

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Charlotte Horn, Office of Legal Services at (512) 239-0779. Requests should be made as far in advance as possible.

Written comments may be submitted to Devon Ryan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.state.tx.us/rules/ecomments/>. File size restrictions may apply to comments being submitted via the *eComments* system. All comments should reference Rule Project Number 2008-030-116-PR. The comment period closes September 27, 2010. Copies of the proposed rulemaking can be obtained from the commission's Web site at [http://www.tceq.state.tx.us/nav/rules/propose\\_adopt.html](http://www.tceq.state.tx.us/nav/rules/propose_adopt.html). For further information, please contact Blake Stewart, Air Permits Division, (512) 239-6931.

TRD-201004712

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: August 13, 2010



## Texas Health and Human Services Commission

### Notice of Correction

The Texas Health and Human Services Commission (HHSC) withdraws its intent to submit Amendment 944, Transmittal Number TX 10-051, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act, which would have proposed to cover certain pharmacy supplies as part of the home health benefit that may be provided by a licensed pharmacy provider. HHSC intends to submit the amendment with updated language at a later date. HHSC will notify the public when the amendment is finalized and will accept public comment at that time.

Please direct questions regarding the amendment to Barbara Dean, Policy Analyst, by mail at the Texas Health and Human Services Commission, P.O. Box 13257, H-600, Austin, Texas 78711; by telephone at (512) 491-1101; by facsimile at (512) 491-1953; or by e-mail at [Barbara.Dean@hhsc.state.tx.us](mailto:Barbara.Dean@hhsc.state.tx.us).

TRD-201004656

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: August 11, 2010



### Public Notice

The Texas Health and Human Services Commission (HHSC) announces its intent to submit amendments to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendments are effective September 1, 2010.

The first adjustment to the proposed rates related to the no-cost inpatient hospital rebasing initiative complies with the 2010-2011 General Appropriations Act (Article II, HHSC, Rider 68, Senate Bill 1, 81st Legislature, Regular Session, 2009). This rider requires HHSC to rebase acute care hospital rates within available funds (at no additional cost). Specifically, the legislation requires HHSC to update the payment division standard dollar amounts (PDSAs) and diagnosis related

group (DRG) factors with more recent cost data and to proportionately reduce the PDSAs within available funds.

In addition, the Legislative Budget Board (LBB) and the Governor's Office informed HHSC in a letter dated May 17, 2010, of their revision to the Spending Reduction Plan for the 2010-2011 Biennium submitted by HHSC in response to the January 15, 2010, letter from the Governor, Lieutenant Governor, and Speaker requesting a spending reduction proposal. In response to this direction, HHSC proposes to adjust payments for inpatient hospital services. The result of this revision is that the payment rates for inpatient hospital services reimbursed under (DRG) prospective payment system (with the adjustments for the no-cost rebasing) will be reduced by one percent effective September 1, 2010, consistent with the May 17, 2010, direction from the LBB and the Governor's Office. The rates are proposed to be effective September 1, 2010.

The proposed amendments are estimated to result in an additional annual aggregate expenditure reduction of \$2,597,824 for the remainder of federal fiscal year (FFY) 2010, with approximately \$1,842,897 in federal funds and \$754,927 in State General Revenue (GR). For FFY 2011, the estimated additional aggregate expenditure reduction is \$31,173,892, with approximately \$19,687,871 in federal funds and \$11,486,021 in GR.

Interested parties may obtain copies of the proposed amendment by contacting Kevin Nolting, Director of Rate Analysis for Hospital Services, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1348; by facsimile at (512) 491-1998; or by e-mail at [Kevin.Nolting@hhsc.state.tx.us](mailto:Kevin.Nolting@hhsc.state.tx.us). Copies of the proposals will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201004756

Steve Aragon

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Texas Health and Human Services Commission

Filed: August 17, 2010



## Texas Boarding House Model Standards

**Introduction:** The Legislature through House Bill 216, 81st Legislature, Regular Session, 2009, created Health and Safety Code Chapter 254, Boarding Home Facilities. Section 254.003 directs the Health and Human Services Commission (HHSC) to develop and publish model standards for the operation of boarding home facilities relating to: construction and remodeling of boarding homes; sanitary and related conditions; the reporting and investigation of injuries, incidents, and unusual accidents and the establishment of policies and procedures to ensure resident health and safety; assistance with self-administering medication; requirements for in-service education of the facility's staff; criminal history record checks; assessment and periodic monitoring to ensure that a resident does not require personal care, nursing or other services and is capable of self-administering medication. The legislation further directed HHSC to make the model standards available to local counties or municipalities that choose to require boarding homes to obtain a permit to operate the boarding home.

