make-up air from the habitable work areas of the laundry.

(B) If linen is processed off the site, the following shall be provided on the premises:

(i) a soiled linen holding room (provided with adequate forced exhaust ducted to the exterior); and

(ii) a clean linen receiving, holding, inspection, sorting or folding, and storage room(s).

(C) Resident-use laundry, if provided, shall utilize residential type washers and dryers. If more than three washers and three dryers are located in one space, the area shall be one-hour fire separated or provided with sprinkler protection.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on April 9, 1993.

TRD-9321484

Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

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For further information, please call: (512) 834-6770

◆ ◆ ◆
General Requirements for All Facilities

• 25 TAC §145.141, §145.142

The new sections are adopted under the Health and Safety Code, Chapter 242, which provides the Texas Board of Health (board) with the authority to adopt rules concerning nursing facilities and related institutions; and §12.001 which provides the Board with authority to adopt rules to implement every duty imposed on the board, the department, and the commissioner of health.

§145.141. Plans, Approvals, and Construction Procedures.

(a) Submittal of preliminary plans.

(1) When construction is contemplated for new buildings, additions, conversion of buildings not licensed by the department (including formerly licensed facilities), or remodeling of existing licensed facilities, one copy of the preliminary proposed plans shall be submitted to the department (Architectural Section) for review prior to the preparation of working drawings. For additions, an overall plan similar to §145.142(c)(3) of this title (relating to Construction and Initial Survey of Completed Construction) shall be included.

(2) Fees for plan reviews will be required in accordance with §145.19 of this title (relating to Fees for Plan Reviews, Construction Inspection Services, and Feasibility Inspection Services).

(3) The project will be considered abandoned and the plans will be destroyed if final plans are not submitted to the department in accordance with the following schedule. Resubmittal of plans and additional plan review fees will be required if, after the abandonment period, the project will be constructed:

(A) nursing facilities—12 months from the submittal date of the preliminary plans for review and approval;

(B) facilities serving persons with mental retardation and related conditions—24 months from the submittal date of the preliminary plans for review and approval;

(C) maternity facilities—24 months from the submittal date of the preliminary plans for review and approval.

(4) The plans shall be drawn to scale, shall indicate the usage of all spaces,

sizes of areas and rooms, and the type and location of fixed equipment. New construction or additions shall include a site plan showing all pertinent conditions including grades and all structures on the site. Written approval of the local health authority, building department, and of the local fire marshal having jurisdiction shall be submitted.

(5) A general description of the surrounding area and vicinity (commercial, residential, rural, shopping, available transportation, etc.) shall be furnished for new locations.

(b) Submittal of intermediate plans. Nursing facilities may need to submit intermediate stage plans and specifications (50% to 75% complete) for review, particularly on new, larger, or more complex construction projects. Review of intermediate plans is not required for maternity facilities or facilities serving persons with mental retardation and related conditions.

(c) Submittal of final plans.

(1) Before construction is begun, one copy of working drawings and specifications (contract documents) in sufficient detail to interpret compliance with these standards and assure proper construction shall be submitted to the department for review within 60 days of receipt of such documents and required plan review fee. These documents shall be prepared according to accepted architectural practice and shall include general construction, special conditions, schedules, and any other pertinent information that the department may require. In addition, two extra copies of the floor plan (only) shall be submitted with the complete set.

(2) The project will be considered abandoned and the plans destroyed if the project is not under construction and continuing progress shown in accordance with the schedule listed in subparagraphs (A)-(C) of this paragraph. Resubmittal of plans and full plan review fee will again be required if, after the abandonment period, the project will be constructed. Fees will be as required in accordance with §145.19 of this title (relating to Fees for Plan Reviews, Construction Inspection Services, and Feasibility Inspection Services):

(A) nursing facilities—six months from the date of the final review of the plans;

(B) facilities serving persons with mental retardation and related conditions—12 months from the date of the final review of the plans;

(C) maternity facilities—12 months from the date of the final review of the plans.

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

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

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

(6) It is the sponsor's responsibility to employ qualified personnel to prepare the contract documents for construction. If the contract documents have errors or omissions to the extent that conformance with standards cannot be reasonably assured or determined, a revised set of documents for review may be requested. For additions and remodeling to existing licensed facilities, construction shall not be started until the final contract documents are reviewed and approved in writing by the department within 60 days of receipt of final drawings and required plan review fee.

(7) The review of plans and specifications by the department is based on general utility, minimum licensing standards, and conformance with the Life Safety Code, and is not to be construed as all-inclusive approval of the structural, electrical, or mechanical components.

(d) Contract documents.

(1) Site plan documents shall include grade contours; streets (with names), north arrow; fire hydrants; fire lanes; utilities, public or private; fences; unusual site conditions, such as ditches, low water levels, other buildings on-site; and indications of buildings five feet or less beyond site property lines. Site plan documents for nursing facilities may include the developed landscaping plan for resident use as called for in §145.62(f) of this title (relating to Location and Site).

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

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

(4) For both new construction and additions or remodeling to existing buildings, an overall plan of the entire building shall be drawn or reduced to fit on an 8 1/2 inch by 11 inch sheet; submit two reduced plans for file record. See §145.142(c) (3) of this title (relating to Construction and Initial Survey of Completed Construction).

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

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

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

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

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

(A) for nursing facilities, a nurse call system; and

(B) for facilities serving persons with mental retardation and related conditions, a staff communication system.

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

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

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

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

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

§145.142. Construction and Initial Survey of Completed Construction.

(a) Construction phase.

(1) The department shall be notified in writing of construction start.

(2) All construction shall be done in accordance with the completed plans and specifications as submitted for review and as modified in accordance with review requirements. Any deviations therefrom must have prior approval of the department. Revised drawings may be required if the change is significant.

(3) A preliminary stage construction inspection is required for most construction work unless otherwise instructed by the department. A minimum of three weeks notification prior to applying interior wall and ceiling surfaces (except for

smoke barrier wall surfaces which shall be completed) must be given so that the inspector may schedule the preliminary visit.

(b) Initial survey of completed construction.

(1) Upon completion of construction, including grounds and basic equipment and furnishings, a final construction inspection (initial survey) of the facility is required to be performed by the department (architectural section) prior to admitting residents. A minimum of three weeks advance notice is needed. The completed construction shall have the written approval of the local authorities having jurisdiction, including the fire marshal, health department, and building inspector.

(2) After the completed construction has been surveyed by a representative of the architectural section of the department and found acceptable, this information will be conveyed to the licensing officer as part of the information needed to issue a license to the facility. In the case of additions or remodeling of existing facilities, a revision or modification to an existing license may be necessary. Note that the building, grades, drives, parking and grounds must be essentially 100% complete at the time of this initial survey visit for occupancy approval and licensing, including basic furnishings and operational needs.

(3) The following documents must be available to the department's architectural inspecting surveyor at the time of the survey of the completed building:

(A) written approval of local authorities as called for in paragraph (1) of this subsection;

(B) written certification of the fire alarm system by the installing agent (Form FML-009 of the Texas State Fire Marshal);

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

(D) approval of the completed sprinkler system installation by the Texas Department of Insurance or the designing engineer. A copy of the material list and test certification shall be available;

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

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

(G) a written statement from an architect/engineer stating that, to the best of his/her knowledge, the building was constructed in accordance with the approved drawings; and

(H) any other such documentation as needed and called for.

(c) Non-approval of new construction

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

(A) substantial changes made during construction which were not submitted to the department for review and which may require revised as-built drawings to cover the changes. This may include architectural, structural, mechanical, and electrical items (reference subsection (a)(2) of this section);

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

(C) no written approval by local authorities;

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

(E) required exits are not all usable according to Life Safety Code requirements;

(F) telephone not installed or not properly working;

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

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

(2) If the surveyor encounters deficiencies that do not affect the health and safety of the residents, licensure may be recommended based on an approved written plan of correction by the facility's administrator.

(3) Copies of reduced size floor plan (on an 8 1/2 inch by 11 inch sheet) shall be submitted in duplicate to the department for record/file use and for the facility use for evacuation plan, fire alarm zone identification, etc. The plan shall contain basic legible information such as overall dimensions, room usage names, actual bedroom numbers, doors, windows, and any other pertinent information.

(d) Feasibility inspections. A feasibility inspection may be requested on any existing structure that is proposed to be converted to a facility. This inspection shall be requested through the department. A fee will be charged as required by §145.19 of this title (relating to Fees for Plan Reviews, Construction Inspection Services, and Feasibility Inspection Services).

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on April 9, 1993.

TRD-9321485

Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

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For further information, please call: (512) 834-6770

◆ ◆ ◆ Subchapter E. Medication Aides

• 25 TAC §§145.161-145.174

The new sections are adopted under the Health and Safety Code, Chapter 242, which provides the Board of Health (board) with the authority to adopt rules concerning nursing facilities and related institutions; and §12.001, which provides the Board with authority to adopt rules to implement every duty imposed on the board, the department and the commissioner of health.

§145.164. Training Requirements; Nursing Graduates; Reciprocity.

(a) Each applicant for a permit issued under Health and Safety Code, Chapter 242, Subchapter F, must complete a training program unless the applicant meets the requirements of subsections (c) or (d) of this section.

(b) Prior to application for a permit under this subchapter, all persons:

(1) must be able to read, write, speak, and understand English;

(2) must be at least 18 years of age;

(3) must be free of communicable diseases and in suitable physical and emotional health to safely administer medications;

(4) must be a graduate of a high school or have a general equivalency diploma;

(5) must be currently employed in a facility as a nurse aide or nonlicensed direct-care staff person; and

(6) must have been employed in a facility for 90 days as a nurse aide or nonlicensed direct care staff person. This employment must have been completed within the 12-month period preceding the first official day of the applicant's medication aide training program.

(c) A person who is attending or has attended an accredited school of nursing and who does not hold a license to practice professional or vocational nursing meets the training requirement for issuance of a permit under this subchapter if the person:

(1) attended the nursing school no earlier than January 1 of the year immediately preceding the year of application for a permit under this subchapter;

(2) successfully completed courses at the nursing school which cover the Texas Department of Health's (department) curriculum for a medication aide training program;

(3) submits a statement on the form provided by the department which is signed by the nursing school's administrator or other authorized individual and certifies that the person completed the courses specified under paragraph (2) of this subsection. The administrator is responsible for determining that the courses to which he or she certifies cover the department's curriculum. The statement shall be submitted with the person's application for a permit under this subchapter; and

(4) complies with subsection (d)(1), (2), and (4)-(9) of this section.

(d) A person who is a graduate of an accredited school of nursing and who

does not hold a license to practice professional or vocational nursing meets the training requirement for issuance of a permit under this subchapter; provided, however, the date of graduation from the nursing school must have been no earlier than January 1 of the year immediately preceding the year of application for a permit under this subchapter.

(1) An official application form shall be submitted to the department by the graduate. The applicant must meet the requirements of subsection (b)(1)-(4) of this section.

(2) The application shall be accompanied by the permit application fee as set out in §145.20 of this title (relating to Fees for Issuance and Renewal of Permits to Administer Medications).

(3) The applicant must include an official transcript documenting graduation from an accredited school of nursing.

(4) The Texas Department of Health (department) shall acknowledge receipt of the application by forwarding to the applicant a copy of this subchapter and the department's open book examination.

(5) The applicant shall complete the open book examination and return it within 45 days to the department.

(6) The applicant shall complete the department's written examination. The site of the examination shall be determined by the department. Any applicant failing to schedule and take the examination within 45 days of the examination notice may have his or her application voided.

(7) An open book or written examination shall not be retaken if the applicant fails.

(8) Upon successful completion of the two examinations, the department will evaluate all application documents submitted by the applicant.

(9) The department shall notify the applicant in writing of the examination results.

(e) A person who holds a valid license, registration, certificate, or permit as a medication aide issued by another state whose minimum standards or requirements are substantially equivalent to or exceed the requirements of this subchapter in effect at the time of application, may request a waiver of the training program requirement.

(1) An official application form shall be submitted to the department by the applicant. The applicant must meet the requirements of subsection (b)(1)-(4) of this section.

(2) The application shall be accompanied by the permit application fee as set out in §145.20 of this title.

(3) The application must include a current copy of the rules of the other state governing its licensing and regulation of medication aides, a copy of the legal authority (law, act, code, section, or otherwise) for the state's licensing program, and a certified copy of the license or certificate by which the reciprocal permit is requested.

(4) The department shall acknowledge receipt of the application by forwarding to the applicant a copy of this subchapter and the department's open book examination.

(5) The department may contact the issuing agency to verify the applicant's status with the agency.

(6) The applicant shall complete the department's open book examination and return it within 45 days to the department.

(7) The applicant shall complete the department's written examination. The site of the examination shall be determined by the department. Any applicant failing to schedule and take the examination within 45 days of the examination notice may have his or her application voided.

(8) An open book or written examination shall not be retaken if the applicant fails.

(9) Upon successful completion of the two examinations, the department will evaluate all application documents submitted by the applicant.

(10) The department shall notify the applicant in writing of the examination results.

§145.168. Permit Renewal.

(a) General.

(1) When issued, an initial permit is valid for one year from date of issuance.

(2) A permit holder must renew the permit annually.

(3) Each permit holder is responsible for renewing the permit before the expiration date. Failure to receive notification from the Texas Department of Health (department) prior to the expiration date of the permit shall not excuse failure to file for timely renewal.

(4) A permit holder must complete a seven clock hour continuing education program approved by the department prior to expiration of the permit in order to renew the permit. Continuing education hours are not required for the first renewal. After a permit is renewed for the first time, the permit holder must begin earning approved continuing education hours.

(5) The department shall deny renewal of the permit of a permit holder who is in violation of Health and Safety Code, Chapter 242, Subchapter F; or this subchapter at the time of application for renewal.

(b) Permit renewal procedures.

(1) At least 30 days prior to the expiration date of a permit, the department will send to the permit holder, at the address listed in the department's records, notice of the expiration date of the permit and the amount of the renewal fee due and a renewal form which the permit holder must complete and return with the required renewal fee.

(2) The renewal form shall include the preferred mailing address of the permit holder and information on certain misdemeanor and felony convictions. It must be signed by the permit holder.

(3) The department shall issue a renewal permit to a permit holder who has met all requirements for renewal.

(4) A permit shall not be renewed if the permit holder does not complete the required seven-hour continuing education requirement. Successful completion shall be determined by the student's instructor. An individual who does not meet the continuing education requirement shall complete a new program, application, and examination in accordance with the requirements of this subchapter.

(c) Late renewal procedures.

(1) A person whose permit has expired for not more than two years may renew the permit by submitting to the department:

(A) the permit renewal form;

(B) all accrued renewal fees;

(C) proof of having earned, during the expired period, seven hours in an approved continuing education program for each year or part of a year that the permit has been expired; and

(D) proof of having earned, prior to expiration of the permit, seven hours in an approved continuing education program as required in subsection (a)(5) of this section.

(2) A permit that is not renewed during the two years after expiration may not be renewed.

(d) Notice. Notices of permit renewal approval, disapproval, or deficiency shall be in accordance with §145.174 of this title (relating to Application Processing).

§145.170. Training Program Requirements.

(a) Application. An educational institution accredited by the Texas Education Agency or Texas Higher Education Coordinating Board which desires to offer a training program shall file an application for approval on an official form. Programs sponsored by state agencies for the training and preparation of its own employees are exempt from the accreditation requirement. An approved institution may offer the training program and a continuing education program.

(1) All signatures on official forms and supporting documentation must be originals.

(2) The application shall include:

(A) the anticipated dates of the program;

(B) the location(s) of the classroom course(s);

(C) the name of the coordinator of the program;

(D) a list of instructors and any other person responsible for the conduct of the program. The list must include addresses and telephone numbers for each instructor; and

(E) an outline of the program content and curriculum if the curriculum covers more than the Texas Department of Health's (department) established curricula.

(3) The department may conduct an inspection of the classroom site.

(4) Notice of approval or proposed disapproval of the application will be given to the program within 30 days of the receipt of a complete application. If the application is proposed to be disapproved due to noncompliance with the requirements of Health and Safety Code, Chapter 242, Subchapter F, or this subchapter, the reasons for disapproval shall be given in the notice.

(5) An applicant may request a hearing on a proposed disapproval in writing within 10 days of receipt of the notice of the proposed disapproval. The hearing shall be in accordance with the department's formal hearing procedures under Chapter 1 of this title (relating to Texas Board of Health) and the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a. If no request is made, the applicant is deemed to

have waived the opportunity for a hearing, and the proposed action may be taken.

(b) Basic training program:

(1) The program shall include, but shall not be limited to, the following instruction and training:

(A) procedures for preparation and administration of medications;

(B) responsibility, control, accountability, storage, and safeguarding of medications;

(C) use of reference material;

(D) documentation of medications in resident's clinical records, including pro re nata (PRN) medications;

(E) minimum licensing standards for facilities covering pharmaceutical service, nursing service, and clinical records;

(F) federal and state certification standards for participation under Title XVIII (Medicare) and Title XIX (Medicaid) of the Social Security Act pertaining to pharmaceutical service, nursing service, and clinical records;

(G) lines of authority in the facility, including facility personnel who are immediate supervisors;

(H) responsibilities and liabilities associated with the administration and safeguarding of medications;

(I) allowable and prohibited practices of permit holders in the administration of medication;

(J) drug reactions and side effects of medications commonly administered to facility residents; and

(K) rules covering the medication aide program.

(2) The program shall consist of 140 hours: 100 hours of classroom instruction and training, 20 hours of return skills demonstration laboratory, 10 hours of clinical experience including clinical observation and skills demonstration under the direct supervision of a licensed nurse in a facility, and 10 more hours in the return skills demonstration laboratory in the preceding order. A classroom or laboratory

hour shall constitute 50 clock minutes of actual classroom or laboratory time.

(A) Class time shall not exceed four hours in a 24-hour period.

(B) The completion date of the program shall be a minimum of 60 days and a maximum of 180 days from the starting date of the program.

(3) Each program shall follow the curricula established by the department.

(4) At least seven days prior to the commencement of each program, the coordinator shall notify the department in writing of the starting date, the ending date, the daily hours of the program, and the projected number of students.

(5) A change in any information presented by the program in an approved application including, but not limited to, location, instructorship, and content must be approved by the department prior to the program's effective date of the change.

(6) The program instructors of the classroom hours shall be a registered nurse and registered pharmacist.

(A) The nurse instructor shall have a minimum of two years of experience in caring for the elderly, chronically ill, mentally retarded, and/or other long-term care setting. An instructor in a school of nursing may request a waiver of the experience requirement.

(B) The pharmacist instructor shall have a minimum of one year of experience and be currently employed as a consultant pharmacist in a facility.

(7) The coordinator shall provide clearly defined and written policies regarding each student's clinical experience to the student, the administrator, and the director of nursing in the facility used for the clinical experience.

(A) The clinical experience shall be counted only when the student is observing or involved in functions involving medication administration and under the direct, contact supervision of a licensed nurse.

(B) The coordinator shall be responsible for final evaluation of the student's clinical experience.

(8) Each program shall issue to each student, upon successful completion of the program, a certificate of completion, which shall include the program's name, the student's name, the date of completion, and

the signature of the program coordinator or administrative official.

(9) Each program shall inform the department of the final grade results for each student within 15 days of completion of the course. The official department class roster form shall be used and signed by the coordinator.

(c) Continuing education training program.

(1) The program shall consist of at least seven clock hours of classroom instruction.

(2) The instructors shall meet the requirements in subsection (b)(6) of this section.

(3) Each program shall follow the curricula established by the department.

(4) Each program shall inform the department of the name of each permit holder who completes the course within 15 days. The official department class roster form shall be used and signed by the coordinator.

§145.172. Violations, Complaints, and Disciplinary Actions.

(a) Purpose. The purpose of this section is to set out:

(1) violations and prohibited actions under Health and Safety Code (code), Chapter 242, Subchapter F, and this subchapter;

(2) procedures concerning complaints alleging violations of the code or this subchapter; and

(3) Texas Department of Health (department) actions against a person or permit holder when violations have occurred.

(b) Compliance. A permit holder must comply with the code and this subchapter.

(c) Filing of complaints.

(1) Any person may complain to the department alleging that a person or program has violated the code or this subchapter.

(2) A person wishing to file a complaint against a permit holder, program, or another person shall notify the department. The initial notification of a complaint may be in writing, by telephone, or by personal visit to the department. The mailing address is Medication Aide Permit Program, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3183.

(3) Upon receipt of a complaint, the department shall send to the complainant an acknowledgment letter and the de-

partment's complaint form, which the complainant must complete and return to the department before further action can be taken. If the complaint is made by a visit to the department, the form may be given to the complainant at that time; however, it must be completed and returned to the department before further action can be taken.

(4) Anonymous complaints may be investigated by the department if the complainant provides sufficient information.

(d) Investigation of complaints.

(1) The department shall make an initial investigation.

(2) If the department determines that the complaint does not come within the department's jurisdiction, the department shall advise the complainant and, if possible, refer the complainant to the appropriate governmental agency for handling such a complaint.

(3) The department shall, at least as frequently as quarterly, notify the parties to the complaint of the status of the complaint until its final disposition.

(4) If the department determines that there are insufficient grounds to support the complaint, the department shall dismiss the complaint and give written notice of the dismissal to the permit holder or person against whom the complaint has been filed and the complainant.

(5) If the department determines that there are sufficient grounds to support the complaint, the department may propose to deny, suspend, emergency suspend, revoke, or not renew a permit or to rescind program approval.

(e) Disciplinary actions.

(1) The department may deny an application or permit renewal, suspend or revoke a permit, or rescind program approval for any violation of the code or this subchapter.

(2) Prior to institution of formal proceedings to revoke or suspend a permit or rescind program approval, the department shall give written notice to the permit holder or program of the facts or conduct alleged to warrant revocation, suspension, or rescission, and the permit holder or program shall be given an opportunity, as described in the notice, to show compliance with all requirements of the Act and this subchapter.

(3) If denial, revocation, or suspension of a permit or rescission of program approval is proposed, the department shall give written notice that the permit holder or program must request, in writing, a formal hearing within 30 days of receipt of the notice, or the right to a hearing shall be

waived and the permit shall be denied, revoked, or suspended or the program approval shall be rescinded.

(4) The formal hearing shall be conducted according to the department's formal hearing procedures under Chapter 1 of this title (relating to Texas Board of Health) and §145.171 of this title (relating to Permitting of Persons with Criminal Background), if applicable.

(f) Suspension, revocation, or nonrenewal.

(1) If the department suspends a permit, the suspension shall remain in effect until the department determines that the reason for suspension no longer exists. The department shall investigate prior to making a determination.

(2) During the time of suspension, the suspended permit holder shall return his or her permit to the department.

(3) If a suspension overlaps a permit renewal date, the suspended permit holder may comply with the renewal procedures in §145.168 of this title (relating to Permit Renewal); however, the department may not renew the permit until the department determines that the reason for suspension no longer exists.

(4) If the department revokes or does not renew a permit, a person may reapply for a permit by complying with the requirements and procedures in this subchapter at the time of reapplication. The department may refuse to issue a permit if the reason for revocation or nonrenewal continues to exist.

(5) Upon revocation or nonrenewal, a permit holder shall return the permit to the department.

§145.173. Requirements for Correctional Institutions.

(a) Purpose. The purpose of this section is to provide the qualifications, conduct, and practice activities of a medication aide employed in a correctional institution.

(b) Supervision and applicable law and rules. A permit holder shall function under the direct supervision of a licensed nurse on duty or on call by the correctional institution using the permit holder.

(1) A permit holder must function in accordance with applicable law and rules relating to administration of medication and operation of a correctional institution.

(2) A permit holder must comply with Texas Department of Criminal Justice rules applicable to personnel used in a correctional institution.

(c) Allowable and prohibited practices of a permit holder.

(1) A permit holder is permitted to:

(A) observe and report to the correctional institution's charge nurse reactions and side effects to medication shown by an inmate;

(B) take and record vital signs prior to the administration of medication which could affect or change the vital signs;

(C) administer regularly prescribed medication which the permit holder has been trained to administer only after personally preparing (setting up) the medication to be administered. The medication aide shall document the administered medication in the inmate's clinical record;

(D) administer oxygen per nasal canula or a non-sealing face mask only in an emergency. Immediately after the emergency, the permit holder shall verbally notify the licensed nurse on duty or on call and appropriately document the action and notifications;

(E) apply specifically ordered ophthalmic, otic, nasal, vaginal, and rectal medication;

(F) administer previously ordered pro re nata (PRN) medication. A permit holder must document in the inmate's records, symptoms indicating the need for the medication, and the time the symptoms occurred;

(G) administer the initial dose of a medication; and

(H) order an inmate's medications from the correctional institution's pharmacy.

(2) Permit holders shall not:

(A) administer medication by the injection route including:

- (i) intramuscular;
- (ii) intravenous;
- (iii) subcutaneous;
- (iv) intradermal; and
- (v) hypodermoclysis;

(B) administer medication used for intermittent positive pressure

breathing (IPPB) treatments or any form of medication inhalation treatments;

(C) calculate an inmate's medication dose for administration except that the permit holder may:

(i) measure a prescribed amount of a liquid medication to be administered; and

(ii) break a tablet for administration to an inmate provided the licensed nurse on duty or on call has calculated the dosage. The inmate's medication card or its equivalent shall accurately document how the tablet must be altered prior to administration;

(D) crush medication unless authorization is obtained from the licensed nurse on duty or on call. The authorization to crush the specific medication shall be documented on the inmate's medication card or its equivalent;

(E) administer medications or feedings by way of a tube inserted in a cavity of the body;

(F) receive or assume responsibility for reducing to writing a verbal or telephone order from a physician, dentist, or podiatrist;

(G) apply topical medications that involve the treatment of skin that is broken or blistered or when a specified aseptic technique is ordered by the attending licensed practitioner;

(H) steal, divert, or otherwise misuse medications;

(I) violate any provision of the Health and Safety Code, Chapter 242, Subchapter F, or this section;

(J) fraudulently procure or attempt to procure a permit;

(K) neglect to administer appropriate medications, as prescribed, in a responsible manner; or

(L) administer medications if the person is unable to do so with reasonable skill and safety to residents by reason of drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material.

(d) Application.

(1) An employee of a correctional institution shall submit an official

application form to the Texas Department of Health (department). An application for a permit shall be made in accordance with §145.165(b) and (c) of this title (relating to Application Procedures).

(2) The Texas Department of Criminal Justice (TDCJ) shall certify to the department the individual(s) who have completed a training program approved pursuant to §145.170 of this title (relating to Training Program Requirements) or approved by the department under earlier rules relating to medication aides. A previous training program taught by the predecessor agency of the Texas Department of Criminal Justice (TDCJ) using the then-approved department's curriculum is deemed to meet the training program requirements of this paragraph.

(3) Examination procedures shall be as follows.

(A) A written examination shall be given by the department to each applicant at a site determined by the department. Examination provisions for employees of correctional institutions shall comply with §145.166(a)(2),(5)-(6), and (b) of this title (relating to Examination).

(B) The applicant must complete the examination no later than 90 days after certification is received by the department from the Texas Department of Criminal Justice. Another examination shall not be permitted if the applicant fails the examination unless the applicant enrolls in and successfully completes another training program.

(e) Determination of eligibility. The department shall determine eligibility according to §145.167(a),(b),(c)(3)-(5), and (d) of this title (relating to Determination of Eligibility) and subsection (d)(2) and (3)(B) of this section.

(f) Renewal. A permit shall be renewed in accordance with §145.168 of this title (relating to Permit Renewal).

(g) Changes. Permit holders shall report changes in accordance with §145.169 of this title (relating to Changes).

(h) Fees. The schedule of fees shall be in accordance with §145.20 of this title (relating to Fees for Issuance and Renewal of Permits to Administer Medications).

(i) Violations, complaints, and disciplinary actions. Complaints, investigations, disciplinary actions, suspensions, revocation, and nonrenewals shall be handled in the manner set forth in §145.172 of this title (relating to Violations, Complaints, and Disciplinary Actions). Section 145.171 of this title (relating to Permitting of Per-

sons with Criminal Backgrounds) shall apply to permit holders under this section.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Subchapter F. Inspections, Surveys and Visits

• 25 TAC §§145.191-145.192

The new sections are adopted under the Health and Safety Code, Chapter 242, which provides the Board of Health (board) with the authority to adopt rules concerning nursing facilities and related institutions; and §12.001 which provides the Board with authority to adopt rules to implement every duty imposed on the board, the department and the commissioner of health.

§145.192. Determinations and Actions Pursuant to Inspections.

(a) The Texas Department of Health (department) will determine if a facility meets the licensing rules, including both physical plant and facility operation requirements.

(b) Violations of regulations will be listed on forms designed for the purpose of the inspection or will be listed in letter form when administrative penalties are being proposed.

(c) At the conclusion of an inspection or survey, the violations will be discussed in an exit conference with the facility's management. A written list of the violations will be left with the facility at the time of the exit conference; any additional violation that may be determined during review of field notes or preparation of the official final list (when the official final list was not issued at the exit conference) will be communicated to the facility in writing within 10 working days of the exit conference, and the facility will have 10 working days to communicate a reply before such additional violation is added to or made a part of the permanent record. Copies of any narratives or similar papers written to further describe the conditions found will be furnished to the facility.

(d) Violations found during complaint investigations will be discussed with the facility management and a plan of cor-

rection obtained; the violations will be furnished in writing to the facility, as well as any supporting narratives, but shall not reveal the source of the complaint.

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

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Subchapter G. Abuse, Neglect, and Exploitation; Complaint and Incident Reports and Investigations

• 25 TAC §§145.211-145.217

The new sections are adopted under the Health and Safety Code, Chapter 242, which provides the Board of Health (board) with the authority to adopt rules concerning nursing facilities and related institutions; and §12.001 which provides the Board with authority to adopt rules to implement every duty imposed on the board, the department and the commissioner of health.

§145.215. Investigations of Incidents and Complaints.

