Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification

Subchapter B, Definitions


The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Abuse--negligent or willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical or emotional harm or pain to a resident; or sexual abuse, including involuntary or nonconsensual sexual conduct that would constitute an offense under Penal Code §21.08 (indecent exposure) or Penal Code Chapter 22 (assaultive offenses), sexual harassment, sexual coercion, or sexual assault.

(2) Act--Chapter 242 of the Texas Health and Safety Code.

(3) Activities assessment--See Comprehensive Assessment and Comprehensive Care Plan.

(4) Activities director--The qualified individual appointed by the facility to direct the activities program as described in §19.702 of this chapter (relating to Activities).

(5) Addition--The addition of floor space to an institution.

(6) Administrator--Licensed nursing facility administrator.

(7) Admission MDS assessment--An MDS assessment that determines a recipient's initial determination of eligibility for medical necessity for admission into the Texas Medicaid Nursing Facility Program.

(8) Affiliate--With respect to a:

(A) partnership, each partner thereof;

(B) corporation, each officer, director, principal stockholder, and subsidiary; and each person with a disclosable interest;
(C) natural person, which includes each:

(i) person's spouse;

(ii) partnership and each partner thereof of which said person or any affiliate of said
person is a partner; and

(iii) corporation in which said person is an officer, director, principal stockholder, or
person with a disclosable interest.

(9) Agent--An adult to whom authority to make health care decisions is delegated under a
durable power of attorney for health care.

(10) Applicant--A person or governmental unit, as those terms are defined in the Texas
Health and Safety Code, Chapter 242, applying for a license under that chapter.


(12) Attending physician--A physician, currently licensed by the Texas Medical Board, who
is designated by the resident or responsible party as having primary responsibility for the
treatment and care of the resident.

(13) Authorized electronic monitoring--The placement of an electronic monitoring device in
a resident's room and using the device to make tapes or recordings after making a request to the
facility to allow electronic monitoring.

(14) Barrier precautions--Precautions including the use of gloves, masks, gowns,
resuscitation equipment, eye protectors, aprons, faceshields, and protective clothing for purposes
of infection control.

(15) Care and treatment--Services required to maximize resident independence, personal
choice, participation, health, self-care, psychosocial functioning and reasonable safety, all
consistent with the preferences of the resident.
(16) Certification--The determination by DADS that a nursing facility meets all the requirements of the Medicaid or Medicare programs.


(18) Change of ownership— An event that occurs when there is a change in the federal tax identification number of a license holder. The substitution of a personal representative for a deceased license holder is not a change of ownership.

(19) CMS--Centers for Medicare & Medicaid Services, formerly the Health Care Financing Administration (HCFA).

(20) Complaint--Any allegation received by DADS other than an incident reported by the facility. Such allegations include, but are not limited to, abuse, neglect, exploitation, or violation of state or federal standards.

(21) Completion date--The date an RN assessment coordinator signs an MDS assessment as complete.

(22) Comprehensive assessment--An interdisciplinary description of a resident's needs and capabilities including daily life functions and significant impairments of functional capacity, as described in §19.801(2) of this chapter (relating to Resident Assessment).

(23) Comprehensive care plan--A plan of care prepared by an interdisciplinary team that includes measurable short-term and long-term objectives and timetables to meet the resident's needs developed for each resident after admission. The plan addresses at least the following needs: medical, nursing, rehabilitative, psychosocial, dietary, activity, and resident's rights. The plan includes strategies developed by the team, as described in §19.802(b)(2) of this chapter (relating to Comprehensive Care Plans), consistent with the physician's prescribed plan.
of care, to assist the resident in eliminating, managing, or alleviating health or psychosocial problems identified through assessment. Planning includes:

(A) goal setting;

(B) establishing priorities for management of care;

(C) making decisions about specific measures to be used to resolve the resident's problems; and

(D) assisting in the development of appropriate coping mechanisms.

(24) [23] Controlled substance--A drug, substance, or immediate precursor as defined in the Texas Controlled Substance Act, Texas Health and Safety Code, Chapter 481, or the Federal Controlled Substance Act of 1970, Public Law 91-513.

