

Texas Register

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Volume 17, Issue Number 79, Part I

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POSTMASTER: Please send Form 3579 changes to the Texas Register, P.O. Box 13824, Austin, Texas 78711-3824.

Information Available: The ten 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- Withdrawn Sections** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the **Texas Register** six months after proposal publication date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 accumulative quarterly and annual indexes to aid in researching material published.

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How to Cite: Material published in the **Texas Register** is referenced by citing the volume in which a 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 17 (1992) is cited as follows: 17 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: "17 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 17 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, Austin. Material can be found using **Texas Register** indexes, the **Texas Administration Code**, section numbers, or TRD number.

Texas Administrative Code

The **Texas Administrative Code** (TAC) is the approved, collected volumes of Texas administrative rules.

How to Cite: Under the TAC scheme, each agency 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 rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

Texas Register Art Project

This program is sponsored by the **Texas Register** to promote the artistic abilities of Texas students, grades K-12, and to help students gain an insight into Texas government. The artwork is used to fill otherwise blank pages in the **Texas Register**. The blank pages are a result of the production process used to create the **Texas Register**. The artwork does not add additional pages and does not increase the cost of the **Texas Register**.

Texas Register Publications



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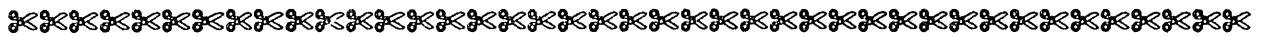
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*The Texas Register Readers Choice Award
continues with this issue!*

You will be able to continue to VOTE into the fall on what you think is the best of the 1991-1992 school art project submissions. In this issue, we continue republishing the artwork from the students. This will allow you one final chance to make your vote count. The pictures are labeled first by the category, and then by a number reflecting the individual piece. For example "7-1" will indicate that the picture is the first submission in the seventh through ninth grade group. You will be able to vote as often as you would like. Simply fill out the attached form, and mail it to the Texas Register, Roberta Knight, P.O. Box 13824, Austin, Texas 78711-3824.

The Secretary of State, Texas Register staff will then tabulate the votes and announce the winners in the fall of 1992.

The artwork does not add additional pages and does not increase the cost of the Texas Register.



1991 - 1992 Texas Register Readers Choice Award.

Please enter my vote for the "best of the best"

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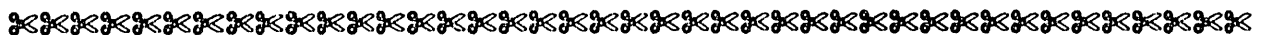
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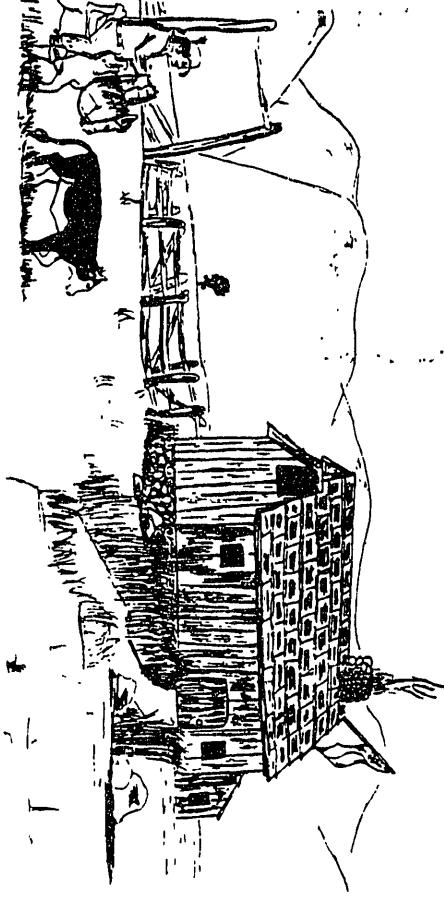
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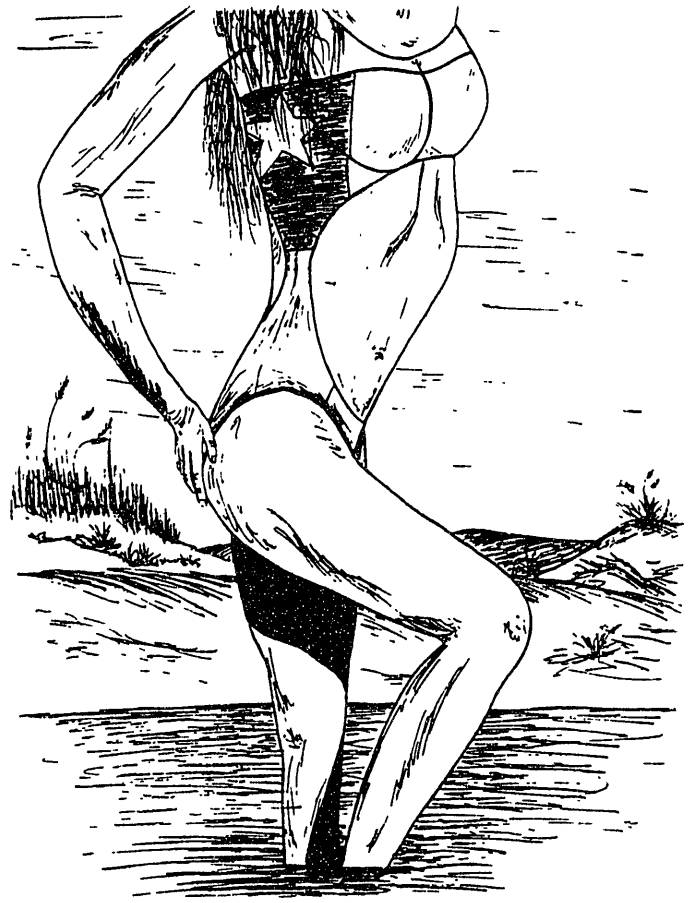
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Make Your Vote Count!



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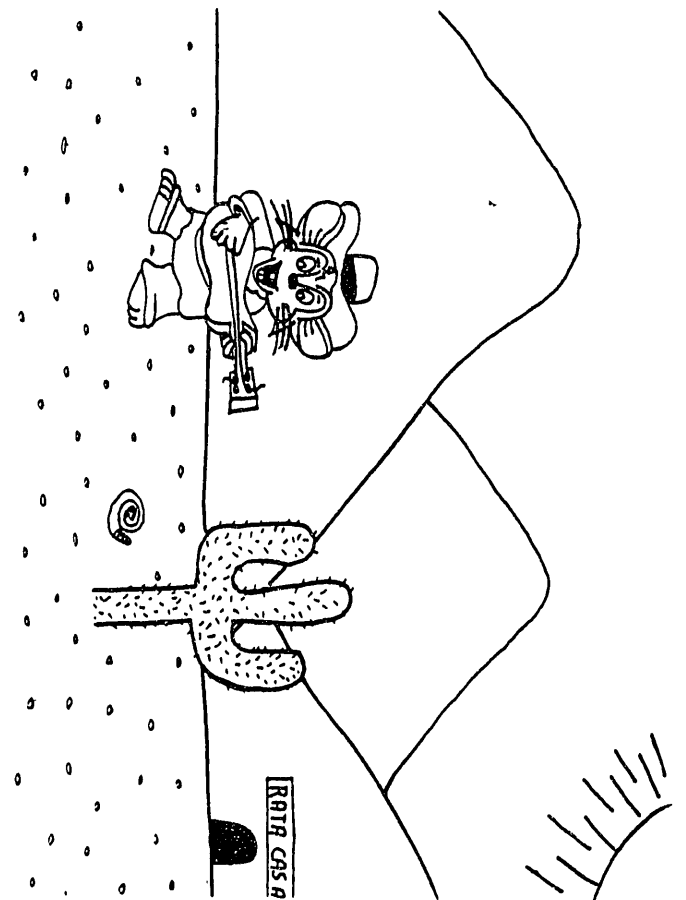


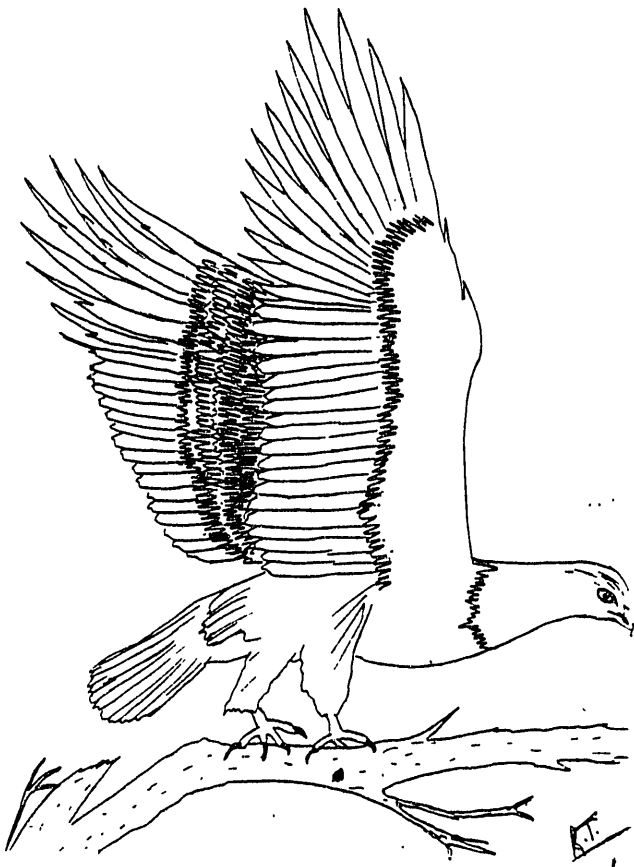
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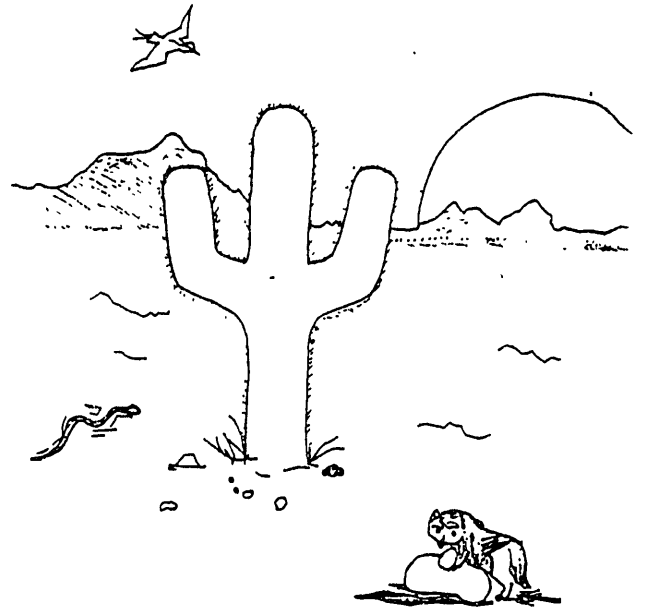


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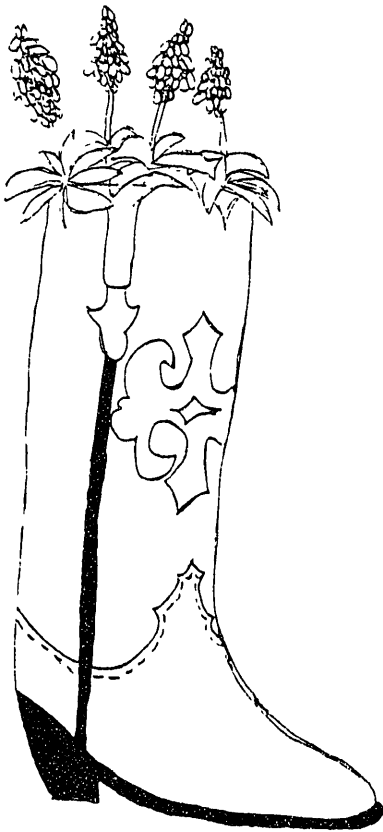


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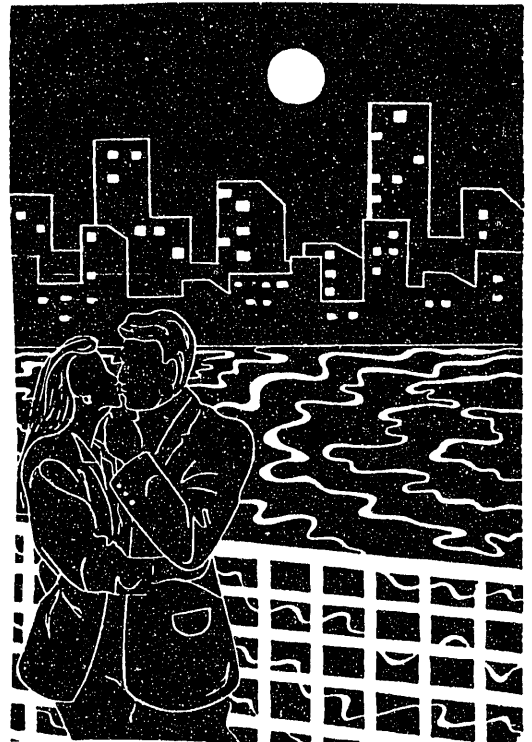


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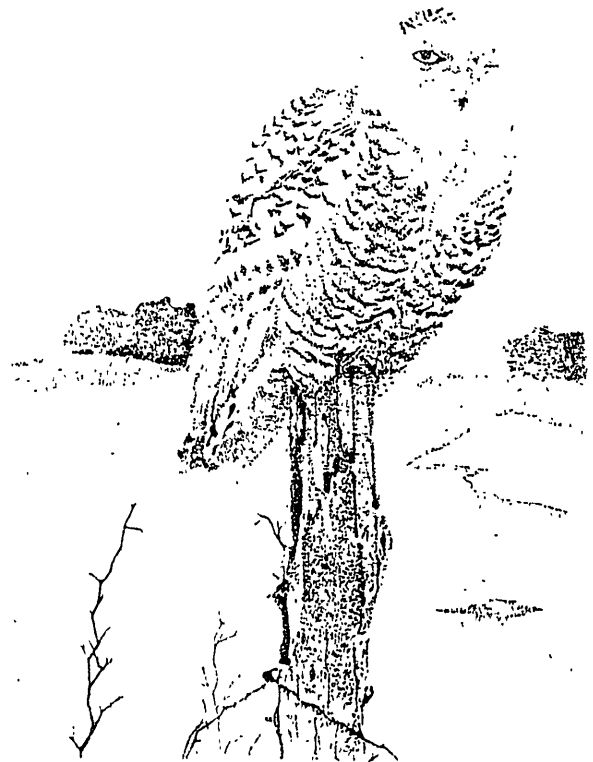


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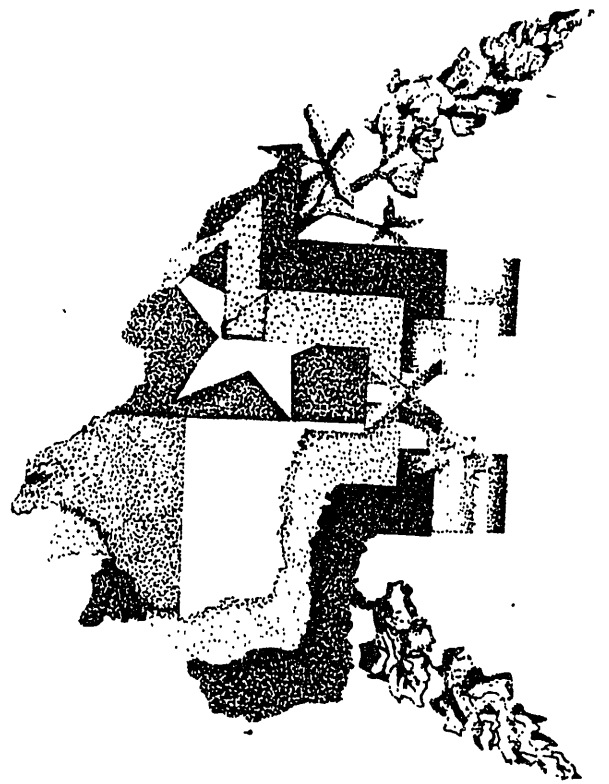


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Open Meeting Notices Move

Open meeting notices posted by the Secretary of State (Texas Civil Statutes, Article 6252-17) are now located on the bulletin board in the lobby at 221 East 11th Street, Austin, Texas.

The open meeting notices were moved due to restoration of the Capitol Building.

The Governor

As required by Texas Civil Statutes, Article 6252-13a, §6, the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in Chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments Made October 6, 1992

To be a member of the **Judge of the 273rd Judicial District Court, Sabine, San Augustine, and Shelby Counties**, until the general election in 1994 and until his successor shall be duly elected and qualified: **John Winship Mitchell**, 603 East Columbia, San Augustine, Texas 75972. Mr. Mitchell will be replacing Judge J. L. Smith of San Augustine who resigned.

Appointments Made October 7, 1992

To be a member of the **Texas Incentive and Productivity Commission** for a term to expire February 1, 1994: **Bill B. Cobb**, 45 Palmer Lane, Wimberley, Texas 78676. Mr. Cobb is being reappointed.