(a) In accordance with the memorandum of understanding which is adopted by reference in §111.1 of this title (relating to Memorandum of Understanding Concerning Protective Services for the Elderly), the Texas Department of Health (department) will receive and investigate report of abuse, neglect, and exploitation of elderly and disabled persons residing in facilities licensed under this chapter.

(b) The department will only investigate complaints of abuse, neglect, or exploitation when the act occurs in the facility, when such licensed facility is re-

sponsible for the supervision of the resident at the time the act occurs, or when the alleged perpetrator is affiliated with the facility. Other complaints of abuse, neglect, or exploitation not meeting this criteria will be referred to the Texas Department of Protective and Regulatory Services.

(c) The primary purpose of an investigation is the protection of the resident. If the department determines that, for protection of the resident from further abuse or neglect, the resident should be removed from the facility, the department will petition a court for temporary care and protection of the resident.

(d) Complaint investigations shall include a visit or visits to the resident and the facility and an interview with the resident. If the facility fails to admit department staff for such investigations, the department will seek a probate or county court order for admission.

(e) Investigations of reports do not exonerate facilities, who may still be subject to the provisions of Subchapter H of this chapter (relating to Enforcement).

(f) If the initial phase of an incident or complaint investigation concludes that no abuse or neglect adversely affecting the physical or mental health or welfare of a resident has occurred, no further investigation will be undertaken.

(g) In cases concluded to be abuse, neglect, or exploitation, the written report of the investigation by the department, along with its recommendations, shall be submitted to the appropriate district attorney and law enforcement agency, as well as to the appropriate state agencies, upon request. The investigation shall include:

(1) the nature, extent and cause of such abuse or neglect;

(2) the identity of the person responsible for the abuse or neglect;

(3) the names and conditions of the other institution residents who are affected or likely to be affected by the investigation as they relate to the abuse or neglect alleged, not necessarily their medical diagnoses;

(4) the evaluation of the persons responsible for the care of the institution residents including the adequacy of the persons in numbers and the competence of persons to deliver the care intended, including specific evaluation individually of those persons directly involved in causing abuse or neglect; and

(5) the adequacy of the institution environment which may include general operation, competence of staff, attitude of staff, physical environment, and other considerations.

§145.216. General Provisions.

(a) Confidentiality. All reports, records, and working papers used or developed by the Texas Department of Health (department) in an investigation are confidential, and may be released to the public only as provided below.

(1) Completed written investigation reports are open to the public, provided the report is deidentified. The process of deidentification means removing all names and other personally identifiable data, including any information from witnesses and others furnished to the department as part of the investigation.

(2) The reporter and the facility will be notified of the results of the department's investigation of a reported case of abuse or neglect, whether the department concluded that abuse or neglect occurred or did not occur.

(b) Immunity. A person who reports suspected instances of abuse or neglect shall, in the absence of bad faith or malicious conduct, be immune from civil or criminal liability which might have otherwise resulted from making the report. Such immunity shall extend to participation in any judicial proceeding resulting from the report.

(c) Privileged communications. In a proceeding regarding a report or investigation conducted under this subchapter, evidence shall not be excluded on a claim of privileged communication except in the case of a communication between an attorney and a client.

(d) Central registry. The department shall maintain a central registry of reported cases of abuse and neglect at the central office in Austin.

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Subchapter H. Enforcement

• 25 TAC §§145.231-145.234, 145.236-145.238

The new sections are adopted under the Health and Safety Code, Chapter 242, which provides the Board of Health (board) with the

authority to adopt rules concerning nursing facilities and related institutions; and §12.001 which provides the Board with authority to adopt rules to implement every duty imposed on the board, the department and the commissioner of health.

§145.231. Enforcement Generally.

(a) Determining degree of noncompliance and determining disciplinary actions.

(1) Texas Department of Health (department) personnel will determine the extent to which violations adversely affect the licensure status of the facility.

(2) A facility may have violations which are not serious and do not impose an immediate threat to the residents and yet be considered to be in substantial compliance as long as those violations can be reasonably expected to be corrected with acceptable methods and within an acceptable time.

(3) When department personnel determine that a facility is out of compliance with requirements to a degree that the facility must be specially warned beyond the routine methods of apprising the facility of its violations, a warning letter will be sent by certified mail to the facility.

(b) Enforcement procedures. When a violation of Health and Safety Code, Chapter 242, these rules, or an order adopted or license issued under Chapter 242 occurs, the department is authorized to:

(1) suspend a license;

(2) revoke a license;

(3) refer the violation to the Attorney General for injunction and/or the assessment of civil penalties; or

(4) assess administrative penalties.

§145.232. Suspension.

(a) When a serious violation occurs or when a series of violations occur such that the event or series of events may (or could) jeopardize the health and safety of residents, the Texas Department of Health (department) may suspend the license.

(b) Suspension of a license may occur simultaneously with any other enforcement provision available to the department.

(c) Unless accompanied by an Emergency Closure Order, the facility will be notified by certified mail of the department's intent to suspend the license. The facility shall have 20 days from receiving the certified mail notice within which to request a hearing, in accordance with

§145.238 of this title (relating to Administrative Hearings).

(d) If the department suspends a license, the suspension shall remain in effect until the department determines that the reason for suspension no longer exists. The department shall conduct an on-site investigation prior to making a determination. During the time of suspension, the suspended licensee shall return the license to the department.

§145.233. Revocation.

(a) When a serious violation occurs, such that the health and safety of residents is jeopardized, the Texas Department of Health (department) may revoke the license.

(b) The department may revoke a license if the licensee:

(1) submitted false or misleading statements in the application for a license or any accompanying attachments;

(2) used subterfuge or other evasive means to obtain the license; or

(3) concealed a material fact in the application for a license or failed to disclose information required in §145.13 of this title (relating to Applicant Disclosure Requirements) that would have been the basis to deny the license under §145.17 of this title (relating to Criteria for Denying a License or Renewal).

(c) Revocation of a license may occur simultaneously with any other enforcement provision available to the department.

(d) Unless accompanied by an Emergency Closure Order, the facility will be notified by certified mail of the department's intent to revoke a license. The facility shall have 20 days from receiving the certified mail notice within which to request a hearing, in accordance with §145.238 of this title (relating to Administrative Hearings).

§145.236. Emergency Suspension and Closing Order.

(a) If the Texas Department of Health (department) finds that a licensee is operating in violation of these rules or Health and Safety Code, Chapter 242, and that such violation creates an immediate threat to the health and safety of a resident, the department shall recommend to the commissioner of health that the facility be immediately closed and/or that the license be suspended.

(b) Any order which suspends a license or closes all or any part of a facility is effective immediately on the date that the licensee receives written notice or is effective on the date specified in the order,

whichever is later. Written notice includes transmission by telecopier.

(c) An emergency order under this section is valid for 10 days after the effective date.

(d) In those circumstances when it is necessary to invoke the provision of this section and conditions warrant a relocation of residents, whether for a total facility or distinct part, the following rules shall apply.

(1) In all circumstances, a resident's rights or freedom of choice in selecting treatment facilities shall be respected.

(2) If a facility or part thereof is closed:

(A) the department shall notify the local health department director, city or county health authority, and representatives of the appropriate state agencies of the closure;

(B) the facility staff shall notify each resident's guardian or responsible party and attending physician, advising them of the action in process;

(C) the resident or the resident's guardian or responsible person shall be given opportunity to designate a preference for a specific facility or for other arrangements; and

(D) the department shall arrange for relocation to other facilities in the area in accordance with the resident's preference. A facility chosen for relocation must be in good standing with the department and, if certified under Titles XVIII and XIX of the United States Social Security Act, must be in good standing under its contract. The facility chosen must be able to meet the needs of the resident.

(E) If absolutely necessary, to prevent transport over substantial distances, the department will grant a waiver to a receiving facility to temporarily exceed its licensed capacity, provided the health and safety of residents is not compromised and the facility can meet the increased demands for direct care personnel and dietary services. A facility may exceed its licensed capacity under these circumstances, monitored by the department staff, until residents can be transferred to a permanent location.

(F) With each resident transferred, the following reports, records, and supplies shall be transmitted to the receiving institution:

(i) a copy of the current physician's orders for medication, treatment, diet, and special services required;

(ii) personal information such as name and address of next of kin, guardian or party responsible for the resident; attending physician; Medicare and Medicaid identification number; social security number; and other identification information as deemed necessary and available;

(iii) all medication dispensed in the name of the resident for which physician's orders are current shall be inventoried and transferred with the resident. Medications past an expiration date or discontinued by physician order shall be inventoried for disposition in accordance with state law;

(iv) the residents' personal belongings, clothing, and toilet articles. An inventory of personal property and valuables shall be made by the closing facility; and

(v) resident trust fund accounts maintained by the closing facility. All items shall be properly inventoried and receipts obtained for audit purposes by the appropriate state agency.

(G) If the closed facility is allowed to reopen within 90 days, the relocated residents shall have the first right to return to the facility. Relocated residents may choose to return, may stay in the receiving facility (if the facility is not exceeding its licensed capacity), or choose any other accommodations.

(H) Any return to the facility shall be treated as a new admission in regard to exchange of medical information, medications, completion of required forms, etc.

(I) A licensee whose facility is closed under this section, is entitled to request and administrative hearing, but such request does not suspend the effectiveness of the order.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Subchapter I. Trustees for Nursing Facilities

• 25 TAC §§145.261-145.263

The new sections are adopted under the Health and Safety Code, Chapter 242, which provides the Board of Health (board) with the authority to adopt rules concerning nursing facilities and related institutions; and §12.001 which provides the Board with authority to adopt rules to implement every duty imposed on the board, the department and the commissioner of health.

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Subchapter J. Respite Care

• 25 TAC §§145.281-145.287

The new sections are adopted under the Health and Safety Code, Chapter 242, which provides the Board of Health (board) with the authority to adopt rules concerning nursing facilities and related institutions; and §12.001 which provides the Board with authority to adopt rules to implement every duty imposed on the board, the department and the commissioner of health.

§145.284. Notification. A institution that offers respite care shall notify the Texas Department of Health (department) in writing that it offers respite care.

§145.285. Inspections. The Texas Department of Health (department), at the time of a licensing inspection or at other times determined necessary by the department, shall inspect an institution's records of respite care services, physical accommodations available for respite care, and the plan of care records to ensure that the respite care services comply with the licensing standards of this chapter, with the following exceptions.

(1) The clinical record of each respite care resident shall contain:

(A) general identifying information necessary to care for the resident and maintain his/her clinical record;

(B) resident assessment according to facility policy and care plan ac-

ording to §145.283 of this title (relating to Plan of Care);

(C) progress notes on flow sheets which document care/services;

(D) reports of diagnostic or lab studies done during resident stay;

(E) any physician's orders given during resident stay; and

(F) discharge and readmission information based on facility policy for respite care services.

(2) Resident assessment requirements found at §145.41(e) of this title (relating to Standards for Nursing Facilities) do not apply to respite care residents.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Subchapter K. Certification of Facilities for Care of Persons with Alzheimer's Disease and Related Disorders

• 25 TAC §§145.301-145.304

The new sections are adopted under the Health and Safety Code, Chapter 242, which provides the Board of Health (board) with the authority to adopt rules concerning nursing facilities and related institutions; and §12.001 which provides the Board with authority to adopt rules to implement every duty imposed on the board, the department and the commissioner of health.

§145.303. General Requirements for a Certified Facility.

(a) Resident admission. The facility shall admit and retain only residents whose needs can be met through service from the facility staff, or in cooperation with community resources or other providers under contract.

(b) Allowable number of residents. Each certificate shall specify the maximum allowable number of residents to be cared for at any one time in the certified area. No greater number of residents shall be kept in

the certified area than is authorized by the certificate.

(c) Nullification of certificate. When a certificate becomes null and void, the facility shall remove the certificate from display and advertising, and the certificate shall be surrendered to the department on request. Also a certificate is non-transferable and non-assignable; therefore, a certificate existing at the time of change of ownership becomes null and void.

(d) Display of certificate. A certificate shall be displayed in a prominent location for public view. The facility may advertise as long as the certificate is in effect; however, the type of advertising shall be such that the advertising can be withdrawn if the certificate becomes null and void. Upon removal of the certificate it is the responsibility of the facility to inform interested persons of the revised status. The certificate is the property of the department.

(e) Cancellation of certificate. A certificate shall be canceled if the department finds that the certified unit is not in compliance with applicable laws and rules.

(f) Effective period of certificate. A certificate is valid for one year from the effective date of approval by the department.

§145.304. Standards for Certified Alzheimer's Facilities.

Number of Beds

- 4 - 15
- 16 - 20
- 21 - 25
- 26 - 30
- 31 - 35
- 36 - 40
- 41 - 50
- 51 - 60
- 61 and over

Area Per Bed (Minimum)

- 18 square feet (Minimum 144 square feet)
- 17 square feet
- 16 square feet
- 15 square feet
- 14 square feet
- 13 square feet
- 12 square feet
- 11 square feet
- 10 square feet (Example: 100 beds equals 1,000 square feet)

(B) A dining area shall be provided and shall be a minimum of 10 square feet per resident with at least one exterior window(s).

(C) Bathtubs or showers shall be provided at a minimum rate of:

- (i) one for each 20 beds in nursing/custodial care homes;
- (ii) one for each 10 beds in personal care homes, which are not oth-

(a) General requirements.

(1) Security and safety measures are provided to prevent the residents from harming themselves or leaving designated indoor or outdoor areas without supervision by staff members or other responsible escort. Policies will also be provided to prevent abuse of the rights and property of other residents.

(2) All assigned staff members and consultants to the unit have documented training in the care and handling of Alzheimer's residents, including at least:

- (A) eight hours of orientation to cover the following:
 - (i) facility Alzheimer's policies;
 - (ii) etiology and treatment of dementias;
 - (iii) stages of Alzheimer's disease;
 - (iv) behavior management; and
 - (v) communication; and

(B) four hours of the required annual continuing education shall be in Alzheimer's disease or related disorders.

(3) A social worker, certified by the State of Texas, is utilized as Community/Family Support Coordinator whose functions shall include:

- (A) evaluation of resident's initial social history on admission;
- (B) utilization of community resources;
- (C) conducting quarterly family support group meetings; and
- (D) identification and utilization of existing Alzheimer's network.

(4) Residents are provided privacy in treatment and in care for his or her personal needs.

(5) Alzheimer's units located as a part of a facility as a distinct area from the normal resident population shall be provided with the following:

(A) Living rooms, day rooms, lounges, sun rooms, etc., shall be provided on a sliding scale as follows:

erwise served by bathing facilities directly accessible from resident bedrooms; and

(iii) one bathing unit is required in adult day health care facilities.

(D) Water closets and lavatories shall be provided at a minimum rate of:

- (i) one for each eight beds in nursing/custodial care homes;
- (ii) one for each six beds in personal care homes; and
- (iii) one for each 15 cli-

ents in adult day health care facilities.

(E) In all facilities a lavatory shall be provided in or adjacent to each area having a water closet.

(F) A monitoring station for staff shall be provided with the following:

- (i) writing surface such as a desk or built-in counter top;
- (ii) chair;
- (iii) task illumination;

(iv) communication system such as telephones or intercom to the main staff station of the facility; and

(v) storage for resident records such as a lockable metal cabinet or storage closet.

(G) Two remote exits must be provided in order to meet Life Safety Code requirements.

(H) Control doors, if used for security of the residents, shall be similar to smoke doors, i.e., be 44 inches in width each leaf, and swing in opposite directions. A latch or other fastening device on a door shall be provided with a knob, handle, panic bar, or other simple type of releasing device, the method of operation of which is obvious, even in darkness.

(I) Locking devices may be used on the control doors provided the following criteria are met.

(i) The building must have a complete sprinkler system and/or a complete fire alarm system including a corridor smoke detection system or smoke detectors located in each resident bedroom, which are interconnected into the fire alarm system.

(ii) The locking device must be electronic and shall be released when the following occurs:

(I) upon activation of the fire alarm or sprinkler systems;

(II) power failure to the facility; and

(III) by pressing a button located at the main staff station and at the monitoring station.

(iii) Key pad or buttons may be located at the control doors for routine use by staff for service.

(iv) Upon loss of primary power, the control doors, if not in an exit access, may automatically reset on emergency power. There must be at least two remote exits (on each side of the control doors) which meet all of the requirements for exits, i.e., proper width of egress, proper size of exterior doors, according to the 1985 Life Safety Code.

(6) Activity and recreational programs will be provided and utilized to the maximum extent possible for all residents in order to promote physical well being and help with behavior management. The program provided must be tailored to the individual resident's needs, being appropriate for his or her specific impairment and stage of disease.

(7) Access to outdoor areas must be provided and such areas must have suitable walls or fencing that do not allow climbing or present a hazard.

(8) Any security measures taken to provide for the safety of wandering patients should be as unobtrusive as possible.

(9) Toxic garden plantings shall be prohibited.

(b) Admission criteria for Alzheimer's units. Residents eligible for admission to Alzheimer's units will have a diagnosis of Alzheimer's disease or related dementing disorders.

(c) Patients rights. Understanding that security measures to prevent wandering may infringe on resident rights, care must be exercised in the use of physical restraint or barriers, or chemical restraint. The need for admission to the Alzheimer's unit must be documented by the attending physician. The specific purpose and time-limited orders for any additional physical or chemical restraint must be written and renewed according to facility policy. The frequency of such renewal shall not exceed 60 days in a nursing facility and 90 days in adult day health care facilities, and personal care facilities.

(d) Staffing.

(1) Specially trained staff will be maintained and assigned exclusively to the Alzheimer's unit. Although emergency scheduling may require substitution of staff, every effort should be made to provide residents with familiar staff members in order to minimize resident confusion. Staff training will meet at least the minimum requirements in §145.303(b) of this title (relating to General Requirements for a Certified Facility).

(2) Required overall minimum staffing ratios for direct care in certified Alzheimer's units in nursing facilities are as follows:

SHIFT	STAFF : RESIDENTS
7:00 a.m. - 3:00 p.m. (Day)	1 : 6
3:00 p.m. - 11:00 p.m.	1 : 10
11:00 p.m. - 7:00 a.m.	1 : 18

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Subchapter L. Provisions Applicable to Facilities Generally

• 25 TAC §§145.321-145.327

The new sections are adopted under the Health and Safety Code, Chapter 242, which provides the Board of Health (board) with the authority to adopt rules concerning nursing facilities and related institutions; and §12.001 which provides the Board with authority to

adopt rules to implement every duty imposed on the board, the department and the commissioner of health.

§145.323. Procedures for Inspection of Public Records.

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

(b) The Bureau of Long Term Care (bureau), Texas Department of Health (department), will be responsible for the main-

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tenance and release of records on licensed facilities; and other related records.

(c) The application for inspection of public records is subject to the following criteria.

(1) The application shall be made to the Bureau of Long Term Care, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

(2) The requestor shall identify himself/herself.

(3) The requestor shall give reasonable prior notice of the time for inspection and/or copying of records.

(4) The requestor shall specify the records requested.

(5) On written applications, if the bureau is unable to ascertain the records being requested, the bureau may return the written application to the requestor for further specificity.

(6) The bureau shall provide the requested records as soon as possible. However, if the records are in active use, or in storage, or time is needed for proper deidentification or preparation of the records for inspection, the bureau shall so advise the requestor and set an hour and date within a reasonable time when the records will be available.

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

(e) Records maintained by the bureau are open to the public, with the following exceptions:

(1) incomplete reports, audits, evaluations, and investigations made of, for, or by the department are confidential;

(2) reports of abuse and neglect are confidential to the extent authorized by Subchapter G of this chapter (relating to Abuse, Neglect, and Exploitation; Complaint and Incident Reports and Investigations);

(3) all names and related personal, medical, or other identifying information about a resident are confidential;

(4) information about any identifiable person which is defamatory or an invasion of privacy is confidential;

(5) information identifying complainants or informants is confidential;

(6) itineraries of surveys and inspections are confidential because of the confidentiality requirements of unannounced inspections in Subchapter F of this chapter (relating to Inspections, Surveys, and Visits); and

(7) to implement this subsec-

tion, the bureau may not alter or deidentify original records. Instead, the bureau will make available for public review or release only a properly deidentified copy of the original record.

(f) The bureau will charge for copies of records upon request.

(1) If the requestor simply wants to inspect records, the requestor will specify the records to be inspected and the bureau will make no charge for this service, except where the bureau chief determines that a charge is appropriate based on the nature of the request.

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

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

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

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

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

§145.324. Time Periods for Processing Licenses for Long Term Care Facilities.

(a) Generally.

(1) The Texas Department of Health (department) considers an application as being received for processing if the department receives the application within 60 days prior to the requested date of the issuance of the license.

(2) The department considers an application as being complete when all requirements for licensing have been met, including compliance with standards. If an inspection for compliance is required, the application is not complete until the inspection has occurred and reports reviewed and the applicant complies with the standards. If

the department notifies an applicant that an application is not complete, the time frame from this notice to the time that an application is complete is not included in this section.

(3) The date of receipt of an application is the date received in the Operations Division, Bureau of Long Term Care, Texas Department of Health.

(b) First time period. The first time period is a time from the date of receipt of an application to the date of issuance of a written notice outlining the reasons why the application is unacceptable. The time period is 30 days for each of the following categories: initial application; change of ownership; renewal; and increase in capacity.

(c) Second time period. The second time period is the time from the date of receipt of a completed application to the date of issuance of the license. The issuance of the license constitutes the department's official written notice to the facility of the acceptance and filing of the application. The time period is 30 days for each of the following categories: initial application; change of ownership; renewal; and increase in capacity.

(d) Reimbursement of fees.

(1) In the event the application is not processed in the time periods as stated, the applicant that is a small business as defined in Texas Civil Statutes, Article 6252-13b.1, has a right to request of the program director full reimbursement of all filing fees paid in that particular application process. If the program director does not agree that the established periods have been violated or finds that good cause existed for exceeding the established periods, the request will be denied.

(2) Good cause for exceeding the period established in considered to exist if:

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

(B) another public or private entity used in the application process caused the delay; or

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

(3) If the request for full reimbursement is denied, the applicant may appeal directly to the commissioner of health for resolution of the dispute. The procedure for the appeal is that the applicant shall send a written statement to the commissioner describing the request for reimbursement and the reasons for it. The program also may send a written statement to the commissioner describing the program's rea-

sons for denying reimbursement. The commissioner shall make a timely decision concerning the appeal and notify the applicant and the program in writing of the decision.

(4) Time periods involved in contested case hearings will be the periods described in §1.34 of this title (relating to Time Periods for Conducting Contested Case Hearings).

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on April 9, 1993.

TRD-9321493

Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

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For further information, please call: (512) 834-6770

Subchapter A. Introduction

The Texas Department of Health (department) adopts the repeal of existing Chapter 145 and new §§145.1-145.3, 145.11-145.21, 145.41-145.43, 145. 61-145.73, 145.92-145.105, 145.131-145.132, 145.141-145.142, 145.161-145.174, 145.191-145.192, 145.211-145.217, 145.231-145.234, 145.236-145.238, 145.261-145.263, 145.281-145.287, 145.301-145.304, and 145.321-145.327 concerning nursing facilities and related institutions. Sections 145.2-145.3, 145.11-145.13, 145.15-145.19, 145.41-145.43, 145.61-145.65, 145.70-145.71, 145.73, 145.92-145.93, 145.97, 145.99, 145.101, 145.105, 145.131-145.132, 145.141-145.142, 145.164, 145.168, 145.170, 145.172-145.173, 145.192, 145.215-145.216, 145.231-145.233, 145.236, 145.284-145.285, 145.303-145.304, and 145.323-145.324 are adopted with changes to the proposed text as published in the October 20, 1992, issue of the *Texas Register* (17 TexReg 7309). Section 145.105 is adopted without changes as published in the October 30, 1992 issue of the *Texas Register* (17 TexReg 7645). Sections 145.1, 145.14, 145.20-145.21, 145.66-145.69, 145.72, 145.94-145.96, 145.98, 145.100, 145.102-145.104, 145.161-145.163, 145.165-145.167, 145.169, 145.171, 145.174, 145.191, 145.211-145.214, 145.217, 145.234, 145.237-145.238, 145.261-145.263, 145.281-145.283, 145.286-145.287, 145.301-145.302, 145.321-145.322, and 145.325-145.327 are adopted without changes and will not be published. The department is withdrawing proposed §145.22 concerning financial disclosure because comments received on the proposal have convinced the department that the rule is inappropriate and should not be adopted. The department is withdrawing proposed new §145.91 because the provisions in this section have been combined with sec-

tion 145.92 for clarification; accordingly, it is unnecessary to adopt §145.91. Finally, the department is withdrawing proposed §145.235 concerning administrative penalties because, as a result of comments received, the department has modified and repropoed the section, which was published in the March 30, 1993 issue of the *Texas Register* for public comment. The adopted sections concern licensing requirements for nursing facilities and related institutions and will replace, modify and update the licensing requirements for nursing facilities and related institutions in existing Chapter 145, which are being repealed in this issue of the *Texas Register*.

The department received numerous comments from groups, associations, agencies and individuals concerning the proposed new sections. A summary of the comments received, including the department's responses, is as follows.

COMMENT: §145.3. The definition of "controlling person" should distinguish the term from "principle stockholder" to conform term to definition in Texas Department of Human Services (TDHS) rules.

RESPONSE: The department's response is that it has deleted the definition of "controlling person" and replaced it with the more appropriate definition of "person with a disclosable interest". The department has made a corresponding change to the definition of "affiliate" and, also, has made corresponding changes in the rules wherever the term "controlling person" had appeared.

COMMENT: §145.3. Clarify definition of Life Safety Code because the code is referred to in the rules sometimes as National Fire Protection Association (NFPA) '101-85 and sometimes as NFPA 101-88. This is confusing. Also, the reference in the definition to Standard 101 is incorrect; NFPA standards are not the same as the code.

RESPONSE: The department disagrees because the definition complies with state law.

COMMENT: §145.3. Add definition of "National Electrical Code (NEC)" to mean the 1990 edition of National Electrical Code (NFPA 70-1990), adopted by the National Fire Protection Association, Inc., Batterymarch Park, Quincy, Massachusetts 02269. The definition is necessary because references to NFPA 70 in rules do not specify the appropriate revision.

RESPONSE: The department disagrees because the department needs the flexibility to use the latest edition.

COMMENT: §145.3. Add definition of "postpartum care" because term is used in standards for maternity facilities.

RESPONSE: The department disagrees because the definition is unnecessary.

COMMENT: §145.3. Clarify health or safety hazard provision in definition of "substandard resident care" because any deficiency could be a health or safety hazard. Limit definition to "immediate jeopardy to health and safety" to be consistent with Texas Department of Human Services definition in Title 40, Texas Administrative Code, §19.2203 (b)(1)(A) or

(B) **RESPONSE:** The department agrees and has clarified the definition to be consistent with § 19.2203.

COMMENT: §145.11. Criteria in §145.11 and related requirements in §§145.12-145.22 will cause increase in department staff to handle paperwork and approvals for license issuances. The department cannot be in a position of having undue delays in processing license issuances, renewals, or changes of ownership.

RESPONSE: The department's response is that the program is prepared to handle increased workload; however, the department has clarified the sections and has deleted the requirements concerning financial disclosure.

COMMENT: §145.11(a). Define "governmental unit".

RESPONSE: The department disagrees because "governmental unit" is already defined in §145.3.

COMMENT: §145.11(c)(1). Change the definition of "controlling interest."

RESPONSE: The department has changed "controlling interest" to "disclosable interest" to correspond to the changes in definitions in §145.3.

COMMENT: §145.11 (c)(2). Delete the provision concerning financial disclosure.

RESPONSE: The department has deleted this provision to correspond to the deletion of all of §145.20 concerning financial disclosure.

COMMENT: §145.11(c)(3). Define "no evidence of inability to comply".

RESPONSE: The department has decided to delete this provision because it is inappropriate.

COMMENT: §145.11(c)(7). Rule requires information which is difficult to obtain or not available.

RESPONSE: The department's response is that it has decided to delete this provision.

COMMENT: §145.11(e). Is the department going to change the 12 month time period for licenses, since this time period now conflicts with the Health Care Financing Agency's (HCFA) recent decision to delete time-limited agreements?

RESPONSE: The department disagrees because the 12-month licensing period is a state law requirement, while the HCFA ruling is a federal requirement.

COMMENT: §145.12. Add a paragraph to read; "Change of Administrator or Director. A facility that hires new administrator or director shall submit to TDH a completed application and administrative fee of \$20 no later than 30th day after date on which change became effective."

RESPONSE: TDH disagrees; however, there is appropriate language concerning this requirement in §145.13(a)(3).

COMMENT: §145.12. This rule will give the local health authority the right to use any building code. The use of different building codes at the local level will produce confusing and inconsistent building requirements across the state. Also, the local health authority can

mandate building requirements without being responsible for fiscal ramifications to Medicaid program. Conversely, Medicaid does not base reimbursement rates on what the local health authority requires. Facilities are caught in middle.

RESPONSE: The department's response is that it has no jurisdiction over local codes, ordinances, or regulations. Accordingly, no change has been made.

COMMENT: §145.12(1). Replace term "dated notice" with word "letter" because "letter" is more appropriate.

RESPONSE: The department disagrees but has clarified the term to read "dated written notice."

COMMENT: §145.12(1)(3) and (4). Paragraphs (1), (3) and (4) should have sentence at end stating, "The department will approve the application only if the facility is found to be in compliance with the standards in this chapter."

RESPONSE: The department disagrees because such language would be redundant.

COMMENT: §145.12(4). This rule conflicts with HCFA's recent ruling on time limited agreements.

RESPONSE: The department disagrees for same reason as expressed in previous response to comment on §145.11(e).

COMMENT: §145.12(5). Reference paragraph (5) in §145.19, relating to Fees.

RESPONSE: The department disagrees but believes the reverse is appropriate by referencing §145.19 in §145.12(5).

COMMENT: §145.13. The department should look at history of specific facility at time of license renewal, and look at history of company when company is planning to operate additional facilities.