(25) [24] Controlling person--A person with the ability, acting alone or in concert with others, to directly or indirectly, influence, direct, or cause the direction of the management, expenditure of money, or policies of a nursing facility or other person. A controlling person does not include a person, such as an employee, lender, secured creditor, or landlord, who does not exercise any influence or control, whether formal or actual, over the operation of a facility. A controlling person includes:

(A) a management company, landlord, or other business entity that operates or contracts with others for the operation of a nursing facility;

(B) any person who is a controlling person of a management company or other business entity that operates a nursing facility or that contracts with another person for the operation of a nursing facility;
(C) an officer or director of a publicly traded corporation that is, or that controls, a facility, management company, or other business entity described in subparagraph (A) of this paragraph but does not include a shareholder or lender of the publicly traded corporation; and

(D) any other individual who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of a nursing facility, is in a position of actual control or authority with respect to the nursing facility, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility.

(26) [25] Covert electronic monitoring--The placement and use of an electronic monitoring device that is not open and obvious, and the facility and DADS have not been informed about the device by the resident, by a person who placed the device in the room, or by a person who uses the device.

(27) [26] DADS--The Department of Aging and Disability Services.

(28) [27] Dangerous drugs--Any drug as defined in the Texas Health and Safety Code, Chapter 483.

(29) [28] Dentist--A practitioner licensed by the Texas State Board of Dental Examiners.

(30) [29] Department--Department of Aging and Disability Services.

(31) [30] DHS--This term referred to the Texas Department of Human Services; it now refers to DADS, unless the context concerns an administrative hearing. Administrative hearings were formerly the responsibility of DHS; they now are the responsibility of the Texas Health and Human Services Commission (HHSC).

(32) [31] Dietitian--A qualified dietitian is one who is qualified based upon either:
(A) registration by the Commission on Dietetic Registration of the Academy of Nutrition and Dietetics; or

(B) licensure, or provisional licensure, by the Texas State Board of Examiners of Dietitians. These individuals must have one year of supervisory experience in dietetic service of a health care facility.

(33) Direct ownership interest—Ownership of equity in the capital, stock, or profits of an applicant or license holder.

(34) Disclosable interest—Five percent or more direct or indirect ownership interest of an applicant or license holder.

(35) [32] Direct care by licensed nurses--Direct care consonant with the physician's planned regimen of total resident care includes:

(A) assessment of the resident's health care status;

(B) planning for the resident's care;

(C) assignment of duties to achieve the resident's care;

(D) nursing intervention; and

(E) evaluation and change of approaches as necessary.

(36) [33] Distinct part--That portion of a facility certified to participate in the Medicaid Nursing Facility program.

(37) [34] Drug (also referred to as medication)--Any of the following:

(A) any substance recognized as a drug in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia 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 body of man; 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.

(38) [35] Electronic monitoring device--Video surveillance cameras and audio devices installed in a resident's room, designed to acquire communications or other sounds that occur in the room. An electronic, mechanical, or other device used specifically for the nonconsensual interception of wire or electronic communication is excluded from this definition.

(39) [36] Emergency--A sudden change in a resident's condition requiring immediate medical intervention.

(40) [37] Executive Commissioner--The executive commissioner of the Health and Human Services Commission.

(41) [38] Exploitation--The illegal or improper act or process of a caregiver, family member, or other individual who has an ongoing relationship with a resident using the resources of the resident for monetary or personal benefit, profit, or gain without the informed consent of the resident.

(42) [39] Exposure (infections)--The direct contact of blood or other potentially infectious materials of one person with the skin or mucous membranes of another person. Other potentially infectious materials include the following human body fluids: semen, vaginal secretions, cerebrospinal fluid, peritoneal fluid, amniotic fluid, saliva in dental procedures, and body fluid
that is visibly contaminated with blood and all body fluids when it is difficult or impossible to
differentiate between body fluids.