### Definitions:

A. Boarding home facility means an establishment that:

1. furnishes, in one or more buildings, lodging to three or more persons with disabilities or elderly persons who are unrelated to the owner of the establishment by blood or marriage; and

2. provides community meals, light housework, meal preparation, transportation, grocery shopping, money management, laundry services, or assistance with self-administration of medication but does not provide personal care services to those persons.

**B. Personal care services means**

1. assistance with meals, dressing, movement, bathing, or other personal needs or maintenance;
2. the administration of medication by a person licensed to administer medication or the assistance with or supervision of medication; or
3. general supervision or oversight of the physical and mental well-being of a person who needs assistance to maintain a private and independent residence in an assisted living facility or who needs assistance to manage the person's personal life, regardless of whether a guardian has been appointed for the person.

**C. Assistance with self-administration of medication means** assisting a resident by reminding the resident to take medication, opening and removing medications from a container, placing medication in a resident's hand or in/on a clean surface such as a pill cup or a medication reminder box and reminding the resident when a prescription medication needs to be refilled.

**D. Resident means** a person who is residing in a boarding home facility.

**E. Elderly person means** a person who is 65 years of age or older.

**F. Person with a disability means** a person with a mental, physical, or developmental disability that substantially impairs the person's ability to provide adequately for the person's care or protection and

1. who is 18 years of age or older or
2. under 18 years of age and who has had the disabilities of minority removed.

**G. An injury, incident or unusual accident is** an event that resulted in a change in the resident's physical or mental status that occurred in the boarding home facility or on the grounds of the boarding home facility that requires intervention by a private or public entity responsible for physical or mental health services, or an event that requires the facility taking resident safety and protection measures including:

1. an allegation of abuse, neglect, or exploitation;
2. death;
3. a resident's absence from the facility when circumstances place the resident's health, safety or welfare at risk;
4. fire;
5. criminal acts; and
6. altercations between residents.

**H. Abuse, neglect and exploitation is defined in the Texas Human Resource Code and 48.002 as the following:**

1. "Abuse" means:
  - a. the negligent or willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical or emotional harm or pain to an elderly or disabled person by the person's caretaker, family member, or other individual who has an ongoing relationship with the person; or
  - b. sexual abuse of an elderly or disabled person, including any involuntary or nonconsensual sexual conduct that would constitute an offense under §21.08, Penal Code (indecent exposure) or Chapter 22, Penal Code (assaultive offenses), committed by the person's caretaker, fam-

ily member, or other individual who has an ongoing relationship with the person.

2. "Exploitation" means the illegal or improper act or process of a caretaker, family member, or other individual who has an ongoing relationship with the elderly or disabled person using the resources of an elderly or disabled person for monetary or personal benefit, profit, or gain without the informed consent of the elderly or disabled person.

3. "Neglect" means the failure to provide for one's self the goods or services, including medical services, which are necessary to avoid physical or emotional harm or pain or the failure of a caretaker to provide such goods or services.

**Standard 1. Construction/Remodeling**

**A. Each owner/operator of a boarding home facility must ensure the resident's health, safety, comfort and protection through the following standards that address the construction or remodeling of a boarding home facility, including plumbing, heating, lighting, ventilation and other housing conditions.**

**B. Each facility must meet the following applicable codes and regulations:**

1. local zoning and building codes;
2. federal, state and local fire codes;
3. federal, state and local health & safety codes; and
4. federal and state accessibility regulations.