RESPONSE: The department disagrees with the comment because company history should be reviewed for new or renewal applications.

COMMENT: §145.13. The department should change disclosure requirements to comply with HCFA's recent decision to delete time-limited agreements.

RESPONSE: The department disagrees for the previous reasons stated in the responses to comments on §§145.11(e) and 145.12(4).

COMMENT: §145.13(c)(5). Delete requirement because too much government interference into facility affairs, not feasible to know extent of financing ahead of time, and no satisfactory evidence that facility can operate for 30 days.

RESPONSE: The department agrees and has deleted the provision.

COMMENT: §145.13(c)-(e). Information required on facilities serving persons with mental retardation or related conditions (ICF/MR) will be difficult to obtain or is unavailable.

RESPONSE: The department believes that owner is able to provide information however, the department has deleted the department approval requirement and the financial disclosure

provision, and has generally modified subsection (c).

COMMENT: §145.13(d). Clarify if rule requires information for the owning company or the individual facility making application.

RESPONSE: The department disagrees because the rule clearly refers to all entities listed in subsection (d).

COMMENT: §145.13(d). Add provision for input on history by state ombudsman in form of the department sending copy of license application to ombudsman.

RESPONSE: The department disagrees because this procedure can be handled by an inter-agency agreement.

COMMENT: §145.13(d). Disclosure requirements go back 5 years in contrast to 2 years in §145.17(e)(1)-(2). Requirements should be the same for each rule.

RESPONSE: The department agrees and has made the change. The department also has replaced the term "controlling person" with "disclosable interest".

COMMENT: §145.13(d). Disclosure requirements should apply only to corporations and not to individual managers.

RESPONSE: The department disagrees because it believes that information about both entities is relevant.

COMMENT: §145.13(d). Clarify provisions about what constitutes federal or state Medicaid or Medicare sanction(s) or penalties for ICF/MR facilities, how information is to be used, and whether survey results are public information.

RESPONSE: The department disagrees that sanctions and penalties need to be clarified. Also, survey results are public information to extent authorized by law.

COMMENT: §145.13(d)-(e). Should this information be submitted to the department with application and \$20 fee when there is change in administrator in a nursing facility, maternity facility, or ICF/MR facility?

RESPONSE: The department's position is that this is not necessary.

COMMENT: §145.13(e). Provision is confusing and it is unclear what information is being requested and for how far in the past. This information is adequately captured under other disclosure requirements. Information is duplicative, expensive, unnecessary restraint of trade, invasion of privacy, and causes delays.

RESPONSE: The department's position is that this information is relevant and necessary but has generally modified subsection (e) and has deleted the provision on approval.

COMMENT: §145.13(e)(5)-(6). Prior state approval is unfair trade restraint, no approval criteria is listed, and it will be impossible for businesses to privately negotiate with individuals or interested parties without negotiations becoming public record.

RESPONSE: The department's response is that it has deleted all of the approval require-

ments in paragraphs (5) and (6) but has retained the provision on the management contract and management company.

COMMENT: §145.13(e)(5). Add exemption from 5% requirement for non-profit boards, and require that changes in board members of non-profit entities should only have to be updated annually.

RESPONSE: The department's response is that it has decided to delete all of paragraph (5) concerning the 5% requirement; however, in the adopted paragraph (5), the department is requiring a licensee to notify the department within 30 days of any change of the manager or management services.

COMMENT/RESPONSE: §145.13(f). The department has modified the exemption provision by requiring disclosure relating to a facility manager.

COMMENT: §145.16(a). This rule is an unfair restraint of trade.

RESPONSE: The department disagrees because nontransferability is mandated under the Health and Safety Code, §242.033(c).

COMMENT: §145.16(a). It is erroneous to require a facility to delay sale of facility for 60 days or more to permit the department to approve purchase; expeditious changes sometimes are necessary. Also, purchases are complex business transaction in which it is usually impossible to specify an exact date of transfer on ownership so far in advance.

RESPONSE: The department agrees and has changed the 60 days to 30 days. Parties may proceed at their own risk.

COMMENT: §145.17. Rule needs to be more specific as to when license will be denied, who will make such a decision, and what is the appeal process.

RESPONSE: The department disagrees that the rules are not specific enough, "may" is appropriate instead of "shall", and the appeal process is covered in subsection (g).

COMMENT: §145.17. Change title of section to read, "Criteria for Denying a License or Renewal as evidenced by:"

RESPONSE: The department disagrees because title change would not clarify language.

COMMENT: §145.17. If license is not renewed, does the department have contingency plan for closing facility and relocating residents? A possible purchaser will have to comply with §145.11 on department approval of ownership change. Accordingly, there could be period of time when no license exists. What is the facility status in this time? If there is no purchase, who would oversee closure and when would it be done?

RESPONSE: The department believes that no change in the rule is necessary because state law adequately covers closure of a facility.

COMMENT: §145.17. Alternatives exist to denying a license or renewal, as follows: transfer residents that need it and monitor care of remaining and new residents; set limits on new admissions; and state establishment of pool of qualified administrators, nurses, etc., to contract with provider to operate or consult

on problem facility. This alternative has to consider limited financial resources of facility.

RESPONSE: The department believes that state law on trusteeship covers this. If funds are not available from facility, trust fund monies as authorized by state law could be used.

COMMENT: §145.17. Entire section is confusing and needs to be clarified because rule jumps back and forth between "may" and "shall"; avoids real core issue, i.e., considering patterns of operational history to determine whether to issue license or renewal; does not distinguish between history of operator and history of facility (former is relevant when company wants to operate additional facilities; latter is relevant at license renewal time); and is vague about process by which the department makes such decisions (who makes decision and on what criteria?).

RESPONSE: The department believes there is a clear distinction in seriousness of circumstances to justify the use of "may" and "shall"; however, the department has edited and rearranged the provisions in the section for clarity.

COMMENT: §145.17(b). Insert word "knowingly" in (b)(1)&(4) to distinguish honest error from deliberate fraud; and more specificity needed in (b)(5) regarding type of fraud (i.e., conviction of tax evasion or conviction for misappropriation of public funds).

RESPONSE: The department agrees with the first comment and has added "knowingly" but disagrees with second comment because such change is not necessary.

COMMENT: §145.17(c). This rule states that an applicant may not get license if applicant fails to disclose required information, and part of the required information is in §145.13(c)(5) concerning "sufficient financial resources". This term needs to be defined.

RESPONSE: The department's response is that it has deleted the financial assurance provisions of §145.13(c)(5) and §145.22.

COMMENT: §145.17(d)(3). Since administrative penalty appeal may not be resolved within 60 days, amend rule to require payment of penalty within 60 days of the date on which appeal has been exhausted.

RESPONSE: The department disagrees because the appeal process is set out in state law.

COMMENT: §145.17(e). Add word "significant" before word "evidence".

RESPONSE: The department disagrees because addition would not clarify language.

COMMENT: §145.17(e)(1). "New facility" is unclear in (e)(1), so, delete term and replace with "any additional facilities beyond the ones currently licensed"; and "court injunction" in (e)(1)(C) could include temporary injunction, so modify term to read, "Permanent court injunctions".

RESPONSE: The department disagrees with both comments because the rules already clarify "new facility" and "court injunction" suffices.

COMMENT: §145.17(e)(2)(G). It's unfair to deny license for unresolved audit exception during preceding two years because exceptions often take several years to resolve. Is

"unresolved final" inconsistent?

RESPONSE: The department believes that rule should remain as written but has deleted the word "final" from adopted § 145.17(a)(5)(G).

COMMENT: §145.17(e)(2)(D)-(G). Delete subparagraphs (D)-(G) because they do not have direct bearing on whether the operator is providing acceptable care.

RESPONSE: The department disagrees because actions in (D)-(G) do have bearing on resident care.

COMMENT: §145.17(e)(3). Facilities are very concerned about cases in which they honestly disagree with the surveyor about a proposed decertification action. Example: Surveyor recommends decertification. Facility disagrees and appeals. Before appeal is heard, department makes return visit and clears deficiency. Yet, facility record will show that it was recommended for decertification. Suggestion: add sentence to read, "Department will consider pending appeal by applicant, license holder, or manager of surveyor/investigator finding of non-compliance with standards; this includes pending appeals of felony criminal convictions".

RESPONSE: The department disagrees because recommended decertification is not a sanction or penalty.

COMMENT: §145.17(f). Rules may conflict with efforts by Department of Mental Health and Mental Retardation to downsize larger facilities which may allow for downsizing without using beds allocated under the bed plan.

RESPONSE: The department disagrees because it does not believe evidence exists to support the assertion of possible conflict.

COMMENT: §145.18(a). Add paragraph (3) to read, "Change of Administrator or Facility Director. New administrator or facility director shall submit application and \$20 fee to the department."

RESPONSE: The department agrees and has made the change.

COMMENT: §145.18(b)(1)-(2). Include more justification and specifics regarding trust fund fees for ICFMR facilities.

RESPONSE: The department disagrees because it believes that rule is adequate and reasonable.

COMMENT: §145.22. Numerous commenters expressed concern about this section and recommended its deletion, for the following reasons: it will be too costly to facilities; the department may not have legal authority to deny license based on financial assessment; the department may not have resources to assess a facility's ability based on financial assessment; the department should not even play that role because the department can take action under other parts of rules if it believes residents are in danger because insufficient money is being spent on them; the rule discriminates against small providers; facilities don't generally use audited financial statements; a new applicant, with no prior experience or history, should only have to provide a pro forma; an existing

provider, should be assessed only on track record of providing care; new ICFMR providers will be unable to provide this document. Audited financial statements do not necessarily ensure financial solvency; not clear how much financial security is enough; and the net worth of an owner does not matter if the owner decides not to provide necessary operating capital.

RESPONSE: The department's response is that the section is inappropriate and has withdrawn it in its entirety. The department also has deleted related provisions in §§145.11(c)(2) and 145.13(c)(5).

COMMENT: §145.41(b). Include a statement regarding male aides taking care of female residents.

RESPONSE: The department disagrees because it is inappropriate to include this provision in rules. Resident right provisions are specific enough.

COMMENT: §145.41(b). Include improvements in the use of restraints.

RESPONSE: The department disagrees because it is not necessary to address this comment in rules.

COMMENT: §145.41(b)(3)(E)(i). Rule conflicts with federal regulations which, as regards medical records, exclude weekends and holidays from 24-hour provision. The department should follow federal rule which is more fair, especially in cases where old clinical records may be stored off-site.

RESPONSE: The department agrees and has made the change.

COMMENT: §145.41(b)(3)(J)(iv). Add provision that resident be notified about any decision to transfer or discharge the resident.

RESPONSE: The department agrees and has added the provision.

COMMENT: §145.41(b)(4)(B). Do not require private pay providers to manage a resident's funds.

RESPONSE: The department agrees and has changed "must" to "may".

COMMENT: §145.41(b)(5). Retain provision in rules regarding freedom of choice for pharmacy series.

RESPONSE: The department agrees and has made the change by adding new subparagraph (c). The department has made a corresponding change in §145.41(e) by adding new paragraph (3).

COMMENT: §145.41(b)(6)(D)(v). The two references to TDHS should be to the department.

RESPONSE: The department agrees and has changed the references.

COMMENT: §145.41(e)(1)(B)(i). References to the HCFA Resident Assessment Instrument are inappropriate because it is a federal form and should not be used to assess residents for state licensing purposes.

RESPONSE: The department disagrees because it has authority to specify forms to be used.

COMMENT: §145.41(e)(1)(B)(iii). The requirement for immediate implementation of the use of the Comprehensive Assessment (Resident Assessment Instrument) for current nursing facility residents would create an undue hardship.

RESPONSE: The department agrees and has clarified the language.

COMMENT: §145.41(g). Include more education and more pay for those providing direct care services to residents.

RESPONSE: The department disagrees because rules should not address these issues.

COMMENT: §145.41(g). It is appropriate to require 24-hour nurse coverage and RN coverage 8 hours a day, 5 days a week, and that director of nursing be a RN; however, 7 day RN coverage is inappropriate because of RN shortage and would produce less benefit for patient care.

RESPONSE: The department disagrees because it believes rules are reasonable.

COMMENT: §145.41(g). Add "such as" at end of (1)(C)(v) and include list of qualified personnel; modify (1)(D)(i)(II) to be consistent with Omnibus Budget Reconciliation Act which allows waiver for 24-hour licensed nurse "and/or" seven day a week RN; and delete (1)(D)(iii) as the department does not have authority to regulate Medicaid or private pay charges.

RESPONSE: The department disagrees with first comment because it is not necessary to specify list in rules, but agrees with last two comments and has made appropriate changes.

COMMENT: §145.41(g). Give facilities phase-in time of two years to increase staffing to comply with new staffing requirements.

RESPONSE: The department disagrees because this provision would be inappropriate.

COMMENT: §145.41(g)(1)(F). What requirements are being referenced? This should follow OBRA requirements for granting waiver.

RESPONSE: The department position is that the requirements are the ones referenced in the section.

COMMENT: §145.41(g)(2)(B). There should be one nursing assistant for each six residents.

RESPONSE: The department disagrees because staffing needs vary with condition and needs of residents.

COMMENT: §145.41(g)(2)(E). How will this be determined? Include wording that facility must provide adequate staff to meet resident needs.

RESPONSE: The department's response is that it makes the determination and the appropriate wording on staff already exists in the rule.

COMMENT: §145.41(g)(2)(M). Add provision concerning licensed nurses entering or approving and signing nurses notes at least monthly.

RESPONSE: The department agrees and has added the provision.

COMMENT: §145.41(g)(3). This provision adopts §19.804 of the combined standards, but some parts of the standards should be deleted or modified as follows: delete §19.804(7)(A) references to "Medicaid" and "recipient"; change the word "rehabilitative" to "restorative" because rehabilitation is terminology of another profession and §19.1101 concerns rehabilitation; and in §19.810(b), "the authorizing physician" should be "an authorizing physician".

RESPONSE: The department does not believe that it is necessary to change §145.14(g)(3).

COMMENT: §145.41(h). At every meal the administrator and dietician should sit at a prominent place where they can be seen and they should eat each meal the residents eat.

RESPONSE: The department disagrees because this requirement would be unreasonable.

COMMENT: §145.41(i)(2)(A). 60-day requirement may be cost burden to some private pay residents. Change rule to say that orders shall be reviewed as necessary.

RESPONSE: The department disagrees because it considers the 60-day requirement to be reasonable.

COMMENT: §145.41(i)(2). In (2)(A), do not allow administrator to abdicate responsibility of pharmacy services. Change rule to say that facility shall provide pharmaceutical services to meet resident needs. In (2)(E), change words "keep at" to "provide to" because consultant pharmacist should not be required to keep records at facility.

RESPONSE: The department disagrees with both comments because administrator is not abdicating responsibility, and a record should be kept at facility.

COMMENT: §145.41(i). Concerning the reference to TDHS §19.1301, change the requirements for licensed only facilities to read, "The facility shall assist the resident in obtaining routine drugs and shall assist the resident in obtaining routine drugs and biologicals and make readily available emergency drugs. Also, retain the provision in the existing rules on freedom of choice pharmacy services.

RESPONSE: The department agrees with both comments and has clarified the requirements by deleting the reference to §19.1301 and replacing it with specific language on drugs in new paragraph (2).

COMMENT: §145.41(n). Add provisions for a treatment or examination room.

RESPONSE: The department disagrees that these changes are necessary.

COMMENT: §145.41(o). Combine (3)(B) and (C) since they duplicate each other; change (3)(C)(vi) to require facility to notify the department if the facility is without administrator for 30 days; and add to (4)(D) a provision about the current care plan.

RESPONSE: The department agrees with first comment, disagrees with second comment because the provision is unnecessary; and agrees with last comment.

COMMENT: §145.41(o). Delete (4)(G)(i)(III) as it duplicates (II) and delete requirement in

(9)(D)(i)(III) as regards reporting of training coordinator's name.

RESPONSE: The department disagrees with first comment because there is no duplication, but agrees with second comment and has made the change.

COMMENT: §145.41(o)(7)(A). Change "medical record" to "clinical record" because more appropriate.

RESPONSE: The department agrees and has made the change.

COMMENT: §145.41(b)(2). Concerning the reference to TDHS §19.202, delete phrase "source of payment" in paragraph (2).

RESPONSE: The department disagrees because this is a legal requirement.

COMMENT: §145.41(b)(9). Concerning the reference to TDHS §19.210, retain provision concerning residents having right to work in facility.

RESPONSE: The department agrees and has made the change.

COMMENT: §145.41(b)(6)(D)(iv). Concerning the reference to TDHS §19.212, do not delete this provision in its entirety.

RESPONSE: The department agrees and has made appropriate changes. The department has clarified the section further by adding "any representative of the department or any other agency with authority".

COMMENT: §145.41. Concerning the reference to TDHS §19.214, retain the provisions concerning the resident right to have personal property.

RESPONSE: The department agrees and has retained this provision in adopted §145.41(b)(14).

COMMENT: §145.41. Concerning the references to TDHS §§19.215, 19.218, and 19.219, retain these provisions.

RESPONSE: The department agrees and has retained the provisions in adopted §145.41(b)(15)-(17).

COMMENT: §145.41. Concerning the reference to TDHS §19.1201, retain the provision that the facility must assist residents in obtaining routine and 24-hour emergency dental care.

RESPONSE: The department agrees and has retained the provision in adopted §145.41(k)(1)(A).

COMMENT: §145.41. Concerning the reference to §19.1301(1), add a provision about the use of unlicensed personnel such as nursing or medication aide students.

RESPONSE: The department agrees and has added an appropriate provision in adopted §145.41(l)(2)(A).

COMMENT: §145.42(a). Purpose cannot be accomplished because cost would be prohibitive and force a number of facilities to close their doors. Penalties were never intended to apply to ICF/MR facilities because of inequity of costs on large and small facilities, ICF/MRs do not have financial resource to pay such penalties, and exemption of state facilities is unfair.

RESPONSE: The department response is that it is going to repropose the penalty provisions with changes.

COMMENT: §145.42(d). Clarify "new provider", and in (d)(1), change term "health survey" to "life safety code survey" for clarity.

RESPONSE: The department agrees and has made the changes.

COMMENT: §145.42(d)(3). Do not require training schedule to be on a monthly basis.

RESPONSE: The department agrees and has made the change.

COMMENT: §145.42(e)(3). Clarify "physical restraints" to distinguish them from chemical, mechanical, or manual restraints.

RESPONSE: The department agrees and has clarified the term.

COMMENT: §145.42(e)(4)(C). New requirement for automatic stop orders is inappropriate return to medical model for ICF/MR facilities. Professional staff property monitoring physician orders should suffice.

RESPONSE: The department disagrees because it considers the requirement to be appropriate.

COMMENT: §145.42(e)(8)(A)-(D). A number of commenters expressed concerns about this rule, as follows: requirements will reduce drowning but is too stringent and restricts residents' ability to be near water; staff to client ratios unclear for in-water activities as opposed to at-site activities; provider will have to employ a licensed swimming instructor to accompany residents on all "outings"; providers will discontinue "outings"; requiring policies and procedures for all sites removes flexibility; assessment of each aquatic environment and review of each client's medical condition as regards risk of drowning in each specific environment will be erroneous and costly; and proper monitoring and safety measures should suffice.

RESPONSE: The department agrees and has made appropriate changes.

COMMENT: §145.43. The Health and Human Services Commission has requested that the department modify this rule. In addition, a number of commenters stated that maternity facility regulation is necessary but they objected to the new standards for the following reasons: rules are too broad in scope; more time is needed for review and comment and input by affected providers, residents, and families; will be undue burden on non-profit facilities; will increase cost of maternity care and adoptions; duplication of services for maternity homes which are associated with adoption agencies licensed as child placing agencies by Department of Protective and Regulatory Services; maternity facilities provide residential and not health services to pregnant women; pregnancy is not illness or disability; medical services are provided away from facility, so medical model is inappropriate; strict interpretation of rules will cover foster homes, potential adoptive parent homes, shelters for homeless, battered women's shelters, and many crisis pregnancy services operated by religious groups.

RESPONSE: The department, in response, agrees that the Health and Safety Code, Chapter 242, requirements are not appropriate for maternity homes; residents are well and alert and need no personal services; medical services are not provided; and this is not a long term care situation because residents are usually in their third trimester. Accordingly, the department has modified §145.43 to reflect the standards as written in the existing rules.

COMMENT: §145.61. Sections 145.61-145.73 seem to mean that in the event that new construction, even of a single room, increases the overall size of a building and exceeds \$25,000, the entire facility and not just newly constructed single room will be required to meet most recent Life Safety Code. If this is not so, clarify rule to state that it applies only to newly constructed part of building.

RESPONSE: The department's position is that construction of single room does not mean that entire facility has to meet code, and the rules as written convey that intent. Accordingly, no change is necessary.

COMMENT: §145.61(a). Clarify the references.

RESPONSE: The department's response is the references do not need to be clarified because they comply with state law.

COMMENT: §145.61(b). Clarify the language by adding to end of sentence the provision, "and the requirement of §145.41(n) of this chapter".

RESPONSE: The department agrees and has added the language.

COMMENT: §145.61(e). An engineer and architect are not necessary. A nursing facility and not a commercial building is being built. Standard building codes will protect the integrity of the structure.

RESPONSE: The department disagrees because the rule complies with state law.

COMMENT: §145.63(g). Is the Department of Licensing and Regulation responsible for enforcing American with Disabilities Act requirements instead of State Board of Purchasing and General Services Commission?

RESPONSE: The department's response is that it is responsible for enforcing state law and the Justice Department is responsible for ADA enforcement.

COMMENT: §145.64. Change reference in introductory paragraph to §145.141 and define "individuals" in (3)(A) and (B) because they could be residents, staff and/or visitors.

RESPONSE: The department disagrees because the reference is correct and it is not necessary to define individuals.

COMMENT: §145.65(10). Language on interior finishes is misleading and needs to be clarified.

RESPONSE: The department agrees and has changed the language in accordance with commenter's recommendations.

COMMENT: §145.67(m). Describe "NFPA Standard 10" more clearly as "NFPA 10 -

Standard for Portable Fire Extinguishers 1990 Edition"; and limit top of extinguisher to 48 inches in (m)(4) to agree with ADA dimensions.

RESPONSE: The department disagrees because rule complies with state law and ADA does not mention mounting height of extinguishers.

COMMENT: §145.68(b). NFPA 99 should be NFPA 56C.

RESPONSE: The department disagrees because NFPA 99 is correct.

COMMENT: §145.69(f)-(g). In absence of local building code, allow any of three model codes (Standard, Uniform, National) but require consistency in the series.

RESPONSE: The department's response is that it believes the rule, as written, allows any of three model codes to be used.

COMMENT: §145.70(1)(F). The parenthetical statement at the end of the first sentence should read, "(For purposes of conforming to licensure requirements, an operating system providing water from 100 degrees to 115 degrees Fahrenheit will be acceptable)".

RESPONSE: The department agrees and has made the change.

COMMENT: §145.70(1)(G). replace "handicapped standards" with more appropriate "persons with disabilities". Also, in (2)(A), replace "Heating, Ventilating, and Air Conditioning Guide of ASHRAE" with more appropriate "NFPA 90A and NFPA 90B"; in (4)(A)(i), replace "Texas Department of Insurance" with more appropriate "Commission on Fire Protection", or delete provision entirely because it is required by NFPA 13 which is cited in (4)(A).

RESPONSE: The department agrees with comment on (1)(G), disagrees on (2)(A) because both documents are required, and disagrees on (4)(A)(i) because the Commission on Fire Protection is inappropriate.

COMMENT: §145.71(d)(2)(C). Clarify language by modifying it to read, "Recommended minimum lighting levels can be found in The Illuminating Engineering Society (IES) Lighting Handbook, latest edition, and in §145.41(n) in this chapter".

RESPONSE: The department agrees and made the change but also has deleted "recommended" because lighting levels in handbook are recommended levels.

COMMENT: §145.71(d)(2)(C). Replace "recommended" with "required" because there should be a minimum lighting level, and replace "latest edition" with actual year for specificity.

RESPONSE: The department disagrees because lighting levels in handbook are recommended, and the reference to the latest edition allows the department to have flexibility.

COMMENT: §145.71(d)(2)(C). Lighting handbook reference not adequate because handbook contains different categories of recommended lighting levels. Rule should include guideline table from 1992 Federal Minimum Construction Guidelines which

references handbook but with greater specificity.

RESPONSE: The department disagrees because recommended levels do not need to be restricted by table.

COMMENT: §145.73. In introductory statement, clarify language by replacing "Americans with Disabilities Act" with "ANSI A17.1".

RESPONSE: The department agrees and has made the change.

COMMENT: §145.91. Several changes are needed for clarification: rewrite (b)(1)-(2) re-name NFPA 101 as Life Safety Code; re-name NFPA 101 Chapter 12 as Life Safety Code New Health Care Occupancies Chapter; rename NFPA 101 Chapter 21 as Life Safety Code Residential Board and Care Occupancies Chapter; rename NFPA 101, 1988 Edition as Life Safety Code as defined in §145.3, Definitions; and rename NFPA 70 National Electrical Code as National Electrical Code as defined in §145.3, Definitions.

RESPONSE: The department disagrees because NFPA references follow requirements in state law and federal standards.

COMMENT: §145.91. Combine this section with §145.92 since both deal with general information and the combination will clarify the rules.

RESPONSE: The department agrees and has combined the two sections into the final §145.92. Accordingly, the department has withdrawn the proposed adoption of §145.91 since it is no longer necessary to adopt the section.

COMMENT: §145.92(d)(2). Delete this requirement because it limits facility to cheaper and uglier surface because carpets can be abrasive and tile can be slippery.

RESPONSE: The department disagrees because rule is a reasonable one and is consistent with federal standards in this area.

COMMENT: §145.92(d)(4). This is an unacceptable requirement because the only ceilings that are cleanable are flat and painted. Existing blown acoustics would have to be removed.

RESPONSE: The department disagrees because this has not been a problem and acoustics can be cleaned.

COMMENT: §145.92(g). Raise maximum hot water temperature from 110 degrees to 125 degrees Fahrenheit, for several reasons: administrative penalty threshold level in schedule (Q.1) is 125 degrees; 110 degrees is not practical standard for hot water; soap clogs dishwasher at 110 degrees; temperature of 110 degrees does not burn skin; and maternity facilities may set water temperature at 125 degrees.

RESPONSE: The department disagrees because it considers the requirements to be reasonable and consistent with federal standards. Also, the department is repositing the administrative penalty schedule.

COMMENT: §145.92(k). The rule is acceptable but it should also include guideline table from 1992 Federal Minimum Construction Guideline.

RESPONSE: The department disagrees because it does not believe it is necessary to include guideline table.

COMMENT: §145.96(b). Revise (b) by requiring door release and air handler shut down just as in large facilities because smoke in small facility is just as deadly as in large facility.

RESPONSE: The department disagrees because revision is not necessary and could make facilities too institutional.

COMMENT: §145.99(b). Several changes are needed: revise (b)(1)(F)(i) to minimize smoke development because fire sprinkler protects property but not life; revise (b)(1)(G)(i) to require two remotely located primary means of egress from building because this is standard in all three model building codes; and replace confusing (b)(1)(G)(ii) entirely with standard requirements in NFPA 101-1988.

RESPONSE: The department disagrees because facilities have smoke detection systems and some facilities use Fire Safety Evaluation Systems (FSES).

COMMENT: §145.99(b)(2). Change second sentence covering living room space to read, "Living space can include one or more rooms or areas provided that the first such area is at least 80 square feet each".

RESPONSE: The department agrees and has made the change.

COMMENT: §145.105(b). Define fire drill in (b)(1) because (b)(4)(A) indicates that a fire drill is not always a rehearsal.

RESPONSE: The department disagrees because it considers the rule to be reasonable and sufficient as written.

COMMENT: §145.131. Make several changes: define Type A and Type B facilities described in (4)(A)-(D); redefine model building code references in (4) and (5) to include standard code by SBCCI because more Texas cities are standard code cities than uniform code cities; and rewrite construction standards for maternity facilities using NFPA 101-1988 and construction standards for ICF/MR facilities.

RESPONSE: The department disagrees because rule complies with state and local law. §145.131(b)(4). Use the 1985 edition of the Life Safety Code since the Health and Safety Code, §242.039, requires the 1985 edition. The department agrees and had made the changes.

COMMENT: §145.131(b)(5)(A)-(B). Replace the 1988 editions of the building and plumbing codes with the 1991 editions since they are the latest editions.

RESPONSE: The department disagrees since it has no jurisdiction over local ordinances.

COMMENT: §145.131(b)(6). Clarify "existing building".

RESPONSE: The department agrees and has clarified the term.

COMMENT: §145.132. Make several changes: revise (f)(4) by replacing "handicap standards" with more appropriate "disability

standards"; revise (i) (3) by changing mounting heights for extinguishers from 5 feet to 4 feet from floor to comply with ADA dimensions; revise (i)(4) replacing "NFPA 10A" with more appropriate "NFPA 10-Standard for Portable Fire Extinguishers"; and revise (k)(1)(E)(ii) by replacing "bedroom size" with "bedroom floor area" to better describe relation between floor and window dimensions (See Standard Building Code for SBCCI provisions).

RESPONSE: The department agrees with the first comment and has made the change; disagrees with second comment because ADA does not have this requirement; and agrees with remaining comments and has made the changes.

COMMENT: §145.132(i). Add paragraph (6) to cover storage and waste containers. These provisions are in existing rules and need to be retained.

RESPONSE: The department agrees and has made the addition.

COMMENT: §145.141(d)(9)(B). In (9)(B), define staff communication system for ICF/MR facility because a staff communication system is inappropriate in ICF/MR facilities because they are not large enough to require such a system. In many instances, there is only one person on duty.

RESPONSE: The department disagrees because the system is not a requirement, just information.

COMMENT: §145.142(a)(3)-(b)(1). The three-week notice is most unreasonable in that it would cost the facility untold amounts in interim financing. The department either should use city inspectors reports or have the facility hire a local engineer to complete the standard inspection form, but don't make the facility wait and pay.