Appointments Made October 8, 1992

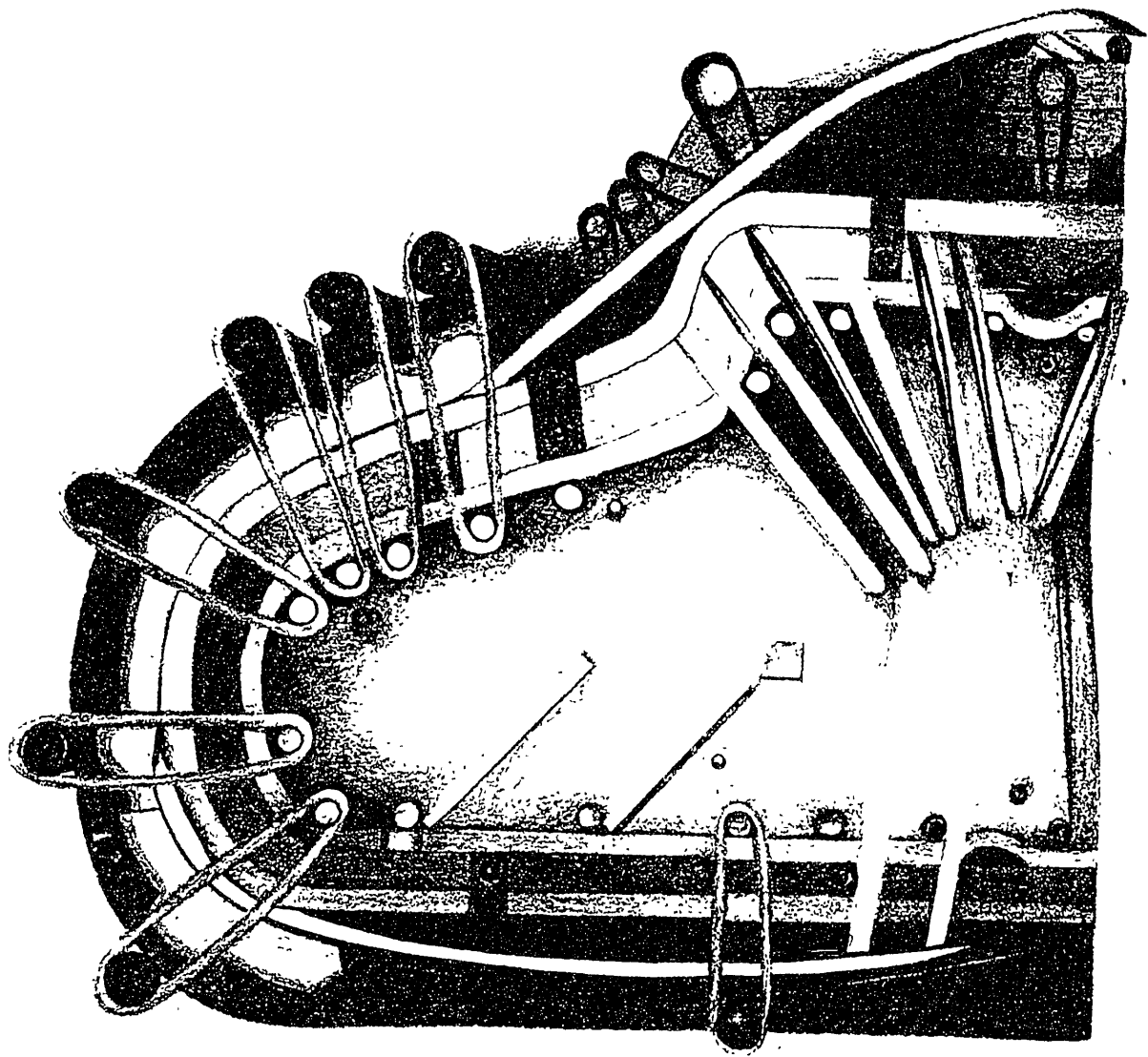
To be a member of the **Upper Neches River Municipal Water Authority Board of Directors** for a term to expire February 1, 1993: **Cathy Ann Stark**, 211, Inwood Drive, Palestine, Texas 75801. Ms. Stark will be filling the unexpired term of Gordon B. Broyles of Palestine who is deceased.

Issued in Austin, Texas, on October 13, 1992.

TRD-9213832

Ann W. Richards
Governor of Texas





Name: Yeonju Jeong

Grade: 12

School: Plano Senior High School, Plano ISD

Attorney General

Description of Attorney General submissions. Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042 and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies maybe held from public disclosure. Requests for opinions, opinions, and open record decisions are summarized for publication in the *Texas Register*. The Attorney General responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the Attorney General unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record.

Opinion

DM-163 (RQ-282). Request from Jesusa Sanchez-Vera, Jim Wells County Attorney, Alice, concerning whether the executive director of a municipal housing authority is subject to the nepotism statute, Texas Civil Statutes, Article 5996a.

Summary of Opinion. Because an executive director has no statutory authority to hire personnel, he or she is not subject to the nepotism statute, Texas Civil Statutes, Article 5996a.

TRD-9213746





Name: Steven Kinder
Grade: 12
School: Plano Senior High School, Plano 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.

Opinions

AOR-111. A member of the legislature has asked whether political contributions may be used to pay for business and personal calls not involving state business from his Austin office to his hometown.

AOR-112. The Texas Ethics Commission has been asked whether the prohibition on honoraria set out in the Texas Penal Code, §36.07 would apply in the following circumstances: city emergency medical services employee would be paid for periodic service as part of a private ambulance company accreditation team; a city fire department employee would be paid for serving a "promotional process assessor" for position in an out-of-state city's fire department. In both situations, the city employees would receive travel expenses.

AOR-113. The Texas Ethics Commission has been asked to consider whether a candidate may use campaign contributions to pay legal expenses incurred in defending a collection suit brought by the holder of notes signed by the candidate in consideration for campaign loans.

AOR-114. The Texas Ethics Commission has been asked to consider whether the Board of Pardons and Paroles is a "regulatory agency" for purposes of Texas civil Statutes, Article 6252-9b, §7.

AOR-115. The Texas Ethics Commission has been asked to consider whether a legislator who is a lawyer may be employed by a law firm that represents clients before either a state agency or a school district. The legislator would not practice before state agencies.

AOR-116. A registered lobbyist has asked whether he may buy gifts of artwork for members of the legislature.

Issued in Austin, Texas, on October 12, 1992.

TRD-9213799 Sarah Woelk
Director, Advisory Opinions
Texas Ethics Commission

Filed: October 13, 1992

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





Name Scot Kaiser
Grade 12
School Plano Senior High School, Plano ISD

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 1. ADMINISTRATION

Part IV. Office of the Secretary of State

Chapter 78. Athlete Agents

Contracts

• 1 TAC §78.51

The Office of the Secretary of State proposes new §78.51, concerning athlete agent contracts. The new rule is proposed to identify certain statutory and administrative information that must be included in such contracts.

Guy Joyner, staff attorney, 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. Joyner, 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 to provide individuals and companies with a clarification of the minimum amount of information that an athlete agent contract or financial services contract must contain. 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.

Comments on the proposal may be submitted to Guy Joyner, Staff Attorney, Statutory Documents Section, P.O. Box 12887, Austin, Texas 78711-2887.

The new section is proposed under Texas Civil Statutes, Article 6252-13a, §4(a)(1) and the Athlete Agents Act, Texas Civil Statutes, Article 8871, which provide the secretary of state with the authority to prescribe and adopt rules.

§78.51. Contract Form.

(a) The secretary of state has the authority to approve the form of all agent and financial services contracts. All such contracts shall:

(1) include the fees the agent may charge to and collect from the athlete and a description of the various services to be rendered in return for each fee;

(2) contain the disclosure statements specified in the Athlete Agents Act, §5(a)(1), (2), and (3);

(3) indicate the date that the athlete signs the contract;

(4) identify the institution of higher education where the athlete attended and participated in intercollegiate sports contests.

(b) If a contract fails to contain the information stated in this rule or if the contract is not filed within the time specified in §78.50 of this title (relating to the Initial Filing Date), an athlete agent may be subject to administrative penalties and other disciplinary action by the secretary of state.

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 October 9, 1992.

TRD-9213851

Audrey Selden
Assistant Secretary of
State
Office of the Secretary of
State

Earliest possible date of adoption: November 20, 1992

For further information, please call: (512) 463-5558

Part XII. Advisory Commission on State Emergency Communications

Chapter 251. Regional Plan Standards

• 1 TAC §251.4

The Advisory Commission on State Emergency Communications proposes new §251.4, concerning guidelines for 9-1-1 ancillary equipment. The guidelines are to be used in evaluating individual council of governments requests for equipment/services considered to be essential to system functions. The guidelines seek to clarify the provisioning of equipment necessary for 9-1-1 call delivery.

Mary A. Boyd, executive director, 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.

Ms. Boyd, 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 improved effectiveness and reliability of 9-1-1 call delivery systems in 9-1-1 regions throughout the state. No historical data is available, however, there appears to be no direct impact on small or large businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Mary A. Boyd, Executive Director, the Advisory Commission on State Emergency Communications, 1101 Capital of Texas Highway, South, Suite B-100, Austin, Texas 78746.

The new section is proposed under the Health and Safety Code, Chapter 771, §§771.055, 771.056, 771.057, and 771.072, which provides the Advisory Commission on State Emergency Communications with the authority to develop and amend a regional plan as necessary within commission standards and procedures to improve 9-1-1 call delivery. It also authorizes 9-1-1 equalization surcharge funding to be used to implement 9-1-1 regional plans that meet commission standards.

§251.4. Guidelines for the Provisioning of Ancillary Equipment.

(a) The commission established standards that must be met in a 9-1-1 regional plan (§251.1 of this title (relating to Regional Plans for 9-1-1 Service)), and guidelines that will govern the regional plan amendment process (§251.2 of this title (relating to Guidelines for Regional Plan Amendments)). Any 9-1-1 regional plan amendments that exceed the authorization guidelines set in place for the councils of governments and commission staff must be reviewed, and recommended to the full commission, by the Planning and Implementation Committee.

(b) The commission will look favorably on plan amendments for ancillary equipment that will improve the effectiveness and reliability of 9-1-1 call delivery systems. This will include the following when the equipment is for 9-1-1 call delivery: surge protection devices, UPS (uninterrupted power source), power backup, voice recorders, paging systems for 9-1-1 call delivery, security devices, and back-up communication services.

(c) The commission will be guided by the basic consideration that it is responsible for the provision of 9-1-1 call delivery and not for the provision of emergency services. Therefore, the commission will normally approve expenditures related only to call delivery and will continue to expect local governments to fund all activities related to the provision of emergency services.

(d) The following guidelines will be used in evaluating plan amendment requests for ancillary equipment.

(1) Voice recording equipment

(A) The commission will normally fund voice recording capability in a PSAP to record the conversation on each answering position used to answer emergency calls on a regular basis. (This means one recording channel per answering position instead of one channel per incoming line.)

(B) The commission will also fund recording capability to record the transfer of an emergency call from the PSAP first answering the call to the agency that is responsible for providing the required emergency services. This recording capability will be limited to the minimum amount required to record the transfer of the caller and relaying of information to the service provider.

(C) The commission will fund the purchase of cassette or reel-to-reel recorders, as justified, to record 9-1-1 call delivery. Dual deck recorders may be provided where justified. Call volumes requiring recording in excess of 90 minutes per day will normally be required to justify reel-to-reel recorders.

(D) The funding of built-in cassette recorders to transfer information from a reel-to-reel recorder will be approved only upon specific justification of need.

(E) Funding for search capability for recorders will be limited to the ability to locate an event by date and time.

(F) The commission will not normally fund the purchase of both voice logging recorders and instant playback recorders in the same location.

(G) When the operator of a 9-1-1 PSAP and the providers of emergency services desire to use the same recording equipment funded by regional plan, the following guidelines will apply to determine

the amount to be funded by the commission.

(i) When the minimum size of recorder that can be purchased to serve the PSAP provides more channels than are needed by the PSAP to record the delivery of 9-1-1 calls, the other agency may use the extra channels and all funding will be provided by the commission.

(ii) When the PSAP requires a given size of recording equipment, and the other agency requires additional channels, the commission will fund the size of recording equipment needed to record the delivery of 9-1-1 calls, and the other agency will fund all additional equipment.

(iii) When the recording requirements of the other agency requires additional features or capabilities than would be required by the PSAP alone, the commission will fund the equivalent amount of the system needed to serve the PSAP alone. For instance, if the PSAP could use a cassette recorder system to record the delivery of 9-1-1 calls, but another agency needs to record a radio channel that requires the capacity of a reel-to-reel recorder, the commission will fund the equivalent cost of the cassette system.

(H) To assist the commission in reviewing and approving requests for funding for voice recording devices for 9-1-1 call delivery, requests for funding should include a worksheet, provided by the commission, for each PSAP location.

(I) In reviewing requests for recording systems, the commission will award funding, when justified, for the actual costs of basic recording systems not to exceed \$6,000 on four-channel or equivalent systems, and not to exceed \$10,000 on up to 10-channel or equivalent recording systems. Requests for any other recording systems will require separate approval by the commission.

(J) The commission will consider funding of recording capabilities greater than those suggested by the guidelines when sufficient justification is provided as part of a regional plan.

(K) The worksheet for requesting voice recording equipment is adopted by reference.

(2) Emergency power equipment

(A) Each PSAP location should be evaluated to determine if an emergency power system is required to insure the ability to answer 9-1-1 calls. A

PSAP that receives a relatively small number of emergency calls per day may be able to provide acceptable service without the availability of ANI or ALI for short periods of time. If the same PSAP is located in a location that is subject to prolonged power outages, it may need emergency power sources.

(B) Where conditions exist that indicate a need for emergency power systems to support 9-1-1 call delivery, UPS should be considered as the emergency power system. Emergency generators (backup power) should be approved only in locations with a history, or potential, for extended interruptions of commercial power supplies.

(C) Each request for UPS must include a worksheet showing the calculations used to determine the system size and batteries required. This worksheet must identify all equipment to be powered and the operating voltage and current drain of each piece of equipment. The request for UPS must identify the load capacity of the system requested and the length of time the batteries will operate the PSAP 9-1-1 equipment.

(D) The length of time that an UPS battery will be required to provide emergency power is a major factor in determining the cost of the UPS system. Each request for UPS must provide information justifying the size of the batteries requested. Information concerning the history of power failures at the PSAP location and the average time to restore power should be obtained from the local power company.

(E) If the history of power failures, or the expected restoral time, is more than can be economically justified for UPS batteries, backup power can be considered. Any request for an emergency generator in addition to an UPS shall include a comparison of the cost of an UPS system with sufficient batteries to the cost of the combination of UPS and backup power.

(F) There may be circumstances that justify the installation of an emergency generator (backup power) in addition to an UPS as the primary system for a PSAP location. In these cases, the request for emergency power must include an explanation and comparison of the relevant costs.

(G) When the operator of a 9-1-1 PSAP and the providers of emergency services desire to share the emergency power system funded by the commission, the following guidelines will apply to deter-

mine the amount to be funded by the Commission.

(i) When the minimum size of emergency power system that can be purchased to serve the PSAP provides more capacity than is needed by the PSAP, the other agency may use the extra capacity and all funding will be provided by the commission.

(ii) When the PSAP requires a given size of emergency power system, and the other agency requires additional capacity, the commission will fund the size of emergency power equipment needed to supply the PSAP alone and the other agency will fund all additional capacity.

(H) The worksheet for emergency power equipment is adopted by reference, and is available through the commission at 1101 Capital of Texas Highway, South, Suite B-100, Austin, Texas 78746.

(3) TDD accessibility equipment.

(A) The program provided for a statewide 9-1-1 placement program coupled with related training and public education through an interagency contract with the Texas Commission for the Deaf and Hearing Impaired (TCDHI), beginning September 1, 1990. The administration of the TDD Distribution Program was transferred to the Advisory Commission on State Emergency Communications (ACSEC) effective April 1, 1991.

(B) The program is utilized by Texas regional councils as well as 9-1-1 emergency communications districts. After the program was moved to the ACSEC, the TCDHI's TDD program closed and those units loaned from their agency were recalled. An agreement was arranged for the ACSEC to purchase those units already placed in emergency response centers.

(C) The Americans with Disabilities Act (Public Law 101-336), commonly referred to as the ADA, impacts telephone emergency services by mandating direct access to TDD and computer modem users. Although the ADA does not mandate TDD detection equipment, the Department of Justice addresses the issue of a "silent call" in their Technical Assistance Manual by stating that "operators must be trained to recognize that silent calls may be TDD or computer modem calls and to respond appropriately." Installation of detection equipment will assist the telecommunicator in call-handling efficiency.

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

(i) TDD is the acronym for telecommunication device for the deaf. Other interchangeable acronyms accepted are TTY (teletypewriter) or TT (text telephone).

(ii) TDD detectors monitor incoming trunks for TDD tones. Upon detection, a response sequence begins. A built-in recording provides a repeating voice announcement, "TDD Call," to the telecommunicator. A message is sent to the TDD caller (such as "9-1-1 Please Hold"). The telecommunicator then connects to a TDD or the call can be transferred to a TDD-equipped trunk.

(iii) TDD call diverters function as a detection device, monitoring incoming calls and upon detection of TDD tones, diverts the call to a trunk/position designated for handling TDD calls. This device requires installation on each incoming trunk to monitor calls.

(E) The following are funding parameters for accessibility equipment.

(i) The commission will fund TDD equipment. ACSEC will coordinate the purchase of the equipment in order to maximize quantity pricing.

(ii) The commission will fund TDD detectors through the plan amendment process with an allocation policy of one TDD detector per position. ACSEC will coordinate the purchase of the equipment in order to maximize quantity pricing.

(iii) The commission will fund TDD call diverters through the plan amendment process, allowing TDD call diverters for PSAPs with four or more positions. The ACSEC will coordinate the purchase of the equipment in order to maximize quantity pricing. The commission recognizes there may be exceptions to this policy.

(iv) The commission will review and consider exceptions to the previously listed policies on a case-by-case basis.

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 October 14, 1992.

TRD-9213898

Mary A. Boyd
Executive Director
Advisory Commission on
State Emergency
Communications

Earliest possible date of adoption: November 20, 1992

For further information, please call: (512) 327-1911

TITLE 22. LICENSING BOARDS

Part IX. Texas State Board of Medical Examiners

Chapter 163. Licensure

• 22 TAC §163.3

(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 State Board of Medical Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas State Board of Medical Examiners proposes the repeal of §163.3, concerning acceptance of the United States Medical Licensing Examination as a means for licensure in Texas. Extensive rewrite of the section was felt necessary; therefore, repeal with simultaneous new wording is proposed.