**C. Mobile homes shall not be permitted for use as boarding homes or additions to existing boarding homes.**

**D. Interior doors to living spaces, bedrooms, bathrooms and toilet rooms must fit the openings in which they are hung, be properly equipped with hardware and be maintained in good working condition. Doors with locking devices must be provided where necessary to provide privacy and protection of the resident.**

1. Every closet door latch will be such that it can be readily opened from the inside in case of an emergency.
2. Every bathroom door or door lock must permit the opening of the locked door in case of an emergency.

**E. Public pathways and stairways in buildings must maintain a minimum unobstructed width concurrent with federal fire codes and must be provided with convenient light switches controlling an adequate lighting system.**

**F. Boarding home facilities must be supplied with electric service and fixtures that are properly installed and maintained in safe working condition and connected to a source of electrical power.**

**G. Every boarding home facility must have heating and cooling equipment that are properly installed, vented, and maintained in a safe good working condition. The temperature of rooms intended for human occupancy will remain at a temperature between sixty-eight (68) and eighty-two (82) degrees Fahrenheit.**

**H. Every boarding home facility must have water heating facilities that are properly installed, vented, in good working condition, and are properly connected with hot and cold water lines. The temperature of water drawn at every required sink, lavatory basin, bathtub or shower will remain at a temperature between one hundred and ten (110) and one hundred and twenty (120) degrees Fahrenheit.**

**I. Every habitable room must have at least one window that can be easily opened, or such other device as will ventilate the room. Locks that can be easily opened manually from the inside must be provided on**

all exterior doors. All windows must be openable without tools. The window opening must meet local codes for emergency egress. The bottom of the window opening must not be more than 44 inches above the floor.

J. Sleeping rooms must have:

1. at least 70 square feet of floor space in single-occupancy rooms;
2. at least 60 square feet of floor space for each occupant in multi-occupancy rooms
3. beds spaced at least three feet apart when placed side by side or end-to-end;
4. at least a seven feet, six inches (7'6") ceiling height;
5. required accessibility for non-ambulatory residents and residents with conditions that substantially limit ambulation and/or mobility;
6. beds at least six feet (6') long and three feet (3') wide equipped with supportive springs in good condition and a clean supportive mattress in good condition, and a mattress cover that prevents bodily fluids from soiling the mattress;
7. at least one pillow with a clean pillowcase, two (2) clean sheets, and a cover such as a blanket or quilt, in good condition, per bed, cleaned weekly or more often if soiled;
8. extra bed linens, including sheets, pillowcase and blankets must be available to each resident;
9. at least one chest of drawers or equivalent, in good condition having a sufficient number of drawers or other areas to contain all necessary items of clothing and personal belongings of each resident that can be locked/secured;
10. at least one chair in good condition in each sleeping room;
11. at least one end table in good condition located adjacent to each bed in each sleeping room;
12. sufficient hanging space to allow clothes not stored in drawers to be hung. Clothing must not be stored on the floor;
13. bath towels, washcloths, soap, individual comb and toothbrush must be available at all times and in quantity sufficient to meet the needs of the residents; and
14. access to emergency exit without passing through another sleeping room.

K. All equipment, fixtures, furniture, and furnishings, including windows, draperies, curtains, and carpets, must be kept clean and free of dust, dirt, vermin, and other contaminants, and must be maintained in good order and repair.

L. Water closets, lavatories, and bathtubs or showers must be:

1. available on each floor when not provided in each individual room;
2. provided in the ratio of one toilet and one lavatory, and one bathtub or shower for every six residents, or fraction thereof; and
3. accessible to the residents without going outside of the building or without going through a sleeping room of another resident.

M. A telephone must be available, 24 hours per day, must be easily accessible, and must afford privacy for use by residents.

1. A listing of emergency telephone numbers, including the numbers of the local police, fire department, ambulance, the office of the local governmental entity that issued the boarding house permit, the Texas Department of Family and Protective Services (DFPS), the Local Mental Health Authority, and the Texas Information and Referral Network

must be placed in plain view on or next to the telephone and accessible to persons who are visually or hearing impaired, as needed.