RESPONSE: The department disagrees because it considers the rule to be reasonable and necessary.

COMMENT: §145.142(d). Delete rule because no need for feasibility inspection exists. Submission of plans for review, including fees, is already required by §145.12(5) and §145.19.

RESPONSE: The department disagrees because it believes that a need for such inspections does exist.

COMMENT: §145.161(a). Expand the rule to apply to other types of employees such as the Texas Rehabilitation Commission, the Texas Commission for the Blind, the Veteran's Administration, etc.

RESPONSE: The department disagrees because the issue already is addressed in §145.162 and Health and Safety Code, §242.154(f).

COMMENT: §145.161(a). Expand rule to address the high school diploma issue, including out-of-country high school diplomas.

RESPONSE: The department doesn't believe this is necessary because §145.164(B)(4) already covers high school diplomas and GED.

COMMENT: §145.168(a)(1)-(3). Make initial and renewal permits valid until the applicant's birthday.

RESPONSE: The department disagrees but has clarified the rules to comply with state law.

COMMENT: §145.170(b)(2). Increase clinical experience hours in basic training program from 10 hours to at least 30 hours.

RESPONSE: The department disagrees because it believes that no basis for an increase exists at this time.

COMMENT: §145.191(f)(2). Expand list of persons who should have opportunity to participate in inspections.

RESPONSE: The department disagrees because it believes that the list is adequate.

COMMENT: §145.192. Clarify rule by specifying that authority to make final determinations lies with Chief, Bureau of Long Term Care.

RESPONSE: The department disagrees because this is an internal procedure and does not need to be in rules.

COMMENT: §145.192(c). Change rule to require department to give facility written notice of additional violation within 10 working days of exit conference and for facility to reply within 10 working days of receipt before additional violation is added.

RESPONSE: The department agrees and has made the change.

COMMENT: §145.192(c). The current rules give facilities 10 days to return the deficiency sheet(s) with the plan(s) of correction for each deficiency to the department. This rule should be retained.

RESPONSE: The department agrees and has retained the rule.

COMMENT: §145.211. Clarify title of Subchapter G which covers §§145.211-145.217 by changing it to read, "Abuse, Neglect, and Exploitation; Complaint and Incident Reports and Investigations".

RESPONSE: The department agrees and has made the change.

COMMENT: §145.215(b). Replace "reported cases" and "reports" with "complaints" for clarity.

RESPONSE: The department agrees and has made the change.

COMMENT: §145.215(d). Insert "Complaint" before "Investigations" in first sentence for clarity.

RESPONSE: The department agrees and has made the change.

COMMENT: §145.215(f). Clarify rule by changing it to read, "If the initial phase of an incident or complaint investigation concludes that no abuse or neglect adversely affecting the physical or mental health or welfare of a resident has occurred, no further investigation will be undertaken".

RESPONSE: The department agrees and has made the change. The department also has made related changes to (b) and (d).

COMMENT: §145.215(g). Clarify first sentence by changing it to read, "In cases concluded to be abuse, neglect, or exploitation, the written report of the investigation, along with its recommendations, shall be submitted to the appropriate district attorney and law enforcement agency...request".

RESPONSE: The department agrees and has made the change.

COMMENT: §145.216(a). Clarify paragraphs (1)-(2) by deleting phrases "The department's" and "on cases concluded".

RESPONSE: The department agrees and has made the changes.

COMMENT: §145.217. The department has decided to delete the last two sentences of subsection (a) to have (a) follow more closely the requirements of the Health and Safety Code, and also to clarify §242.134. The department has also reworded (a) and combined (1) and (2) for clarity.

COMMENT: §145.231. The rules are not uniform or consistent and they do not name the department operating unit that will administer the program.

RESPONSE: The department disagrees as this is an internal administrative procedure which does not need to be included in the rules.

COMMENT: §145.231. New rules fail to assure that punishment fits crime and that various existing enforcement options will be coordinated with the Department of Human Services and the Attorney General to avoid duplication of penalties.

RESPONSE: The department disagrees because enforcement options presently are being coordinated with TDHS and AG.

COMMENT: §145.231. Need equitable enforcement system to penalize substandard care and promote quality care. Proposed rules, however, establish system which could result in imposition of multiple penalties by department, AG, and TDHS, which could cripple a facility. Agencies should adopt mechanisms to provide for coordinated assessment of penalties to prevent simultaneous assessment.

RESPONSE: The department agrees that penalty provisions need to be coordinated with other agencies.

COMMENT: §145.231(a)(3). Clarify language about who sends notice letter, what is time frame, review panel, facility being notified at exit of action.

RESPONSE: The department agrees that language requires clarification and has done appropriate editing in (3) and (1).

COMMENT: §145.231(b). Rewrite (b) using federal survey procedure language. Proposed (b) indicates that a simple violation could invoke punitive action. Rule should comport with §145.231(a) which indicates that more than simple violation is necessary.

RESPONSE: The department disagrees because it considers the rule to be fair and reasonable; however, the department has clarified (b) by changing "recommend" to "authorized".

COMMENT: §145.232 and 145.233. Clarify "serious violation" to ensure due process and to remove ambiguity. There is too much latitude, which fosters inconsistent application of rule.

RESPONSE: The department agrees that the term needs to be clarified in §145.233 concerning the more serious violation of revocation and has done so by adding new (b) on criteria for revocation. The department has also clarified §145.232 and §145.233 by changing "recommend" to "suspend" in §145.232, changing "recommend" to "revoke" in §145.233, and requiring notice to be sent by certified mail in §145.233.

COMMENT: §145.232 and §145.233. Clarify rules about what happens if a facility appeals to court a department decision to suspend license. Is suspension in effect during appeal? What is status of facility during suspension? Will it have to close? Will it continue to receive medicaid funding?

RESPONSE: The department disagrees that the rules need to address these issues.

COMMENT: §145.234. Establish specific referral criteria to assure fair notice and due process.

RESPONSE: The department disagrees because it considers the language to be sufficient.

COMMENT: §145.235. Numerous commenters expressed objections and concerns over the administrative penalty provisions and schedule, as follows: monetary penalties do not achieve compliance; the department should emphasize alternatives such as state directed plans of correction; Health and Safety Code does authorize imposition of administrative penalties, but does not require that fines be routine method in all cases; penalty system is inappropriate for maternity facilities; present remedies are adequate for ICF/MR facilities; application of penalties to ICF/MR facilities will be excessively costly; penalties will decrease funds for resident care; small facilities will have to fold; large facilities will cut services to pay penalties; surveyors generally lack experience to use discretion that penalty schedule requires; surveyors are inconsistent in application of penalties; existing penalties and sanctions are adequate and not fully used; retain language in existing penalty rules on allowance of warnings, referencing licensing standards and waiver of administrative penalties when other penalties are imposed; state schools and MHMR facilities should not be exempt; too much discretion and inconsistency in survey process already; surveyors and government agencies should be fined when they are inconsistent and waste taxpayers dollars on hearings on inconsistencies; House Bill 7 reorganization is not final; the department will need more staff to implement system and to handle appeals; no proof that penalties are effective; questionable if Medicaid funds can be used to pay penalties; system based on fallacy that nursing facilities and ICF/MR facilities operate same; conditions warranting penalties include ones which are not part of ICF/MR standards and include others which contradict standards; pattern of violations necessary to warrant penalties is not defined;

occurrence of the condition is not defined, put time limit on occurrences; pattern of violations must be established; list of conditions contradicts rule because it includes conditions which do not constitute health and safety hazards; needs to be easily understood by providers and surveyors; should address issue of bad actors leaving program; should consider positive effects on delivery of quality care of such current initiatives as application training for ICF/MR providers; should more clearly explain that penalties generally will be assessed only after a facility violates a standard repeatedly; rule should clearly describe, with examples, the situations in which a single violation justifies a penalty, i.e., when a consumer is in immediate danger of a health and safety risk; penalties should be based on number of beds in facility so that system will be fair to small and large providers; department should obtain an attorney general opinion on the applicability of the administrative penalties to ICF/MR Facilities; since group homes operated by TDMHMR will be exempt, this will create major problem in that there will be differing application of standards in different settings; "First occurrence" is not clearly defined (does first occurrence mean first offense or the first time the penalty is assessed?); it is not clear if there a time limit or do occurrences start over with a new owner; and a number of commenters had specific concerns and objections regarding the conditions and elements in the penalty schedule itself.

RESPONSE: The department's response is that it has considered all of the comments, withdrawn the proposed rule, and has re-proposed it with modifications in this issue of the Texas Register.

COMMENT: §145.236(d). Who is responsible for performing responsibilities, especially after TDH has closed facility, who pays staff, and does the department have authority to close facility?

RESPONSE: The department's response is that these responsibilities are specified in a court order.

COMMENT: §145.236(d)(2)(D). Clarify language on orderly closure and relocation of residents as well as effective date of denial by modifying language to read, "If license renewal is denied and there is no qualified purchaser for facility, the department must develop plan for orderly closure and relocation of residents.

RESPONSE: The department disagrees because this section applies to emergency closure only.

COMMENT: §145.236(d)(2)(F)(iii). Delete last sentence as it is redundant.

RESPONSE: The department agrees and has deleted the language.

COMMENT: §145.237. In (b), if any ombudsman, advocate, resident, etc. can cause a hearing to be held, what protects the facility against libelous actions? In (d)(2), why do relatives of each resident need to be informed, even if they are not involved? In (f), why would facility's administrator or personnel be excluded from open hearing?

RESPONSE: The department disagrees because the rule follows state law.

COMMENT: 145.237(f). It is unreasonable to exclude facility personnel from a hearing that directly involves their welfare.

RESPONSE: The department disagrees because rule follows state law.

COMMENT: §145.238. Include time tables for hearings.

RESPONSE: The department disagrees because it believes time tables to be inappropriate.

COMMENT: §145.285. Clarify and strengthen plan of care provision by adding phrase to read, "and provisions of § 145.283 of this title (relating to Plan of Care).

RESPONSE: The department agrees and has made the change.

COMMENT: §145.285. Clarify "records or respite care services" in the areas of clinical records and resident assessment requirements.

RESPONSE: The department agrees and has made appropriate changes.

The following agencies, associations and organizations commented on proposed Chapter 145: Texas Health Care Association; Bell and Associates, Inc.; Texas Association of Private Residential Providers; Texas Association for Homes for the Aging; United Health, Inc.; Living Centers of America; Levelland Nursing Home of Lubbock; Exceptional Living, Inc.; Educare Community Living Corporation; Hilltop Village of Kerrville; Skyview Living Center of San Antonio; Texas Department of Aging; Texas Department of Human Services; Texas Hospital Association; Anderson, Goodman and Wade; Independent Living Centers; Trinity Terrace of Fort Worth; Mission Road Development Center of San Antonio; Community Living Concepts, Inc.; River Gardens of New Braunfels; Boles Homes, Inc.; Lee & Beulah Moore Children's Homes; Sherwood & Myrtle Foster's Home for Children; Christian Child Help Foundation; Texas Baptist Children's Home; University of Texas Medical School at Houston; Methodist Home of Waco; Methodist Mission Home of San Antonio; New Horizons of Goldwaite; Texas Cradle Society; Bair Foundation; Texas Association of Licensed Children's Services; Lena Pope Home of Fort Worth; Saint Theresa's Home of Fort Worth; Blessed Trinity House; Settlement Home of Austin; Texas Council on Family Violence; Living Alternatives of Tyler; International Conference of Building Officials; Alvin Community College; Bitter Sweet Farms; Concept Six of Austin; ARC/Texas; Advocacy, Inc.; Community Residential Services Association of Texas; Volunteers of America; High Plains Health Facility of Wichita Falls; Agnes Dent Homes; Independent Horizons; Southern Concepts; Bridge, a Refuge for Woman; Burke Foundation; HEA Management Group, Inc.; Texas Council of Community Mental Health and Mental Retardation Centers, Inc.; and Midland Association of Retarded Citizens. The Honorable Judith Zaffirini, State Senator, District 21, The Senate of the State of Texas, commented on the proposal. In addition, numerous individuals

commented on the proposed rules. The commenters ranged from those who opposed various sections and provisions in the proposal to those who supported various sections and provisions. Also, commenters expressed numerous concerns and made numerous suggestions for change throughout the proposed rules.

• 25 TAC §§145.1-145.3

The new sections are adopted under the Health and Safety Code, Chapter 242, which provides the Board of Health (board) with the authority to adopt rules concerning nursing facilities and related institutions; and §12.001 of this title which provides the Board with authority to adopt rules to implement every duty imposed on the board, the department and the commissioner of health.

§145.2. Institutions Covered.

(a) The provisions of this chapter apply to the following types of institutions:

- (1) a nursing facility;
- (2) a maternity facility; and
- (3) a facility serving persons with mental retardation or related conditions.

(b) The term "nursing facility," when used in this chapter, means an establishment that provides food, shelter, and nursing care to four or more persons who are unrelated to the owner of the establishment and that provides minor treatment under the direction and supervision of a physician licensed by the Texas State Board of Medical Examiners, or other services that meet some need beyond the basic provision of food, shelter, or laundry. A nursing facility may be a building, which may consist of one or more floors or one or more units, or may be a distinct part of a hospital.

(c) The term "maternity facility," when used in this chapter, means a place or establishment that receives, treats, or cares for, overnight or longer, within a period of 12 months, four or more pregnant women or women who, within two weeks before the date of the treatment or care, gave birth to a child, not including a woman who receives maternity care in the place or establishment that is the home of a relative of the woman related within the third degree of consanguinity or affinity.

(d) The term "facility serving persons with mental retardation or related conditions," when used in this chapter, means an establishment that provides food, shelter, and services to four or more persons who are unrelated to the owner of the establishment and whose physical and mental condition requires institutional care; and that provides minor treatment under the direction and supervision of a physician licensed by the Texas State Board of Medical Examiners, or other services that meet some need beyond the basic provision of food, shelter, or laundry.

(1) A person receiving services in a facility serving persons with mental retardation or related conditions must have a diagnosis of mental retardation or a related condition as defined under paragraph (2) of this subsection. Facilities serving persons with other developmental disabilities as a primary diagnosis do not fall under the scope of these standards.

(2) The term "related condition" means a severe, chronic disability that meets all of the following conditions:

(A) a condition attributable to:

(i) cerebral palsy or epilepsy; or

(ii) any other condition including autism, but excluding mental illness, found to be closely related to mental retardation because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with mental retardation and requires treatment or services similar to those required for these persons;

(B) a condition manifested before the person reaches age 22 years;

(C) a condition likely to continue indefinitely; and

(D) a condition that results in substantial functional limitations in three or more of the following areas of major life activity:

- (i) self-care;
- (ii) understanding and use of language;
- (iii) learning;
- (iv) mobility;
- (v) self-direction; and
- (vi) capacity for independent living.

§145.3. Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Individual subchapters may have definitions which are specific to the subchapter.

Addition—The addition of floor space to an institution.

Administrator—The administrator of an institution.

Affiliate—With respect to a:

(A) partnership, each partner thereof;

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

(C) natural person which includes each:

(i) person's spouse;

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

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

Applicant—A person required to be licensed under Health and Safety Code, Chapter 242.

APTRA—The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a.

Attendant personnel—All persons who are responsible for direct and non-nursing services to residents of an institution. (Nonattendant personnel are all persons who are not responsible for direct personal services to residents.) Attendant personnel come within the categories of: administration, dietitians, medical records, activities, housekeeping, laundry, and maintenance.

Board—Texas Board of Health.

Care and treatment—Services required to maximize resident independence, personal choice, participation, health, self-care, psychosocial functioning and provide reasonable safety, all consistent with the preferences of the resident.

Controlled substance—A drug, substance, or immediate precursor as defined in the Texas Controlled Substance Act, Health and Safety Code, Chapter 481, as amended, and/or the Federal Controlled Substance Act of 1970, Public Law 91-513, as amended.

Convalescent home—A nursing facility.

Dangerous drug—Any drug as defined in the Texas Dangerous Drug Act, Health and Safety Code, Chapter 483.

Department—Texas Department of Health.

Drug (also referred to as medication)—A drug is:

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

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

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

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

Establishment—A place of business or a place where business is conducted which includes staff, fixtures, and property.

Facility—A nursing facility, maternity facility, or a facility serving persons with mental retardation or related conditions licensed under this chapter as described in §145.2 of this title (relating to Institutions Covered).

Facility serving persons with mental retardation or a related condition—A facility as described in §145.2 of this title (relating to Institutions Covered).

Governmental unit—A state or a political subdivision of the state, including a county or municipality.

Hearing—A contested case hearing held in accordance with the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, and the department's formal hearing procedures adopted in Chapter 1 of this title (relating to Board of Health).

Incident—An unusual or abnormal event or occurrence in, at, or affecting the facility and/or the residents of the facility.

Inspection—Any on-site visit to or survey of an institution by the Texas Department of Health for the purpose of inspection of care, licensing, monitoring, complaint investigation, architectural review, or similar purpose.

Institution—An establishment as defined in the Health and Safety Code, §242.002, and includes a nursing facility, maternity facility, and a facility serving persons with mental retardation or a related condition, as these facilities are defined in §145.2 of this title (relating to Institutions Covered).

Legal guardian—A person lawfully invested with power and duty to take care of another person and manage the property and rights of that person who is considered incapable of administering his or her own affairs.

License—Approval from the Texas Department of Health to establish or operate an institution.

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

Life safety features—Fire safety components required by the Life Safety Code such as building construction, fire alarm systems, smoke detection systems, interior finishes, sizes and thicknesses of doors, ex-

its, emergency electrical systems, sprinkler systems, etc.

Local authorities—A local health authority, fire marshal, building inspector, etc. who may be authorized by state law, county order, or municipal ordinance to perform certain inspections or certifications.

Local health authority—The physician having local jurisdiction to administer state and local laws or ordinances relating to public health, as described in the Health & Safety Code, §§121.021 - 121.025.

Manager—A person having a contractual relationship to provide management services to a facility, but does not include a licensed nursing home administrator.

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

Maternity facility—A facility as described in §145.2 of this title (Institutions Covered).

Nursing care—Services provided by nursing personnel as prescribed by a physician, which services include, but are not limited to, promotion and maintenance of health; prevention of illness and disability; management of health care during acute and chronic phases of illness; guidance and counseling of individuals and families, and referral to physicians, other health care providers, and community resources when appropriate.

Nursing facility—A facility as described in §145.2 of this title (Institutions Covered).

Nursing home administrator—A person licensed by and in good standing with the Texas Board of Licensure for Nursing Home Administrators. The nursing home administrator is under the overall direction and control of and is responsible to the facility management and is responsible for planning, organizing, directing, and controlling the operation of a nursing facility, whether or not such individual has an ownership interest in such home and whether or not such functions are shared by one or more individuals.

Nursing personnel—All persons responsible for giving nursing care to residents. Such personnel includes registered nurses, licensed vocational nurses, therapists, medication aides, nurses aides, and orderlies.

Person—An individual, firm, partnership, corporation, association, or joint stock company, and includes a legal successor of those entities.

Person with a disclosable interest—A person with a disclosable interest is any person who owns five percent interest in any corporation, partnership, or other business entity that is required to be licensed

under Health and Safety Code, Chapter 242. A person with a disclosable interest does not include a bank, savings and loan, savings bank, trust company, building and loan association, credit union, individual loan and thrift company, investment banking firm, or insurance company unless such entity participates in the management of the facility.

Remodeling—The construction, removal, or relocation of walls and partitions, or construction of foundations, floors, or ceiling-roof assemblies, including expanding of safety systems (i.e. sprinkler systems, fire alarm systems), that will change the existing plan and use areas of the facility.

Renovation—The restoration to a former better state by cleaning, repairing, or rebuilding, e.g., routine maintenance, repairs, equipment replacement, painting.

Resident—An individual, including a patient, who resides in an institution.

Responsible party—An individual authorized by the resident to act for him or her as an official delegate or agent. Responsible party is usually a family member or relative, but may be a legal guardian or other individual.

Standards—The minimum conditions, requirements and criteria established in this chapter with which an institution will have to comply with in order to be licensed under this chapter.

Substandard resident care—

(A) a violation of a requirement which immediately jeopardizes the health or safety of a resident; or

(B) a violation or violations of one or more requirements which pose or did pose a health and/or safety hazard; or limits or limited the facility's capacity to render adequate care.

Universal precautions—The use of barrier precautions by facility personnel to prevent direct contact with blood or other body fluids that are visibly contaminated with blood.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on April 9, 1993.

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Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

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For further information, please call: (512) 834-6770

Subchapter B. Application Procedures

• 25 TAC §§145.11-145.21

The new sections are adopted under the Health and Safety Code, Chapter 242, which provides the Texas Board of Health (board) with the authority to adopt rules concerning nursing facilities and related institutions; and §12.001, which provides the Board with authority to adopt rules to implement every duty imposed on the board, the department, and the commissioner of health.

§145.11. Criteria for Licensing.

(a) A person or governmental unit, acting jointly or severally, must be licensed by the Texas Department of Health (department) to establish, conduct, or maintain a facility in this state.

(b) An applicant for a license must submit a complete application form and license fee to the department.

(c) An applicant for a license must affirmatively show that:

(1) the applicant, person with a disclosable interest, affiliate, and manager has had no conviction of a felony or crime involving moral turpitude in this state or any other state;

(2) the facility meets the standards of the Life Safety Code;

(3) the facility meets the construction standards in Subchapter D of this chapter (relating to Facility Construction); and

(4) the facility meets the standards for operation based upon an on-site survey.

(d) The applicant must provide all information requested on the application form and submit the appropriate fees as prerequisites for the department to conduct a feasibility inspection or plan review, as requested or required.

(e) A license shall be issued to a facility which meets all requirements of this chapter and shall be valid for one year. Each license shall specify the maximum allowable number of residents to be cared for at any one time. No greater number of residents shall be kept at any one time than is authorized by the license.

§145.12. Building Approval. All applications for license shall include written approval of the local fire authority having jurisdiction based on the facility and operation meeting local applicable fire ordinances; such approval shall be on forms or in a manner as determined by the Texas Department of Health (department). The local health authority may provide recommen-

dations regarding licensure utilizing the following procedure and process.

(1) **New facility.** The sponsor of a new facility under construction or a previously unlicensed facility will provide to the department a copy of a dated written notice to the local health authority that construction or modification has been or will be completed by a specific date. The sponsor will also provide a copy of a dated written notice of the approval for occupancy by the local fire marshal or local building code authority, if applicable. The local health authority may provide recommendations to the department regarding the status of compliance with local codes, ordinances, or regulations. Local health authority comments and recommendations must be received by the department within 10 days after the date of the sponsor's notice of the fire marshal or building code authority approval for occupancy. The local health authority may recommend that a state license be issued or denied; however, the final decision on licensure status remains with the department.

(2) **Resident increase.** The license holder shall request an application for increase in capacity from the department. The department shall provide the license holder with the application form, and the department shall notify the local fire marshal and the local health authority of the request. The license holder shall arrange for the inspection of the facility by the local fire marshal. Upon completion of the inspection, the license holder shall notify the local health authority and the department in writing if the facility meets local code requirements. The local health authority may provide recommendations to the department regarding the status of compliance with local codes, ordinances, or regulations. Local health authority comments and recommendations must be received within 10 days after the date of the facility's notice of the local fire marshal or building code authority approval. The local health authority may recommend that an increase in capacity be granted or denied; however, the final decision on the increase remains with the department. The department will approve the application only if the facility is found to be in compliance with the standards. Approval to occupy the increased capacity may be granted by the department prior to the issuance of the license covering the increased capacity after inspection by the department if standards are met.

(3) **Change of ownership.** The applicant for a change of ownership license will provide to the department a copy of a letter to the local health authority of the request for a change of ownership under §145.16 of this title (relating to Change of Ownership). The local health authority may provide recommendations to the department regarding the status of compliance with lo-

cal codes, ordinances, or regulations. Local authority recommendations must be received within 10 days of the dated notice from the new owner or date of change of ownership, whichever is later, if local health official recommendations are to be considered by the department.

(4) **Renewal.** The local health authority having jurisdiction shall receive a copy of the department's license renewal notice specifying the expiration date of the facility's current license. The local health authority may provide recommendations to the department regarding the status of compliance with local codes, ordinances, or regulations. The local authority may also recommend that a state license be issued or denied; however, the final decision on licensure status remains with the department. Local health authority comments and recommendations must be received at least 30 days prior to expiration of the license for consideration by the department.

(5) **Inspection/Plan Review.** Any existing building being considered for licensure must either submit plan for review and approval or request a feasibility inspection to be performed by a representative of the department to determine construction or renovation requirements. The fees for inspection/plan reviews shall be in accordance with §145.19 of this title (relating to Fees for Plan Reviews, Construction Inspection Services, and Feasibility Inspection Services).

§145.13. Applicant Disclosure Requirements.

(a) **Scope of section.** No person shall apply for a license, change of ownership, increase in capacity, or renewal of a license to operate or maintain a facility without making a disclosure of information as required in this section. The disclosure is required if the person is applying for a license for the first time or if the person owned, operated, or managed another facility in this or any other state, using the same or any other business name.

(b) **Disclosure form.** All applications shall be made on forms prescribed by and available from the Texas Department of Health (department). Applications include initial applications, change of ownership, and renewal applications. Each application must be completed in accordance with department instructions, and signed and notarized.

(c) **General information required.** An applicant shall file with the department an application which shall contain:

(1) the name of the applicant and, if an individual, whether the applicant has attained the age of 18 years;

(2) the type of facility;

(3) the location of the facility;

(4) the name of the administrator;

(5) evidence of the right to possession of the facility at the time the application will be granted, which may be satisfied by the submission of applicable portions of a lease agreement, deed or trust, or appropriate legal document. If the applicant is not the owner of the real estate, the lease agreement must clearly state that the applicant/lessee has the right to renovate, repair, and maintain the real estate as may be required to meet the licensing standards. The names and addresses of any persons or organizations listed as owner of record in the real estate, including the buildings and grounds appurtenant to the buildings, shall be disclosed to the department;

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

(7) the certificate of incorporation issued by the Secretary of State for a corporation or a copy of the partnership agreement for a partnership.

(d) **Disclosure requirements.** Applicants must disclose the following information for the two-year period preceding the application date, concerning the applicant, persons with a disclosable interest, facility lessor, officers, affiliates, and manager, without regard to whether the data required relates to current or previous events:

(1) denial or revocation of a license to operate a nursing facility, facility serving persons with mental retardation or related conditions, maternity facility, personal care facility, or similar facility in any state;

(2) federal or state Medicaid or Medicare sanctions or penalties;

(3) state or federal criminal convictions for any offense that provides a penalty of incarceration;

(4) federal or state liens;

(5) unsatisfied final judgments;

(6) operation of a facility that has been decertified in any state under Medicare or Medicaid;

(7) debarment, exclusion, or contract cancellation in any state from Medicare or Medicaid;

(8) eviction involving any property or space used as a facility in any state;

(9) unresolved final state or federal Medicare or Medicaid audit exceptions; or

(10) orders from any court restraining or enjoining the applicant, manager, or any person with a controlling

interest from operating a facility in any state.

(e) Ownership and management information required.

(1) Each applicant for a license to operate a facility shall disclose to the department the name and business address of:

(A) each limited partner and general partner if the applicant is a partnership;

(B) of each director and officer if the applicant is a corporation; and

(C) each person having a beneficial ownership interest of 5.0% or more in the applicant corporation, partnership, or other business entity.

(2) If any person described in this section has served or currently serves as an administrator, general partner, limited partner, trustee or trust applicant, sole proprietor, or any applicant or licensee who is a sole proprietorship, executor, or corporate officer or director of or has held a beneficial ownership interest of 5.0% or more in any other long term care facility, the applicant shall disclose the relationship to the department, including the name and current or last address of the facility and the date such relationship commenced and, if applicable, the date it was terminated.

(3) If the applicant or licensee is a subsidiary of another organization, the information shall include the names and addresses of the parent organization and the names and addresses of the officers and directors of the parent organization.

(4) If the facility is operated by, or proposed to be operated under, a management contract, the names and addresses of any person or organization, or both, having an ownership interest of 5.0% or more in the management company shall be disclosed to the department.

(5) The information required by this section shall be provided to the department upon initial application for licensure, and changes in the information shall be provided to the department on an annual basis, except that a licensee shall notify the department within 30 days of any change of the facility's manager or management services.

(f) Exemptions. The provisions of this section shall not apply to a bank, trust company, financial institution, title insurer, escrow company, or underwriter title company to which a license is issued in a fiduciary capacity except for provisions that require disclosure relating to the manager of the facility.

§145.15. Renewal Procedures and Qualifications.

(a) Each license issued under this chapter must be renewed annually. Each license expires 12 months from the date issued. A license issued under this chapter is not automatically renewed.

(b) Each license holder must, at least 45 days prior to the expiration of the current license, file an application for renewal with the Texas Department of Health (department). The application for renewal shall contain the same information required for an original application as well as payment of the annual licensing fees.

(c) The renewal of a license may be denied for the same reasons an original application for a license may be denied. See §145.17 of this title (relating to Criteria for Denying a License or Renewal of a License.)

§145.16. Change of Ownership.

(a) During the license term, a license holder may not transfer the license as a part of the sale of the facility. Prior to the sale of the facility, the license holder shall notify the Texas Department of Health (department) that a change of ownership is requested. The prospective purchaser shall submit to the department a complete application for a license under §145.11 of this title (relating to Criteria for Licensing) at least 30 days prior to the anticipated date of sale. The applicant shall meet all requirements for a license.

(b) Pending the review of the prospective purchaser's application, the license holder shall continue to meet all requirements for operation of the facility.

§145.17. Criteria for Denying a License or Renewal of a License.