Ivan Hurwitz, director of licensure, 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.

Pat Wood, secretary to the executive director, 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 will be no benefits anticipated other than clarification of the rules by omission. 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 Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134. A public hearing will be held at a later date.

The repeal is proposed under Texas Civil Statutes, Article 4495b, which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations, and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

§163.3. Examination Required by the Board for Licensure.

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 October 14, 1992.

TRD-9213909

Homer R. Goehrs, M.D.
Executive Director
Texas State Board of
Medical Examiners

Earliest possible date of adoption: November 20, 1992

For further information, please call: (512) 834-4502

The Texas State Board of Medical Examiners proposes new §163.3, concerning acceptance of the United States Medical Licensing Examination as a means for licensure in Texas. Extensive rewrite of the section was felt necessary; therefore, repeal with simultaneous new wording is proposed.

Ivan Hurwitz, director of licensure, 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.

There will be no local employment impact.

Pat Wood, secretary to the executive director, 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 to enable physicians to be licensed on the basis of USMLE. 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 will be none, other than normal licensure fees.

Comments on the proposal may be submitted to Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134. A public hearing will be held at a later date.

The new section is proposed under Texas Civil Statutes, Article 4495b, which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations, and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

§163.3. Examination Required by the Board for Licensure.

(a) Applicants for licensure must have passed the Texas medical jurisprudence examination; and

(b) An applicant for licensure by examination must have met one of the following examination requirements:

(1) USMLE examination, passage of all parts within seven years, with a score of 75 or better on each step; or

(2) FLEX examination, passage of all parts within seven years, with a score of 75 or better on each component after July 1985; or

(3) FLEX examination, passage in one sitting with a score of 75 weighted average or better prior to June 1985; or

(4) Texas state board examination, passage with a score of 75 average or better prior to January 1, 1977; or

(c) An applicant for licensure by reciprocal endorsement must be a licentiate of a state, territory, or province based on passage of one of the following examinations:

(1) National Board of Medical Examiners examination;

(2) National Board of Osteopathic Medical Examiners examination;

(3) Medical Council of Canada examination prior to January 1, 1978;

(4) Medical Council of Canada examination after January 1, 1978, and Day III of the FLEX, Component II of the FLEX, SPEX, or specialty certification or recertification by a board that is a member of the American Board of Medical Specialties or the Advisory Board for Osteopathic Specialists; or

(5) state board licensing examination prior to January 1, 1978, with the exception of Florida, Virgin Islands, Guam, Tennessee Osteopathic Board, or Puerto Rico after June 30, 1963;

(6) state board licensing examination after January 1, 1978, with the exception of Florida, Virgin Islands, Guam, Tennessee Osteopathic Board, or Puerto Rico after June 30, 1963, and Day III of the FLEX, Component II of the FLEX, SPEX, or specialty certification or recertification by a board that is a member of the American Board of Medical Specialties or the Advisory Board for Osteopathic Specialists;

(7) FLEX examination, passage in one sitting with a score of 75 weighted average or better prior to June 1985; or

(8) FLEX examination, passage of all parts within seven years, with a score of 75 or better on each component after July 1985; or

(9) USMLE examination, passage of all parts within seven years, with a score of 75 or better on each step.

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 October 14, 1992.

TRD-9213910 Homer R. Goehrs, M.D.
Executive Director
Texas State Board of
Medical Examiners

Earliest possible date of adoption: November 20, 1992

For further information, please call: (512) 834-4502

• 22 TAC §163.9

The Texas State Board of Medical Examiners proposes an amendment to §163.9, concerning procedural rules for all licensure appli-

cants. The amendment provides clarification of the term "full force" as used in the Medical Practice Act regarding procedural rules for licensure applicants.

Ivan Hurwitz, director of licensure, 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.

There will be no impact on local employment.

Pat Wood, secretary to the executive director, 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 clarification of procedural rules for licensure applicants. 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.

Comments on the proposal may be submitted to Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134. A public hearing will be held at a later date.

The amendment is proposed under Texas Civil Statutes, Article 4495b, which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations, and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

§163.9. Procedural Rules for all Licensure Applicants.

(a)-(i) (No change.)

(j) Applicants for licensure by reciprocal endorsement must possess a license in another jurisdiction which is in full force and not canceled, suspended, revoked, or restricted. A physician with a license in full force shall include a physician who does not have a current, active, valid annual permit in another jurisdiction because:

(1) that jurisdiction requires the physician to practice in the jurisdiction before the annual permit is current; or

(2) that jurisdiction requires the physician, prior to practicing in that jurisdiction, to hold a current professional liability insurance policy before the annual permit is current.

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 October 14, 1992.

TRD-9213912 Homer R. Goehrs, M.D.
Executive Director
Texas State Board of
Medical Examiners

Earliest possible date of adoption: November 20, 1992

For further information, please call: (512) 834-4502

Chapter 165. Administration of Examinations

• 22 TAC §165.1

The Texas State Board of Medical Examiners proposes an amendment to §165.1, concerning acceptance of the United States Medical Licensing Examination as a means for licensure in Texas.

Ivan Hurwitz, director of licensure, 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.

There will be no local employment impact.

Pat Wood, secretary to the executive director, 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 to enable physicians to be licensed on the basis of USMLE. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the section as proposed will be none, other than normal licensure fees.

Comments on the proposal may be submitted to Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134. A public hearing will be held at a later date.

The amendment is proposed under Texas Civil Statutes, Article 4495b, which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations, and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

§165.1. Examination Administration.

(a) The board shall administer Step 3 of the United States Medical Licensing Examination (USMLE), the Federation Licensing Examination (FLEX), the special purpose examination (SPEX) and the Texas medical jurisprudence examination in writing at times and places as designated by the board.

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

(d) All USMLE Step 3, FLEX, and SPEX questions and answers, with grades attached, shall be preserved for at least one year at the National Board of Medical Examiners offices.

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

(g) A graduate of a medical school may sit for an [the] examination 14 months prior to the successful completion of the required graduate training program, but will not be eligible for licensure until proof is

presented to the board of having successfully completed the required graduate training.

(h) An applicant shall not be eligible to sit for the USMLE Step 3 examination until:

(1) the application is complete, with the exception of the FBI fingerprint card report;

(2) the applicant has passed the USMLE Step 1 and USMLE Step 2 examinations with a grade of 75 on each step within the last seven years; and

(3) the applicant has made a personal appearance to have his or her required original documents inspected by a representative of the board.

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 October 14, 1992.

TRD-9213911

Homer R. Goehrs, M.D.
Executive Director
Texas State Board of
Medical Examiners

Earliest possible date of adoption: November 20, 1992

For further information, please call: (512) 834-4502

Chapter 171. Institutional Permits

• 22 TAC §171.9

The Texas State Board of Medical Examiners proposes new §171.9, concerning a teaching fellow permit. This proposed rule allows for a teaching permit at Texas medical schools under certain conditions.

Ivan Hurwitz, director of licensure, 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.

There will be no local employment impact.

Pat Wood, secretary to the executive director, 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 that this proposed rule will allow qualified physicians to teach at Texas medical schools without obtaining full licensure. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the section as proposed will be a permit fee to be determined at a later date.

Comments on the proposal may be submitted to Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134. A public hearing will be held at a later date.

The new section is proposed under Texas Civil Statutes, Article 4495b, which provide the Texas State Board of Medical Examiners

with the authority to make rules, regulations, and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

§171.9. Teaching Fellow Permit.

(a) The board may issue a permit to practice medicine to a person appointed as a teaching fellow by a Texas medical school in accordance with this subchapter:

(1) who holds a valid license in another state or Canadian province or has completed three years of post graduate training; and

(2) who holds position as a salaried assistant professor or associate professor on the faculty working full-time in one of the following institutions:

(A) University of Texas Medical Branch at Galveston;

(B) University of Texas Health Science Center at Dallas;

(C) University of Texas Health Science Center at Houston;

(D) University of Texas Health Science Center at San Antonio;

(E) University of Texas Health Center at Tyler;

(F) University of Texas M.D. Anderson Cancer Center;

(G) Texas A&M School of Medicine;

(H) Texas Tech University School of Medicine;

(I) Baylor College of Medicine; or

(J) Texas College of Osteopathic Medicine.

(b) The permit shall be issued for one year, and may be renewed three times.

(c) The permit shall be issued to the institution authorizing the named teaching fellow to practice medicine within the teaching confines of the applying medical school as a part of duties and responsibilities assigned by the school to the teaching fellow.

(d) The teaching fellow may participate in the full activities of the department

in whichever hospitals the appointee's department has full responsibility for clinical, patient care, and teaching activities.

(e) The teaching fellow and the school shall file affidavits affirming acceptance of the terms, limitations, and conditions imposed by the board on the medical activities of the teaching fellow.

(f) The application and fee for the teaching fellow permit or the renewal thereof shall be presented to the executive director of the board at least 30 days prior to the effective date of the appointment of the teaching fellow.

(g) The application shall be made by the chairman of the department in which the teaching fellow will teach and provide such information and documentation to the board as may be requested.

(h) The application shall be endorsed by the dean of the medical school or by the president of the health science center.

(i) Three years in a teaching fellowship at one medical school may be equivalent to three years of approved post graduate training, if, at the conclusion of this three-year period, the teaching fellow presents recommendations in his or her behalf from the chief administrative officer and the president of the institution.

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 October 14, 1992.

TRD-9213913 Homer R. Goehrs, M.D.
Executive Director
Texas State Board of
Medical Examiners

Earliest possible date of adoption: November 20, 1992

For further information, please call: (512) 834-4502

◆ ◆ ◆
Part XIX. Polygraph Examiners Board
Chapter 391. Polygraph Examiner Internship

• 22 TAC §391.3

The Polygraph Examiners Board proposes an amendment to §391.3, concerning Internship training schedule. The amendment is proposed for the ultimate benefit of the public by insuring that only qualified polygraph schools will be approved by the board.

Bryan M. Perot, executive officer, 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. Perot, 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 that the polygraph industry will be more closely regulated in areas that the board determines to be critical. 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.

Comments on the proposal may be submitted to Bryan M. Perot, Polygraph Examiners Board, P.O. Box 4087, Austin, Texas 78773.

The amendment is proposed under Texas Civil Statutes, Article 4413(29cc), which provide the Polygraph Examiners Board with the authority to regulate persons who purport to be able to detect deception or to verify truth of statements through the use of instrumentation.

§391.3. *Internship Training Schedule.* The following internship schedule has been approved and adopted by the board as a minimum type and number of hours of any internship training program to be utilized in a course of supervised instruction of not less than 32 hours per week.

(1)-(12) (No change.)

(13) Approved polygraph schools include the following:

(A) (No change.)

(B) DOD Polygraph Institute [United States Army Polygraph School];

[(C) GORMAC;]

(C)[(D)] National Training Center of Polygraph Science;

(D)[(E)] Virginia School of Polygraph;

[(F) University of Houston, Downtown College, Polygraph Program;]

(E)[(G)] Maryland Institute of Criminal Justice;

(F)[(H)] American Institute of Polygraph Technology and Applied Psychology;

(G)[(I)] Argenbright International Institute of Polygraph;

(H)[(J)] Arizona School of Polygraph Science;

(I)[(K)] any other polygraph school or institution the board may approve from time to time.

(14)-(16) (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 October 12, 1992.

TRD-9213834

Bryan M. Perot
Executive Officer
Polygraph Examiners
Board

Earliest possible date of adoption: November 20, 1992

For further information, please call: (512) 465-2058

◆ ◆ ◆
TITLE 25. Health Services
Part I. Texas Department of Health
Chapter 111. Special Health Services

• 25 TAC §111.4

The Texas Department of Health (department) proposes new §111.4, concerning a memorandum of understanding relating to long term care services for the elderly. The new section will replace existing §145.121, which is being proposed for repeal in this issue of the *Texas Register*.

The new section will adopt by reference a Texas Department of Aging (TDoA) rule in 40 Texas Administrative Code §251.13.

The TDoA rule covers a memorandum of understanding between TDoA, the department, the Department of Human Services, and the Texas Department of Mental Health and Mental Retardation concerning coordination by the agencies of long term care services for the elderly.

Janice M. Caldwell, Dr.P.H., chief, bureau of long term care, 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.

Dr. Caldwell 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 to provide better comprehension of the section by deleting it from its existing chapter and moving it to a more appropriate chapter in 25 Texas Administrative Code. There will be no fiscal implications for small or large businesses; no cost to persons who may be required to comply with the section; and no impact on local employment.

Comments on the proposed new section may be submitted to Janice M. Caldwell, Dr.P.H., Chief, Bureau of Long Term Care, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7709. All comments must be submitted to the department by December 22, 1992.

The new section is proposed under the Human Resources Code, §101.031, which provides TDoA, the Texas Department of Human Services, the Texas Department of Health, and the Texas Department of Mental Health and Mental Retardation with authority to develop and adopt a memorandum of understanding concerning each agency's responsibilities concerning long term care services for the elderly; and the Health and Safety Code, §12.001, which provides the Texas Board of Health (board) with authority to adopt rules for the performance of every duty imposed by law on the department, the board, and the commissioner of health.

§111.4. Memorandum of Understanding Concerning Long Term Care Services for the Elderly.

(a) The Texas Department of Health adopts by reference the Texas Department on Aging (TDoA) rule in 40 Texas Administrative Code §251.13, concerning the coordination of long term care services for the elderly.

(b) The TDoA rule concerns a memorandum of understanding between the department, TDoA, the Texas Department of Human Services, and the Texas Department of Mental Health and Mental Retardation relating to coordination by the agencies of long term care services for the elderly.

(c) Copies of the memorandum of understanding may be reviewed by the public during regular business hours at the Bureau of Long Term Care, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

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 October 13, 1992.

TRD-9213876 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Earliest possible date of adoption: January 15, 1993

For further information, please call: (512) 458-7709

◆ ◆ ◆
Chapter 145. Long-Term Care
Subchapter A. Federal Laws
and Regulations Covering
Nursing and Convalescent
Homes

The Texas Department of Health (department) proposes to repeal existing §§145.1-145.2, 145.11-145.25, 145.31-145.43, 145.51-145.70, 145.81-145.97, 145.101-102, 145.111, 145.121, 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 concerning long term care. The repealed sections will be replaced, modified, and updated by the following proposed new section 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 new section and chapters are being published in this issue of the *Texas Register*.

Janice M. Caldwell, Dr. P.H., chief, bureau of long term care, has determined that for the first five-year period that the proposed repeals will be in effect there will be no fiscal implications to state or local government as a result of enforcing or administering the proposed repeals. Any fiscal implications under the proposed new sections and chapters which will replace the repealed sections are described in the preambles to the new sections and new chapters.

Dr. Caldwell also has determined that for each year of the first five years that the proposed repeal is in effect the public benefit anticipated as a result of enforcing the repeal as proposed will be to improve the care of residents in nursing facilities and related institutions by deleting outdated rules. The proposed repeal will have no fiscal implications to small businesses, there will be no cost to persons and there will be no impact on local employment.

Written Comments on the proposed repeal may be submitted to Janice M. Caldwell, Dr. P.H., Chief, Bureau of Long Term Care, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7709. Written comments must be submitted to the department no later than the postmark date of December 22, 1992. In addition, the department will conduct three public hearings to receive public comments on the proposed repeal as follows: Wednesday, December 2, 1992, 9:30 a.m., Texas Department of Health, Public Health Region 2, Large Conference Room, 1109 Kemper Street, Lubbock, (806) 744-3577 (contact Ralph Harmon, Program Administrator, Canyon/Lubbock Long Term Care Unit, alternate phone (806) 655-7151); Tuesday, December 8, 1992, 9 a.m., Arlington Community Center, Auditorium, 2800 South Center Street, Arlington, (817) 465-6661 (contact Mr. Ron Haygood, Program Administrator, Arlington, Long Term Care Unit (817) 792-7270); Tuesday, December 1, 1992, 9 a.m., San Antonio Convention Center, Room 108, 200 East Market Street, San Antonio, Texas 78205 (contact: Dick Dempsey, Program Administrator, San Antonio Long Term Care Unit (512) 342-3300).

• **25 TAC §145.1, §145.2**

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the

Texas Department of Health or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Health and Safety Code, Chapter 242, which provides the Texas Board of Health (board) with authority to adopt rules concerning nursing facilities and related institutions; §12 standards concerning nursing facilities and related institutions; Section 12.001 which provides the board with authority to adopt rules every duty imposed on the board, the department, and the commissioner of health; and Texas Civil Statutes, Article 6252-13a, §5, which establishes the procedures for a state agency to propose the repeal of a rule.

§145.1. Federal Laws Covering Nursing and Convalescent Homes.

§145.2. Federal Regulations Covering Long-Term Care Facilities.

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 October 9, 1992.

TRD-9213698 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Proposed date of adoption: January 16, 1993

For further information, please call: (512) 458-7709

◆ ◆ ◆
Subchapter A. Introduction

The Texas Department of Health (department) proposes to adopt new §§145.1-145.3, 145.11-145.22, 145.40-145.43, 145.61-145.73, 145.91-145.105, 145.131-145.134, 145.161-145.174, 145.191-145.192, 145.211-145.217, 145.231-145.238, 145.261-145.263, 145.281-145.287, 145.301-145.304, 145.321-145.327, concerning nursing facilities and related institutions. The new sections will replace the licensing standards for nursing facilities and related institutions in existing Chapter 145 which is being proposed for repeal in this issue of the *Texas Register*.