N. Each boarding home facility must provide:

1. A washer and dryer for every 10 residents, or fraction thereof that is properly vented to the outside. Washer or dryer must be in a utility room/ area that is not in kitchen area.
2. A sitting/communal/recreational room for the common use of all residents. Furniture must include comfortable chairs and tables, and lamps in good repair and appearance.
3. A dining room located on the same floor as the communal kitchen and must:
  - a. be as nearly adjacent to the communal kitchen as practicable;
  - b. be accessible to the residents, without going through a sleeping room or sleeping dormitory of another resident;
  - c. contain not less than 70 square feet of floor area; and
  - d. be supplied with one dining chair and 2 linear feet of dining table space for each resident of a boarding home facility.
4. A kitchen that:
  - a. is accessible to the residents sharing the use without going through a sleeping room of another resident;
  - b. has a food preparation area with a total of not less than 6 square feet;
  - c. contains a minimum floor space of 60 square feet for dining area or, each kitchen with dining attached must be at least 100 square feet;
  - d. has a minimum two compartment sink for manual dishwashing;
  - e. has a cooking stove fueled by gas or electricity;
  - f. contains at least one cabinet of adequate size, suitable for storage of food and utensils; and
  - g. is properly equipped to allow for the preparation of meals.

O. Fire precautions must include:

1. providing suitable fire escapes/exits that must be kept in good repair and accessible at all times;
2. having a written fire and evacuation plan that sets forth responsibilities and steps to be taken by staff and residents in the event of fire or other emergency;
3. posting an emergency evacuation plan throughout the facility; and
4. not storing gasoline operated maintenance equipment, lawn care equipment, and flammable supplies inside the boarding home facility.

P. Alarm precautions must include the following:

1. Extinguishers must be sufficiently provided, accessible, checked monthly and recharged annually by a certified person.
2. All fire protection measures must be in accordance with requirements of the local fire authority.
3. Smoke detectors must be hard-wired, working and equipped in each bedroom, in corridors or hallways on each floor, and in laundry and basement areas.
4. If a facility has a resident who is hearing impaired, a boarding house owner/operator must install a visual smoke detector that is capable of alerting a person with a hearing impairment of the presence of fire or smoke.
5. Carbon monoxide detectors must be working and equipped close to sleeping areas.

Q. All residents must be shown how to use all emergency exits from the facility within 24 hours of arrival to the facility.

R. The boarding home site must pass all required inspections and the owner/operator must keep a current file of reports and other documentation on-site needed to demonstrate compliance with applicable laws and regulations. The inspections must be signed, dated, and free of any outstanding corrective actions. The following inspections are required:

1. annual inspection by the local fire authority or the State fire marshal;
2. annual inspection of the alarm system by the local fire authority or an inspector authorized to install and inspect such systems;
3. annual kitchen inspection by the local health authority;
4. gas pipe pressure test once every three years by the local gas company or a licensed plumber;
5. annual inspection and maintenance of fire extinguishers by personnel licensed or certified to perform these duties; and
6. annual inspection of liquefied petroleum gas systems by an inspector certified by the Texas Railroad Commission.

### Standard 2. Sanitary and Related Conditions

A. Each owner/operator of a boarding home facility must be responsible for maintaining the dwelling and premises in a clean and sanitary condition.

B. Every boarding home facility must be kept in good repair, and so maintained as to promote the health, comfort, safety and well-being of residents.

C. Interior walls, ceilings and floors must be capable of affording privacy and must be maintained free of holes, cracks, loose or deteriorated material, or any other condition that constitutes a hazard to the residents or is a harborage for insects, pests or vermin.

D. Every window, exterior door and basement hatchway must be weather tight, watertight, insect and rodent-proof and must be kept in good working condition.

E. The water supply must be of safe, sanitary quality, suitable for use, and adequate in quantity and pressure. The water must be obtained from a water supply system approved by the Texas Commission on Environmental Quality (TCEQ).

F. Every plumbing fixture, water pipe and waste pipe must be properly installed and maintained in good sanitary working condition, free from defects, leaks and obstructions and properly connected to an approved sewage disposal system.

G. Every boarding home facility utilizing well water must provide water samples at least annually to the permit issuing entity. If the sample results show coliform present, a resample must be taken within seven (7) days of receipt of the results.