(a) The Texas Department of Health (department) may deny a license or a renewal of a license if an applicant, manager, or affiliate:

(1) substantially fails to comply with the requirements described in §145.41 of this title (relating to Standards for Nursing Facilities);

(2) fails to provide the required information, facts and/or references;

(3) provides the following false or fraudulent information:

(A) knowingly submits false or misleading statements in the application or any accompanying attachment;

(B) uses subterfuge or other evasive means of filing;

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

(D) knowingly conceals a material fact; or

(E) is responsible for fraud;

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

(A) licensing fees as described in §145.18 of this title (relating to License Fees);

(B) reimbursement of emergency assistance funds within one year from the date on which the funds were received by the trustee in accordance with the provisions of §145.263(g) of this title (relating to Involuntary Appointment of a Trustee);

(C) administrative penalties within 60 days of the order assessing the penalties in accordance with §145.235 of this title (relating to Administrative Penalties); or

(D) franchise taxes;

(5) discloses any of the following actions within the two-year period preceding the application:

(A) operation of a facility that has been decertified and/or had its contract cancelled under the Medicare or Medicaid program in any state;

(B) federal or state Medicare or Medicaid sanctions or penalties;

(C) state or federal criminal convictions for any offense that provides a penalty of incarceration;

(D) federal or state liens;

(E) unsatisfied final judgments;

(F) eviction involving any property or space used as a facility in any state;

(G) unresolved state or federal Medicare or Medicaid audit exceptions; or

(H) suspension of a license to operate a health care facility, long term care facility, personal care facility, or a similar facility in any state;

(b) Concerning subsection (a)(5) of this section, the department may consider exculpatory information provided by the applicant, manager, or affiliate and grant a license under subsection (a) (5) if the department finds the applicant, license holder, manager, or affiliate able to comply with the rules in this chapter.

(c) The department shall not issue a license to an applicant to operate a new facility if the applicant discloses any of the following actions during the two-year period preceding the application:

(1) revocation of a license to operate a health care facility, long term care facility, personal care facility, or similar facility in any state;

(2) debarment or exclusion from the Medicare or Medicaid programs in any state; or

(3) a court injunction prohibiting the applicant or manager from operating a facility.

(d) The department shall not approve as meeting licensing standards new beds or the expansion of a facility serving persons with mental retardation or related conditions that participates in the medical assistance program under Title XIX of the Social Security Act, as provided by the Health and Safety Code, §222.042, unless:

(1) the new beds or the expansion was included in the plan approved by the Interagency Council on Intermediate Care Facilities for the Mentally Retarded (ICF/MR) in accordance with Health and Safety Code, §533.061; and

(2) the Texas Department of Mental Health and Mental Retardation has approved the beds or the expansion for certification in accordance with Health and Safety Code, §533.065.

(e) If the department denies a license or refuses to issue a renewal of a license, the applicant or licensee may request an administrative hearing in accordance with §145.238 of this title (relating to Administrative Hearings).

§145.18. License Fees.

(a) Basic fees.

(1) Initial and renewal license. The license fee shall be \$50 plus \$2 for each unit of capacity or bed space for which a license is sought. The fee must be paid with each initial application and annually with each application for renewal of the license.

(2) Increase in bed space. An approved increase in bed space is subject to an additional fee of \$2.00 for each unit of capacity or bed space.

(3) Change of administrator or director. A new facility administrator or director shall submit an application and a \$20 fee to the Texas Department of Health (department).

(b) Trust fund fee.

(1) In addition to the basic license fee described in subsection (a) of this section, the department has established a trust fund for the use of a court-appointed trustee as described in the Health and Safety Code, Chapter 242, Subchapter D.

(2) The trust fund will be established by charging and collecting an annual fee from each facility licensed under Health and Safety Code, Chapters 242 and 247. All facilities licensed as of May 1 of each year will be charged with a fee established by the department. The fee will be based on a monetary amount specified for each unit of capacity or bed space licensed. The initial amount will be calculated so as to establish a fund of \$100,000; each subsequent May 1, an annual amount will be determined by the department that will cause the unencumbered balance of the fund to equal \$100,000 based on the licensed facilities as of that May 1. In calculating the fee, the amount will be rounded to the next whole cent.

(c) Alzheimer's certification. In addition to the basic license fee described in subsection (a) of this section, a facility that applies for certification to provide specialized services to persons with Alzheimer's disease or related conditions under Subchapter K of this chapter (relating to Certification of Facilities for Care of Persons with Alzheimer's Disease and Related Disorders) shall pay an annual fee of \$100.

§145.21. Method of Payment. Payment of fees shall be by check or money order made payable to the Texas Department of Health. All fees are non-refundable except as provided by Texas Civil Statutes, Article 6252-13(b)(1).

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
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For further information, please call: (512) 834-6770

Subchapter C. Standards for Licensure

• 25 TAC §§145.41-145.43

The new sections are adopted under the Health and Safety Code, Chapter 242, which provides the Texas Board of Health (board) with the authority to adopt rules concerning nursing facilities and related institutions; and §12.001, which provides the Board with authority to adopt rules to implement every duty imposed on the board, the department, and the commissioner of health.

§145.41. Standards for Nursing Facilities.

(a) Definitions. The Texas Board of Health (board) adopts by reference 40 Texas Administrative Code (TAC) §19.101 (relating to Definitions), as amended October 1, 1992. These definitions shall be applicable only to this subchapter. If these definitions are in conflict with the definitions in §145.3 of this title (relating to Definitions), the definitions in this section shall control.

(b) Resident rights.

(1) Introduction. The Texas Board of Health (board) adopts by reference 40 TAC §19.201 (relating to Introduction), as amended October 1, 1992.

(2) Exercise of rights. The board adopts by reference 40 TAC §19.202 (relating to Exercise of Rights), as amended October 1, 1992.

(3) Notice of rights and services.

(A) The facility must inform the resident, both orally and in writing, in a language that the resident understands, of his/her rights and all rules and regulations governing resident conduct and responsibilities during the stay in the facility. Such notification must be made prior to or upon admission and during the resident's stay if changed.

(B) The facility must also inform the resident, upon admission and during the stay, in a language the resident understands, of the following:

(i) facility admission policies;

(ii) a description of the protection of personal funds as described in 40 TAC §19.204 (relating to Protection of Resident Funds); and

(iii) the Human Resources Code, Title 6, Chapter 102; or

(iv) a written list of the rights and responsibilities contained in the Human Resources Code, Title 6, Chapter 102.

(C) Receipt of information in subparagraphs (A)-(B) of this paragraph, and any amendments to it, must be acknowledged in writing. See subparagraph (H) of this paragraph concerning furnishing written description of legal rights.

(D) The facility must post a copy of each document specified in subparagraphs (A)-(B) of this paragraph in a conspicuous location. Additional posting responsibilities are identified in 40 TAC §19.1921(j) (relating to General Requirements for a Nursing Facility) concerning additional items that must be posted, and 40 TAC §19.208 (relating to Examination of Survey Results).

(E) The resident or his/her legal representative has the following rights:

(i) upon an oral or written request, to access all records pertaining to himself/herself, including current clinical records, within 24 hours, excluding weekends and holidays; and

(ii) after receipt of his/her records for inspection, to purchase photocopies of all or any portion of the records, at a cost not to exceed the community standard, upon request and two work-days advance notice to the facility.

(F) The resident has the right to be fully informed in language that he/she can understand of his/her total health status, including, but not limited to, his/her medical condition.

(G) The resident has the right to refuse treatment, to formulate an advance directive (as specified in 40 TAC §19.217 (relating to Directives and Durable Powers of Attorney for Health Care), as amended October 1, 1992), and to refuse to participate in experimental research.

(i) If the resident refuses treatment, he/she must be informed of the possible consequences.

(ii) If the resident chooses to participate in experimental research, he/she must be fully notified of the research and possible effects of the research. The research may be carried on only with the full written consent of the resident's physician, and the resident.

(iii) Experimental research must comply with Federal Drug Administration regulations on human research as found in 45 Code of Federal Regulations, Part 4b, Subpart A.

(H) The facility must furnish a written description of legal rights which includes:

(i) a description of the manner of protecting personal funds, described in 40 TAC §19.204 (relating to Protection of Resident Funds); and

(ii) a statement that the resident may file a complaint with the Texas Department of Health concerning resident abuse, neglect, and misappropriation of resident property in the facility.

(I) The facility must inform each resident of the name, specialty, and way of contacting the physician responsible for his or her care.

(J) A facility must immediately inform the resident; consult with the resident's physician; and if known, notify the resident's legal representative or an interested family member when there is:

(i) an accident involving the resident which results in injury and has the potential for requiring physician intervention;

(ii) a significant change in the resident's physical, mental, or psychosocial status (that is, a deterioration in health, mental, or psychosocial status in either life-threatening conditions or clinical complications);

(iii) a need to alter treatment significantly (that is, a need to discontinue an existing form of treatment due to adverse consequences, or to commence a new form of treatment); or

(iv) a decision to transfer or discharge the residents from the facility.

(K) The facility must also promptly notify the resident and, if known, the resident's legal representative or interested family member when there is a change in room or roommate assignment as described in 40 TAC §19.501(e) (relating to Quality of Life).

(L) The facility must record and periodically update the address and phone number of the resident's family or legal representative, or a responsible party.

(4) Protection of resident funds.

(A) Management of financial affairs. The resident has the right to manage his or her financial affairs and the facility may not require residents to deposit their personal funds with the facility. The resident may designate another person to manage his/her financial affairs.

(B) Management of personal funds. Upon written authorization of a resident, the facility may hold, safeguard, manage, and account for the personal funds of the resident deposited with the facility, as specified in subparagraph (3) of this subsection. The facility will act as a fiduciary agent if the facility holds, safeguards, and accounts for the resident's personal funds.

(C) Statement of resident rights/responsibilities. The facility must provide each resident and responsible party with a written statement at the time of admission that meets the following requirements.

(i) The statement must describe the resident's rights to select how personal funds will be handled. The following alternatives must be included.

(I) The resident has the right to manage his/her financial affairs.

(II) The facility may not require residents to deposit their personal funds with the facility.

(III) The facility has an obligation, upon written authorization of a resident, to hold, safeguard, manage, and account for the personal funds of the resident deposited with the facility.

(IV) The resident has a right to apply to the Social Security Administration to have a representative payee designated for federal or state benefits to which he/she may be entitled.

(V) Except when subclause (IV) of this clause applies, the resident has a right to designate in writing another person to manage personal funds.

(ii) The statement advises the resident that the facility must have written permission from the resident, responsible party, or legal representative to handle his/her personal funds.

(5) Free choice.

(A) The resident has the right to:

(i) choose and retain a personal attending physician, subject to that physician's compliance with the facility's standard operating procedures for physician practices in the facility;

(ii) be fully informed in advance about care and treatment and of any changes in that care or treatment that may affect the resident's well-being; and

(iii) unless adjudged incompetent or otherwise found to be incapacitated under the laws of the State of Texas, participate in planning care and treatment or changes in care and treatment. See 40 TAC §19.217 (relating to Directives and Durable Powers of Attorney), as amended October 1, 1992.

(B) Residents are free to exercise their will in making written or unwritten directives to reject life-sustaining procedures. The resident's attending physician must comply with a previously issued directive of a resident who becomes comatose or otherwise unable to communicate unless the physician believes the directive no longer reflects the resident's present desire. If the attending physician refuses to comply with a directive or treatment decision, he must make a reasonable effort to transfer the resident to another physician. The desire of a terminally ill resident, who is under 18 years old and who is competent, is to supersede the effects of a directive executed on his behalf by persons specified in the Texas Natural Death Act. See 40 TAC §19.217 (relating to Directives and Durable Powers of Attorney), as amended October 1, 1992.

(C) The resident must be allowed complete freedom of choice to obtain pharmacy services from any pharmacy that is qualified to perform the services. A facility must not require residents to purchase pharmaceutical supplies or services from the facility itself or from any particular vendor. The resident has the right to be informed of prices before purchasing any pharmaceutical item or services from the facility, except in an emergency.

(6) Privacy and confidentiality. The resident has the right to personal privacy and confidentiality of his/her personal and clinical records. See also 40 TAC §19.1910(e) (relating to Clinical Records) and paragraph (3)(E) of this subsection.

(A) Personal privacy includes accommodations, medical treatment, written and telephone communications, personal care, visits, and meetings of family and resident groups; but this does not require the facility to provide a private room for each resident.

(B) Except as provided in subparagraph (C)(ii) of this paragraph, the resident may approve or refuse the release of personal and clinical records to any individual outside of the facility.

(C) The resident's right to refuse release of personal and clinical records does not apply when:

(i) the resident is transferred to another health care institution;

(ii) record release is required by law; or

(iii) during licensure surveys.

(D) The facility must ensure the resident's right to privacy in the following areas:

(i) accommodations as described in 40 TAC §19.1501(d) (relating to General Requirements);

(ii) medical treatment (The facility must provide privacy to each resident during examinations, treatment, case discussions, and consultations. Staff must treat these matters confidentially.);

(iii) personal care;

(iv) access and visitation, as follows:

(I) The resident has the right and the facility must provide immediate access to any resident by the following:

(-a-) any representative of the Texas Department of Health (department) or any other agency with authority;

(-b-) the resident's individual physician;

(-c-) the state long-term care ombudsman as established under the Older Americans Act of 1965, §307(a)(12);

(-d-) any representative of Advocacy Incorporated;

(-e-) subject to the residents' right to deny or withdraw consent at any time, immediate family, or other relatives of the resident; and

(-f-) subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, others who are visiting with the consent of the resident.

(II) The facility must provide reasonable access to any resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time.

(III) The facility must allow representatives of the state ombudsman cited in subclause (I)(-c-) of this clause to examine a resident's clinical records with the permission of the resident or the resi-

dent's legal representative, and consistent with state law.

(v) governmental searches as follows.

(I) Governmental searches are permitted only if there exists probable cause to believe an illegal substance or activity is being concealed.

(II) Administrative searches by the appropriate entity, such as the fire inspector, are allowed only for limited purposes, but such searches would not ordinarily extend to the resident's personal belongings.

(III) The department and the nursing facility must provide for and allow residents their individual freedoms. State statutes authorize inspections of the nursing facility but do not authorize inspection of those areas in which an individual has a reasonable expectation of privacy. Any direct participation by the department personnel in an inspection of "the contents of residents' personal drawers and possessions," is in violation of federal and state law.

(vi) privacy for meetings with family and resident groups.

(E) All information that contains personal identification or descriptions which would uniquely identify an individual resident or a provider of health care is considered to be personal and private and will be kept confidential. Personal identifying information (except for PCN numbers) will be deleted from all records, reports, and/or minutes from formal studies which are forwarded to the Texas Department of Human Services (TDHS), or anyone else. These records, reports, and/or minutes, which have been de-identified, will still be treated as confidential. All such material mailed to TDHS or anyone else must be in a sealed envelope marked "Confidential."

(7) Grievances. A resident has the right to:

(A) voice grievances without discrimination or reprisal. Such grievances include those with respect to treatment which has been furnished as well as that which has not been furnished;

(B) prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents; and

(C) notify state agencies of complaints against a facility. Complaints

will be acknowledged by the staff of the agency that receives the complaint. All complaints will be investigated, whether oral or written.

(8) Examination of survey results. The board adopts by reference 40 TAC §19.208 (relating to Examination of Survey Results), as amended October 1, 1992.

(9) Work. The resident has the right to:

(A) refuse to perform services for the facility; and

(B) perform services for the facility, if he chooses, when:

(i) the facility has documented the need or desire for work in the plan of care;

(ii) the plan specifies the nature of the services performed and whether the services are voluntary or paid;

(iii) compensation for paid services is at or above prevailing rates; and

(iv) the resident agrees to the work arrangement described in the plan of care.

(10) Mail. The board adopts by reference 40 TAC §19.211 (relating to Mail), as amended October 1, 1992.

(11) Telephone. The board adopts by reference 40 TAC §19.213 (relating to Telephone), as amended October 1, 1992.

(12) Self-administration of drugs. The board adopts by reference 40 TAC §19.216 (relating to Self-administration of Drugs), as amended October 1, 1992.

(13) Directives and durable powers of attorney for health care. The board adopts by reference 40 TAC §19.217 (relating to Directives and Durable Powers of Attorney for Health Care), as amended October 1, 1992.

(14) Personal property. The resident has the right to retain and use personal possessions, including some furnishings, and appropriate clothing as space permits, unless to do so would infringe upon the rights or health and safety of other residents. Reasons for any limitations are documented in the resident's clinical record.

(A) If the resident dies, personal property must be transferred to the estate or the person designated by the resident.

(B) If it is donated or sold to the facility by the resident or estate, the transaction must be documented.

(C) If the resident dies and there is no responsible party, family, or legal guardian and no arrangements have been made for the disposition of property, the facility must dispose of property according to the Texas Property Code, Title 6, Chapter 71 (relating to Escheat of Property) and according to the Texas Probate Code, Chapter 10 (relating to Payment of Estates into State Treasury).

(15) Married couples. The resident must be ensured privacy for visits with his or her spouse. The resident has the right to share a room with his or her spouse when married residents live in the same facility and both spouses consent to the arrangement.

(16) Incompetency. If a resident has been adjudicated incompetent or has been found by the attending physician to be, for medical reasons, incapable of understanding these rights, the resident's rights are to be exercised as outlined in this subchapter. Documentation to support delegation of rights must be according to the provisions of paragraph (17) of this subsection.

(17) Documentation for the delegation of rights.

(A) The delegation of the individual, resident and citizen rights may occur in any one of the following three cases:

(i) when a competent individual chooses to allow another to act for him/her;

(ii) when the resident has been adjudicated to be incompetent by a court of law; or

(iii) when the physician has determined that, for medical reasons, the resident is incapable of understanding and exercising such rights.

(B) In order to assure preservation of rights, the physician and the facility must be aware of, must address, and must document specific information concerning the incapability of the resident to understand and exercise his/her rights even if the resident has been fully adjudicated incompetent and a guardian has been appointed or if there is an extant durable power of attorney.

(C) To ensure that the protection of a resident adjudicated incompetent or determined to be incapable or exercising his/her rights and responsibilities

for medical reasons, the administrator, the physician, and the resident care staff have specific responsibilities.

(D) Administrative documentation must exist covering:

(i) the relationship of the resident to the person assuming his rights and responsibilities;

(ii) evidence that the responsible person can act for the resident; and

(iii) the extent of a guardianship or power of attorney.

(E) Physician documentation must exist covering:

(i) a statement that the resident is or not capable of understanding and exercising his/her rights;

(ii) specific causative and/or contributive medical diagnosis(es);

(iii) medical observation and test(s) which support the diagnosis; (examples include, but are not limited to, Alzheimer's Disease, Organic Brain Syndrome, confusion, short-term memory loss, inability to attend to verbal input, disorientation as to time, place, or person, incoherent speech, inability to attend or converse or to answer questions);

(iv) periodic assurance that there has been no essential change in the resident's mental function;

(v) reevaluation whenever a significant change in resident status occurs or for orders that impact on resident rights (e.g. "No CPR").

(F) Facility staff documentation must exist covering:

(i) resident assessments, care plans and progress notes that address the resident's inability to exercise his/her rights and responsibilities and demonstrate that the facility encourages the resident to exercise his/her rights and responsibilities to his/her fullest capability;

(ii) assurances that the resident who is mentally capable of understanding and exercising his/her rights, but physically incapable of doing so, receives interventions which facilitate the exercise of his/her rights.

(G) The presence of documentation in this paragraph does not guarantee the protection of a resident's rights and responsibilities, but forms the basis for compliance with the federal requirements for the delegation of a resident's rights. It is important because it increases the likelihood

that the resident's care-givers and family will understand and be accountable for the resident's rights and responsibilities.

(c) Resident behavior and facility practice. The board adopts by reference 40 TAC §19.401 (relating to Resident Behavior and Facility Practice), as amended October 1, 1992.

(d) Quality of life. The board adopts by reference 40 TAC §§19.501-19.504 (relating to Quality of Life), as amended October 1, 1992.

(e) Resident assessment.

(1) The facility must conduct initially and periodically a comprehensive accurate, standardized, reproducible assessment of each resident's functional capacity.

(A) Admission orders. At the time each resident is admitted, the facility must have physician orders for the resident's immediate care.

(B) Comprehensive assessments.

(i) The facility must make a comprehensive assessment of all residents' needs, utilizing the Health Care Financing Administration's (HCFA) approved Resident Assessment Instrument (RAI).

(ii) The comprehensive assessment must include at least the following information:

(I) medically defined conditions and prior medical history;

(II) medical status measurement;

(III) physical and mental functional status;

(IV) sensory and physical impairments;

(V) nutritional status and requirements;

(VI) special treatments or procedures;

(VII) mental and psychosocial status;

(VIII) discharge potential;

(IX) dental condition;

(X) activities potential;

(XI) rehabilitation potential;

(XII) cognitive status; and

(XIII) drug therapy.

(iii) Assessments must be conducted:

(I) no later than 14 days after the date of admission;

(II) for current nursing facility residents, not later than one year from the effective date of this rule;

(III) promptly after a significant change in the resident's physical or mental condition (as soon as the resident stabilizes at a new functional or cognitive level, or within two weeks, whichever is earlier); and

(IV) in no case, less often than once every 12 months.

(iv) The nursing facility must examine each resident, and review the minimum data set core elements specified in HCFA's RAI no less than once every three months and as appropriate. Results must be recorded to assure continued accuracy of the assessment.

(v) The results of the assessment are used to develop, review, and revise the resident's comprehensive plan of care as specified in 40 TAC §19.602 (relating to Comprehensive Care Plans).

(C) Accuracy of assessments.

(i) Coordination.

(I) Each assessment must be conducted or coordinated with the appropriate participation of health professionals.

(II) Each assessment must be conducted or coordinated by a registered nurse who signs and certifies the completion of the assessment.

(ii) Certification. Each individual who completes a portion of the assessment must sign and certify the accuracy of that portion of the assessment.

(2) The board adopts by reference 40 TAC §19.602 and §19.603 (relating

to Resident Assessment), as amended October 1, 1992.

(f) Quality of care. The board adopts by reference 40 TAC §19.701 (relating to Quality of Care), as amended October 1, 1992.

(g) Nursing services.

(1) The facility must have sufficient staff to provide nursing and related services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care. Care and services are to be as specified in 40 TAC §19.701 (relating to Quality of Care).

(A) Sufficient staff.

(i) The facility must provide services by sufficient numbers of each of the following types of personnel on a 24-hour basis to provide nursing care to all residents in accordance with resident care plans:

(I) licensed nurses (except when waived under paragraph (3) of this subsection); and

(II) other nursing personnel.

(ii) Except when waived under subparagraph (C) of this paragraph, the facility must designate a licensed nurse to serve as a charge nurse on each tour of duty.

(B) Registered nurse.

(i) Except when waived under subparagraphs (C) or (D) of this paragraph, the facility must use the services of a registered nurse for at least eight consecutive hours a day, seven days a week.

(ii) Except when waived under subparagraphs (C) or (D) of this paragraph, the facility must designate a registered nurse to serve as the director of nursing on a full-time basis, 40 hours per week.

(iii) The director of nursing may serve as a charge nurse only when the facility has an average daily occupancy of 60 or fewer residents.

(C) Waiver of requirement to provide licensed nurses on a 24-hour basis. To the extent that a facility is unable to meet the requirements of subparagraphs (A)(ii) and (B)(i) of this paragraph, the state may waive such requirements with respect to the facility, if:

(i) the facility demonstrates to the satisfaction of the Texas De-

partment of Health (department) that the facility has been unable, despite diligent efforts (including offering wages at the community prevailing rate for nursing facilities), to recruit appropriate personnel;

(ii) the state determines that a waiver of the requirement will not endanger the health or safety of individuals staying in the facility;

(iii) the state finds that, for any periods in which licensed nursing services are not available, a registered nurse or a physician is obligated to respond immediately to telephone calls from the facility;

(iv) a waiver granted under the conditions listed in this subparagraph is subject to annual state review;

(v) in granting or renewing a waiver, a facility may be required by the state to use other qualified, licensed personnel;

(vi) the state agency granting a waiver of such requirements provides notice of the waiver to the state long-term care ombudsman (established under the Older Americans Act of 1965, §307(a)(12)) and the protection and advocacy system in the state for the mentally ill and mentally retarded; and

(vii) the nursing facility that is granted such a waiver by the state notifies residents of the facility (or, where appropriate, the guardians or legal representatives of such residents) and members of their immediate families of the waiver.

(D) Request of waiver. The facility must request a waiver through the local the department's long-term care unit, in writing, at any time the administrator determines that staffing will fall, or has fallen, below that required in subparagraphs (A) and (B) of this paragraph for a period of 30 days or more out of any 45 days.

(i) Information to be included in the request/notification:

(I) date beginning when facility was/is unable to meet staffing requirements;

(II) type waiver requested—24-hour licensed nurse and/or seven day/per week registered nurse;

(III) projected number of hours per month staffing reduced for 24-hour licensed nurse waiver or seven day/per week registered nurse waiver; and

(IV) staffing adjustments made due to inability to meet staffing requirements.

(ii) Waivers will be granted by department.

(iii) If a facility, after requesting a waiver, is later able to meet the staffing requirements of subparagraphs (A) and (B) of this paragraph, the department must be notified, in writing, on the effective date that staffing meets requirements.

(iv) Verification that the facility appropriately made a request and notification will be done at the time of survey.

(E) Effectiveness of waivers. Approved waivers are valid throughout the facility licensure period unless approval is withdrawn. During the relicensure survey, the determination is made for approval or denial for the next facility licensure period should a waiver continue to be necessary. The facility requests a redetermination for a waiver from the department long-term care unit at the time the relicensure survey is scheduled. At other times if a request is made, the long-term care unit may schedule a visit for waiver determination. Recommendation for approval or denial of a waiver is initially made by the surveyor.

(F) Approval of waiver. To be approved for a waiver, the nursing facility must meet all of the requirements stated in this subsection and the requirements specified throughout this section. In some instances, the survey agency may require additional conditions or arrangements such as:

(i) an additional licensed vocational nurse on day-shift duty when the registered nurse is absent;

(ii) modification of nursing services operations; and

(iii) modification of the physical environment relating to nursing services.

(G) Denial/withdrawal of waiver. Denial or withdrawal of a waiver may be made at any time if any of the following conditions exist:

(i) the quality of resident care is not acceptable; or

(ii) justified complaints are found in areas affecting resident care.

(2) Additional nursing services staffing requirements are as follows.

(A) The ratio of licensed nurses to residents must be sufficient to meet the needs of the residents.

(i) At a minimum, the facility must maintain a ratio (for every 24-hour period) of one licensed nursing staff person for each 20 residents. This equates to a minimum of .04 licensed-care hours per resident day.

(ii) There shall be at least one licensed nurse on each shift.

(iii) Licensed nurses who may be counted in the ratio include, but are not limited to, director of nursing, assistant directors of nursing, staff development coordinators, charge nurses, and medication/treatment nurses. These licensed nurses may be counted subject to the limitations of clause (iv) of this subparagraph.

(iv) Staff, who also have administrative duties not related to nursing, may be counted in the ratio only to the degree of hours spent in nursing related duties.

(B) The facility must have sufficient total direct-care staff to meet the needs of the residents.

(C) A registered nurse must have a current license from the Board of Nurse Examiners for the State of Texas and must practice in compliance with the Nurse Practice Act and rules and regulations of the Board of Nurse Examiners.

(D) A licensed vocational nurse must have a current license from the Board of Vocational Nurse Examiners of Texas and must practice in compliance with the Vocational Nurse Act and rules and regulations of the Board of Vocational Nurse Examiners.

(E) The administrator is responsible for always maintaining as many nurse aides as necessary to meet the needs of residents. Nursing time devoted solely to resident care is included in computing nursing requirements. There must be enough nursing personnel to provide 24-hour nursing services. Personnel are increased if necessary to ensure that each resident receives protection of his rights and quality care as specified by these requirements.

(F) Nursing personnel must be assigned duties consistent with their education and experience and based on the characteristics of the resident load and the nursing skills needed to provide care to residents.

(G) The facility must maintain continuous time schedules showing the number and classification of nursing personnel, including relief personnel, who are

scheduled or who worked in each unit during each tour of duty. The time schedules must be maintained for the period of time specified by facility policy or for at least two years following the last day in the schedule.

(H) A graduate vocational nurse who has a temporary work permit must work under the direction of a licensed vocational nurse, registered nurse, or licensed physician who is physically present in the facility. The graduate (registered) nurse who has a temporary work permit must work under the direction of a registered nurse until registration has been achieved.

(I) If the facility uses licensed temporary nursing personnel, the temporary personnel must have the same qualifications that permanent facility employees do. Temporary personnel may not serve as the director of nursing. If temporary personnel are used for afternoon or night shifts, a full-time, currently licensed nurse must be on call and immediately available by telephone. The on-call nurse must be a registered nurse unless the facility has a current waiver from the department and is not required to provide daily registered nurse coverage.

(J) The charge nurse on the afternoon shift must be at least a licensed vocational nurse.

(K) The licensed charge nurse working on the 7-3 and 3-11 shift and charge individual working on the 11-7 shift (if because of waiver granted a licensed nurse is not required on the 11-7 shift) will conduct rounds to see all residents on their shift.

(L) It is not a deficiency if the facility has documentation that a nurse has a current temporary work permit from the Board of Vocational Nurse Examiners of Texas or the Board of Nurse Examiners of Texas. See 40 TAC §19.804(a)(3) (relating to Nursing Facility Director of Nursing Services).

(M) Licensed nurses must enter, or approve and sign, nurses' notes at least monthly. Routine charting for residents must reflect the resident's ability as assessed on the basis of the way he/her performs his/her activities of daily living at least 60% of the time. See 40 TAC §19.804(7)(A) (relating to Director of Nursing services).

(3) The board adopts by reference 40 TAC §§19.803-19.806 and

§§19.808-19.811 (relating to Nursing Services), as amended October 1, 1992.

(h) Dietary Services. The board adopts by reference 40 TAC §§19.901-19.911 (relating to Dietary Services), as amended October 1, 1992.

(i) Physician services.