The major changes between the existing Chapter 145 and the sections in new Chapter 145 are as follows. The new sections will cover three types of facilities: nursing facilities; maternity facilities; and facilities serving persons with mental retardation or related conditions. Personal care facilities and adult day care and adult day health care facilities are being moved to new Chapters 146 and 153, respectively, in Title 25 of the Texas Administrative Code because they are being adopted under separate statutory authorities. Also, the provisions in the existing Chapter 145 concerning federal and state requirements for the survey and certification of long term care facilities participating in the medicare and medicaid programs are being moved to new Chapter 152 of Title 25 of the Texas Administrative Code.

Other major changes are as follows. The new sections contain new provisions on disclosure requirements. Applicants for a license will be required to disclose the past history of non-compliance in long term care programs, including licensure and certification, of the business entity, its owners, related business interests, and the facility management. The applicants also will be required to furnish financial information relating to past business practices and current condition. The new sections contain new provisions on regulatory authority. The criteria for denial of a license will be based on past history of noncompliance and/or financial ability to operate, and a license will be issued to the business entity owning the business and not to the administrator. The new sections contain new provisions on enforcement. Administrative penalties authorized under the Health and Safety Code, Chapter 242, will be levied against maternity facilities and facilities serving persons with mental retardation or related conditions as well as against nursing facilities. The new sections contain new provisions concerning minimum standards for nursing facilities. The standards will be based upon the requirements for participation in the medicaid program (over 95% of the currently licensed nursing facilities participate in medicaid); accordingly, the new sections will adopt by reference certain standards for licensure for nursing facilities adopted by the Texas Department of Human Services in Title 40 of the Texas Administrative Code. Finally, the new sections will upgrade the standards for maternity facilities.

Janice M. Caldwell, Dr. P.H., chief, bureau of long term care, has determined that for the first five-year period that the proposed new sections will be in effect there will be fiscal implications to state government as a result of enforcing or administering the new sections. Since the enforcement and administration of proposed new Chapter 145 has to be in conjunction with the enforcement and administration of proposed new Chapters 146 and 153 of this title, the fiscal implications for all three chapters has to be discussed together in this preamble. Accordingly, enforcement and administration of new Chapters 145, 146, and 153 will cost the department approximately \$236,109 for personnel for each year of the first five years. Administrative hearings for denials of licenses and assessment of administrative penalties under Chapter 145 will cost the department approximately \$57,700 for each year of the first five years. An anticipated increase in the assessment of administrative penalties will produce revenue to the state of a possible range of \$41,300-\$206,000 for each year of the first five years. This additional revenue would come from the penalties assessed on facilities serving persons with mental retardation or related conditions. With the removal of the warning requirement and the 50% reduction option from the administrative penalties for nursing facilities, there is a potential to increase the revenue by 60% over the amount assessed for fiscal year 1991. This would amount to an estimated additional \$96,645 assessed by the state for each year of the first five years. The fiscal implications to local government will be discussed in conjunction with the fiscal implications to small and large businesses in the following paragraph.

Dr. Caldwell has further determined that there may be a fiscal impact on small and large facilities operated by local government and private businesses as a result of administering the proposed new sections. The fiscal impact may vary depending on the type of facility and the size of the facility. The increased cost for affected facilities relates to documenting financial assurance, administrative penalties and licensed nurse staffing. Each nursing facility, facility serving persons with mental retardation or related conditions, and maternity facility may incur an additional cost ranging from \$2,000-\$5,000 to provide the department a financial statement prior to issuance of a license for each year of the first five year period that the proposed sections will be in effect. The department does not want to place an undue financial burden on facilities to provide this financial statement. Therefore, the department is interested in receiving comments suggesting alternative methods of documenting a facility's financial assurance. Both government and privately operated nursing facilities and licensed facilities serving persons with mental retardation or related conditions may experience a fiscal impact due to the administrative penalties section in proposed Chapter 145 if they do not remain in compliance with the licensing and administrative penalties rules.

Nursing facilities participating in the Texas Department of Human Service (TDHS) Medicaid program will probably not experience increased costs due to the proposed administrative penalties because other sanctions are available under the TDHS Medicaid certification rules for non-compliant facilities. Therefore, licensed-only nursing facilities may have increased costs due to the proposed administrative penalty rules. Small licensed-only nursing facilities (30 to 100 beds) could experience an increased cost ranging from \$40 to \$133 per bed per first occurrence and large licensed-only nursing facilities (101-397 beds) could experience an increased cost ranging from \$10 to \$40 per bed per first occurrence. Facilities serving persons with mental retardation or related conditions could experience more increased costs due to penalty assessment since this is the first time that a penalties system would apply to them. Estimated costs are as follows. Costs to small and medium facilities (6-100 beds) could range from \$2.50 to \$1,700 per bed per first occurrence. The cost to large facilities (101-300 beds) could range from \$1 to \$100 per bed per first occurrence. Most licensed-only nursing facilities meet or exceed the proposed licensed nurses (LVN) staffing ratio of 1:20. Some licensed-only nursing facilities may experience increased cost to comply with the proposed LVN staffing ratio. For small facilities (30-100 beds) the maximum cost increase would be \$52,688 (annual salary and benefits of \$31,550 times 1.67 full time equivalent LVN positions) for each year of the first five years. For large facilities (101-397 beds) the possible range of increased cost for LVN staffing would be \$53,319-\$208,961 per facility for each year of the first five years. This range is based on the annual salary and benefit cost of \$31,550 times a range of increase from 1.69 to 6.62 full time equivalent LVN positions. There is no anticipated cost to individuals affected by the proposal nor anticipated effect on local employment.

Dr. Caldwell also has determined that for each year of the first five-year period the proposed rule will be in effect, the anticipated public benefit is that the rules will be strengthened in order to provide for better care of residents, the rules will be easier to understand, and the rules will be more closely track the statutory mandate under the Health and Safety Code, Chapter 242.

Written comments on the proposed new sections may be submitted to Janice Caldwell, Dr.P.H., Chief, Bureau of Long Term Care, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756 (Telephone: (512) 458-7709). All written comments must be mailed to the department no later than the postmark date of December 22, 1992. In addition, the department will conduct three public hearings to receive public comments on as follows: December 2, 1992, 9:30 a.m., Texas Department of Health, Public Health Region 2, Large Conference Room, 1109 Kemper Street, Lubbock, Texas, (806) 744-3577 (Contact: Mr. Ralph Harmon, Program Administrator, Canyon/Lubbock Long Term Care Unit, alternate phone (806) 655-7151; December 8, 1992, 9 a.m., Arlington Community Center, Auditorium, 2800 South Center Street, Arlington, (817) 465-6661 (Contact: Mr. Ron Haygood, Program Administrator, Arlington, Long Term Care Unit (817) 792-7270); December 1, 1992 9 a.m., San Antonio Convention Center, Room 108, 200 East Market Street, San Antonio, Texas 78205 (contact: Mr. Dick Dempsey, Program Administrator, San Antonio Long Term Care Unit (512) 342-3300).

• 25 TAC §§145.1-145.3

The new sections are being proposed under the Health and Safety Code, Chapter 242, which provides the Board of Health (board) with authority to adopt rules concerning licensing standards for personal care facilities; §12.001, which provides that the board will adopt rules for the performance of every duty imposed by law on the department, the board, and the commissioner of health; and Texas Civil Statutes, Article 6252-13a, §5, which establishes the procedures for a state agency to propose rules.

§145.1. Purpose. The purpose of this chapter is to implement the provisions of the Health and Safety Code, Chapter 242, by providing for the development, establishment and enforcement of standards and related procedures for the care and treatment of residents of convalescent and nursing homes and related institutions; and for the establishment, construction, maintenance, and operation of these institutions that will promote the safe and adequate care and treatment of the residents.

§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 provided 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 function-

ing 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, subsidiary, and controlling person thereof;

(C) natural person:

- (i) each person's spouse;
- (ii) each partnership and each partner thereof of which said person or any affiliate of said person is a partner; and
- (iii) each corporation in which said person is an officer, director, principal stockholder, or controlling person.

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 per-

sons 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.

Controlling person—A controlling person of any corporation, partnership, or other legal entity 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. Controlling person 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.

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, mater-

nity 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 according to the Administrative Procedures and Texas Register Act, Texas Civil Statutes, Art. 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.

Licensing agency—Texas Department of Health.

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, exits, 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.

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 rela-

tive, 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.

Standard resident care—Resident Care that is in:

(A) A violation of a standard which constitutes an immediate threat to the health and safety of a resident; or

(B) a violation or violations of one or more standards which constitute health or safety hazards to residents.

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

Issued in Austin, Texas, on October 9, 1992.

TRD-9213894

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

Proposed date of adoption: January 16, 1993

For further information, please call: (512) 458-7709

Subchapter B. Minimum Standards for Nursing Homes

• 25 TAC §§145.11-145.25

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

The repeals are proposed 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; §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; and Texas Civil Statutes, Article 6252-13a, §5, which establishes the procedure for a state agency to propose the repeal of a rule.

§145.11. Purpose and Application.

§145.12. Definitions.

§145.13. Administrative Management.

§145.14. Resident Rights.

§145.15. Physician Services.

§145.16. Dental Services and Other Professional Services.

§145.17. Nursing Services.

§145.18. Social Services.

§145.19. Activities.

§145.20. Medical Records

§145.21. Pharmacy Services.

§145.22. Dietary Services.

§145.23. Physical Plant and Environment.

§145.24. Environmental Services.

§145.25. Safety Operations.

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 October 9, 1992

TRD-9213699

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

Proposed date of adoption: January 16, 1993

For further information, please call: (512) 458-7700

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Subchapter B. Application Procedures

• 25 TAC §§145.11-145.22

The new sections are proposed under the Health and Safety Code, Chapter 242, which provides the Texas Board of Health (board) with authority to adopt rules concerning licensing standards for personal care facilities; §121.001, which provides that the board will adopt rules for the performance of every duty imposed by law on the department, the board, and the commissioner of health; and Texas Civil Statutes, Article 6252-13a, §5, which establishes the procedures for a state agency to propose rules.

§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 controlling interest, affiliate, or manager has had no conviction of a felony or crime involving moral turpitude in this state or any other state;

(2) the applicant has financial capability to operate the facility by providing evidence as set out in §145.22 of this title (relating to Financial Assurance);

(3) the applicant, person with a controlling interest, affiliate, or manager has had no evidence of inability to comply with requirements for facilities in this state or any other state;

(4) the facility meets the standards of the Life Safety Code;

(5) the facility meets the construction standards in subchapter D of this chapter (relating to Facility Construction);

(6) the facility meets the standards for operation based upon an on-site survey; and

(7) if the applicant will contract for management services, the manager has had no evidence of inability to comply for facilities in this state or any other state.

(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 meeting 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 licensing agency. The local health authority may provide recommendations 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 licensing agency a copy of a dated notice to the local health authority that construction or modification has been or will be com-

pleted by a specific date. The sponsor will also provide a copy of a dated 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 licensing agency regarding the status of compliance with local codes, ordinances, or regulations. Local health authority comments and recommendations must be received by the licensing agency 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 licensing agency.

(2) Resident increase. The license holder shall request an application for increase in capacity from the licensing agency. The licensing agency 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 licensing agency in writing if the facility meets local code requirements. The local health authority may provide recommendations to the licensing agency 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 licensing agency. The licensing agency 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 licensing agency prior to the issuance of the license covering the increased capacity after inspection by the licensing agency if standards are met.

(3) Change of ownership. The applicant for a change of ownership license will provide to the licensing agency 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 licensing agency regarding the status of compliance with local 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 licensing agency.

(4) **Renewal.** The local health authority having jurisdiction shall receive a copy of the licensing agency's license renewal notice specifying the expiration date of the facility's current license. The local health authority may provide recommendations to the licensing agency 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 licensing agency. Local health authority comments and recommendations must be received at least 30 days prior to expiration of the license for consideration by the licensing agency.

(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.

§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) **Texas Department of Health (department) disclosure form.** All applications shall be made on forms prescribed by and available from the 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 satisfactory to the department that the applicant possesses financial resources sufficient to operate or manage the facility for a period of at least 30 days; and

(6) 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/leasee 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;

(7) certificate of good standing is issued by the Comptroller of Public Accounts; and

(8) 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 five year period preceding the application date, concerning the applicant, its controlling persons, 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 five percent 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) 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.

(5) After issuance of a license, no person may acquire a beneficial interest of five percent or more in the business entity licensed to operate a facility nor may any person become an officer or director of, or general partner in, such a business entity without the prior written approval of the department. Each application for departmental approval pursuant to this paragraph shall include the information specified in this section as regards the person for whom the application is made. If the department fails to approve or disapprove the application within 30 days after receipt thereof, the application shall be deemed approved.

(6) 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 or control interest of five percent or more in the management company shall be disclosed to the department. All managers must be approved by the department.

(A) After approval of the manager, no person may acquire a beneficial interest of five percent or more in any

business entity that has been approved as the manager, nor may any person become an officer or director of, or general partner in, such a business entity without the prior written approval of the department.

(B) Each application for departmental approval pursuant to this paragraph shall include the information specified in this section as regards the person for whom the application is made. If the department fails to approve or disapprove the application within 30 days after receipt thereof, the application shall be deemed approved.

(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.

§145.14. Increase in Capacity.

(a) During the license term, a license holder may not increase capacity without approval from the Texas Department of Health (department). The license holder shall submit to the department a complete application for increase in capacity and the fee required in §145.18 of this title (relating to License Fees).

(b) Upon approval of an increase in capacity, the department shall issue a new license.

§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).)

§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 60 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.

(a) Failure to comply with standards. The Texas Department of Health (department) may deny a license or renewal of a license for substantial failure by the applicant or license holder to comply with the requirements described in §145.43 Subchapter C of this title (relating to Standards for Licensure).

(b) False or fraudulent information. The department may deny a license or renewal if the applicant or license holder:

(1) submits false or misleading statements in the application or any accompanying attachments;

(2) uses subterfuge or other evasive means of filing;

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

(4) conceals a material fact; or

(5) is responsible for fraud.

(c) Failure to disclose. The department may deny a license or renewal if the applicant or license holder fails to provide the required information, facts and/or references to demonstrate the applicant's and manager's ability to comply with the regulations set out in this subchapter.

(d) Failure to pay fees and assessments. Failure to pay all applicable fees, taxes, and assessments when due shall constitute grounds for denial of a license or renewal:

(1) licensing fees as set out in §145.18 of this title (relating to License Fees);

(2) reimbursement of emergency assistance funds within one year from the date on which the funds were received by the trustee (see §145.263 of this title (relating to Involuntary Appointment of a Trustee));

(3) administrative penalties within 60 days of the date of the order assessing the penalties under §145.235 of this title (relating to Administrative Penalties); or

(4) franchise taxes, if applicable.

(e) Fitness to operate. The department may deny a license if the applicant, manager, or license holder discloses evidence of inability to comply with Health and Safety Code, Chapter 242, and the rules adopted under this chapter.

(1) No license shall be issued to an applicant to operate a new facility if the applicant, affiliate, or manager, in the two-year period preceding the application, has disclosed any of the following actions:

(A) 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;

(B) debarment or exclusion from the Medicare or Medicaid programs in any state; or

(C) court injunctions prohibiting the applicant, license holder, or manager from operating a facility.

(2) The department may deny a license to an applicant or license holder if the applicant, license holder, affiliate, or manager, in the two-year period preceding the application, has disclosed any of the following actions:

(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 final state or federal Medicare or Medicaid audit exceptions; or

(H) suspension of a license to operate a nursing facility, facility serving persons with mental retardation or a related condition, maternity facility, personal care facility, or similar facility in any state.

(3) The department may consider exculpatory information provided by the applicant, license holder, or manager to grant a license under paragraph (2) of this subsection if the department finds that the applicant, license holder, or manager is able to comply with the standards and rules in this chapter.

(f) Intermediate care facilities for the mentally retarded standards. The department may 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 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 ICF-MR Facilities 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.

(g) Hearing. 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 \$2.00 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.

(b) Trust fund fee.

(1) In addition to the basic license fee described in subsection (a) of this section, the Texas Department of Health (department) has established as 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 title (relating to Certification of Facilities for Care of Persons with Alzheimer's Disease and Related Disorders) shall pay an annual fee of \$100.

§145.19. Fees for Plan Reviews, Construction Inspection Services, and Feasibility Inspection Services.

(a) The Health and Safety Code, §12.031 §12.032, authorizes the Texas Department of Health (department) to charge fees for providing services mentioned in this section. Pursuant to this authority, the department establishes the fees, as shown in the fee schedule in subsection (j) of this section, to cover plan review services, construction inspection services, and feasibility inspection services. The fees are designed not to exceed the costs to the department to provide these services.

(b) When the department finds in a licensed facility a violation of standards and when plans are submitted for the purpose of showing how the violation will be corrected, there will be no fee for such plan review. There will similarly be no fee for a construction visit made pursuant to a plan review.

(c) The plan review fees shown in the schedule in subsection (j) of this section cover the review of plans in all the stages of development.

(d) In determining the cost of additions or remodeling, only the direct construction costs need to be considered, i.e., construction contract amount plus any add-on costs by contractor or owner during construction. Costs do not include land acquisition, architectural/engineering fees, financing, legal fees, fund raising fees, furnishings, or movable equipment.

(e) Remodeling is 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.

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

(g) Fees are due for payment as follows.

(1) When plan development has reached the preliminary plan stage and preliminary plans are submitted for review, 30% of the plan review fee must accompany the plans. Before final plans are reviewed, the full fee, if preliminary plans were not submitted, or the balance of the plan review fee must be paid.

(2) Construction inspection fees for new facilities and for additions or remodeling of existing licensed facilities are due for payment before the facility is licensed or otherwise accepted by the department under licensure.

(3) Feasibility inspection fees are due for payment prior to the inspection being made.

(h) Payment of fees shall be by check or money order made payable to the Texas Department of Health.

(i) Should the facility or institution request construction inspections beyond those called for in the schedule, the appropriate additional fees shall be submitted. If the department elects to make additional construction inspections, there will be no charge for such inspections.