H. All garbage and refuse must be kept in watertight, covered containers. The garbage and refuse area must be kept in a clean and sanitary condition. A sufficient number of garbage receptacles must be provided by the boarding home. All garbage, trash and refuse must be removed from the premises frequently to prevent nuisance and unsightly conditions.

I. Each owner/operator must be responsible for the extermination of any insects, rodents or other pests in the rooms occupied by residents, storage areas, attics or on the premises and yard.

J. Water closets, lavatories, and bathtubs or showers must be:

1. kept clean and in good repair and must be well-lighted and ventilated;

2. adequately supplied with toilet paper, soap, and hand towels for each bathroom; and

3. supplied with non-slip surfaces in bathtub or shower, and curtains or other safe enclosures for privacy.

K. Each kitchen in a boarding home must:

1. be kept in a clean and sanitary condition;
2. have a food preparation area with a surface area that is smooth, impermeable, free of cracks and easily cleanable, that shall not be used for eating; and
3. have a refrigerator that is equipped with a thermometer and is maintained in an operational, clean and sanitary condition that is adequate to maintain foods at the required temperature.

L. Each facility shall meet all applicable state and local sanitary codes.

M. All linens and laundry shall be

1. bagged or placed in a hamper before being transported to the laundry area;
2. properly identified to prevent loss; and
3. not be transported through, sorted, processed, or stored in kitchens, food preparation areas, or food storage areas, if soiled.

N. Poisonous, toxic, and flammable materials shall

1. be stored and maintained away from bed linens, towels, or kitchen equipment;
2. be prominently and distinctly labeled for easy identification of contents; and
3. not be used in a way that contaminates food equipment or utensils, or in a way that constitutes a hazard to employees or residents.

O. After each usage, all eating and drinking utensils shall be thoroughly washed and sanitized in hot water containing a suitable soap or synthetic detergent and rinsed in clean hot water. In the event a mechanical dishwasher is used, dish detergent is required.

P. All food and drink shall be:

1. clean, free from spoilage, pathogenic organisms, toxic chemicals, and other harmful substances;
2. prepared, stored, handled, and served so as to be safe for human consumption;
3. maintained at a temperature of 41 degrees Fahrenheit or below for foods subject to spoilage;
4. maintained at 140 degrees Fahrenheit or above at all times for hot foods ready to serve;
5. maintained in the freezer at a temperature of 0 degrees Fahrenheit or below for foods stored as frozen; and
6. stored in food containers that are appropriately labeled, dated, and protected from flies, insects, rodents, dust, and moisture.

Q. Meals provided by the facility shall be nutritionally balanced and shall provide the USDA recommended daily allowances of vitamins, minerals and calories.

R. With the exception of service animals for persons with disabilities, birds, cats, dogs or other animals are not permitted in areas in which food is prepared, stored or where utensils are washed or stored.

S. Meals shall be served:

1. at least three (3) times per day;

2. in sufficient quantity and quality to meet the nutritional needs of the residents;

3. daily at regular hours, with at least one hot meal per day;

4. with no more than 14 hours between the beginning of the evening meal and the beginning of the morning meal; and

5. with alternative selections for residents on medically prescribed diets.

T. A time schedule of meals shall be posted daily.

U. Employees or residents engaged in food handling shall

1. observe sanitary methods, including hand washing as appropriate; and

2. not be assigned to preparing foods for others at the facility if carrying a disease that can be transmitted to others.

V. Regardless of the number of residents, each boarding home facility shall hold a valid food handling permit issued by the applicable local or state regulatory authority in the name of the owner/operator and for the specific boarding home facility.

W. If preparing meals for residents, staff must have a food-handler's permit.

X. Each boarding home facility shall maintain a minimum food and water supply sufficient for all residents as recommended by the American Red Cross.

Y. Each boarding home facility shall be equipped with a first aid kit as recommended by the American Red Cross.

**Standard 3. Reporting and Investigation of Injuries, Incidents and Unusual Accidents and the Establishment of Other Policies and Procedures to Ensure Resident Health and Safety**

A. Each owner/operator of a boarding home facility must develop and implement policies and procedures for investigating and documenting injuries, incidents and unusual accidents that involve residents. Owners/operators must also establish policies and procedures necessary to ensure resident health and safety.