(1) The board adopts by reference 40 TAC §§19.1001, 19.1002, 19.1004, 19.1009, and 19.1010 (relating to Physicians Services), as amended October 1, 1992.

(2) Physician visits must conform to the following schedule.

(A) The resident must be seen by a physician at least once every year and as necessary to meet the needs of the resident. Physician orders shall be reviewed and revised as necessary at least once every 60 days, unless the resident's physician specifies, in writing in the resident's clinical record, a different schedule for such review and revision.

(B) Each resident shall have a physical examination at least annually by his or her physician. See also 40 TAC §19.1401(2)(E) (relating to Infection Control).

(j) Provision of specialized rehabilitative services. The board adopts by reference 40 TAC §19.1101 and §19.1102 (relating to Provision of Specialized Rehabilitative Services), as amended October 1, 1992.

(k) Dental and other professional services.

(1) Dental services.

(A) The facility must assist residents in obtaining routine and 24-hour emergency dental services.

(B) At the time of admission, the facility shall obtain the name of the resident's preferred dentist and record this in the medical record.

(C) The facility shall maintain a list of local dentists for residents who do not have a private dentist.

(D) At least once each year, the facility shall ask each resident or the resident's custodian if the resident desires a dental examination and treatment.

(E) Each facility shall use all reasonable efforts to arrange for a dental examination for each resident who desires one.

(F) The facility shall not be liable for the costs of the resident's dental care.

(2) Other professional services.

(A) The facility shall maintain a list of podiatrists in the area as assistance to the resident in arranging for podiatric care.

(B) The facility shall maintain a list of optometrists in the area as assistance to the resident in arranging for optometric services.

(l) Pharmacy services.

(1) The board adopts by reference 40 TAC §§19.1304 and 19.1306-19.1310 (relating to Pharmacy Services), as amended October 1, 1992.

(2) The facility shall assist the resident in obtaining routine drugs and biologicals and make readily available emergency drugs or obtain them under an agreement described in 40 TAC §19.1906 (relating to Use of Outside Resources). See also 40 TAC §19.701(12) and (13) (relating to Quality of Care) for information concerning drug therapy and medication errors.

(A) Methods and procedures. The facility may permit unlicensed personnel to administer drugs, but only under the general supervision of a licensed nurse. The unlicensed individual must have a current medication aide permit issued by the department, or be a nursing or medication aide student.

(B) Accuracy in service delivery. A facility must provide pharmaceutical services (including procedures that assure the accurate acquiring, receiving, dispensing, and administering of all drugs and biologicals) to meet the needs of each resident.

(C) Monitoring. The facility's quality assessment and assurance committee will monitor the pharmaceutical services of the facility as described in subsection (o)(6)(D) of this section.

(D) Service consultation. The facility must employ or obtain the services of a licensed pharmacist who:

(i) provides consultation on all aspects of the provision of pharmacy services in the facility;

(ii) establishes a system of records of receipt and disposition of all controlled drugs in sufficient detail to enable an accurate reconciliation; and

(iii) determines that drug records are in order and that an account of all controlled drugs is maintained and periodically reconciled.

(iv) adheres to the additional supervision and consultation requirements in paragraph (3) of this subsection.

(E) Drug regimen review.

(i) The drug regimen of each resident must be reviewed at least once a month by a licensed pharmacist.

(ii) The pharmacist must report any irregularities to the attending physician and the director of nursing, and these reports must be acted upon.

(iii) The physician must review the resident's drug regimen in accordance with subsection (i)(2) of this section.

(F) Labeling of drugs and biological. Drugs and biological used in the facility must be labeled in accordance with currently accepted professional principles and in compliance with the Texas State Board of Pharmacy Laws and Regulations, including the appropriate accessory and cautionary instructions and the expiration date when applicable.

(G) Storage of drugs and biological.

(i) In accordance with state and federal laws, the facility must store all drugs and biologicals in locked compartments under proper temperature controls, and permit only authorized personnel to have access to the keys.

(ii) The facility must provide separately locked, permanently affixed compartments for storage of controlled drugs listed in Schedule II of the Comprehensive Drug Abuse Prevention and Control Act of 1976 and other drugs subject to abuse, except when the facility uses single unit package drug distribution systems in which the quantity stored is minimal and a missing dose can be readily detected (see 40 TAC §19.1309, (relating to Controlled Substances)).

(3) The resident's choice of pharmacy provider must be in accordance with the provisions concerning free choice in subsection (b)(5)(C) of this section. The resident's freedom of choice of pharmacy services is not considered abridged when the facility's policies require:

(A) a written agreement that the resident's pharmacy services be provided by a pharmacy on a 24-hour basis for emergency medications; and/or

(B) a written agreement that the resident's medication be delivered to the facility on a timely and reasonable basis;

(C) a written agreement specifying that the facility may choose a pharmacy and/or particular unit dose and related distribution equipment system when the facility is paying for the medications, and does not subsequently pass the charge on to the resident or family representative.

(m) Infection control. The board adopts by reference 40 TAC §19.1401-§19.1402 (relating to Infection Control), as amended October 1, 1992.

(n) Physical plant and environment. The board adopts by reference 40 TAC, §§19.1501-19.1521 (relating to Physical Plant and the Environment), as amended October 1, 1992.

(o) Administration.

(1) Generally. The board of adopts by reference 40 TAC §§19.1903-19.1911, 19.1913, 19.1914, 19.1920-19.1922, 19.1928, and 19.1930 (relating to Administration), as amended October 1, 1992.

(2) Administration. A nursing facility must be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident.

(A) Licensure. A nursing facility (NF) must be licensed by the department as described in 40 TAC §19.2001 (relating to Licensure) as amended.

(B) Compliance with federal, state, and local laws and professional standards. The facility must operate and provide services in compliance with all applicable federal, state, and local laws, regulations, and codes, and with accepted professional standards and principles that apply to professionals providing services in such a facility. All facility personnel and consultants must be licensed, registered, or certified as required by state and local laws and the rules adopted under those laws.

(3) Governing body.

(A) The facility must have a governing body, or designated persons functioning as a governing body that is legally responsible for establishing and implementing policies regarding the management and operation of the facility.

(i) The governing body must have periodically updated written policies and procedures specifying and governing all services that are formally adopted

and dated. The policies and procedures must be available to all of the facility's governing body's members, staff, residents, family or legal representatives of residents, and the public.

(ii) The governing body must appoint a qualified full-time nursing home administrator as its official representative, and designate the administrator's responsibilities and authority.

(B) The facility must operate under the supervision of a full-time nursing home administrator, who is appointed by the governing body and who is licensed by the Texas Board of Licensure for Nursing Home Administrators. The administrator, as a professional, must work at least 40 hours per week on administrative duties. The administrator must be accountable to the governing body for overall management of the nursing facility. The administrator's authority and responsibilities must be clearly outlined to include, but not be limited to:

(i) maintaining liaison with the governing body, medical and nursing staff, and other professional and supervisor staff, through regular meetings and periodic reporting;

(ii) adopting and enforcing rules and regulations for the health care and safety of residents and others, and for the protection of their personal property and civil rights;

(iii) establishing standard operating procedures for physician practices in a nursing facility, in coordination with the director of nursing;

(iv) evaluating, implementing, and documenting disposition of recommendations from the facility's committees and consultants;

(v) managing the facility through employment of professional and ancillary personnel and through proper delegation of duties;

(vi) naming a responsible employee to act in the administrator's absence so the facility has continuous administrative direction;

(vii) ensuring that all volunteer programs are planned and supervised by a designated employee;

(viii) designating a person in authority if the facility does not have an administrator. The facility must secure a licensed nursing home administrator within 30 days; and

(ix) ensuring that a person designated as in authority must notify the department immediately if the facility does not have an administrator.

(4) Additional clinical record service requirements.

(A) The facility must maintain a permanent, master index of all residents admitted to and discharged from the facility. This index must contain at least the following information concerning each resident:

- (i) name of resident (first, middle, and last);
 - (ii) date of birth;
 - (iii) date of admission;
 - (iv) date of discharge;
- and
- (v) social security, Medicare, or Medicaid number.

(B) In the event of closure of a facility, change of ownership or change of administrative authority, the new management shall maintain documented proof of the medical information required for the continuity of care of all residents. This documentation may be in the form of copies of the resident's clinical record or the original clinical record. In a change of ownership, the two parties will agree and designate in writing who will be responsible for the retention and protection of the inactive and closed clinical records.

(C) Recording information in ink. All resident care information must be recorded in ink.

(i) Erasures are not allowed on any part of the clinical record, with the exception of the medication/treatment/diet section of the resident care plan.

(ii) Erasures and obliterations may create curiosity and suspicion as to the reasons for the change. The correct procedure is to line out the incorrect data with a single line in ink. Record the date of the lining out, the signature of the person doing it, and the correct information.

(iii) Alterations on physician's orders, after they are cosigned by the physician, are unacceptable.

(D) Periodic thinning of active clinical records is necessary to reduce bulkiness. The following items must remain in the active clinical record for the sake of completeness:

- (i) current history and physical;
- (ii) current physician's orders and progress notes;
- (iii) current resident assessment instrument (RAI) and subsequent quarterly reviews;

(iv) current care plan;

(v) most recent hospital discharge summary and transfer summary;

(vi) current nursing and therapy notes;

(vii) current medication and treatment records;

(viii) current lab and x-ray reports; and

(ix) the admission record.

(E) Clinical records shall be maintained as follows for readmitting patients.

(i) If a resident is discharged for 30 days or less and readmitted to the same facility, it is not necessary to develop a completely new clinical record upon the resident's readmission. Upon readmission, it is necessary to:

(I) obtain current, signed physician's orders;

(II) record a descriptive nurse note, giving a complete assessment of the resident's condition;

(III) start a new medication sheet to document medications ordered by the physician;

(IV) update the admission sheet and include any changes in diagnoses, etc.;

(V) obtain the transfer summary, which could update the history and physical and authenticate the hospital diagnosis, and could constitute new orders, provided physical examination findings and orders are contained in the document and it is signed by a physician. If incomplete, the facility must obtain signed copies of the hospital history and physical and discharge summary; and

(VI) complete a new resident assessment instrument (RAI) and update the comprehensive care plan if evaluation of the resident indicates a significant change which appears to be permanent. If no such change has occurred, then update only the resident comprehensive care plan.

(ii) A new clinical record must be initiated if the resident is a new admission or has been gone over 30 days.

(F) Pro re nata (PRN) medications/treatments must be recorded in the clinical record as specified by 40 TAC

§19.809(c) (relating to Administration of Drugs in Nursing Facilities).

(G) All required signatures must comply with the following criteria.

(i) The use of electronic data transmission of facsimiles (faxing) is acceptable for sending and receiving health care documents, including the transmission of physicians' orders. Long-term care facilities may utilize electronic transmission if they adhere to the following requirements.

(I) The sending station or originator of the document maintains an original signed by the author, or immediately forwards the original to the facility.

(II) All faxed documents must be signed by the author before transmission.

(III) The person wanting to use faxing to send documents to the facility must send the facility a letter stating his/her intent and sign it using the official signature which he/she will use to sign the faxed reports.

(IV) The facility must implement safeguards to assure that faxed documents sent and received are directed to the correct location to protect confidential health information from unauthorized access.

(V) Facilities should be advised to take extra precaution when "thermal paper" is used to ensure that a legible copy of the order is retained as long as the medical record is maintained.

(ii) Stamped signatures are acceptable for all health care documents requiring a physician's signature, if the person using the stamp sends a letter of intent which specifies that they will be the only one using the stamp, and then signs the letter with the same signature as the stamp.

(iii) The facility must maintain all letters of intent on file and make them available to representatives of the state Medicaid and survey agencies upon request.

(iv) All orders must originate with a physician, dentist or podiatrist (see 40 TAC §19.804 (relating to Nursing Facility Director of Nursing Facilities)).

(v) Use of a master signature legend in lieu of the legend on each form for nursing staff signatures of medication, treatment, or flow sheet entries is acceptable if the following exist.

(I) Each nursing employee documenting on medication, treatment, or flow sheets will sign his/her full name, title, and initials on the legend.

(II) The original master legend will be kept in the clinical records office or director of nurses' record.

(III) A current copy of the legend will be filed at each nurses' station available to state agency representatives.

(IV) Once a nursing employee leaves employment with the facility, his/her name will be deleted from the list by lining through it and writing the current date by the name.

(V) If the master legend is not maintained in alphabetical order, facility staff will provide assistance to state agency representatives in locating appropriate nursing employees' signatures.

(VI) The facility will update the master legend as needed for newly hired and terminated employees.

(VII) The master signature legend must be retained permanently as a reference to entries made in clinical records.

(H) When resident records are destroyed after the retention period is complete, the facility must shred or incinerate the records in a manner which protects confidentiality. At the time of destruction, the facility must document the following for each record destroyed:

- (i) resident name;
- (ii) medical record number, if used;
- (iii) social security number, Medicare/Medicaid number, or the date of birth; and
- (iv) date and signature of person carrying out disposal.

(I) The facility must develop and implement policies and procedures to safeguard the confidentiality of medical record information from unauthorized access. The facility must allow access and/or release confidential medical information under court order or by written authorization of the resident or his or her legal guardian or designated representative (see subsection (b)(6) of this section).

(5) Transfer agreement.

(A) The facility must have in effect a transfer agreement with one or more hospitals that reasonably assures that:

(i) residents will be transferred from the facility to the hospital and ensured of timely admission to the hospital when transfer is medically appropriate as determined by the attending physician; and

(ii) medical and other information needed for care and treatment of residents, and when the transferring facility deems it appropriate, for determining whether such residents can be adequately cared for in a less expensive setting than either the facility or the hospital, will be exchanged between the institutions.

(B) To ensure continuity of care, the transfer agreement should:

(i) provide for prompt diagnostic and other medical services;

(ii) ensure accountability for a resident's personal effects at the time of transfer;

(iii) specify the steps needed to transfer a resident in a prompt, safe and efficient manner;

(iv) provide for supplying, at the time of transfer, a summary of administrative, social, medical, and nursing information to the facility to which the resident is transferred. The summary must either be a transcript of the resident's medical record, an interagency referral form, or a copy of the admission sheet and discharge summary; and

(v) ensure that provisions of the Civil Rights Act of 1964, Title VI, are met.

(C) If the board and/or governing body for a long-term care facility and a hospital are the same, the controlling entity must have written procedures outlining how transfers will occur. This is regardless of whether there are different administrators.

(D) The facility is considered to have a transfer agreement in effect if the state survey agency determines that the facility tried to enter into an agreement but could not, and if it is the public interest not to enforce this requirement. The facility must document in writing its good faith effort to enter into an agreement.

(6) Quality assessment and assurance.

(A) The facility must maintain a Quality Assessment and Assurance Committee consisting of:

(i) the director of nursing services;

(ii) a physician designated by the facility; and

(iii) at least three other members of the facility's staff.

(B) The Quality Assessment and Assurance Committee shall:

(i) meet at least quarterly to identify issues with respect to which quality assessment and assurance activities are necessary; and

(ii) develop and implement appropriate plans of action to correct identified quality deficiencies.

(C) The department may not require disclosure of the records of the Quality Assessment and Assurance Committee except insofar as such disclosure is related to the compliance of the committee with the requirements of subparagraph (B) of this paragraph.

(D) The Quality Assessment and Assurance Committee, or a subcommittee thereof, will establish and monitor an infection control program according to 40 TAC §19.1401 (relating to Infection Control), and will monitor the pharmaceutical services of the facility.

(E) See 40 TAC §19.701(12) and (13) (relating to Quality of Care) and paragraph (7) of this subsection for additional items that should be monitored by the Quality Assessment and Assurance Committee.

(7) Incident or accident reporting.

(A) The facility must detail in the clinical record every accident or incident, including allegations of mistreatment of residents by facility staff, medication errors, and drug reactions.

(B) Accidents, whether or not resulting in injury, and any unusual incidents or abnormal events including allegations of mistreatment of residents by staff or personnel or visitors, shall be described in a separate administrative record and reported by the facility in accordance with the licensure Act and this section.

(i) If the incident appears to be of a serious nature, it shall be investigated by or under the direction of the director of nurses, the facility administrator, or a committee charged with this responsibility.

(ii) If the incident involves a resident and is serious or is one requiring special reporting to the department, the resident's responsible party and attending physician shall be immediately notified.

(iii) Certain types of incidents shall be specially and specifically reported to the central office of the department in accordance with guidelines established by the department.

(C) Accident or incident reports shall be retained for the period of time specified by facility policy; but at least for two years following the occurrence, and shall contain the following information:

(i) For incidents involving residents, the name of the resident; witnesses (if witnesses were present); date, time, and description of the incident; circumstances under which it occurred; action taken including documentation of notification of the responsible party and attending physician if appropriate; and final disposition that indicates the resident's condition has stabilized and/or is resolved. The final disposition shall include the date and time of entry, resident's vital signs and description of the resident's present health condition. The incident report shall be completed under the direction of the director of nurses or individual in charge of the shift of duty at the time the accident or incident occurred.

(ii) For incident reports describing incidents not involving residents, names of individuals involved; date; time; witnesses (if witnesses were present); description of the event or occurrence, including the circumstances under which it occurred; action taken; and final disposition that indicates resolution of the event or occurrence.

(D) The facility must investigate incidents/accidents and complaints for trends which may indicate resident abuse (see paragraph (6) of this subsection). Trends that might be identified include, but are not limited to: type of accident, type of injury, time of day, staff involved, staffing level, and relationship to past complaints.

(E) The facility must make incident reports available for review, upon request and without prior notice, by representatives of the department.

(8) Financial records.

(A) Nursing facility staff must maintain current financial records in accordance with recognized fiscal and accounting procedures. The facility must ensure that records clearly identify each

charge and payment made on behalf of each resident residing in the facility. The facility must clearly state in its records to whom charges were made and for whom payment was received.

(B) The facility must make financial records and supporting documents available at any time within working hours and without prior notification for review by the department.

(9) Staff development. Each facility shall implement and maintain programs of orientation, training, and continuing in-service education to develop the skills of its staff (see 40 TAC §19.1903 (relating to Required Training of Nurse Aides)). The programs shall meet the requirements described in this paragraph.

(A) Orientation, training, and continuing in-service education programs. The following orientation, training, and continuing in-service education programs shall be provided by the facility for its employees.

(i) Present employees shall demonstrate and/or submit evidence to the facility training coordinator that they have competency in the skills and have knowledge meeting the requirements of orientation and job-specific training, the same as required for new employees, or shall receive part or all orientation or training as necessary to have such required competency and knowledge. Documentation of attainment of competency and receipt of knowledge shall be on the same report forms as for new employees, those forms being derived from a standard training inventory list prepared by and supplied only in sample form by the department. The facility shall make all necessary copies. The form shall not be modified in any way. The standard training inventory list, referred to as the training inventory list, will be the document used to accomplish the following:

(I) to serve as an inventory for determining if more training is needed for present employees, and if so, in what areas;

(II) to determine the level of training success for each employee; and

(III) to point out employees who fail to adequately complete training and who must receive all or part of the orientation or training again as necessary to gain required competency and knowledge.

(ii) The orientation section of the training inventory list will be the

same for all employees. Each job-specific area will be covered by the training inventory list. The inventory list will be administered by the facility training coordinator or by the appropriate and competent person named to carry out or assist in carrying out the training program. The administrator of the inventory list must be closely familiar with the actual training each individual taking the training inventory list has undergone.

(iii) New employees shall receive orientation and job-specific training, of the content and scope as specified in this paragraph and as approved by the department. On completion of the training, the employees shall be tested by the required inventory list, except for those nurse aides enrolled in an approved training course or who are on the required nurse aide registry.

(iv) Both new and present employees must receive continuing in-service education of content and scope, as it relates to the job category involved and as approved by the training coordinator.

(v) Employees involved include the following.

(I) Employees included are those having responsibility for any part of the care given to residents and who have any contact with residents. Licensed and degreed personnel will not be required to meet the job-specific requirements of this paragraph for these training programs, but will be included in training required for all employees under the orientation provisions in this subparagraph.

(II) Orientation is required for all employees, except the administrator. The employee categories requiring job-specific training and continuing in-service education to their respective jobs are nursing, dietary, janitor/housekeeper, activity-social service, and clinical records.

(-a-) For the purpose of this subparagraph, a medication aide is considered a nurse aide and must receive the same training as the nurse aides in orientation, job-specific training, and continuing in-service education. The continuing in-service education requirement for nurse aides in this subparagraph may not be used for renewal as a medication aide.

(-b-) Administrators licensed by the Texas Board of Licensure for Nursing Home Administrators and administrators-in-training under the auspices of that board are not included. Consultants and subcontract personnel who are not employees of the facility are not included.

(-c-) A person who is employed as a food service supervisor

and enrolls in an approved food service supervisor course within 90 calendar days after the date of employment. It is not required to receive the dietary job-specific training.

(-d-) Activity directors who meet the requirements for activity directors under 40 TAC §19.502 (relating to Activities), are excluded from the job-specific training.

(-e-) Job-specific training is not required of nurse aides enrolled in an approved training course or who are on the nurse aide registry.

(III) The administrator shall be responsible for determining that employees who come from outside placement resources have been adequately trained to perform the job which they will occupy in the facility. Outside placement resources would include contract personnel, registry personnel, agency pools, and temporary help placement agencies. Orientation programs for such individuals may be conducted at the discretion of each facility. Facility administrators shall request outside placement resources to provide documented evidence that their personnel have successfully completed the required training.

(vi) As part of orientation, each employee must receive instruction regarding the Human Immunodeficiency Virus (HIV) as outlined in the educational information provided by §98.70 of this title (relating to Model HIV/AIDS Workplace Guidelines). At a minimum the HIV curriculum must include:

(I) modes of transmission;

(II) methods of prevention;

(III) behaviors related to substance abuse;

(IV) occupational precautions;

(V) current laws and regulations concerning the rights of an AIDS/HIV-infected individual; and

(VI) behaviors associated with HIV transmission which are in violation of Texas law.

(B) Facility training coordinator.

(i) The administrator of the facility shall designate in writing a facil-

ity training coordinator to organize, oversee, and coordinate the facility's program of orientation, job-specific training and continuing in-service education. The training coordinator shall engage the services of appropriate and competent persons to carry out or assist in carrying out the programs. The coordinator, based on his own instruction, or by recommendation of the instructors or trainers involved, shall determine the status of all employees, new and present, with respect to training programs, training needs, and competencies. The coordinator will be held responsible for checking or causing to be checked the credentials of persons being trained.

(ii) A training coordinator may serve more than one facility as long as the training program requirements are met. As the training coordinator will be responsible for the training of all employee categories, that person shall be a professionally or vocationally licensed person in health care or shall hold a Bachelor's Degree from an accredited college or university. Ideally, the training coordinator will have had training or experience in adult education and in the general area of health care.

(iii) To assure that the overall quality of service provided by the facility is not lessened, the facility administrator and director of nurses are not to serve as the training coordinator.

(C) Methods acceptable.

(i) It is the intent of the department to accept various methods by which a facility may accomplish its training and in-service education programs as long as the employees receive the training and education necessary to achieve the competencies and proficiencies outlined in the training inventory list within the required total timeframes. Programs may be conducted in the facility, in a school or college, or elsewhere. Instructors may be consultants, qualified facility employees including the training coordinator, persons from outside the facility or representatives of schools or other organizations, as engaged or approved by the training coordinator. Facility employees with other duties may be used in training programs as long as their other required duties are not adversely affected.

(ii) A facility consultant may teach the continuing in-service education required by this program and count that as part of the time spent in consultation. The time a consultant may use teaching in orientation or job-specific training may not be counted as time spent in consultation.

(iii) Any generally recognized training technique may be used, including, when appropriate, demonstration and learning-by-doing while actually on the

job. In teaching technical and nursing care of the elderly and other residents of the facilities, consideration shall be given in all such subjects to the psychological and social needs of the residents.

(iv) If the facility chooses to purchase training from a college, school or other institution, to meet these requirements, the course must be approved. For a college, school or other institution to acquire approval, it must submit a letter of intent or training outline it will use to the department for approval. If the college, school or other institution uses the material suggested by the department, it may submit a letter of intent to the department. In either case, it is the facility's responsibility to determine that the college, school or other institution has a current approval from the department. The department will maintain a current list of approved training institutions. Health care facilities shall have open access to that list.

(D) Program teaching outline.

(i) New employee training requirements are as follows.

(I) New employee orientation and job-specific training shall meet the requirements specified in subparagraph (A) of this paragraph, concerning general description of orientation, training, and continuing in-service education programs. The training for an employee shall include information not less than that specified for the category or subcategory applicable to the employee in the basic teaching outlines included as part of these sections.

(II) If a facility has a policy prohibiting a skill to be performed, that facility may exclude the training for that skill. Similarly, if a facility has no residents requiring a certain skill, that facility may exclude the training for that skill. In both cases, documentation to this effect shall be made on the individual's training inventory list.

(III) Each facility shall submit a letter of intent which shall include an outline of the subject matter (if different from the one suggested by the department), and the date of implementation of the training. The substituted teaching outline is subject to approval by the department. A copy of the department's basic teaching outline and suggested plan for implementing the training program will be furnished to each facility; additional copies may be reproduced by the facility. The minimum subject requirements of training for each category are shown in the department's basic teaching outline, and it is expected that each

individual subject in each category will receive an appropriate amount of time. Appropriate learning-by-doing, when supervised by the training coordinator, or the person designated by the training coordinator, may count toward job-specific training. Such training may be subject to monitoring and approval by the department.

(ii) Continuing in-service education subjects shall relate to the job category involved and be as approved by the training coordinator.

(E) Schedule of training and continuing in-service education.

(i) The facility must provide all new employees with a full orientation within 10 working days of employment. The remainder of the training required on the outline for each of the respective job categories shall be completed within 120 calendar days following the 10 working day orientation.

(ii) Continuing in-service education requirements are as follows.

(I) Each new and present employee shall secure or receive the numbers of hours of continuing in-service education per year as appropriate to his or her specific job, but not less than the following:

(-a-) licensed nursing personnel and nurse aides—two hours per quarter;

(-b-) food service supervisors, cooks and helpers, dietary aides—two hours per quarter;

(-c-) housekeepers, janitors, laundry workers—one hour per quarter;

(-d-) activity staff—one hour per quarter;

(-e-) social services staff—one hour per quarter; and

(-f-) medical record clerks—one hour per quarter.

(II) Annual in-service training on rehabilitation nursing procedures, the use of restraints, and the promotion of a restraint-free environment must be given to all nursing personnel.

(III) In addition, all facility employees shall receive annual in-service on the following:

(-a-) the proper technique for prevention and control of infections;

(-b-) fire prevention and safety;

(-c-) accident prevention;

(-d-) confidentiality of resident information;

(-e-) preservation of resident dignity, including protection of privacy and personal and property rights;

(-f-) HIV as outlined in subparagraph (A)(vi) of this paragraph; and

(-g-) services to residents with cognitive impairments.

(IV) The Quality Assessment and Assurance Committee as described in paragraph (6) of this subsection shall assist in identifying additional topics for continuing in-service education.

(V) When related to the employee's respective job, attendance at outside meetings or seminars may be used to satisfy the continuing in-service education requirement for a maximum of four quarters. The facility shall keep records of the total number of hours of in-service education for all employees in the facility as well as records of attendance of each individual employee.

(iii) If present employees have to meet the same requirements as new employees, documentation covering these requirements shall be recorded on the same training inventory list and other report forms, as are used for new employees.

(iv) Job interruption for any reason, including leave of absence, will cause a suspension of the minimum training time. The training time restarts immediately upon the renewal of active employment.

(v) Part-time employee requirements are as follows.

(I) Part-time employees shall be included in orientation and their respective job-specific training and continuing in-service education.

(II) Additional time may be allowed for the completion of both the orientation and job-specific training for part-time employees. The number of hours worked will determine the time allowed for completion of training. Orientation must be completed within 10 working days of employment, and job-specific training must be completed within 120 calendar days following the 10-working day orientation.

(F) Employees already trained or partly trained when employed. New employee requirements are as follows.

(i) Any new employee who has already met all the training requirements or has had similar training, or six months previous employment in a health care facility, and presents verification of previous experience need undergo only that part of training which would relate to orientation and/or specific training peculiar to the facility. To receive credit for all or any completed portion of past training, the employee must be able to offer documented evidence in the form of copies of records of subjects completed in the facility of former employment or demonstrate skill competency to the training coordinator. In either instance, the training inventory will be used as the record for documenting credit.

(ii) Any new employee that has had at least six months previous experience in a health care facility may demonstrate competency to the training coordinator. The required training inventory list will be administered by the facility training coordinator or by the appropriate and competent person to determine if more training is needed, and if so, in what areas. The employee's previous service dates are to be verified by the former employer, and this documentation included in the employee's training record.

(G) Assurance of training effectiveness. The training coordinator is to assure himself/herself that the employee being trained is in fact receiving the knowledge and attaining the skills in accordance with the intent of the program. The department will provide samples of the required standardized training inventory list. The training coordinator may develop examinations or other tests of skills or knowledge; but such tests shall not be used in lieu of the required standardized training inventory list.

(H) Records.

(i) Each facility shall keep appropriate records on each employee who must be involved in training and education programs. The records shall show the status and progress of each employee with reference to his or her required training and shall denote completion and show the date of completion of the appropriate training. An employee is not eligible to receive a record of completion of job-specific training until the required course work is completed and the training coordinator is satisfied appropriate skill levels are attained. Thus, the awarding of a completion record may take as long as 120 calendar days for an employee.

(ii) Copies of all records and training inventory lists will be maintained in employee files. However, when the training is provided by a school, college, or other educational institution ap-

proved by the department, those records and training inventory lists need only be maintained by the training institution. Training inventory lists and records pertaining to orientation will in all cases be maintained by the facility. A record or report from an educational institution attesting that a student has successfully completed a training course will be acceptable to the department, but such record or report must be available in the facility involved for review by the department. Records of a student or graduate of an educational institution will be made available to the student or graduate on his or her request in accordance with policies of the institution. When an employee terminates employment in a facility, on that employee's request, the facility shall provide that employee with a copy of his or her training inventory list and/or other documentation showing his or her status with respect to required training. Such records shall be shared with another facility on request of the employee. All records shall be made available to representatives of the department. The facility shall also have a record showing the designation of the training coordinator by the administrator and a resume or curriculum vitae of the coordinator.