(j) The fee schedule is as follows.

I. Facility Plan Review: Nursing Facilities and Facilities Serving Persons with Mental Retardation or Related Conditions (based on health care occupancy of the Life Safety Code, Chapter 12).

A. New Facility

Single Story	\$12 per bed (Minimum \$1,000)
Multiple Story	\$15 per bed (Minimum \$1,500)

B. Existing Licensed Facility

1. Additions or remodeling of \$100,000 or more:

Single Story	1% of project cost, not to exceed \$2,000*
Multiple Story	1% of project cost, not to exceed \$2,500*

2. Additions or remodeling:

\$25,000-\$99,999	\$200
under \$25,000	\$100

* NOTE: If project cost is not available, the following construction cost figures will be utilized to calculate fee:

Construction with bed addition:	\$15,000 per bed
Construction without bed addition:	\$60 per gross square foot (single story wood frame)
	\$70 per gross square foot (non-combustible or multi-story)

II. Facility Plan Review: Facilities Serving Persons with Mental Retardation or Related Conditions, and Maternity Facilities (based on other than health care occupancy, Chapter 12 or 13 of the Life Safety Code).

A. New Facility

4 - 16 beds	\$200
17 beds and over	\$10 per bed (Minimum \$350)

B. Existing Licensed Facility

1. Additions or remodeling of \$10,000 or more:

Single story	1% of project cost not to exceed \$1,000**
Multiple story	1% of project cost not to exceed \$1,200**

2. Additions or remodeling under \$10,000: \$100

**** NOTE:** If project cost is not available, the following construction cost figures will be utilized to calculate the fee:

Construction with bed addition:	\$5,000 per bed
Construction without bed addition:	\$35 per gross square foot

III. Inspections: All facilities.

A. Construction

Preliminary inspections (each)	\$5 per bed (Minimum \$150)
Final inspections (each)	\$12 per bed (Minimum \$150)

B. Feasibility

Each feasibility inspection and each subsequent visit including final survey prior to licensure	\$10 per bed (Minimum \$250)
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§145.20. Fees for Issuance and Renewal of Permits to Administer Medications.

(a) The schedule of fees is as follows:

- (1) combined, permit application and examination fee—\$25;
- (2) renewal fee—\$15; and
- (3) permit replacement fee—\$5.00.

(b) An applicant whose personal check for the combined permit application and examination fee is not honored by the financial institution may reinstate the application by remitting to the Texas Department of Health (department) a money order or cashier's check for the amount within 30 days of the date of the applicant's receipt of the department's notice. An application will be considered incomplete until the fee has been received and cleared through the appropriate financial institution.

(c) A permit holder whose personal check for the renewal fee is not honored by the financial institution shall remit to the department a money order or cashier's check within 30 days of the date of the licensee's receipt of the department's notice. If proper payment is not received, the permit shall not be renewed. If a renewal card has already been issued, it shall be voided.

§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 6252-13b.1.

§145.22. Financial Assurance.

(a) Financial assurance to ensure that a facility is able to maintain all standards required in this chapter, is required of all licensees.

(b) Each applicant shall submit to the Texas Department of Health (department) an audited financial statement with the application for a license, including a renewal or a change of ownership license.

(c) The department may require financial assurance in an acceptable letter of credit, performance bond, or insurance policy if the department believes that such security is necessary to protect the health and welfare of the residents.

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 October 9, 1992.

TRD-9213695	Robert A. MacLean, M.D. Deputy Commissioner Texas Department of Health
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Proposed date of adoption: January 16, 1993

For further information, please call: (512) 458-7709



Subchapter C. Minimum Standards for Custodial Care Homes

• 25 TAC §§145.31-145.43

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

The repeals are proposed 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; §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; and Texas Civil Statutes, Article 6252-13a, §5, which establishes the procedure for a state agency to propose the repeal of a rule.

§145.31. Purpose.

§145.32. Definitions.

§145.33. General Requirements.

§145.34. Planning, Construction, Procedures, and Approvals.

§145.35. Physical Plant.

§145.36. Personnel.

§145.37. Admission Policy.

§145.38. Emergency Medical Care.

§145.39. Routine Medications.

§145.40. Reports and Records.

§145.41. Dietary.

§145.42. Housekeeping and Maintenance Services.

§145.43. Humane Treatment.

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 October 9, 1992.

TRD-9213700 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Proposed date of adoption: January 16, 1993

For further information, please call: (512) 458-7709



Subchapter C. Standards for Licensure

• 25 TAC §§145.41-145.43

The new sections are proposed under the Health and Safety Code, Chapter 242, which provides the Board of Health (board) with authority to adopt rules concerning licensing standards for personal care facilities; §12.001, which provides that the board will adopt rules for the performance of every duty imposed by law on the department, the board, and the commissioner of health; and Texas Civil Statutes, Article 6252-13a, §5, which establishes the procedure for by a state agency to propose rules..

§145.41. Standards for Nursing Facilities.

(a) Definitions. The Texas Board of Health adopts by reference 40 Texas Administrative Code (TAC) §19.101 (relating to Definitions). 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 adopts by reference 40 TAC §19.201 (relating to Introduction), as amended October 1, 1992.

(2) Exercise of rights. The Texas Board of Health 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 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 legal representative has the following rights:

(i) upon an oral or written request, to access all records pertaining to himself, including clinical records, within 24 hours; and

(ii) after receipt of his 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 can

understand of his total health status including, but not limited to, his 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)), and to refuse to participate in experimental research.

(i) If the resident refuses treatment, he must be informed of the possible consequences.

(ii) If the resident chooses to participate in experimental research, he 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); or

(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).

(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); or

(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 financial affairs.

(B) Management of personal funds. Upon written authorization of a resident, the facility must hold, safeguard, manage, and account for the personal funds of the resident deposited with the facility, as specified in paragraph (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 describes 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 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 may be entitled; and

(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 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).

(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)).

(6) Privacy and confidentiality. The resident has the right to personal privacy and confidentiality of his 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 described in 40 TAC §19.212 (relating to Access and Visitation Rights);

(v) governmental searches. Governmental searches are permitted only if there exists probable cause to believe an illegal substance or activity is being concealed. 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. The Department of Human Services (DHS) 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 DHS 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 identify-

ing 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, 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 DHS 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 Texas Board of Health adopts by reference 40 TAC §19.208 (relating to Examination of Survey Results), as amended October 1, 1992.

(9) Mail. The Texas Board of Health adopts by reference 40 TAC §19.211 (relating to Mail), as amended October 1, 1992.

(10) Telephone. The Texas Board of Health adopts by reference 40 TAC §19.213 (relating to Telephone), as amended October 1, 1992.

(11) Self-administration of drugs. The Texas Board of Health adopts by reference 40 TAC §19.216 (relating to Self-administration of Drugs), as amended October 1, 1992.

(12) Directives and durable powers of attorney for health care. The Texas Board of Health adopts by reference 40 TAC §19.217 (relating to Directives and Durable Powers of Attorney for Health Care), as amended October 1, 1992.

(c) Resident behavior and facility practice. The Texas Board of Health adopts by reference 40 TAC §19.401 (relating to Resident Behavior and Facility Practice), as amended October 1, 1992.

(d) Quality of life. The Texas Board of Health 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 October 1, 1991;

(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 §19.602 of this title (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 Texas Board of Health adopts by reference 40 TAC §19.602 and §19.603 (relating to Resident Assessment), as amended October 1, 1992.

(f) Quality of care. The Texas Board of Health 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 deter-

mined 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) except when waived under paragraph (3) of this section, licensed nurses; 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 section, the state may waive such requirements with respect to the facility, if:

(i) the facility demonstrates to the satisfaction of the Texas Department of Health 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 im-

mediately 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 §307(a)(12) of the Older Americans Act of 1965) 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) The facility must request a waiver through the local TDH 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 or seven day per week R.N.;

(III) projected number of hours per month staffing reduced for 24 hour licensed nurse waiver or seven day per week R.N. waiver; and

(IV) staffing adjustments made due to inability to meet staffing requirements.

(ii) Waivers will be granted by licensing agency.

(iii) Amounts paid to facilities in the per diem payment to meet the staffing requirements of subparagraphs (A) and (B) of this paragraph may be adjusted if staffing requirements are not met.

(iv) 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, the effective date that staffing meets requirements.

(v) Verification that the facility appropriately made a request and notification will be done at the time of survey.

(E) 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 TDH 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) 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 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.

(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 .4 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 li-

censed 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 TDH and is not required to provide daily RN 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 seven-three and three-11 shift and charge individual working on the 11-seven shift (if because of waiver granted a licensed nurse is not required on the 11-seven 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).)

(3) The Texas Board of Health 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 Texas Board of Health adopts by reference 40 TAC §§19.901-19.911 (relating to Dietary Services), as amended October 1, 1992.

(i) Physician services.

(1) The Texas Board of Health 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.

(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 Texas Board of Health 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) At the time of admission, the facility shall obtain the name of the resident's preferred dentist and record this in the medical record.

(B) The facility shall maintain a list of local dentists for residents who do not have a private dentist.

(C) 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.

(D) Each facility shall use all reasonable efforts to arrange for a dental examination for each resident who desires one.

(E) 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 Texas Board of Health adopts by reference 40 TAC §§19.1301, 19.1304, and 19.1306-19.1310 (relating to Pharmacy Services), as amended October 1, 1992.

(2) Additional supervision and consultation requirements.

(A) The facility must provide pharmaceutical services under the responsibility and direction of a pharmacist consultant and the director of nursing.

(B) A pharmacist, currently licensed by the State of Texas and in good standing, must be an employee of the facility or act as a consultant to the facility. The facility must ensure that notes on the monthly visits by the consulting pharmacist are entered in the resident's clinical record. The pharmacist must prepare a written report for quarterly review. This report may consist of the monthly summaries (see 40 TAC §19.1301(5) (relating to Pharmacy Services)).

(C) The number of hours per month the consultant pharmacist devotes to the pharmaceutical services for ordering, storage, administration, disposal, recordkeeping (documentation) of drugs and medications, and drug regimen review shall be based upon the total number of residents in the facility and shall not be less than:

- (i) four hours for facilities with 60 residents or less;
- (ii) five hours for facilities with 61-150 residents; and
- (iii) six hours for facilities with more than 150 residents.

(D) The facility must ensure that its residents' pharmacy needs are met. Consultant time may be reduced if the administrator and consultant agree and if the department concurs.

(E) The consultant must keep at the facility a record of services, consultations, and recommendations for pharmacy procedure.

(m) Infection control. The Texas Board of Health adopts by reference 40 TAC §19.1401-§19.1402 (relating to Infection Control), as amended October 1, 1992.

(n) Physical plant and environment. The Texas Board of Health adopts by reference 40 TAC §§19.1501-19.1521 (relating to Physical Plant and the Environment), as amended October 1, 1992.

(o) Administration.

(1) The Texas Board of Health 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) 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).

(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 law 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 governing body appoints the administrator who is:

(i) licensed by the Texas State Board of Licensure for Nursing Home Administrators;

(ii) responsible for management of the facility; and

(iii) required to work at least 40 hours per week on administrative duties.

(C) The facility must operate under the supervision of a full-time nursing home administrator 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; and

(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.

(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) 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) the current resident assessment instrument (RAI) and subsequent quarterly reviews;

(iv) most recent hospital discharge summary and transfer summary;

(v) current nursing and therapy notes;

(vi) current medication and treatment records;

(vii) current lab and x-ray reports; and

(viii) 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;

(VI) complete a new 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) PRN medications/treatments must be recorded in the clinical record as specified by §19.809(c) of this title (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 according to 40 TAC §19.1301 (relating to Pharmacy Services).

(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 medical 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 licensing agency, 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 licensing agency in accordance with guidelines established by the licensing agency.

(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. The nursing staff is then to document in the nurses notes, on each shift, the condition of the resident for at least 24 hours or until the condition stabilizes.

(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 subsection (o)(6) of this section). 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 TDH.

(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 licensing agency. 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:

(II) 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 herein and as approved by the licensing agency. 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.

(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 the same subsection.

(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 subsection, 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 subsection 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, 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 tem-

porary 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 §98.25 of this title (relating to Model 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 facility 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 licensing agency 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 licensing agency for approval. If the college, school or other institution uses the material suggested by the licensing agency, it may submit a letter of intent to the licensing agency. In either case, it is the facility's responsibility to determine that the college, school or other institution has a current approval from the licensing agency. The licensing agency will maintain a current list of approved training institutions. Health care facilities shall have open access to that list.

(D) Programs 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 sub-category 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 licensing agency), the date of implementation of the training, and the name and curriculum vitae of the designated training coordinator. The substituted teaching outline is subject to approval by the licensing agency. A copy of the licensing agency'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 licensing agency'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 licensing agency.

(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 subsection (o)(6) of this section 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 dem-

onstrate 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) 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 licensing agency 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 approved by the licensing agency, 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 licensing agency, but such record or report must be available in the facility involved for review by the Licensing Agency. 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 licensing agency. 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 licensing agency. 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 licensing agency will offer assistance in organizing and maintaining training programs, or in orienting training coordinators, to the extent licensing agency 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) 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.

§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 individuals 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 individuals with mental retardation and related conditions in Texas (MR facilities). Individuals 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/prelicensure training conference prior to licensing by the 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 person with mental retardation or related conditions.

(1) A provider who has not had at least one year of administering services in a facility serving persons with mental retardation or related conditions in Texas must attend a precertification training conference prior to the health survey.

(2) Each 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 on a monthly basis, and the date, time, and location of the monthly 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 title (relating to Abuse and Neglect).

(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 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 communi-

ble 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 certified lifeguard 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 lifeguard may not be counted in the staff to resident ratios.)

(B) A description of each aquatic environment to 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 the following:

(i) a documented functional assessment of each resident's basic water safety survival skills and ability to swim; and

(ii) a documented medical review for each resident which identifies 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.)

(i) 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.

(ii) Non-ambulatory residents who are independent swimmers must have a 1:1 ratio.

(iii) Non-ambulatory residents who are not independent swimmers must utilize a personal flotation device and be on a 1:1 ratio.

(D) All individuals counted in the staff ratios must be able to swim and must constantly supervise the water activity.

(E) A formal assessment of each resident's ability to swim must be conducted by a certified lifeguard or water safety instructor prior to designating the resident as an independent swimmer.

(F) 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.

(G) 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; for the care of individuals in facilities of the character defined and covered herein; and for the establishment, construction, maintenance, and operation of such facilities which will promote safe and adequate care of individuals of these facilities.

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

(1) Authority having jurisdiction (AHJ)—Texas Department of Health.

(2) Co-mingles—The laundering of wearing apparel and/or linens of two or more individuals together.

(3) Dietitian—A person who is:

(A) a registered dietitian is a dietitian who is currently registered by the Commission on Dietetic Registration; or

(B) a licensed dietitian is a dietitian who is currently licensed by the Texas State Board of Examiners of Dietitians and who has 15 hours of dietetic continuing education annually.

(4) Licensing agency—Texas Department of Health.

(5) Maternity facility—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.

(6) NFPA 101—The 1988 publication titled NFPA 101 Life Safety Code published by the National Fire Protection Association, Inc., Battermarch Park, Quincy, Massachusetts 02269.

(7) Resident—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.

(c) Admission.

(1) A maternity facility shall be restricted to the care of maternity residents. Persons having or suspected of having any physical or mental disease or disability endangering the health and welfare of other residents may be admitted to residential care upon medical advice and maternity facility evaluation.

(2) The purpose of a maternity facility shall be to meet the individual needs of the resident, the father of her child and their families.

(3) A written agreement between the facility and resident shall be obtained at the time of admission. The written agreement shall include, but not be limited to, the following identifying information:

(A) full name of resident;

(B) usual residence (where resident lived prior to admission to facility);

(C) color or race;

(D) date of birth;

(E) place of birth; and

(F) family and physician for emergency notification.

(4) A list, which is signed and dated by the resident, of all personal belongings and valuables of the resident shall be made on admission to the facility. A copy of the list is to be provided to the resident, her guardian or family, or the agency responsible for her care and a copy maintained on file in the facility.

(5) Records pertaining to residents shall be treated as confidential and properly safeguarded, and shall be made available only to authorized persons and agencies.

(6) Admission, medical, labor, delivery, newborn, and social work records shall be maintained and preserved for a period of five years after resident discharge or in the case of a minor resident, for three years after the resident reaches majority.

(d) Social services.

(1) Casework services shall be provided. These services should be supplied according to the case load standards of the National Association of Social Workers and should be offered as long as advisable.

(2) Each facility shall show evidence of a working affiliation with a State licensed child placement agency.

(3) Educational, vocational, and recreational activities shall be provided and planned according to the individual needs of the residents and shall include:

(A) formal academic instruction; and

(B) vocational guidance and social opportunities.

(e) Dietary.

(1) At least three meals or their equivalent shall be served daily, at regular times, with no more than a 16-hour span between a substantial evening meal and breakfast the following morning.

(2) Menus shall be planned one week in advance. Menus shall be prepared and provided to all residents in an amount and kind to meet individual needs and to conform to the daily allowance of nutrients recommended by the National Research Council for pregnant and lactating women. Records of menus as served shall be filed and maintained for 30 days after the date of serving.

(3) Therapeutic diets which can customarily be prepared by a person in a family setting, can be prepared by facility staff. Any resident in need of a therapeutic diet, that requires professional calculation, shall have the diet calculated and planned by a qualified dietitian.

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

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

(6) Plastic containers with tight fitting lids are acceptable for storage of staple foods.

(7) Potentially hazardous food, such as meat and milk products, shall be stored at 45 degrees Fahrenheit or below. Hot food shall be kept at 140 degrees Fahrenheit or above during preparation and serving.