1. Minimum requirements for the documentation of injuries, incidents or unusual accidents should include, but are not limited to:

a. Date and time of the injury, incident or unusual accident occurred;

b. Description of the injury, incident or unusual accident;

c. Description of any medical or mental health treatment the resident received;

d. Steps taken by the owner/operator to prevent future injuries, incidents or unusual accidents if a problem at the boarding home facility resulted in the injury, incident or unusual accident.

e. When the resident's legal guardian or legally authorized representative was notified about the injury, incident or unusual accident.

2. Residents, the resident's guardian, or legally authorized representatives should be given access to the inspection records as described in A (1) within 48 hours of requesting the records from the owner/operator.

B. In addition to investigating and documenting injuries, incidents or unusual accidents, an owner/operator must report any allegations of abuse, neglect or exploitation of an adult age 65 or older or an adult with a disability to the Texas Department of Family and Protective Services. Failure to report suspected abuse, neglect or exploitation of an elderly adult or adult with a disability is a Class A misdemeanor.

1. Each owner/operator should ensure that each resident has access to a telephone 24 hours per day that is easily accessible and affords privacy for use by residents.

2. The owner/operator shall ensure that no resident is harassed, retaliated against, threatened or intimidated at anytime for making a report of abuse, neglect or exploitation.

3. Owner/operators will provide each resident with a copy of the definitions of abuse, neglect or exploitation as outlined in Chapter 48 of the Human Resources Code.

4. Owner/operators will allow law enforcement personnel, emergency medical and fire personnel access to the boarding home facility when these professionals are responding to a call at the owner/operator's room and board facility.

C. No operator or other employee of a boarding home facility shall provide services or engage in behavior that constitutes a financial conflict of interest including:

1. borrowing from or loaning money to residents;

2. witnessing wills in which the operator or employee is a beneficiary;

3. commingling the resident's funds with the operator's or other residents' funds; or

4. becoming the guardian, conservator or power of attorney for a resident.

D. If an owner/operator becomes the representative payee for a resident or assists a resident with general money management, the owner/operator shall:

1. maintain separate financial records for each resident for which the owner/operator is the representative payee for the entire period of time the owner/operator is the resident's representative payee and continue to maintain the resident's records for one year past the last calendar day the owner/operator is the resident's representative payee;

2. include in the records an itemized list of expenditures that the owner/operator has made on behalf of the resident, including the charges that are assessed by the owner/operator;

3. maintain receipts for all expenditures in addition to the itemized documentation;

4. develop a budget with the resident outlining routine expenditures and ensure that expenditures that are not routine are discussed with the resident before the resident's funds are expended; and

5. the owner/operator will allow the resident, the resident's guardian, or legally authorized representative access to the resident's financial records that are maintained by the owner/operator within 48 hours of receiving a request.

E. An owner/operator of a boarding home facility shall develop a service agreement with each resident and maintain a copy of the agreement signed by the resident.

**Standard 4. Assistance with Self-Administration of Medication**

A. Assistance with self-administration of medication may be provided to adult residents who can identify their medication and know when their medication should be taken but require assistance with self-administration. Assistance with self-administration of medication may not be provided to minors.

B. Assistance with self-administration of medication is limited to:

1. reminding the resident to take medication;

2. opening a container, removing medication from a container, and placing medication in a resident's hand or in/on a clean surface, such as a pill cup or medication reminder box, for the resident's self-administration; and

3. reminding the resident when a prescription needs to be refilled.

C. All residents' medication must be stored in a locked area. The boarding home facility must provide a central locked storage or individual locked storage areas for each resident's medication.

1. If the boarding home facility uses a central medication storage area, a boarding home employee must be available to provide access at all times and each resident's medication must be stored separately from other residents' medications within the storage area.

2. If a resident's medication requires refrigeration, the boarding home facility must provide a refrigerator with a designated and locked storage area or a refrigerator inside a locked medication room.