(I) Employees changing positions within the facility. An employee changing position within a facility will be considered as a new employee with respect to the new position, and will be subject to being provided with any additional training that would be required for the category or sub-category of the new position within the total minimum training time for that job category or sub-category.

(J) Monitoring and assistance by the department. Each facility shall maintain not less than a 30-day advance schedule of training classes. This shall not apply for classes being taught by a college, school, or other institution, where the advance scheduling becomes the responsibility of that institution. The department will offer assistance in organizing and maintaining training programs, or in orienting training coordinators, to the extent department staff and funds permit.

(10) Services provided by order of physician. Nursing facility administrators are responsible for assuring that all medical or medical support services provided to a resident in the nursing facility are ordered by the treating physician.

(p) Availability of adoption by reference material.

(1) Copies of all of the documents adopted by reference in this section may be reviewed during regular business hours in the Bureau of Long-Term Care,

Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

(2) Copies of all the documents adopted by reference in this section can be reviewed in state libraries.

§145.42. Standards for Facilities Serving Persons with Mental Retardation or Related Conditions.

(a) Purpose. The purpose of this section is to promote the public health, safety, and welfare by providing for the development, establishment, and enforcement of standards:

(1) for the habilitation of persons based on an active treatment program in institutions defined and covered in this section; and

(2) for the establishment, construction, maintenance, and operation of such institutions which view mental retardation and other developmental disabilities within the context of a developmental model in accordance with the principle of normalization.

(b) Philosophy. Facilities regulated by the standards in this section are known as facilities serving persons with mental retardation and related conditions in Texas (MR facilities). Persons in these facilities have the same civil rights, equal liberties, and due process of law as other individuals, plus the right to receive active treatment and habilitation. Facilities shall provide and promote services that enhance the development of such individuals, maximize their achievement through an interdisciplinary approach based on developmental principles, and create an environment, to the extent possible, that is normalized and normalizing.

(c) Standards. Each facility serving persons with mental retardation or related conditions shall comply with regulations promulgated by the United States Department of Health and Human Services in Title 42, Code of Federal Regulations, Part 483, Subpart D, §§483.400-483.480, titled, "Conditions of Participation for Intermediate Care Facilities for the Mentally Retarded."

(d) Precertification training conference for new providers of service. Each new provider must attend the precertification/precensure training conference prior to licensing by the Texas Department of Health (department). The purpose of the training is to assure that providers of services are familiar with the licensing requirements and to facilitate the delivery of quality services to residents in facilities serving persons with mental retardation or related conditions.

(1) A new provider is an entity which has not had at least one year of administering services in a facility serving persons with mental retardation or related conditions in Texas. All new providers must attend a precertification training conference prior to the life safety code survey.

(2) Each new provider must designate at least one individual who will be involved with the direct management of the facility to attend the training conference prior to a health survey being scheduled.

(3) Each new provider will be given a training schedule. The department will schedule training sessions, and the date, time, and location of the training will be indicated on the schedule.

(e) Additional requirements.

(1) The facility must develop and implement policies and procedures regarding injuries, accidents, and unusual incidents which involve or affect residents. These policies and procedures shall include the following provisions.

(A) An investigation and report shall be completed which describes the circumstances of the injury, accident, or incident and its cause, the results of the investigation, and recommended actions. Serious injuries, accidents, or unusual incidents shall be reported to the resident's responsible parties and to the department.

(B) Allegations of abuse, neglect, or other mistreatment of residents shall be reported in accordance with Subchapter G of this chapter (relating to Abuse, Neglect, and Exploitation; Complaint and Incident Reports and Investigations).

(2) In the area of behavior management, seclusion of residents shall not be used. Seclusion is defined as placement of a resident in a room without staff present from which egress is prevented by a locked door.

(3) In the area of physical restraints, the following applies.

(A) When physical restraints (mechanical and/or manual) are used as an integral part of an individual program plan that is intended to lead to less restrictive means of managing and eliminating the behavior for which the restraint is applied, a physician must participate on the interdisciplinary team that authorizes the use of restraint and must concur with the team's decision concerning its use.

(B) When physical restraints are used as an emergency measure to protect the resident or others from injury, a

physician must authorize its use or the extension of its use.

(4) In the area of pharmacy services, the following applies.

(A) All pharmacy services shall be in compliance with the Texas State Board of Pharmacy requirements, the Texas Pharmacy Act, and rules adopted thereunder, the Texas Controlled Substances Act, and Health and Safety Code, Chapter 483 (relating to Dangerous Drugs).

(B) All medications must be ordered in writing by a physician, dentist, or podiatrist. Verbal orders may be taken only by a licensed nurse, pharmacist, or another physician, and must be immediately transcribed and signed by the individual taking the order. Verbal orders must be signed by the physician, dentist, or podiatrist within seven working days.

(C) The facility, with input from the consultant pharmacist and physician, must develop and implement policies and procedures regarding automatic stop orders for medications. These procedures must be utilized when the order for a medication does not specify the number of doses to be given or the time for discontinuance or re-order.

(5) Specialized nutrition support (delivery of parental nutrients and enteral feedings by nasogastric, gastrostomy, or jejunostomy tubes, etc.) must be given in accordance with physician's orders by a registered or licensed nurse.

(6) In the area of administration of medication, the following applies.

(A) Medications may be administered only by physicians, licensed nursing personnel, permitted medication aides, or persons who are exempt from licensure or permit requirements pursuant to the Health and Safety Code, §242.1511. These persons must function in accordance with the memorandum of understanding (MOU) between the Texas Department of Health and the Board of Nurse Examiners and/or Board of Vocational Nurse Examiners. The department adopts the MOU by reference and copies are available for review at the department's Bureau of Long-Term Care, 1100 West 49th Street, Austin, Texas 78756.

(i) The individual who removes the medication dose from the container in which it was dispensed must administer the dose.

(ii) The individual who administers the medication must record the dose after it is administered and during the shift in which it was given.

(B) Residents who have demonstrated the competency for self-administration of medications shall have access to and maintain their own medications. They shall have an individual storage space that permits them to store their medications under lock and key.

(C) Residents may participate in a self-administration of medication habilitation training program if the interdisciplinary team determines that self-administration of medications is an appropriate objective. Residents participating in a self-administration of medication habilitation training program shall have training in coordination with and as part of the resident's total active treatment program. The resident's training plan shall be evaluated as necessary by a licensed nurse. The supervision and implementation of a self-administration of medication habilitation program may be conducted by nonlicensed personnel and is not limited to personnel who have completed an approved training program in medication administration.

(7) In the area of communicable diseases, the facility shall have written policies and procedures for the control of communicable diseases in employees and residents. When any reportable communicable disease becomes evident, the facility shall report in accordance with Communicable Disease and Prevention Act, Health and Safety Code, Chapter 81, or as specified in §§97.1-97.13 of this title (relating to Control of Communicable Diseases) and §§97.131-97.136 of this title (relating to Sexually Transmitted Diseases) and in the publication titled, "Reportable Diseases in Texas," Publication 6-101a (Revised 1987). The local health authority should be contacted to assist the facility in determining the transmissibility of the disease and, in the case of employees, the ability of the employee to continue performing his/her duties. The facility shall have written policies and procedures for infection control, which include implementation of universal precautions as recommended by the Centers for Disease Control (CDC).

(8) The facility must develop and implement written procedures pertaining to recreational water activities for all sites accessed by the facility. These procedures must minimally include the following provisions.

(A) A minimum of one individual with demonstrable proficiency in water safety skills must be on duty at all times when residents are utilizing a swimming pool, lake, or other aquatic environment which could pose a risk of drowning. The individual must be familiar with basic water

survival skills, and must maintain supervision of the water activity for the duration of the activity.

(B) A description of each aquatic environment must be accessed by the facility that includes identification of those aquatic environments which could pose a risk of drowning. The determination of risk for each aquatic environment identified must be based on a documented functional assessment of each resident's knowledge of basic water safety survival skills and ability to swim, and a documented review for each resident who chooses or may choose to attend recreational water activities must be available in the resident record. The review must identify any medical conditions or physical disabilities which could increase the risk of drowning in the identified aquatic environments.

(C) Based on individual resident characteristics and the aquatic environment to be utilized, the facility must determine the minimum staff to resident ratio necessary to assure the safety and supervision of all residents in circumstances which pose a risk of drowning. (Parents and volunteers may be counted in the staff ratios if they have been trained in the facility's water activity procedures.) Staff to resident ratios must be sufficient to assure constant visual supervision of all residents who are not independent swimmers and/or who have a history of seizures within the previous 12 months. The individual with a demonstrable proficiency in water skills required in subparagraph (A) of this paragraph may not be counted in staff to resident ratios.

(D) All personal flotation devices utilized must be approved by the United States Coast Guard or be a specialized therapy flotation device utilized for a resident's individual therapy program.

(E) Each resident's individual program plan must include information with regards to the resident's water safety skills, the staff to resident ratio needed to provide adequate supervision in circumstances which pose a risk of drowning and designate when a personal or specialized therapy flotation device is to be utilized.

§145.43. Standards for Maternity Facilities.

(a) Purpose and scope. The purpose of this section is to promote the public health, safety, and welfare and provide for the development, establishment, and enforcement of standards in maternity facilities (facilities); for the care of individuals in the facilities; and for the establishment,

construction, maintenance and operation of the facilities which will promote safe and adequate care of individuals in the facilities.

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

(1) Client—A pregnant woman; or a woman regardless of age, who has within two weeks had a child born to her and who is registered with a licensed maternity facility; and who may or may not be considering the placement of her child for adoption.

(2) Facility—A maternity facility as defined in this section.

(3) License—An annual license issued by the Texas Department of Health (department).

(4) Maternity facility—Any place, agency, or establishment providing any or all of the following: residential (domiciliary or private) care; health care; and counseling services to the client, as provided in the Health and Safety Code, Chapter 242.

(5) Physician—A physician licensed by the Texas Board of Medical Examiners.

(6) Shall—Required and essential for the client's welfare and having the force of law.

(7) Should—The desirable standard of performance.

(c) General requirements.

(1) A facility shall be restricted to the care of maternity clients. Persons having or suspected of having any physical or mental disease or disability endangering the health and welfare of other clients may be admitted to residential care upon both medical advice and facility evaluation.

(2) Each licensed facility shall specify the maximum allowable number of clients to be cared for at any one time. No greater number of clients shall be kept than is authorized by the license.

(3) The facility license shall be conspicuously posted in the area where clients are admitted.

(4) Copies of this section shall be on file in the facility and shall be available to facility personnel. They shall be instructed in the requirements of the law and the rules pertaining to their respective duties.

(5) Each facility shall have a working arrangement with a licensed hospital for obstetric and pediatric care for the client. It is desirable that each facility have a working arrangement with an accredited hospital.

(6) The purpose of a facility shall be to meet the individual needs of the client, the father of her child, and their families.

(7) Facility services shall include the following:

(A) casework, which shall include:

(i) casework services which shall be provided according to case load standards of the National Association of Social Workers and should be offered as long as advisable; and

(ii) evidence of a working affiliation with a state licensed child placing agency;

(B) educational, vocational, and recreational activities which should be planned according to the individual needs of the clients and should include:

(i) formal academic instruction; and

(ii) vocational guidance and social opportunities;

(C) the opportunity for religious activities and spiritual counseling which shall be offered to the client;

(D) health care services which shall be provided to each client in accordance with these sections and the current manual of standards in obstetric-gynecologic practice of the American College of Obstetricians and Gynecologists; and

(E) legal services in that the facility shall have available an arrangement with the legal profession to assure legal counsel to the client as needed.

(d) Eligibility for licensure.

(1) Each applicant for a license to operate a facility shall furnish upon a suitable form made available by the department certain information, facts and references that will attest to the moral character, stability, financial responsibility, and physical and mental capability of said applicant to conduct the operations of a facility pursuant to the standards in this section. Such attestation shall be given in the form of an affidavit and shall be a prerequisite to licensing.

(2) The submission, knowingly, of false information by any applicant to said affidavit shall constitute grounds for the denial or revocation of state license to operate.

(3) The use of subterfuge or other evasive means such as filing for li-

cense through a second party when an individual is disqualified for licensing shall constitute grounds for the refusal or revocation of a state license to operate a facility.

(4) Habitual drunkenness, addiction to narcotics, disorderly conduct, or the violation of any law involving moral turpitude on the part of the owner, manager, operator or employee engaged in the operations and functions of a facility shall constitute grounds for withholding or revoking State license to operate.

(5) Consuming alcoholic beverages on the premises or while on duty in a licensed facility by the owner, manager, operator, or employee of a licensed facility shall constitute grounds for revoking the state license issued for the operation of the facility.

(e) Personnel.

(1) Each facility shall provide at all times at least one responsible adult who is immediately available to the clients.

(2) At all times there shall be enough personnel to provide the standards of care and maintenance in the facility for the well-being of the clients. A record shall be kept of the period of service of each employee, as well as daily shift records, and such records shall be subject to inspection by the Texas Department of Health (department).

(3) At the discretion of the department, any owner, manager, operator or employee of a facility may be required to secure an adequate examination of themselves by a physician and secure in evidence thereof, a statement signed by such physician to the effect that such an examination had been made and that to the best of his or her knowledge, the person examined was found on that date to be free of any transmissible condition of any disease and any physical or mental debility which would preclude the person examined from discharging his or her duties proficiently in the home. Such examination shall be actual and thorough and conducted within the framework of practical scientific procedures for the determination of the existence of communicable disease or gross physical or mental debility. A pre-employment physical examination and interim examination as may be necessary of all personnel should be required and should include a tuberculin test or chest x-ray for tuberculosis and tests for syphilis and gonorrhea.

(4) Personnel shall include such professional staff as necessary to assure adequate care of the clients accepted by the facility. Medical, dental, nursing, nutrition, and social work services are necessary components of maternity care and shall be a direct or consultation service of each facility.

(5) Personnel required to maintain standards of care for clients shall be employed directly or made available through cooperation of other agencies in the community.

(6) The executive director of a facility shall have completed 120 semester hours in a recognized college or university and have two years of experience in the field of public administration. Additional experience may be substituted for training year for year with a maximum substitution of four years.

(7) The director of social services in a facility shall have social work education with a masters degree (MSW) and at least three years professional experience in casework and/or supervision.

(8) Each facility should have a professionally trained social worker with a MSW degree to provide supervision of workers with less educational background and/or experience but with a bachelor's degree.

(9) There should be one caseworker to every 30 clients.

(10) There should be a group worker on the staff of the facility and each facility should strive to achieve a professionally trained group worker with an MSW degree.

(11) The junior caseworker should have one year of formal education in a school of social work. The second year may be supplemented by experience which consists of 300 hours of actual practice under supervision of an accredited social worker. On-going supervision in the facility should be performed by an accredited social worker with an MSW degree.

(12) A graduate registered nurse (R.N.) licensed to practice by the Texas Board of Nurse Examiners shall be available to give nursing supervision and consultation to each licensed facility.

(13) There should be house-mother(s), housekeeper, food service staff and maintenance staff to carry the responsibility of housekeeping, food service and maintenance.

(14) There shall be a qualified medical staff for health care depending upon the type service offered by the facility.

(15) There should be a qualified dietitian to direct and supervise the food service, plan menus to meet nutritional needs of the clients, plan therapeutic diets for clients under physician direction when necessary. A qualified dietitian has a college degree and advanced education or experience in foods and nutrition and is a member of the American Dietetic Association.

(f) Sanitation.

(1) The water supply shall be of safe, sanitary quality, suitable for use, and shall be obtained from a water supply system, the location, construction, and operation of which are acceptable to the department. Hot water of a temperature safe to use for handwashing shall be available at sinks and lavatories at all times.

(2) Sewage shall be discharged into a municipal sewerage system where such a system is available; otherwise, the sewage shall be collected, treated, and disposed of in a sewage disposal system which is acceptable to the department.

(3) The plumbing and drainage, or other arrangements for the disposal of excreta and wastes shall be acceptable to the department and comply with the provisions of the local plumbing codes where available.

(4) When flies, mosquitoes, and other insects are prevalent, all outside doors, windows, and other outside openings shall be screened with wire screen or its equal with not less than 16 meshes to the inch.

(5) Toilets shall be provided in number ample for use according to number of clients and personnel of the facility. A minimum requirement is one water closet and one handwashing lavatory for every six clients, preferably for every four clients, or fraction thereof, and additional water closets and lavatories when deemed necessary by the department. Hand grips should be added to toilets.

(6) A shower shall be provided in the ratio of at least one shower for each 10 clients, or fraction thereof. Hand grips shall be provided for the bathtubs and all existing bathtub-shower combinations shall be provided with nonskid devices.

(7) All accumulated soiled dressings and other waste materials shall be stored in adequate clean covered containers and disposed of in a manner acceptable to the department.

(8) The outside grounds and surroundings of the buildings shall be maintained in a clean and sanitary condition at all times. The premises and buildings shall be kept free from rodent and insect infestations at all times.

(9) The facility shall comply with departmental rules regarding special waste in §§1.131-1.137 of this title (relating to Definition, Treatment, and Disposition of Special Waste from Health Care Related Facilities).

(g) Furnishings and Equipment for Care.

(1) The facility shall provide the following items to each client:

(A) a comfortable and suitable individual bed at least 36 inches in width with springs and a clean firm mattress. Clean bedding and bed linen shall be kept on hand for use at all times. Bed linens should be changed at least weekly. Clean blankets and a mattress pad should be provided each new occupant. Waterproof protection should be provided for all pillows and mattresses;

(B) at least one comfortable easy chair. Easy cleanable waterproof covering of chair is recommended;

(C) a locker, closet, or other suitable enclosed space for storage of clothing. If a common closet is used for two or more persons, there shall be separation of clothing for each person;

(D) available drawer space for clients' personal possessions in each living area; and

(E) individual towels and washcloths in sufficient quantity.

(2) The facility shall maintain first aid supplies in a place known to and readily available to all personnel responsible for the health or well-being of clients and include a sterile emergency delivery pack.

(3) The facility shall provide handwashing facilities with approvable controls as indicated by the department and readily available to physicians, nurses, and other personnel attending clients. Fresh linen or paper towels shall be available at all times. Use of a common towel is prohibited.

(h) Laundry.

(1) Linen and other washable goods shall be stored and cleaned in a manner acceptable to the department.

(2) If linen and other washable goods are laundered in the facility a separate suitably located laundry room shall be provided in the facility and it may be used only for the cleaning of linens and other washable goods used by the facility. Personal laundry facilities are essential for use of clients in the facility.

(3) The laundry room shall be adequately screened and protected to prevent access of flies and vermin.

(4) All waste water resulting from operation of laundry machines shall be discharged into the public sewerage system and if a public sewerage system is not available, such waste water shall be disposed of in accordance with department recommendations.

(i) Provisions for recreation. Facilities for recreational, visiting, occupational therapy, and other such purposes of sufficient area should be provided and should be freely available at reasonable times to clients and visitors.

(j) Food service and food sanitation.

(1) Food shall be provided to all clients in an amount and kind to meet individual needs and to conform to the daily dietary allowances of nutrients recommended by the National Research Council for Pregnant and Lactating Women. Such food shall be provided in three substantial meals at regularly scheduled meal hours and/or between meal feedings. Modified diets prescribed by the physician shall be provided to the individuals for whom such diets are prescribed.

(2) All food services and food sanitation should comply with the current food service sanitation manual of the United States Department of Health, Education, and Welfare.

(3) No drugs and other nonfood items such as sprays, waxes, cleaning compounds shall be stored where food is also stored in refrigerator, cabinets, shelves, or pantry.

(4) Invoices covering all food purchases and copies of menus served shall be kept on file in the facility and shall be available to representatives of the department.

(5) All fluid milk for use shall be in conformity with the requirements prescribed by the State Milk Grading and Labeling Law and department rules adopted thereunder.

(6) Ice used in contact with food or drink shall be obtained from a source acceptable to the department and handled and dispensed in a sanitary manner.

(7) A kitchen for the proper preparation and serving of food shall be maintained in a room or rooms separate from the dining room and other rooms. It shall be used for no other purpose than activities connected with the dietary service and the washing and storage of dishes and utensils.

(8) Handwashing facilities with hot and cold water, soap, and single service towels or other hand drying facilities approved by the department shall be accessible for use of all food handlers.

(9) Perishable food shall be stored in clean refrigerators of adequate capacity at temperatures less than 50 degrees Fahrenheit. Each refrigerator shall be equipped with a thermometer. Nonperishable food shall be stored off the floor in

clean well ventilated rooms free of insects and rodents.

(10) Garbage shall be disposed of in a manner acceptable to the department. When stored, it shall be retained in water tight metal cans equipped with tightly fitting metal covers. All containers for the collection of garbage and refuse shall be kept securely covered in a sanitary manner.

(11) The following procedures shall be employed in the cleaning and sanitizing of dishes and utensils used in food services.

(A) No client shall be furnished with any dish, receptacle, or utensil used in eating, drinking, or conveying food unless such dish, receptacle, or utensil has been washed after each service until clean to the sight and touch in warm water containing soap or alkali cleaner.

(B) After washing, all glasses, dishes, silverware, and other receptacles and utensils shall be:

(i) immersed in clear water heated to a minimum temperature of 170 degrees Fahrenheit for at least three minutes or two minutes at 180 degrees Fahrenheit;

(ii) immersed for at least two minutes in a lukewarm chlorine bath containing at least 50 ppm of available chlorine if hypochlorites are used, or a concentration of equal bactericidal strength if chloramines are used; or

(iii) sterilized by any other chemical method approved by the department.

(C) In order to protect the clean dishes and the utensils from contamination, proper storage space shall be provided.

(k) Reports and records.

(1) Because of the confidential nature of facility care, the admission, medical, and social work records shall be maintained and used only by those responsible for the care of the clients and shall not be open for inspection by others except under special conditions.

(2) Admission, medical, labor, delivery, newborn (especially identification) and social work records shall be kept. Such records shall be preserved. When a facility is closed or ownership is being transferred, the licensee shall apply to the department for instructions as to disposition of such records.

(3) Physician's orders shall be preserved with the permanent record of the client.

(4) There should be a dated, signed list, made in duplicate, of all personal belongings and valuables upon the admission of each client. Corrections should be made to the list as necessary. The original list and all corrections made should be given to the client, her guardian, or the agency responsible for her care and a copy kept on file in the facility.

(5) Each licensed facility shall prepare in written form and make available for distribution a general statement of policies governing the operation of the home, and the guardian or person placing the client in the facility shall be furnished a copy of said policy. The statement of policy shall cover such matters as type of clients accepted in the facility, responsibility for medical care and medications, rules and regulations related to client management, charges for services and refund policy. A copy of the policy statement shall be placed on file with the department and shall also include:

(A) legal status constitution and by-laws;

(B) organizational structure;

(C) income, including fees;

(D) current facility program budget;

(E) staffing and personnel policies;

(F) type of facilities and size;

(G) future plans;

(H) recordkeeping system;

(I) staff development;

(J) affiliations; and

(K) program, philosophy, and procedures.

(l) Health care services.

(1) The client or the client's parents or guardian shall designate a physician licensed by the Texas State Board of Medical Examiners or sign a statement to permit the physician(s) designated by the facility to provide medical care.

(2) Each facility shall provide the following:

(A) a physical examination for each client within 48 hours unless the facility has received from a licensed physician a statement of the client's physical examination and diagnosis dated not earlier than 30 days prior to the client's admission to the facility. The client's record shall include the history, a physical examination, and laboratory tests recommended by the current manual of standards of the American College of Obstetricians and Gynecologists;

(B) subsequent prenatal supervision for clients in accordance with the standards of the American College of Obstetricians and Gynecologists;

(C) hospitalization for delivery and immediate postpartum care;

(D) diagnosis and treatment of medical problems related to pregnancy including medical and surgical emergencies;

(E) dental examination and emergency treatment; and

(F) postpartum, convalescent care for the client shall be provided by the facility for a minimum of eight days. It shall be the responsibility of each facility to refer each client for a postpartum examination unless such examination has been given prior to her dismissal from the facility.

(3) No medication or treatment shall be given to a client in a facility except on written order signed by a physician. If an emergency arises and instructions are given verbally, such instructions shall be followed by written order, signed by the physician and filed with the director of the facility within 24 hours.

(4) Every facility shall designate one or more physicians to be called for emergencies.

(m) Control of communicable diseases.

(1) Each licensed maternity home shall exercise maximum protective practices in handling communicable diseases. Proper isolation techniques must be observed in order to protect other clients in the facility.

(2) In facilities with nursing service, isolation should consist of private rooms, individual supplies and equipment, supervision and on the job training of personnel, and limitation of contacts.

(n) Humane treatment of clients.

(1) Restrictive rules shall be kept to a minimum. While some are necessary in group living to maintain a balance

between individual wishes and group welfare, they shall not infringe upon the client's right to self-determination, privacy of personal thought, and personal dignity. General rules affecting all clients shall be based on the premise that clients have the capacity to function as individuals commensurate with their age level.

(2) Abuse or punishment of clients in the home will not be tolerated. Substantiated evidence of the owner, operator, or any staff member willfully inflicting injury, physical suffering, or undue mental anguish on any client in the home shall constitute grounds for revocation of license.

(3) Each client shall have unlimited freedom to leave the facility upon proper discharge at any time. However, a facility may establish reasonable rules whereby the clients are limited in their leaving the facility so long as they remain resident subject to the facility's jurisdiction.

(4) Each client shall be allowed to manage her own money and the licensee or any member of the staff of the facility may not serve as guardian.

(5) Each client shall have the right to participate in, or abstain from religious observances as she chooses. If dietary abstinences are a part of her religious observance, she shall be provided with religiously acceptable substitutes, provided the forbidden is on the regular menu and constitutes an essential portion of her dietary needs.

(6) Each client shall have freedom to receive and send mail unopened and without undue delay. Exception may be made for specific and valid reasons, provided such decision to withhold or censor incoming or outgoing mail is concurred in by the person responsible for placement of that individual in the facility, or the client's physician.

(7) Each licensed facility shall establish policies which will permit the individual client to receive visitors.

(8) Clients shall have reasonable freedom in choice of clothing when provisions are available for laundry and dry cleaning at the individual client's expense. Beautician services should be made available to the facility for use by those desiring such outside service at the individual client's expense.

(9) It is recommended that facility operators provide opportunities for meaningful activities and social relationships. These may include holiday celebrations, parties, indoor or outdoor games, or personal hobbies. Educational or recreational sessions, sponsored by groups within the community should be encouraged and planned for with such community groups or agencies.

(o) Narcotics and sedation. Standards in this subsection apply only to facilities providing 24-hour nursing service.

(1) When a physician orders narcotics for a client of the home, special safeguards concerning their use are needed. Narcotics shall be kept in a separate locked medicine closet and the key held by the director of the facility or the supervising nurse.

(2) Each time a narcotic is given, a notation shall be made on the nursing record including the date, time, dosage and method of administration, the name of the physician who prescribed the drug, and the name of the person administering the narcotic.

(3) In any facility holding a narcotics license there shall be a reported and signed narcotic stock count made daily. Unused portions of prescribed narcotics, because of discharge or removal of the client, shall be accounted for in the narcotics records of the facility.

(4) Sedation shall be used only upon written order of a physician licensed by the Texas State Board of Medical Examiners and in accordance with the medicinal plan for the individual. However, when an emergency arises and instructions are given over the telephone, such instructions shall be followed up by a written order signed by the practitioner and filed with the director of the facility within 24 hours.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on April 9, 1993.