(8) Freezers shall be maintained at a temperature of 0 degrees Fahrenheit or below. Refrigerators shall be maintained at 45 degrees Fahrenheit or below. Thermometers shall be placed in the warmest area of the refrigerator and freezer to assure proper temperature.

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

(10) Raw foods shall be washed with potable water before preparation.

(11) If employees contract a communicable disease that is transmissible to residents through routine care practices, the facility shall ensure that they shall be excluded from direct resident care and/or foodhandling, as appropriate, as long as risk of transmission is present. The local health authority should be available to assist the facility in determining the transmissibility of the disease, when exclusion from direct resident care and/or foodhandling is appropriate, and when work can be resumed. The facility must maintain evidence of compliance with local health codes or ordinances regarding employee and resident health status.

(12) Effective hair restraints shall be worn by food service employees to prevent the contamination of food.

(13) Tobacco products shall not be used in the food preparation and service areas.

(14) Employees shall maintain a high degree of personal cleanliness and shall conform to good hygienic practice during all working periods in food service.

(15) Sanitary dish washing procedures and techniques shall be followed.

(16) Facilities housing 17 or more residents shall comply with §§229.161-229.173 of this title (relating to Food Service Sanitation) and local health ordinances or requirements.

(f) Resident assessment.

(1) Each resident shall be provided health care in accordance with the provisions of the current Manual of Standards in Obstetric-Gynecologic Practice of the American College of Obstetricians and Gynecologists.

(2) The resident or the resident's parents or guardian shall designate a physician or sign a statement to permit the physician(s) designated by the facility to provide medical care.

(3) Each facility shall provide the following:

(A) a physical examination for each resident within 48 hours of admission unless the facility has received from a licensed physician a statement of the resident's physical examination and diagnosis dated not earlier than 30 days prior to the resident's admission to the maternity facility. The resident'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 residents which shall be furnished in accordance with the current Manual of 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 resident for a minimum of eight days. It shall be the responsibility of each facility to refer each resident for a postpartum examination unless such examination has been given prior to her dismissal from the facility.

(g) Physician services.

(1) No medication or treatment shall be given to a resident 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.

(2) Every facility shall designate one or more physicians to be called for emergencies.

(3) Physician's orders shall be maintained in the permanent record of the resident.

(4) Each facility shall have a working arrangement with a licensed hospital for obstetric and pediatric care for the resident. It is desirable that each facility have a working arrangement with a hospital for general acute care. Copies of pertinent information from the resident's facility record will be shared by the receiving hospital at the time of the resident transfer.

(h) Pharmacy.

(1) When a physician orders controlled drugs for a resident special safeguards concerning their use are required. Controlled drugs 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 controlled drug is given, a notation shall be made on the nursing record including the date, time, dosage, method of administration, name of the physician who prescribed the drug, and the name of the person administering the controlled drug.

(i) Resident behavior and facility practice. A person, including an owner or employee of an institution, who has cause to believe that the physical or mental health or welfare of a resident has been, or may be adversely affected by abuse or neglect, caused by another person, must report the abuse or neglect to the licensing agency. The person reporting must make a verbal report immediately on learning of the alleged abuse or neglect. A written report and a copy of the facility incident report must be sent no later than the fifth calendar day after the verbal report.

(j) Infection control.

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

(2) The facility 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).

(3) The name of any resident of a facility with a reportable disease as specified in §§97.1-97.22 (relating to Control of Communicable Diseases) shall be reported

immediately to the city health officer, county health officer, or health unit director having jurisdiction, and appropriate infection control procedures shall be implemented as directed by the local health authority.

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

(A) If employees contract a communicable disease that is transmissible to residents through food handling or direct resident care, the employee must be excluded from providing these services as long as a period of communicability is present. The decision to return to work must be made by the facility's executive director in conjunction with the employee's personal physician or the facility's medical director, the local or state health authority if the disease is reportable, and in accordance with generally accepted practices.

(B) The facility must maintain evidence of compliance with local and/or state health codes or ordinances regarding employee and resident health status.

(C) The facility must screen all employees within two weeks of employment and annually for tuberculosis. All persons providing services under an outside resource contract must, upon request of the facility, provide evidence of compliance with this requirement.

(5) Personnel must handle, store, process, and transport linens so as to prevent the spread of infection.

(6) Universal precautions shall be used in the care of all residents because a reliable source cannot identify all those persons infected with blood-borne pathogens.

(A) Universal precautions apply to blood and other body fluids containing visible blood.

(B) General principles of universal precautions are as follows.

(i) All health-care workers shall routinely use appropriate barrier precautions to prevent skin and mucous-membrane exposure when contact with blood or other body fluids of any resident is anticipated.

(I) Gloves shall be worn for touching blood and blood contaminated body fluids, mucous membranes, or non-intact skin of all residents for handling

items or surfaces soiled with blood or body fluids, and for performing venipuncture and other vascular access procedures.

(II) Gloves shall be changed after contact with each resident

(III) Masks and protective eyewear of face shields shall be worn during procedures that are likely to generate droplets of blood or other body fluids to prevent exposure of mucous membranes of the mouth, nose, and eyes.

(IV) Gowns or aprons shall be worn during procedures that are likely to generate splashes of blood or other body fluids.

(ii) Hands and other skin surfaces shall be washed immediately and thoroughly if contaminated with blood or other body fluids. Hands shall be washed immediately after gloves are removed.

(iii) All health-care workers shall take precautions to prevent injuries caused by needles, scalpels, and other sharp instruments after procedures.

(iv) Although saliva has not been implicated in HIV transmission, to minimize the need for emergency mouth-to-mouth resuscitation, mouthpieces, resuscitation bags, or other ventilation devices shall be available for use in areas in which the need for resuscitation is predictable.

(v) Pregnant health-care workers are not known to be at greater risk of contracting HIV infection than health-care workers who are not pregnant; however, if a health-care worker develops HIV infection during pregnancy, the infant is at risk of infection resulting from perinatal transmission. Because of this risk, pregnant health-care workers should be especially familiar with and strictly adhere to precautions to minimize the risk of HIV transmission.

(C) The facility must have policies that provide for:

(i) orientation and training at the time of employment and continuing education, at least annually, for health-care workers;

(ii) provision of equipment and supplies necessary to minimize the risk of infection from blood-borne pathogens; and

(iii) monitoring adherence to recommended protective measures.

(D) The facility shall implement infection control procedures, including, but not limited to, universal precautions.

(E) Facility employees and residents shall be protected from direct exposure to blood and body fluids that are visibly contaminated with blood to prevent exposure to HIV and hepatitis B virus (HBV).

(k) General requirements.

(1) Each facility shall prepare, and make available for distribution, a general statement of policies governing the operation of the facility. A copy shall be provided to the resident, guardian, family member, or person placing the resident in the facility. The statement of policy shall cover such areas as rules and regulations related to resident management and shall include the following:

(A) legal status—constitution and by-laws;

(B) organizational structure;

(C) sources of income, including fees,

(D) current program budget;

(E) staffing and personnel policies;

(F) program philosophy; and

(G) procedures.

(2) The most current 12 months inspection reports shall be available to the public at the business office on premises during normal facility office hours.

(l) Staffing.

(1) An executive director shall be employed and 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.

(2) A director of social services shall be a certified social worker with a masters degree and at least three years professional experience in casework and/or supervision.

(3) A certified social worker should be employed with a bachelor's degree to provide supervision of workers with less education and/or experience.

(4) There should be one case-worker to every 30 residents.

(5) It is recommended that there should be a group worker on the staff of the maternity facility who has a specialty in group work.

(6) A registered nurse (R.N.) currently licensed to practice by the Texas Board of Nurse Examiners shall be available to give nursing supervision and consultation.

(7) A qualified dietitian should be employed to direct and supervise the food service, plan menus to meet nutritional needs of the residents, plan therapeutic diets for residents under physician direction when necessary.

(8) There shall be qualified medical staff for health care depending upon the type services offered by the maternity facility.

(9) Each maternity facility shall provide at all times at least one responsible adult who is immediately available to the residents.

(10) At all times there shall be sufficient personnel to provide the standards of care and maintenance in the facility for the well-being of the residents. 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 licensing agency.

(11) The Health and Safety Code, §85.010, requires that all health-care facility employees complete an educational course about human immunodeficiency virus infection based on the model education program developed by the Texas Department of Health. (See §97.20 of this title (relating to Model HIV/AIDS Workplace Guidelines)). For information about this program refer to the Texas AIDS Community Resource Directory or call the Texas Department of Health, Public Health Promotion Division, at (512) 458-7405.

(12) Copies of these rules shall be on file in the facility and shall be available to the personnel of the facility. They shall be instructed in the requirements of the law and the regulations pertaining to their respective duties.

(m) Resident rights.

(1) The governing body of the facility establishes written policies regarding the rights and responsibilities of residents and, through the administrator, is responsible for development of, and adherence to, procedures implementing such policies. These policies and procedures are made available to residents, residents' responsible parties, and the public. The staff of the facility shall be trained and involved in the implementation of these policies and procedures. These resident right policies and procedures shall ensure that, at least, each resident admitted to the facility:

(A) is fully informed, as evidenced by the resident's and/or responsible

party's written acknowledgment, prior to or at the time of admission and during stay, of these rights and of all rules and regulations governing conduct and responsibilities;

(B) is fully informed, by a physician, of her health condition unless medically contraindicated (as documented by a physician, in her medical record), and is afforded the opportunity to participate in the planning of her treatment and to refuse to participate in experimental research;

(C) is transferred or discharged only for medical reasons, or for her welfare or that of other residents, or for nonpayment of her stay (except as prohibited by the United States Social Security Act, Titles XVIII or XIX), and is given reasonable advance notice to ensure orderly transfer or discharge, and that such actions are documented in her medical record;

(D) is encouraged and assisted, throughout her period of stay, to exercise her rights as a resident and as a citizen and, therefore, may voice grievances and recommend changes in policies and services to facility staff and/or to outside representatives of her choice, free from restraint, interference, coercion, discrimination, or reprisal;

(E) may manage her personal financial affairs, or is given at least a quarterly accounting of financial transactions made on her behalf should the facility accept her written delegation of this responsibility to the facility for any period of time in conformance with state law;

(F) is free from mental and physical abuse, and free from chemical and, except in emergencies, physical restraints, except as authorized in writing by a physician for a specified and limited period of time, or when necessary to protect the resident from injury to herself or to others;

(G) is assured confidential treatment of her personal and medical records, and may approve or refuse their release to any individual not involved in her care, except, in case of her transfer to another health care facility, or as required by law or third-party payment contract;

(H) is treated with consideration, respect, and full recognition of her dignity and individuality, including privacy in treatment and in care for her personal needs;

(I) is not required to perform services for the facility that are not

included for therapeutic purposes in her plan of care;

(J) may associate, communicate, and meet privately with individuals, unless to do so would infringe on the rights of other individuals;

(K) may meet with and participate in activities of social, religious and community groups at her discretion, within the facility and in the community at large, unless medically contraindicated by her physician in her medical record;

(L) may retain and use her personal clothing and possessions as space permits, unless to do so would infringe upon rights of other residents, and unless medically contraindicated (as documented by her physician in the medical record);

(M) if married, is assured privacy for visits by her spouse;

(N) is not denied appropriate care on the basis of her race, religious practice, color, national origin, sex, age, or disability;

(O) is not prohibited from communicating in her native language with other individuals or employees for the purpose of acquiring or providing any type of treatment, care, or services;

(P) may receive and send mail unopened without delay;

(Q) has unrestricted communication, including personal visitation with any person of the resident's choice, including family members, at any reasonable hour;

(R) has unaccompanied access to a telephone at a reasonable hour or at any time if there is an emergency or personal crisis; and

(S) may leave the facility temporarily or permanently.

(n) Each resident shall be given a copy of the resident rights in subsection (b) of this section.

(o) A resident may present grievances on the behalf of the resident or others to the executive director, state agencies, or other persons without threat of reprisal in any manner. The facility providing services shall develop procedures for submitting complaints and recommendations by residents and for assuring a response by the facility providing services.

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 October 9, 1992.

TRD-9213696

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

Proposed date of adoption: January 16, 1993

For further information, please call: (512) 458-7709

◆ ◆ ◆
Subchapter D. Minimum Standards for Maternity Homes

• 25 TAC §§145.51-145.70

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

The repeals are proposed 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; §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; and Texas Civil Statutes, Article 6252-13a, §5, which establishes the procedure for a state agency to propose the repeal of a rule.

§145.51. *Definitions.*

§145.52. *General Requirements.*

§145.53. *Personnel.*

§145.54. *Planning, Construction, Procedures, and Approvals.*

§145.55. *Types of Construction Programs and Applications of the Standards.*

§145.56. *Safety of Clients.*

§145.57. *Physical Plant.*

§145.58. *Sanitation.*

§145.59. *Rooms for Clients and Administrative Offices.*

§145.60. *Furnishings and Equipment for Care.*

§145.61. *Laundry.*

§145.62. Provisions for Recreation.

§145.63. Food Service and Food Sanitation.

§145.64. Reports and Records.

§145.65. Fire Protection.

§145.66. Health Care Services.

§145.67. Control of Communicable Diseases.

§145.68. Humane Treatment of Clients.

§145.69. Narcotics and Sedation.

§145.70. Eligibility for Licensure.

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 October 9, 1992.

TRD-9213701 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Proposed date of adoption: January 16, 1993

For further information, please call: (512) 458-7709

◆ ◆ ◆
Subchapter D. Facility Construction

Construction Standards for Additions, Remodeling, and New Nursing Facilities

• 25 TAC §§145.61-145.73

The new sections are proposed under the Health and Safety Code, Chapter 242, which provides the Texas Board of Health (board) with authority to adopt rules concerning licensing standards for personal care facilities; §121.001, which provides that the board will adopt rules for the performance of every duty imposed by law on the department, the board, and the commissioner of health; and Texas Civil Statutes, Article 6252-13a, §5, which establishes the procedures for a state agency to propose rules.

§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 the 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 entitled 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.

(c) Section 145.41(n) of this title (relating to Standards for Nursing Facilities) 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) of this title.

(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 licensing agency. Any conflicts shall be made known to the licensing agency 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 licensing agency 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 licensing agency.

(g) No construction or demolition shall be started prior to submittal of final plans to the licensing agency 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 licensing agency.

(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 licensing agency: 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 licensing agency. 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 licensing agency.

(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 approved by the licensing agency. 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 licensing agency 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 licensing agency.

(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 licensing agency.

(4) The building shall have suitable all-weather fire lanes for access as required by local fire authorities and the licensing agency. 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 licensing agency, the exterior finish material of buildings classified (per 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 licensing agency. 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 accessibility for individuals with disabilities in the following laws: the Americans with Disabilities Act of 1990 (Public Law 101-332; 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 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 §145.133 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 following service areas listed shall be located in or readily available to each nursing unit. The size and disposition of each ser-

vice 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 disinfecting 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 Fahrenheit.

(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 licensing agency.

(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 an-

chored 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:

<u>Number of Beds</u>	<u>Area Per Bed (Minimum)</u>
4-15	18 square feet (Minimum 144 square feet)
16-20	17 square feet
21-25	16 square feet
26-30	15 square feet
31-35	14 square feet
36-40	13 square feet
41-50	12 square feet
51-60	11 square feet
61 and over	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 dis-

counted 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 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) 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 Fahrenheit 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 recommended 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.

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

§145.66. Smoke Compartmentation (Subdivision of Building Spaces).

(a) Smoke compartmentation shall be as described in the Life Safety Code and, in addition, as described in this section.

(b) An exit sign shall be provided on each side of corridor smoke doors unless otherwise directed by the licensing agency.

(c) The metal frames for the wire glass view panels in smoke doors shall be steel unless otherwise approved by the licensing agency. The bottom of the view panel shall not be higher than 54 inches above the floor. Pairs of opposite (double egress) swinging smoke doors in corridors shall have push/pull hardware. The door leaves shall align in the closed position.

(d) Smoke barrier walls in concealed spaces such as attics, shall have prominent signs on each side that read: "Warning: Smoke/fire barrier. Properly seal all openings."

(e) Provisions shall be made for reasonable access to concealed smoke barrier walls for maintaining smoke dampers and so that walls and dampers can be visually checked periodically for conformance by facility staff, servicemen, and inspectors. Access shall provide for visual inspection of both sides of the wall, and of all parts (end to end and top to bottom). Ceiling access panels shall be prefabricated metal panel or equal and be at least 20 inches by 20 inches with no obstructions above (such as ducts) to hamper entrance and it shall be fire rated if required to maintain ceiling-roof or ceiling-floor fire rating. Access shall be provided for both sides of the wall.

(f) Air systems should be designed to avoid having ducts which penetrate

smoke barrier walls, thus eliminating the need for smoke dampers which are often a problem to maintain in proper and reliable working condition.

§145.67. Fire Protection Systems.

(a) Fire protection systems include detection, alarm, and communication systems, fixed automatic extinguishment systems, and portable extinguishers. Such systems shall meet the requirements of the Life Safety Code, and of this section. Components shall be compatible and laboratory listed for the use intended.

(b) Fire protection systems shall meet the requirements of all applicable NFPA standards such as NFPA 72A for alarm systems, etc., as referenced in the Life Safety Code. Wiring and circuitry for alarm systems shall meet the applicable requirements of NFPA standards including the NFPA 70 for such systems.

(c) Requirements of emergency electrical systems shall be in accordance with §145.71 of this title (relating to Electrical Requirements). Requirements for sprinkler systems shall be in accordance with §145.70(4) of this title (relating to Mechanical Requirements).

(d) Partial sprinkler systems (those provided only for hazardous areas) shall be interconnected with the fire alarm and comply with the Life Safety Code. Each partial system shall have a valve with a supervisory switch to sound a trouble signal, water flow switch to activate the fire alarm, and an end of line test drain.

(e) Fire alarm systems shall be installed (maintained, repaired, etc.) by an agent having a current certificate of registration with the State Fire Marshal's office of the Texas Commission on Fire Protection, in accordance with state law. A fire alarm installation certificate shall be provided as required by the Office of the State Fire Marshal.