3. Medications labeled for "external use only" must be stored separately within the locked area.

4. Poisonous substances must be labeled, stored safely, and stored separately from medications within a locked area.

5. If a boarding home facility stores controlled drugs, the facility must adopt and enforce a written policy for preventing the diversion of the controlled drugs.

D. Medication that remains in the boarding home facility after a resident is no longer lodging in the facility must be properly disposed of by the owner or operator in accordance with applicable county or municipality requirements.

**Standard 5. Requirements for in-service education of facility's staff**

A. Each owner/operator and employee is subject to the following initial training requirements prior to contact with residents:

1. employer rules and policies;
2. recognizing and reporting abuse, neglect and exploitation;
3. Resident's rights, including all applicable rights from the following:
  - a. Texas Human Resource Code, Chapter 102, Rights of the Elderly;
  - b. Texas Human Resource Code, Chapter 112, Developmental Disabilities;
  - c. Texas Property Code, Chapter 301, Fair Housing Practices; and
  - d. Texas Property Code, Chapter 92, Residential Tenancies.
4. policies and procedures for contacting emergency personnel when a resident's health or safety is at risk;
5. complaint process specific to the city and boarding home;
6. assistance with self-administration of medication;
7. prevention of injuries, incidents and unusual accidents;
8. emergency, evacuation and disaster plan; and
9. service specific orientation that includes, but is not limited to:
  - a. nutrition, including meal preparation and dietary needs;
  - b. sanitation;
  - c. laundry; and
  - d. housework.

B. Each owner/operator and employee is subject to the following ongoing training requirements:

1. Updates and changes in any policies and procedures within 10 days of the owner, operator or employee becoming aware of the change.

2. Orientation specific to the needs of each new resident within one day of the resident moving into the home.

3. Orientation specific to the needs of a resident whose needs have changed due to injury, illness, hospitalization or other circumstances which affect the resident's needs within one day of the owner, operator, or employee becoming aware of the change.

**Standard 6. Criminal Background History Checks**

A. A boarding home facility owner/operator's permit to operate a boarding home may be denied, revoked, suspended, or denied for renewal if the owner/operator has been convicted of a criminal offense listed in subsection C or D of this section, or if the owner/operator has in its employ any person convicted of a criminal offense listed in subsection C or D.

B. The owner/operator must complete any state or federal request and release forms that are required to obtain a criminal history report for the owner/operator. In addition to the permit fee, the owner/operator will provide funding to the county/municipality in a manner specified by the county/municipality to cover any fees imposed by state or federal agencies for the report.

C. The following histories will disqualify an owner/operator from obtaining a permit to operate a boarding home or will serve as a bar to being employed by a boarding home facility:

1. an offense under Chapter 19, Penal Code (criminal homicide);
2. an offense under Chapter 20, Penal Code (kidnapping and unlawful restraint);
3. an offense under §21.02, Penal Code (continuous sexual abuse of young child or children), or §21.11, Penal Code (indecent with a child);
4. an offense under §22.011, Penal Code (sexual assault);
5. an offense under §22.02, Penal Code (aggravated assault);
6. an offense under §22.04, Penal Code (injury to a child, elderly individual, or disabled individual);
7. an offense under §22.041, Penal Code (abandoning or endangering child);
8. an offense under §22.08, Penal Code (aiding suicide);
9. an offense under §25.031, Penal Code (agreement to abduct from custody);
10. an offense under §25.08, Penal Code (sale or purchase of a child);
11. an offense under §28.02, Penal Code (arson);
12. an offense under §29.02, Penal Code (robbery);
13. an offense under §29.03, Penal Code (aggravated robbery);
14. an offense under §21.08, Penal Code (indecent exposure);
15. an offense under §21.12, Penal Code (improper relationship between educator and student);
16. an offense under §21.15, Penal Code (improper photography or visual recording);
17. an offense under §22.05, Penal Code (deadly conduct);
18. an offense under §22.021, Penal Code (aggravated sexual assault);

19. an offense under §22.07, Penal Code (terroristic threat);
20. an offense under §33.021, Penal Code (online solicitation of a minor);
21. an offense under §34.02, Penal Code (money laundering);
22. an offense under §35A.02, Penal Code (Medicaid fraud);
23. an offense under §42.09, Penal Code (cruelty to animals);
24. an offense under §30.02, Penal Code (burglary);
25. an offense under §31, Penal Code (theft), that is punishable as a felony; or
26. a conviction under the laws of another state, federal law, or the Uniform Code of Military Justice for an offense containing elements that are substantially similar to the elements of an offense listed in this subsection.