TRD-9321481

Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Effective date: August 31, 1993

Proposal publication date: October 20, 1992

For further information, please call: (512) 834-6770

◆ ◆ ◆
Subchapter S. Minimum Licensing Standards for Personal Care Facilities

• 25 TAC §§145.321-145.335

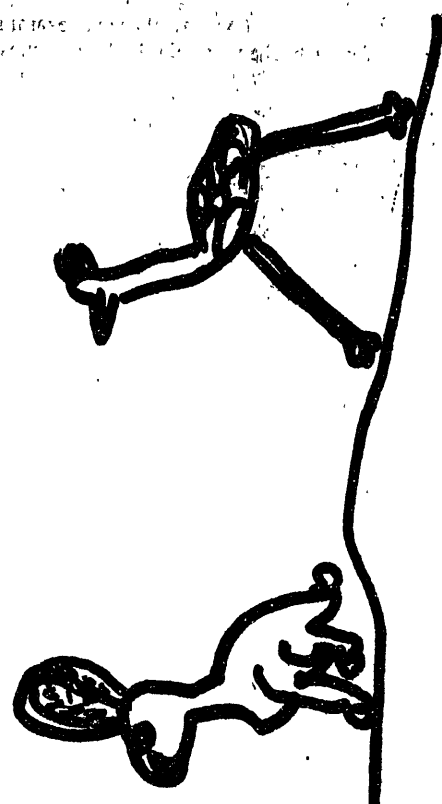
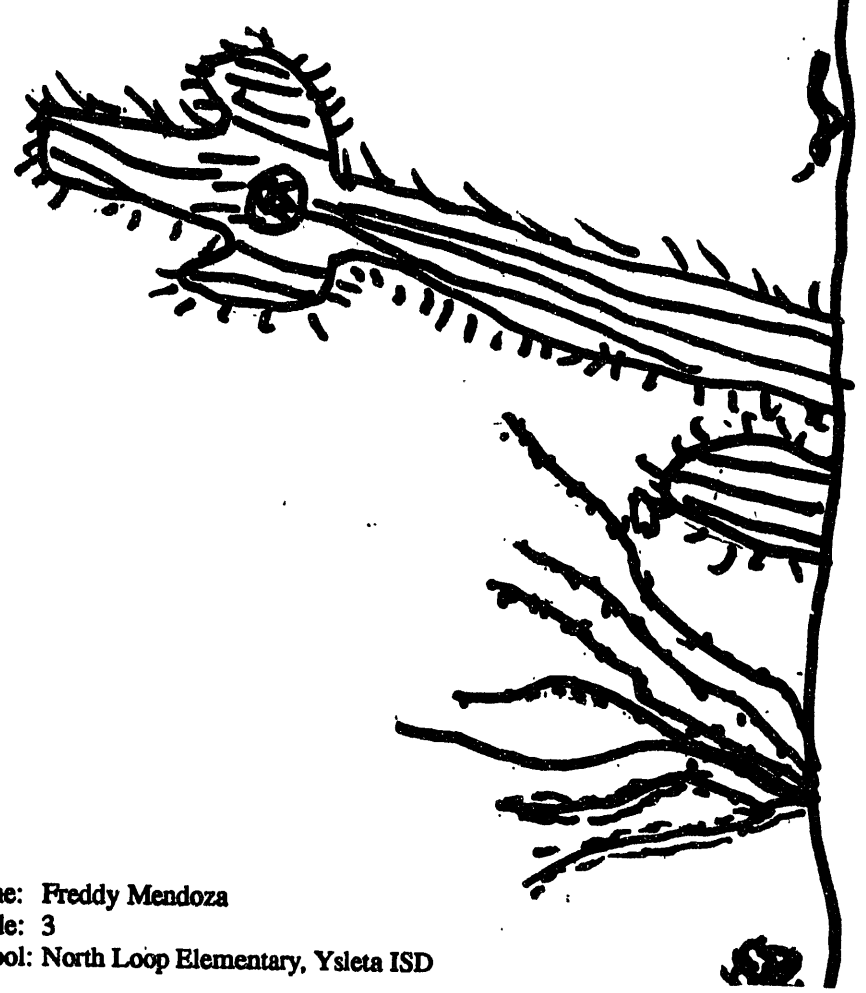
The repeals are adopted under the Health and Safety Code, Chapter 242, which provides the Board of Health (board) with authority to adopt standards concerning nursing facilities and related institutions; and §12.001 which provides the board with authority to adopt rules to implement every duty imposed on the board, the department and the commissioner of health.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel

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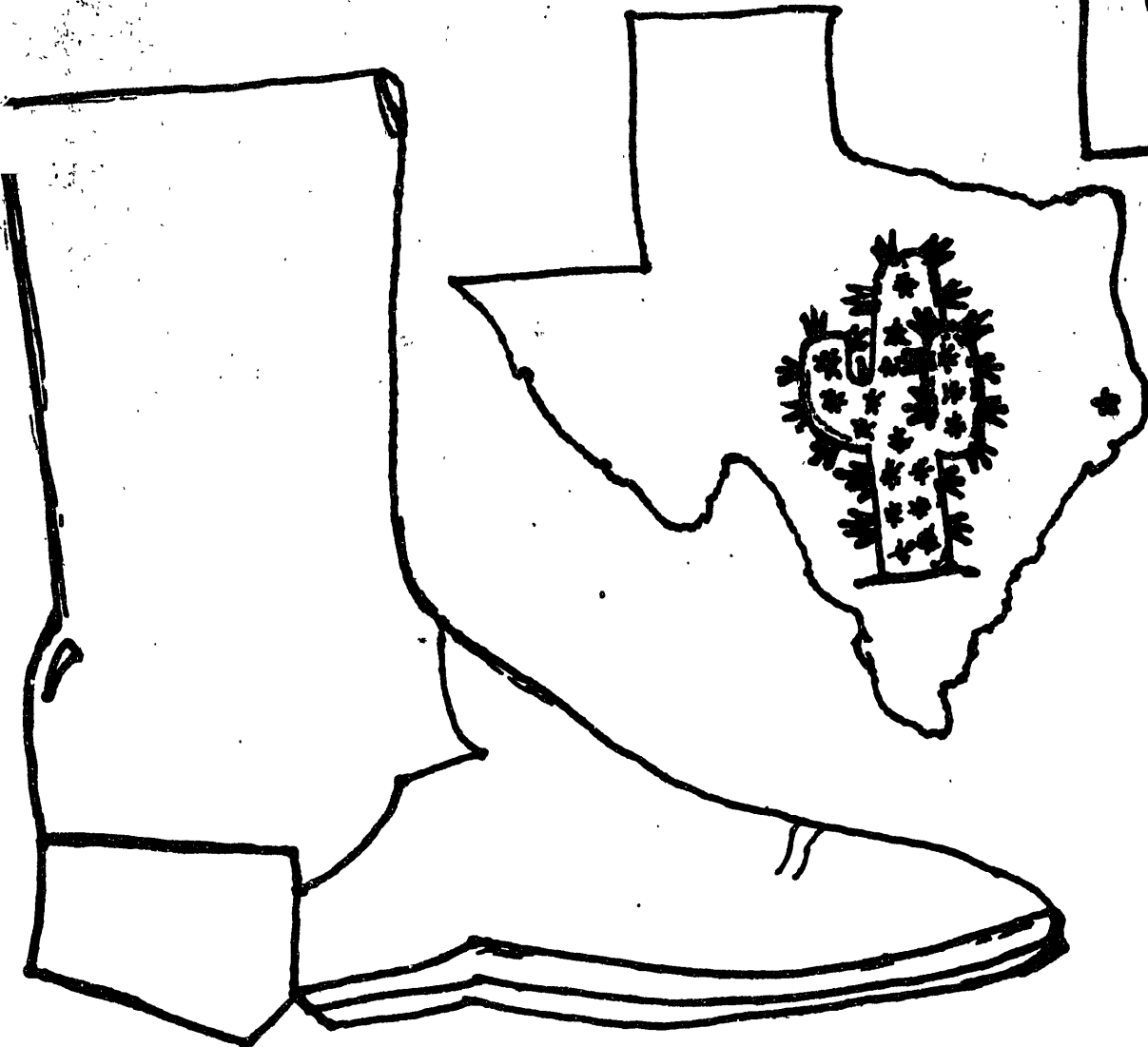
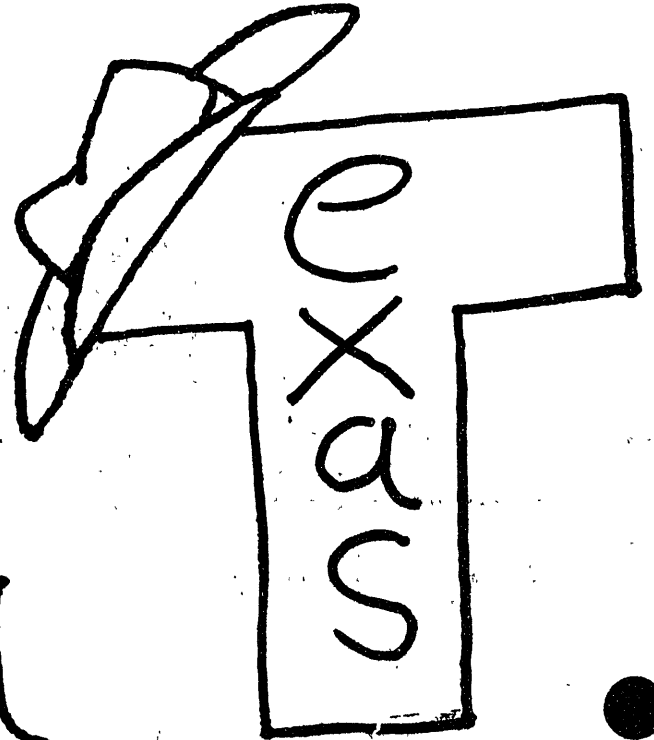
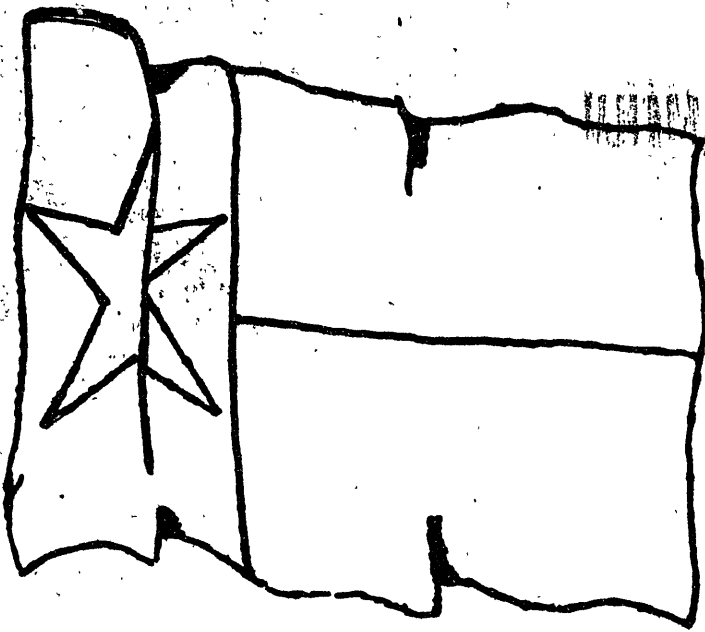
3⁵ North
Loop
School

Mendoza



Name: Freddy Mendoza
Grade: 3
School: North Loop Elementary, Ysleta ISD

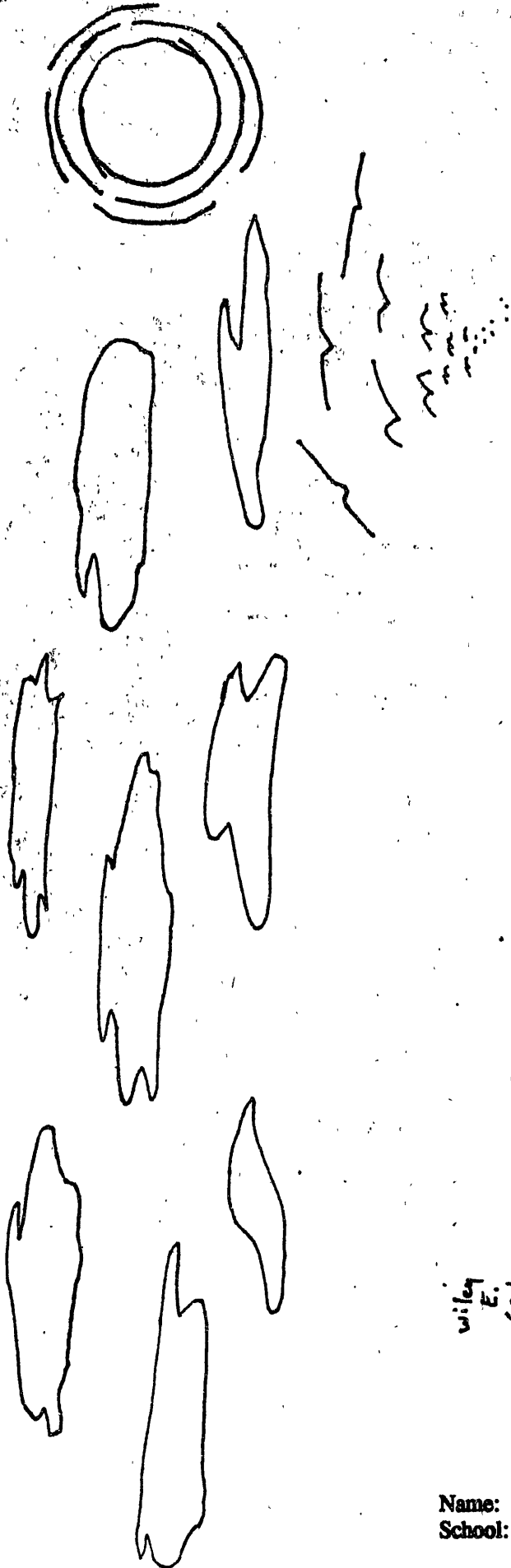
Name: David Covacevich
School: Langham Creek High School, Cypress-Fairbanks ISD





Name: Robbi Holtzman
School: Langham Creek High School, Cypress-Fairbanks ISD

Robbi H⁹³

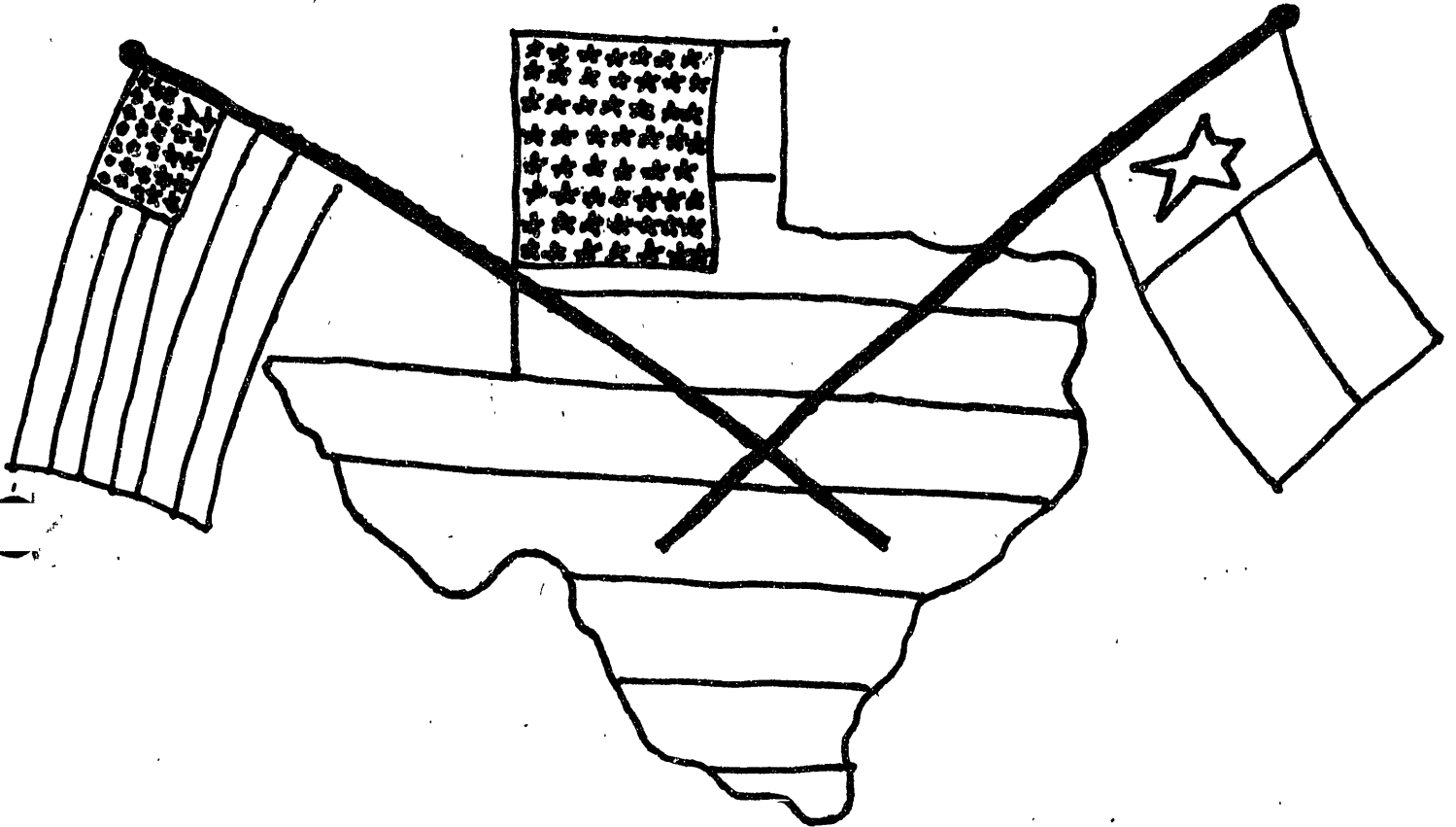


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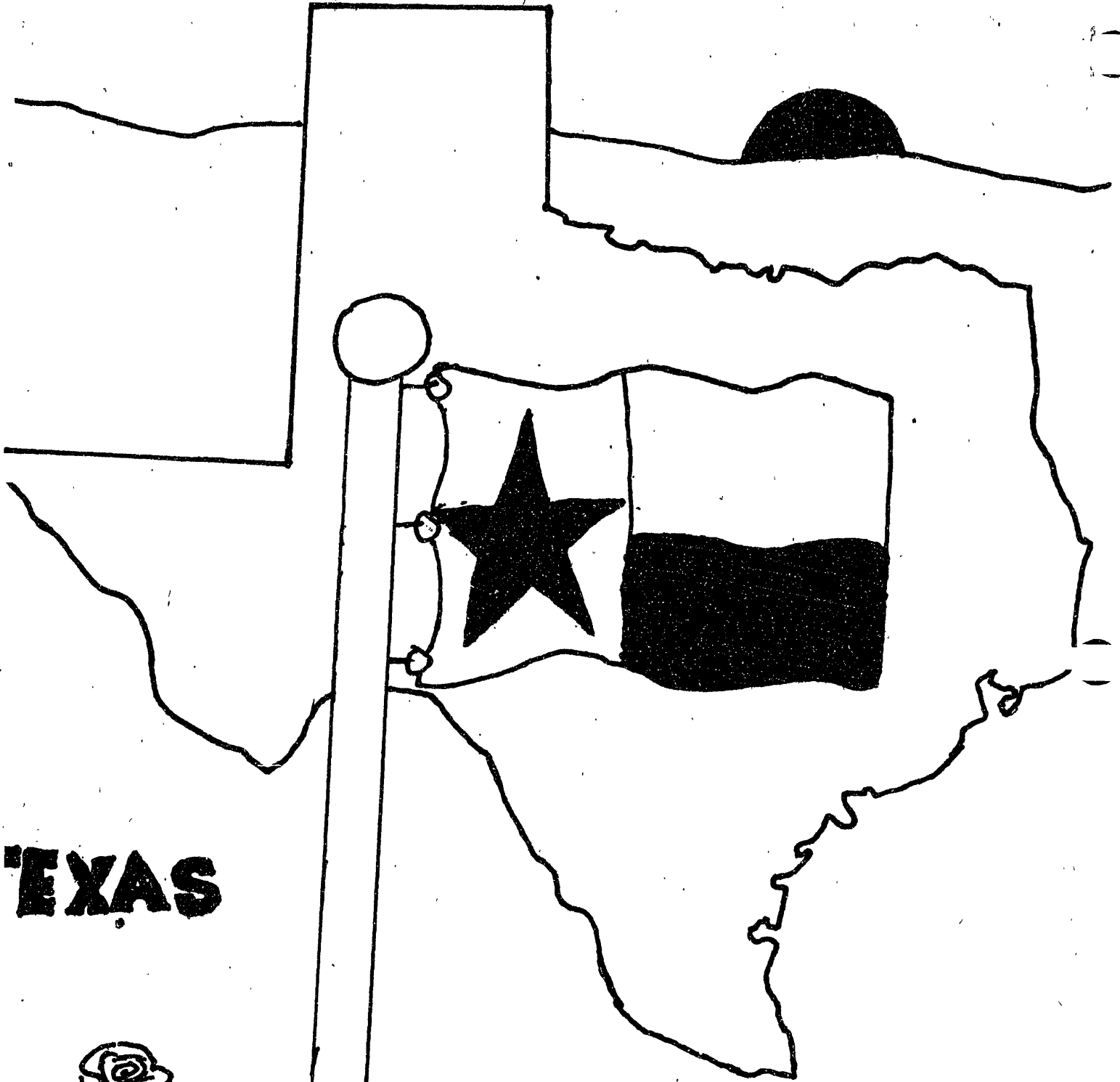
Name: Shawn Vesquez
School: Langham Creek High School, Cypress-Fairbanks ISD

Texas

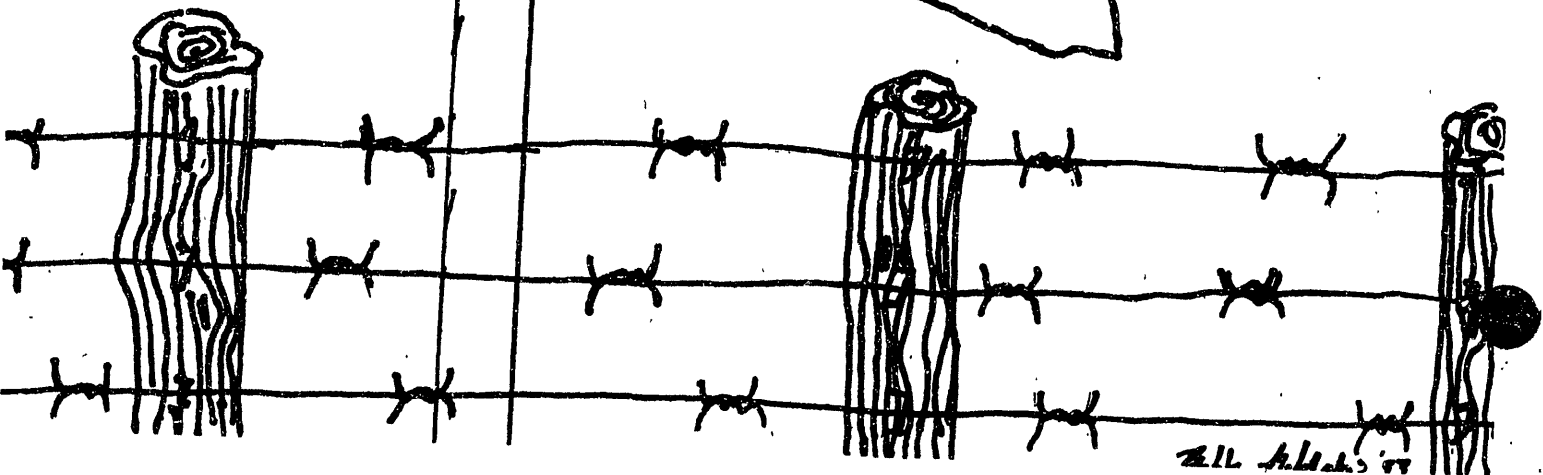


Name: Shannon Schrader
School: Langham Creek High School, Cypress-Fairbanks ISD

Name: Bubba Meleski
School: Langham Creek High School, Cypress-Fairbanks ISD

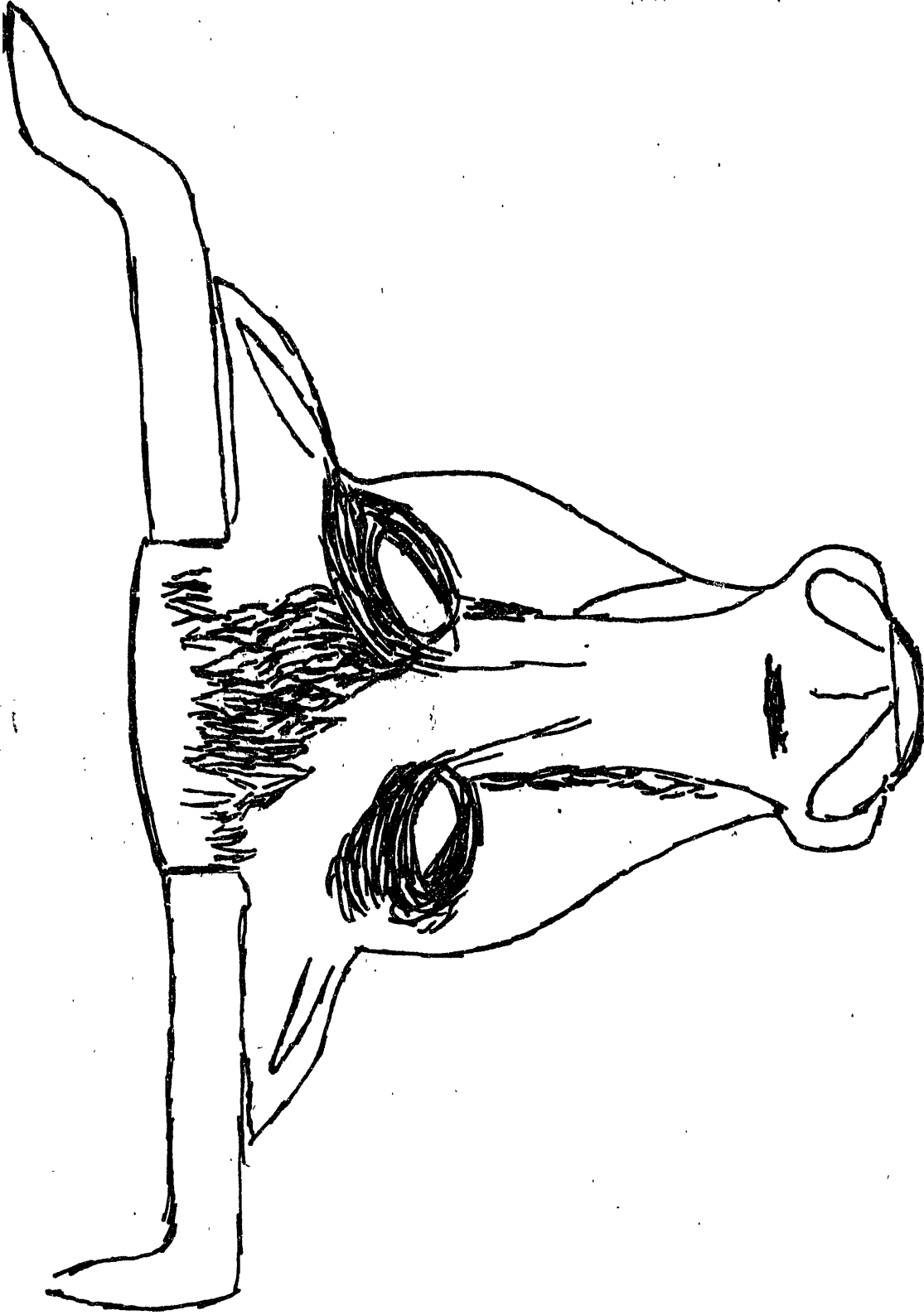


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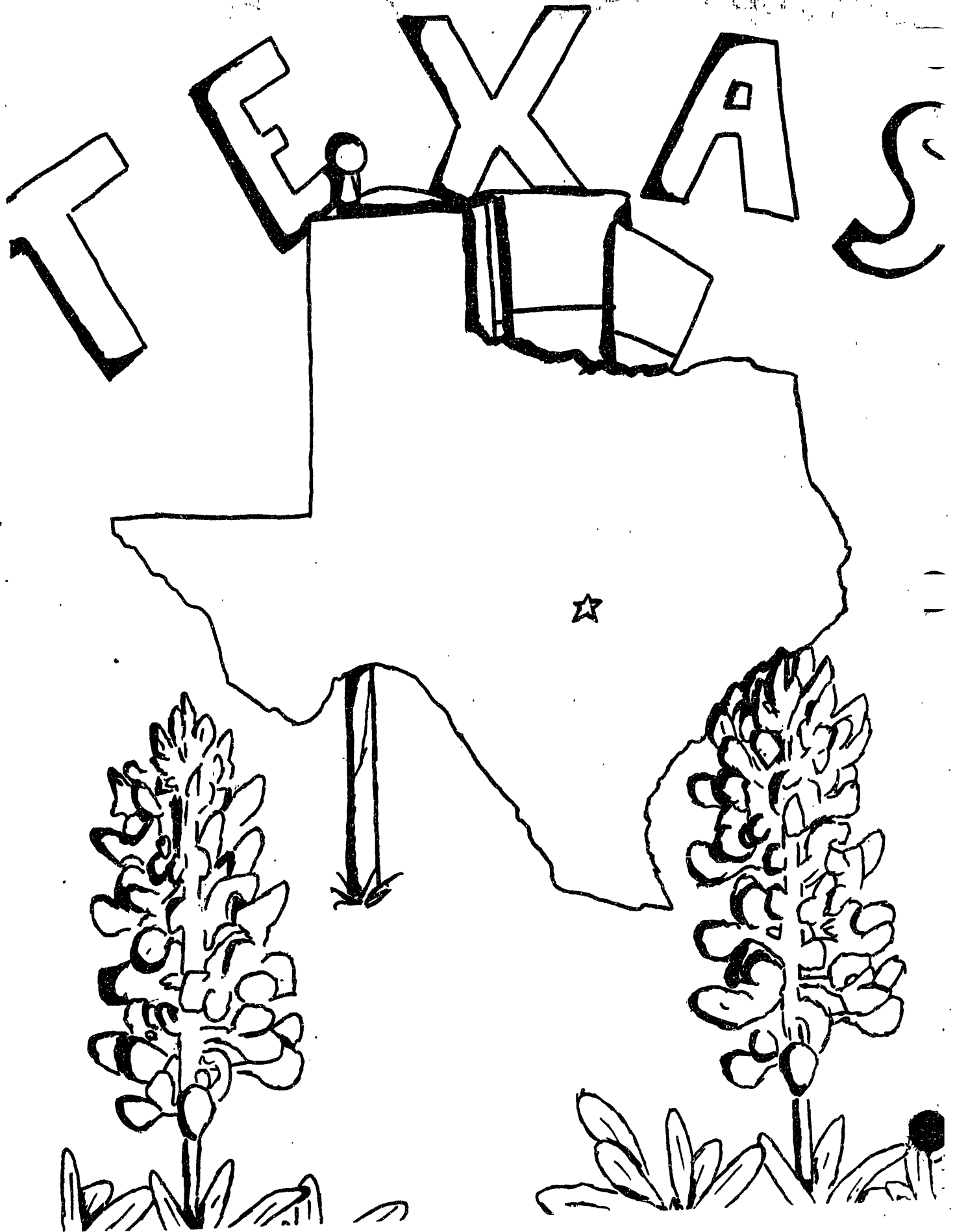
Bubba Meleski '99

Ebony Simon 93



Name: Ebony Simon
School: Langham Creek High School, Cypress-Fairbanks ISD

Name: Ryan Granger
School: Langham Creek High School, Cypress-Fairbanks ISD





Name: David Lopez
School: Langham Creek High School, Cypress-Fairbanks ISD

David Lopez
Lopez '93

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