(f) The fire alarm system shall be designed so that whenever the general alarm is sounded by activation of any device (manual pull, smoke sensor, sprinkler, kitchen range hood extinguisher, etc.) the following shall occur automatically.

(1) Smoke and fire doors which are held open by approved devices shall be released to close.

(2) Air handlers (air conditioning/heating distribution fans) serving three or more rooms or any means of egress shall shut down immediately.

(3) Smoke dampers shall close.

(4) The proper zone indicating lights shall show on the fire alarm control panel(s), including auxiliary panels.

(g) Fire alarm bells or horns shall be located throughout the building for audible coverage. Flashing alarm lights (visual alarms) shall be installed to be visible in corridors and public areas including dining rooms and living rooms in a manner that will identify exit routes.

(h) A master control panel shall be visible at the main nurse station which has alarm and trouble conditions by zones, power on lights, and required signal devices for trouble conditions. All control panels must be listed UL for the intended use, i.e., manual, automatic, and water flow activation. Alarm and trouble zoning shall be by smoke compartments and by floors in multi-story facilities.

(i) Remote annunciator panels, equipped with alarm by zone, or devices, trouble and power on lights shall be located at auxiliary or secondary nurse stations on each floor, and will indicate the alarm condition of adjacent zones and the alarm conditions at all other nurse stations.

(j) Manual pull stations shall be provided at all exits, living rooms, dining rooms, and at or near the nurse stations.

(k) The sprinkler system shall be interconnected with the fire alarm panel as a separate zone for alarm and trouble. Activation of the tamper switch will provide a trouble condition on the fire alarm panel which will not impair the operation of the alarm.

(l) The kitchen range hood extinguisher shall be interconnected with the fire alarm system. This interconnection may be a separate zone on the panel or combined with other initiating devices located in the same zone as the range hood is located.

(m) Portable fire extinguishers shall be provided throughout the facility as required by NFPA Standard 10 and as determined by the local fire department and the licensing agency.

(1) Portable type ABC or BC 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 licensing agency and so spaced that travel distance is not more than 75 feet.

(2) Extinguishers shall be installed on hangers or brackets supplied or mounted in approved cabinets. Recessed cabinets are required for extinguishers located in corridors.

(3) Extinguishers installed under conditions where they are subject to physical damage shall be protected from impact or dislodgement.

(4) Extinguishers having a gross weight not exceeding 40 pounds shall be installed so that the top of the extinguisher

is not more than five feet above the floor. Extinguishers having a gross weight greater than 40 pounds shall be installed so that the top of the extinguisher is not more than 3 1/2 feet above the floor. In no case shall the clearance between the bottom of the extinguisher and the floor be less than four inches.

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

§145.68. Hazardous Areas.

(a) Protection from hazardous areas shall be as required in the Life Safety Code except as required or modified in this section. Gas fired equipment shall not be located in attic spaces except under the following conditions.

(1) The area around the units shall be constructed to be one-hour fire rated.

(2) The enclosure shall have sprinkler protection.

(3) Combustion and venting air shall be ducted from the exterior in properly sized metal ducts.

(b) Laboratories shall be protected in accordance with NFPA 99.

(c) Cooking equipment shall have exhaust systems designed and installed in accordance with NFPA 96.

(d) Doors to hazardous areas must have closers and be kept closed unless provided with an approved hold open device such as an alarm activated magnetic hold-open device. Doors shall be single-swing type with positive latching hardware. View panels at kitchen and laundry entrances shall be provided and be of materials adequate to maintain the integrity of the door as allowed by the Life Safety Code.

§145.69. Structural Requirements.

(a) Every building and every portion thereof shall be designed and constructed to sustain all dead and live loads in accordance with accepted engineering practices and standards.

(b) Special provisions shall be made in the design of buildings in regions where local experience shows loss of life or extensive damage to buildings resulting from hurricanes, tornadoes, earthquakes, or floods.

(c) It shall be the sponsor's responsibility to employ qualified personnel in the preparation of plan designs and engineering and in the construction of the facility to assure that all structural components are adequate, safe, and meet the applicable construction requirements.

(d) The design of the structural system shall be done by or under the direction

of a professional (structural) engineer who is currently registered by the Texas State Board of Registration for Professional Engineers in accordance with state law.

(e) The parts of the plans, details, and specifications covering the structural design shall bear the legible seal of the engineer on the original drawings (from which the prints are made).

(f) If the municipality has a building code, that code shall govern the building requirements for the construction involved. The Life Safety Code is to be used for fire safety requirements. Should discrepancies between the codes arise, they shall be called to the attention of the licensing agency for resolution.

(g) In the absence of such a local building code, a nationally recognized building code shall be used, (such as the Standard Building Code of the Southern Building Code Congress International, Inc.) with regard to the construction integrity of the building. The Life Safety Code is to be used for fire safety requirements.

(h) Each building shall be classified as to building construction type for fire resistance rating purposes in accordance with NFPA 220 and the Life Safety Code.

(i) For Construction requirements of enclosures of vertical openings between floors, shall be in accordance with the Life Safety Code.

(j) All interior walls, partitions, roof structure, etc., in buildings of fire resistive and noncombustible construction shall be of noncombustible or limited combustible materials.

(k) Building insulation materials, unless sealed on all sides and edges in an approved manner, shall have a flame spread rating of 25 or less when tested in accordance with NFPA 255 and NFPA 258.

§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 §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 licensing agency 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 licensing agency.

(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 licensing agency.

(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 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 handicapped standards.

(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 licensing agency. 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 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 require-

ments 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 exceeding 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 penetrations 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 an approved engineered smoke removal system.)

(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 (xii) 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. Exhausting 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 Areas	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 licensing agency 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) Recommended minimum lighting levels can be found in the Illuminating Engineering Society (IES) Lighting Handbook, latest edition.

(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) of this title (relating to Architectural Space Planning and Utilization).

(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 department.

(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.

§145.72. Miscellaneous Details.

(a) Safety related details. A high degree of safety for the occupants is needed to minimize accidents which are more apt to occur with the elderly and/or infirm residents in a nursing facility. Consideration must be given to the fact that many will

have impaired vision, hearing, spatial perception, and ambulation.

(1) Hazards such as sharp corners and edges and unexpected steps must be avoided.

(2) Items such as drinking fountains, telephone booths, vending machines, and portable equipment shall be located so as not to restrict corridor traffic or reduce corridor width.

(3) Windows shall be designed to prevent accidental falls through or out of such windows.

(4) Doors which normally stay open or are frequently used shall not swing out into the corridor unless otherwise needed or required. Alcoves may be provided for doors which must swing outward toward a corridor or way of egress.

(5) The proper use of safety glass shall be adhered to in applicable locations and conditions.

(6) Thresholds and expansion joint covers shall be made essentially flush with the floor surface to facilitate use of wheelchairs and carts. See §145.70(1)(H) of this title (relating to Mechanical Requirements) for requirements for such items as shower curbs, surfaces, and doors.

(7) Grab bars shall be provided at all residents' toilets, showers, tubs, and sitz baths. The bars shall be 1 1/4 to 1 1/2 inches in diameter and shall have 1 1/2 inch clearance to walls. Bars shall have sufficient strength and anchorage to sustain a concentrated load of 250 pounds. Grab bar standards shall comply with standards adopted under the Americans with Disabilities Act.

(8) Handrails shall be provided on both sides of corridors used by residents. A clear distance of 1 1/2 inches shall be provided between the handrail and the wall. Handrails shall be securely mounted to withstand downward forces of 250 pounds. Handrails may be omitted on wall segments less than 18 inches. Handrails shall be mounted 33 inches to 36 inches above the floor, and shall comply with standards adopted under the Americans with Disabilities Act.

(9) Ends of handrails and grab bars shall be constructed to prevent snagging the clothes of residents (e.g., return ends to wall).

(10) Ceiling fan blades shall be at least seven feet above the floor and be located so as not to interfere with the operation of any ceiling mounted smoke detectors.

(b) General details.

(1) Concrete floors, whether finished by sealant, or similar product, shall

not be used as the finished floor unless specifically approved in writing by the licensing agency. An exception shall be: mechanical equipment rooms and maintenance or similar areas.

(2) Sound separation shall be provided in corridor walls and resident room party walls. Minimum Sound Transmission Coefficient 30 per American Society for Testing Material E-90.

(3) Illumination and a safe platform in the attic shall be provided at all attic access panels.

(4) Attic access shall be provided for building maintenance. Access panels shall be prime coated steel flush panels where required to maintain fire rating of ceiling-roof/ceiling-floor assemblies.

§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 Americans with Disabilities Act.

(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 proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Deputy Commissioner
Texas Department of
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For further information, please call: (512) 458-7709

Subchapter E. Procedures on Long-Term Care Facilities

• 25 TAC §§145.81-145.97

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

The repeals are proposed 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; §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; and Texas Civil Statutes, Article 6252-13a, §5, which establishes the procedure for a state agency to propose the repeal of a rule.

§145.81. Interpretive Memoranda.

§145.82. Personnel Performing Inspections, Survey, and Utilization Review/Quality Assurance Visits.

§145.83. Inspections, Surveys, and Visits.

§145.84. Determinations and Actions Pursuant to Inspections, Surveys, and Visits.

§145.85. Conducting Open Hearings.

§145.86. Conditions Constituting an Immediate Threat to Resident Health and Safety.

§145.87. Resident Placement under Emergency License Suspension or Closing Order.

§145.88. Reports of Abuse and Neglect under the Health and Standards.

§145.89. Procedures for Inspection of Public Records.

§145.90. Operating a Part of a Facility under the Standards of a Lesser Licensing Category.

§145.91. Administrative Penalties.

§145.92. Trust Fund for the Use of a Trustee.

§145.93. Fees for Plan reviews and Building Inspections.

§145.94. Investigation of Facility Employees.

§145.95. Time Periods for Processing Licenses for Long-Term Care Facilities.

§145.96. Procedures for the Investigating and Reporting of Abuse, Neglect, and Exploitation.

§145.97. Reporting of Resident Death Information.

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

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Robert A. MacLean, M.D.
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Subchapter F. Institutions Subject to Licensure Under Texas Civil Statutes, Article 4442c

• **25 TAC §145.101, §145.102**

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

The repeals are proposed 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; §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; and Texas Civil Statutes, Article 6252-13a, §5, which establishes the procedure for a state agency to propose the repeal of a rule.

§145.101. *Institutions or Facilities Included.*

§145.102. *Classification of Services.*

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

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

• **25 TAC §§145.91-145.105**

The new sections are proposed under the Health and Safety Code, Chapter 242, which provides the Texas Board of Health (board) with authority to adopt rules concerning licensing standards for personal care facilities §121.001, which provides that the board will adopt rules for the performance every duty imposed by law on the department, the board, and the commissioner of health; and Texas Civil Statutes, Article 6252-13a, §5, which establishes the procedures for a state agency to propose rules.

§145.91. *Introduction and Application.*

(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) Licensing agency—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 unlicensed. 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 licensing agency. 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 licensing agency 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 licensing agency.

(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 licensing agency. 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 licensing agency.

(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 licensing agency.

(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 101-332; 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.

§145.92. General Requirements.

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

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

(c) 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.

(d) The facility must have:

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

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

(3) 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

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

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

(f) 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.

(g) 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.

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

(i) Wastebaskets shall be of non-combustible material.

(j) 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.

(k) The Illuminating Engineering Society of North America (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.

(l) 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.

(m) 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 licensing agency.

(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 licensing agency.

(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 licensing agency.

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

§145.94. Fire Service.

(a) The facility shall be served by a paid or volunteer fire department. The fire department must provide written assurance to the licensing agency that the fire department can respond to an emergency at the facility.

(b) Water supply for fire fighting purposes shall be as required and approved by the fire fighting unit.

§145.95. Means of Egress.

(a) Corridors and other means of egress shall be kept clear of obstructions and shall not be used for any purpose which would interfere with its use as an exit, such as for storage, vending machines, seating, or similar purposes. The corridor width shall be maintained at all times.

(b) Doors within the means of egress shall not be equipped with a latch or lock which requires the use of a key or tool to open from the inside of the building. 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. An exception is that large facilities are permitted to have doors which are locked, provided that residents can be rapidly removed by the use of remote control of locks or by keying all locks to keys readily available to staff who are in constant attendance.

§145.96. Fire Alarms, Detection Systems, and Sprinkler Systems.

(a) General. Fire alarms, detection systems, and sprinkler systems shall be as required by National Fire Protection Association (NFPA) 101 Life Safety Code, NFPA 72A Standard for the Installation, Maintenance and Use of Local Protective Signaling Systems, NFPA 13 Standard for the Installation of Sprinkler Systems, or NFPA 13-D Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Mobile Homes, as specified in NFPA 101, Chapter 21 titled "Residential Board and Care Occupancies" and as modified in this section.

(1) Each building shall have an approved fire alarm system.

(2) Components shall be compatible and laboratory listed for the use intended.

(3) Wiring and circuitry for alarm systems shall meet the applicable requirements of NFPA Codes, including NFPA 70 National Electric Code, for such systems.

(4) Fire alarm systems shall be installed, maintained, repaired, etc. by an agent having a current certificate of registration with the state fire marshal's office of the Texas Commission on Fire Protection, in accordance with the state law. A fire alarm system installation certificate shall be provided as required by the Office of the State Fire Marshal. An exception is that large facilities who have professional engineers on staff that are qualified in electrical and electronic installations are not required to have a certificate of registration with the state fire marshal's office, provided they do not sell, install, or maintain fire alarm systems commercially.

(b) Fire alarm and smoke detection systems for small facilities.

(1) A manual alarm initiating system shall be provided and shall be supplemented by an automatic smoke detection and alarm initiation system in accordance with NFPA 101, Chapter 7, Section 7-6, titled "Building Service and Fire Protection Equipment."

(2) Smoke detectors shall be installed in resident bedrooms, corridors, hallways, and common living/dining areas. Service areas such as laundries and kitchens may have heat detectors in lieu of smoke detectors.

(3) The fire alarm control panel shall be located to be in view of staff. The primary power source for the complete fire alarm system must be commercial electric.

(4) Emergency power source shall be from storage batteries or on-site engine-driven generator set.

(5) The operation of any alarm initiating device will sound an audible/visual alarm(s) at the site.

(6) The facility shall have a written contract with a fire alarm company or person licensed by the State of Texas to maintain the fire alarm system semiannually.

(c) Fire alarm and emergency systems for large facilities.

(1) The fire alarm system shall be designed so that whenever the general alarm is sounded by activation of any device (manual pull, smoke sensor, sprinkler, kitchen range hood extinguisher, etc.) the following shall occur automatically.

(A) Smoke and fire doors which are held open by approved devices shall be released to close.

(B) Air handlers (air conditioning/heating distribution fans) serving three or more rooms or any means of egress shall shut down immediately.

(C) Smoke dampers shall close.

(D) The proper zone indicating lights shall show on the fire alarm control panel(s), including auxiliary panels.

(2) Fire alarm bells or horns shall be located throughout the building for audible coverage. Flashing alarm lights (visual alarms) of proper intensity shall be installed to be visible in corridors and public areas including dining rooms and living rooms.

(3) A master control panel shall be visible at the main staff station which has alarm and trouble conditions by zones, power-on lights, and required signal devices for trouble conditions. All control panels must be listed in accordance with the provisions of the Underwriters Laboratories, Inc. (UL) for the intended use, i.e., manual, automatic, and water flow activation. Alarm and trouble zoning shall be by smoke compartments and by floors in multi-story facilities.

(4) Remote annunciator panels equipped with alarm by zone and a common trouble signal (both audible and visual) shall be located at auxiliary or secondary staff stations on each floor or major subdivisions of single story facilities, that will indicate the alarm condition of adjacent zones and the alarm conditions at all other staff stations.

(5) Manual pull stations shall be provided at all exits, living rooms, dining rooms, and at or near the staff stations.

(6) The NFPA 13 sprinkler system shall be interconnected with the fire alarm panel as a separate zone for alarm and trouble. Activation of the tamper switch will provide a trouble condition on the fire alarm panel which will not impair the operation of the alarm.

(7) The kitchen range hood extinguisher shall be interconnected with the fire alarm system. This interconnection may be a separate zone on the panel or combined with other initiating devices located in the same zone as the range hood is located.

(8) The fire alarm system shall be arranged to transmit an alarm automatically to the fire department legally committed to serve the area in which the facility is located by the most direct and reliable method allowed by NFPA 101.

(9) Partial sprinkler systems (those provided only for hazardous areas) shall be interconnected to the fire alarm system and comply with NFPA 101. Each partial system shall have a valve with a supervisory switch to sound a trouble signal, water flow switch to activate the fire alarm, and an end of line test drain.

(10) Emergency electrical services shall be provided to comply with the provisions of NFPA 70. This includes such items as emergency power provided by generator or batteries for fire alarm systems, emergency egress lighting, call systems, TV cameras and monitors (if used for corridor observation), life support systems, designated wall receptacles, etc. The system shall comply with NFPA 99 Standard for Health Care Facilities, and NFPA 37 Standard for the Installation and Use of Stationary Combustion Engines and Gas Turbines.

(11) Elevators, escalators, and moving walks. Elevators shall comply with the provisions of NFPA 101 and American National Standards Institute (ANSI) Safety Code for Elevators, Dumbwaiters, Escalators, and Moving Walks (ANSI A17.1). Elevators are required for buildings having resident facilities (such as bedrooms, dining, or recreation areas) or services (such as diagnostic or therapy) located on other than the main entrance floor. Passenger elevators, escalators, and walks shall be inspected by a qualified agent at least every six months. Freight elevators and dumbwaiters shall be inspected every 12 months.

§145.97. Portable Fire Extinguishers.