D. A person may not own a boarding home or be employed in a position the duties of which involve direct contact with a resident in a boarding home before the fifth anniversary of the date the person is convicted of any felony offense not listed in subsection C or any of the following non-felony offenses:

1. an offense under §22.01, Penal Code (assault), that is punishable as a Class A misdemeanor;
2. an offense under §32.45, Penal Code (misapplication of fiduciary property or property of a financial institution), that is punishable as a Class A misdemeanor;
3. an offense under §32.46, Penal Code (securing execution of a document by deception), that is punishable as a Class A misdemeanor;
4. an offense under §37.12, Penal Code (false identification as peace officer);
5. an offense under §42.01(a)(7), (8), or (9), Penal Code (disorderly conduct); or
6. a conviction under the laws of another state, federal law, or the Uniform Code of Military Justice for an offense containing elements that are substantially similar to the elements of an offense listed in this subsection.

E. The owner/operator must ensure that all employees, including volunteers who are not residents, have had a background check of conviction records, pending charges and disciplinary board decisions completed within the past two years, and is repeated every year thereafter, and that the individual is not disqualified under the provisions of Subsections C and D of this section. The owner/operator will immediately discharge any employee or volunteer whose criminal history check reveals conviction of a crime that bars employment or volunteer service.

**Standard 7. Assessment and periodic monitoring of residents**

A. Owners/operators of a boarding home facility or their designee will complete and document an annual assessment and conduct periodic monitoring to ensure that a resident is capable of self-administering medication and completing basic elements of personal care as listed in Subsection B & C. The assessment will be used as a tool to determine if the needs of the resident can be addressed in a boarding home facility or if the resident needs personal care services and/or medication administration that cannot be provided by the boarding home facility.

B. Elements of the self-administration of medication to be assessed by the boarding home facility owner/operator or designee include the ability to perform each of the following tasks with little assistance:

1. identifying the name of the medication;

2. providing a reason for the medication (the owner/operator cannot force the resident to disclose a health condition that is the basis for the medication if the resident refuses);
3. distinguishing color or shape;
4. preparing correct number of pills (dosage);
5. confirming the time to take medication(s); and
6. reading labels.

C. Elements of personal care to be assessed by the boarding home facility owner/operator include the resident's ability to:

1. eat independently;
2. bathe without assistance;
3. dress without assistance; and
4. move and transfer independently.

D. As a result of an assessment, if an owner/operator finds that a resident is in a state of possible self-neglect due to no longer being able to perform basic elements of personal care as listed in Subsection C and believes that a higher level of care is needed, the owner/operator is responsible for the following:

1. Contacting DFPS by phoning the Statewide Intake division at 1-800-252-5400;
2. Notifying the resident's guardian or legally authorized representative; and
3. Contacting the appropriate health or human services authority to advise that the resident requires services beyond what can be provided by the boarding home facility.

E. A state of self-neglect does not exist if the resident receives outside professional services that meet the resident's need for personal care or self-administration of medication. In these cases, the resident can remain in the boarding home facility provided that all needs for personal care and self-administration of medication are met.

TRD-201004668  
 Steve Aragon  
 Chief Counsel  
 Texas Health and Human Services Commission  
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**Department of State Health Services**

Correction of Error

The Department of State Health Services adopted new rules under 25 TAC §§140.575 - 140.595, concerning the licensing and regulation of dyslexia therapists and dyslexia practitioners. The rules were published in the August 13, 2010, issue of the *Texas Register* (35 TexReg 7072).

The deadline was incorrect in new §140.577(b), page 7073, column 1. Instead of September 1, 2010, as published, the correct deadline is January 1, 2011. The subsection as corrected should read as follows.

"(b) For applications and renewal applications postmarked on and after January 1, 2011, the licensing fees are as follows: ..."

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Licensing Actions for Radioactive Materials