(a) General. Portable fire extinguishers shall be provided and maintained to comply with the provisions of 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 licensing agency 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.

§145.98. Accessibility Provisions. The physical plant shall be designed for persons with physical disabilities and/or mobility impairments and must comply with applicable federal, state, and local requirements.

§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 licensing agency. 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 licensing agency. 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 shall be as stated in 42 Code of Federal Regulations §483.470(b)(iii), concerning resident bedrooms.

(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 licensing agency, 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 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 licensing agency.

(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 under 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. In all facilities, a mechanical dishwasher is required for sanitizing dishes. Separation of soiled and clean dish areas shall be maintained, including air flow.

(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 lava-

tory 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 licensing agency. 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 as stated in federal requirements in 42

Code of Federal Regulations, §483.470(b)(iii), concerning resident bedrooms.

(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 arcas provided that the first such area is at least 120 square feet and any others, thereafter, 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.

(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.

§145.100. Storage Requirements (All Facilities).

(a) Bulk storage of hazardous items such as janitor supplies and equipment shall be provided in closets or spaces separate from resident use areas. Closets or spaces shall be maintained in a safe and sanitary condition and ventilated in a manner commensurate with the use of the closet or space.

(b) There shall be space for equipment for daily out-of-bed activity for all residents.

(c) There shall be suitable storage space accessible to the resident for personal possessions such as toys, televisions, radios, prosthetic equipment, and clothing.

(d) Attics, mechanical rooms, boiler rooms, and other similar areas shall not be used for storage purposes.

§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 licensing agency (i.e., 100% continuous recirculation of interior air in most areas is not acceptable), or the system shall be designed to meet 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 licensing agency 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.

§145.102. Plumbing (All Facilities).

(a) The water supply shall be of safe, sanitary quality, suitable for use, and adequate in quantity and pressure. The water shall be obtained from a water supply system; the location, construction, and operation of which are approved by the Texas Water Commission.

(b) Sewage shall be discharged into a state-approved sewerage system or septic system; otherwise, the sewage shall be collected, treated, and disposed of in a manner which is approved by the Texas Water Commission.

§145.103. Maintenance (All Facilities).

(a) Walls, doors, and ceilings shall be maintained free from holes, cracks, falling plaster or paint, and shall be cleaned and painted.

(b) Paint or plaster inside the building that contains lead shall be removed or covered so that it is not accessible to the residents.

(c) All abandoned utilities such as electrical wiring, ducts, and pipes shall be removed from the facility when no longer usable.

§145.104. Environmental Services.

(a) Pest control.

(1) The facility shall be kept free of insects, rodents, and vermin. The least toxic and least flammable effective chemicals shall be used. Poisons shall not be stored with food products and shall be under lock.

(2) Garbage and trash shall be stored in enclosed containers, protected against leakage, contact with disease vectors, and access to animals. It shall be stored in areas separate from those used for the preparation and storage of food and shall be removed from the premises in conformity with state and local practices. Garbage and trash containers shall be maintained free of accumulations and coatings of garbage. Garbage storage areas shall be kept clean and in good repair.

(b) Storage. Storage items shall be neatly arranged and placed to minimize fire hazard. Gasoline, volatile materials, paint, and similar products (excluding personal items) shall not be stored in the building housing residents except as may be approved by the local fire marshal. Accumulations of extraneous material and refuse shall not be permitted.

(c) Laundry.

(1) There shall be clean linen available at all times, and in a quantity to meet the needs of the residents.

(2) Clean linen shall be stored in a clean storage area, which is easily accessible to the personnel.

(3) Soiled linen and clothing in large facilities shall be transported or stored in approved containers or bags.

(A) Soiled laundry storage shall be in separate, well ventilated areas and shall not be permitted to accumulate in other areas of the facility.

(B) Soiled bags or containers shall not be used to convey clean linens.

(C) Soiled linens shall not be sorted, laundered, rinsed, or stored in bathrooms, resident rooms, corridors, kitchens, or food storage areas.

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 October 9, 1992.

TRD-9213762 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
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Proposed date of adoption: January 16, 1993

For further information, please call: (512) 458-7709

Subchapter G. Licensing and Medical Certification Standards for Nursing Homes

• 25 TAC §145.111

(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 Health or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed 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; §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; and Texas Civil Statutes, Article 6252-13a, §5, which establishes the procedure for a state agency to propose the repeal of a rule.

§145.111. Standards for Nursing Homes Jointly Developed by the Texas Department of Human Services That Apply to Licensure and to Medicaid Certification.

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 October 9, 1992.

TRD-9213704 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

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For further information, please call: (512) 458-7709

Subchapter H. Long-Term Care Services for the Elderly

• 25 TAC §145.121

(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 Health or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed 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; §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; and Texas Civil Statutes, Article 6252-13a, §5, which establishes the procedure for a state agency to propose the repeal of a rule.

§145.121. Memorandum of Understanding between TDOA, TDHS, TDH, and TDMHMR concerning Long-Term Care Services for the Elderly.

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

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Deputy Commissioner
Texas Department of
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Subchapter I. Employee Orientation and Training in Nursing Homes and Custodial Care Homes

• 25 TAC §145.131

(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 Health or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed 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; §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; and Texas Civil Statutes, Article 6252-13a, §5, which establishes the procedure for a state agency to propose the repeal of a rule.

§145.131. Basic Teaching Outline.

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

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Deputy Commissioner
Texas Department of
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For further information, please call: (512) 458-7709

Construction Standards for Maternity Facilities

• 25 TAC §145.131, §145.132

The new sections are proposed under the Health and Safety Code, Chapter 242, which provides the Texas Board of Health (board) with authority to adopt rules concerning licensing standards for personal care facilities §121.001, which provides that the board will adopt rules for the performance of every duty imposed by law on the department, the

board, and the commissioner of health; and Texas Civil Statutes, Article 6252-13a, §5, which establishes the procedures for a state agency to propose rules.

§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 providing sleeping accommodations for 17 or more residents exclusive of "live-in" staff.

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

(1) All buildings or structures, new or existing, used as a licensed 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 licensing agency.

(3) A licensed nursing facility or licensed hospital, meeting Chapter 12 titled "Health Care Occupancies for Large Facilities" 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 1988 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 licensing agency 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 'T' 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 in this undesignated head.

(6) An existing building either occupied as a maternity facility at the time of initial inspection by the licensing agency or converted to occupancy as a maternity facility shall meet all local requirements pertaining to that building for that occupancy. The licensing agency 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 42, 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.

§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, titled "Health Care Occupancies for Large Facilities" and the "impractical" requirements for small facilities as found in NFPA 101, Chapter 21. Examples of residents that may not be capable of self-evacuation are as follows:

(1) a person with a physical disability of a nature that he 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 that is taking medication which will make it difficult for a staff member to arouse the person quickly.

(b) Evacuation procedures. Residents that 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 cannot 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 licensing agency 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 licensing agency.

(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 partic-

ipation 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. The partition shall be 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 licensing agency. 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, §6.5. Flame spread is the rate of fire travel along the surface of a material. (This is different than other requirements for time-

rated "burn through" resistance ratings, such as one-hour rated.) Flame spread ratings are Class A (0-25), Class B (26-75), and Class C (76-200).

(4) Doors between resident rooms and corridors or public spaces 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 licensing agency. 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 licensing agency.

(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-resistant texture and uniform, without irregularities. Ramps shall not exceed 1:12 slope, and shall meet handicap 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 licensing agency.

(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 licensing agency.

(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. An exception is that 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 licensing agency 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 licensing agency 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. Min-

imum 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 U.L. or F.M.-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. Alternative locations and arrangements for fire extinguishers may be as approved by the licensing agency for small facilities, facilities consisting of separate small building units, or unusual building arrangements.

(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 10A) by competent personnel licensed or

certified to perform servicing by the State Fire Marshal. Unserviceable extinguishers must be replaced.

(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 licensing agency. 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 window will be operable from the inside, without the use of tools or special devices, and provide an operable section with a clear opening of not less than 5.7 square feet (minimum width of 20 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 inches.

(ii) In large Type B facilities, the bedroom window size shall not be less than 8% of the bedroom size.

(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 10 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:

<u>Number of Beds</u>	<u>Area Per Bed (Minimum)</u>
4-16	15 square feet (Minimum 120 square feet)
17-39	13 square feet
40-59	12 square feet
60 and over	10 square feet

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.

(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

(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). An exception is that staff rest rooms in existing facilities must be provided, but may be located outside of the kitchen area.

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

(ix) Non-absorbent smooth finishes or surfaces 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. An exception is that existing facilities with wood shelves may continue to use the shelves provided they are kept sealed and clean.

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

(iv) 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 proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on October 9, 1992.

TRD-9213761 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Proposed date of adoption: January 16, 1993

For further information, please call: (512) 458-7709

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

◆ ◆ ◆
• 25 TAC §§145.141-145.147

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Health or in the Texas

Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed 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; §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; and Texas Civil Statutes, Article 6252-13a, §5, which establishes the procedure for a state agency to propose the repeal of a rule.

§145.141. *Purpose.*

§145.142. *Definitions.*

§145.143. *Department's General Responsibilities under Title XIX Medical Assistance Program.*

§145.144. *Department's Survey Procedure and Practice in Facilities.*

§145.145. *Action by Department on Survey Recommendations.*

§145.146. *Appeals.*

§145.147. *Construction of This Subchapter.*

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 October 9, 1992.

TRD-9213707 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Proposed date of adoption: January 16, 1993

For further information, please call: (512) 458-7709

◆ ◆ ◆
General Requirements For All Facilities

◆ ◆ ◆
• 25 TAC §145.141, §145.142

The new sections are proposed under the Health and Safety Code, Chapter 242, which provides the Board of Health (board) with authority to adopt rules concerning licensing standards for nursing facilities and related institutions; §121.001, which provides the board with authority to adopt rules to implement every duty imposed by law on the board, the department and the commissioner of health; and Texas Civil Statutes, Article 6252-13a, §5, which establishes the procedure for proposing new rules by a state agency.

§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 licensing agency (including formerly licensed facilities), or remodeling of existing licensed facilities, one copy of the preliminary proposed plans shall be submitted to the licensing agency (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 as follows.

(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 licensing agency in accordance with the schedule below. 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 licensing agency 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 licensing agency may require. In addition, two extra copies of the floor plan (only) shall be submitted with the aforementioned 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 below. 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 licensing agency within 60 days of receipt of final drawings and required plan review fee.

(7) The review of plans and specifications by the licensing agency 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.

(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 licensing agency 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 licensing agency. 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 licensing agency. 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 licensing agency (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

licensing agency 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 licensing agency'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) 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 sur-

veyor finds certain basic requirements not met, he may recommend to the licensing agency 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 licensing agency 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 licensing agency 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 licensing agency. 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 proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on October 9, 1992.

TRD-8213791

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

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For further information, please call: (512)
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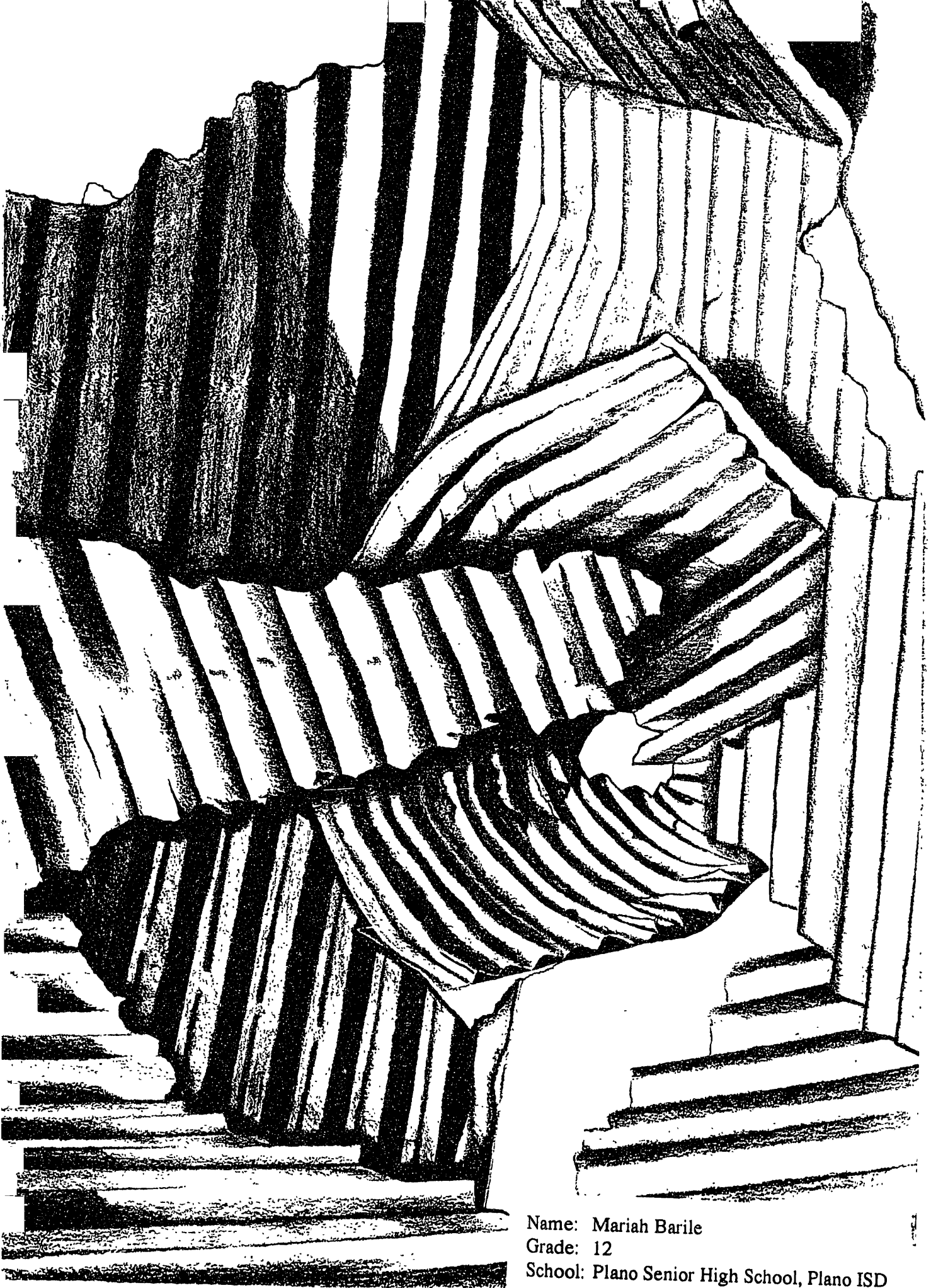
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1992 Publication Schedule for the *Texas Register*

Listed below are the deadline dates for the September-December 1992 issues of the *Texas Register*. Because of printing schedules, material received after the deadline for an issue cannot be published until the next issue. Generally, deadlines for a Tuesday edition of the *Texas Register* are Wednesday and Thursday of the week preceding publication, and deadlines for a Friday edition are Monday and Tuesday of the week of publication. No issues will be published on February 28, November 6, December 1, and December 29. A bullet beside a publication date indicates that the deadlines have been moved because of state holidays.

FOR ISSUE PUBLISHED ON	ALL COPY EXCEPT NOTICES OF OPEN MEETINGS BY 10 A.M.	ALL NOTICES OF OPEN MEETINGS BY 10 A.M.
66 Tuesday, September 1	Wednesday, August 26	Thursday, August 27
67 Friday, September 4	Monday, August 31	Tuesday, September 1
68 Tuesday, September 8	Wednesday, September 2	Thursday, September 3
69 *Friday, September 11	Friday, September 4	Tuesday, September 8
70 Tuesday, September 15	Wednesday, September 9	Thursday, September 10
71 Friday, September 18	Monday, September 14	Tuesday, September 15
72 Tuesday, September 22	Wednesday, September 16	Thursday, September 17
73 Friday, September 25	Monday, September 21	Tuesday, September 22
74 Tuesday, September 29	Wednesday, September 23	Thursday, September 24
75 Friday, October 2	Monday, September 28	Tuesday, September 29
76 Tuesday, October 6	Wednesday, September 30	Thursday, October 1
77 Friday, October 9	Monday, October 5	Tuesday, October 6
Tuesday, October 13	THIRD QUARTERLY INDEX	
78 Friday, October 16	Monday, October 12	Tuesday, October 13
79 Tuesday, October 20	Wednesday, October 14	Thursday, October 15
80 Friday, October 23	Monday, October 19	Tuesday, October 20
81 Tuesday, October 27	Wednesday, October 21	Thursday, October 22
82 Friday, October 30	Monday, October 26	Tuesday, October 27
83 Tuesday, November 3	Wednesday, October 28	Thursday, October 29
Friday, November 6	NO ISSUE PUBLISHED	
84 Tuesday, November 10	Wednesday, November 4	Thursday, November 5
85 Friday, November 13	Monday, November 9	Tuesday, November 10
*86 Tuesday, November 17	Tuesday, November 10	Thursday, November 12
87 Friday, November 20	Monday, November 16	Tuesday, November 17
88 Tuesday, November 24	Wednesday, November 18	Thursday, November 19
89 Friday, November 27	Monday, November 23	Tuesday, November 24
Tuesday, December 1	NO ISSUE PUBLISHED	
90 Friday, December 4	Monday, November 30	Tuesday, December 1
91 Tuesday, December 8	Wednesday, December 2	Thursday, December 3
92 Friday, December 11	Monday, December 7	Tuesday, December 8
93 Tuesday, December 15	Wednesday, December 9	Thursday, December 10
94 Friday, December 18	Monday, December 14	Tuesday, December 15

95 Tuesday, December 22	Wednesday, December 16	Thursday, December 17
96 Friday, December 25	Monday, December 21	Tuesday, December 22
Tuesday, December 29	NO ISSUE PUBLISHED	
1 Friday, January 1	Monday, December 28	Tuesday, December 29

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