(43) [(40)] Facility--Unless otherwise indicated, a facility is an institution that provides
organized and structured nursing care and service and is subject to licensure under Texas Health
and Safety Code, Chapter 242.

(A) For Medicaid, a facility is a nursing facility which meets the requirements of
§1919(a)-(d) of the Social Security Act. A facility may not include any institution that is for the
care and treatment of mental diseases except for services furnished to individuals age 65 and
over and who are eligible as defined in Chapter 17 of this title (relating to Preadmission
Screening and Resident Review (PASRR).

(B) For Medicare and Medicaid purposes (including eligibility, coverage, certification,
and payment), the "facility" is always the entity which participates in the program, whether that
entity is comprised of all of, or a distinct part of, a larger institution.

(C) "Facility" is also referred to as a nursing home or nursing facility. Depending on
context, these terms are used to represent the management, administrator, or other persons or
groups involved in the provision of care of the resident; or to represent the physical building,
which may consist of one or more floors or one or more units, or which may be a distinct part of
a licensed hospital.

(44) [(41)] Family council--A group of family members, friends, or legal guardians of
residents, who organize and meet privately or openly.

(45) [(42)] Family representative--An individual appointed by the resident to represent the
resident and other family members, by formal or informal arrangement.

(46) [(43)] Fiduciary agent--An individual who holds in trust another's monies.
(47) [(44)] Free choice--Unrestricted right to choose a qualified provider of services.

(48) [(45)] Goals--Long-term: general statements of desired outcomes. Short-term: measurable time-limited, expected results that provide the means to evaluate the resident's progress toward achieving long-term goals.

(49) [(46)] Governmental unit--A state or a political subdivision of the state, including a county or municipality.

(50) [(47)] HCFA--Health Care Financing Administration, now the Centers for Medicare & Medicaid Services (CMS).

(51) [(48)] Health care provider--An individual, including a physician, or facility licensed, certified, or otherwise authorized to administer health care, in the ordinary course of business or professional practice.

(52) [(49)] Hearing--A contested case hearing held in accordance with the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the formal hearing procedures in 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act) and Chapter 91 of this title (relating to Hearings Under the Administrative Procedure Act).

(53) [(50)] HIV--Human Immunodeficiency Virus.

(54) Indirect ownership interest—Any ownership interest in a person that has a direct ownership interest in an applicant or license holder.

(55) [(51)] Incident--An abnormal event, including accidents or injury to staff or residents, which is documented in facility reports. An occurrence in which a resident may have been subject to abuse, neglect, or exploitation must also be reported to DADS.

(56) [(52)] Infection control--A program designed to prevent the transmission of disease and infection in order to provide a safe and sanitary environment.
(57) [(53)] Inspection--Any on-site visit to or survey of an institution by DADS for the purpose of licensing, monitoring, complaint investigation, architectural review, or similar purpose.

(58) [(54)] Interdisciplinary care plan--See the definition of "comprehensive care plan."

(59) [(55)] Involuntary seclusion--Separation of a resident from others or from the resident's room or confinement to the resident's room, against the resident's will or the will of a person who is legally authorized to act on behalf of the resident. Monitored separation from other residents is not involuntary seclusion if the separation is a therapeutic intervention that uses the least restrictive approach for the minimum amount of time, not exceed to 24 hours, until professional staff can develop a plan of care to meet the resident's needs.

(60) [(56)] IV--Intravenous.

(61) [(57)] Legend drug or prescription drug--Any drug that requires a written or telephonic order of a practitioner before it may be dispensed by a pharmacist, or that may be delivered to a particular resident by a practitioner in the course of the practitioner's practice.

(62) [(58)] Licensed health professional--A physician; physician assistant; nurse practitioner; physical, speech, or occupational therapist; pharmacist; physical or occupational therapy assistant; registered professional nurse; licensed vocational nurse; licensed dietitian; or licensed social worker.

(63) [(59)] Licensed nursing home (facility) administrator--A person currently licensed by DADS in accordance with Chapter 18 of this title (relating to Nursing Facility Administrators).

(64) [(60)] Licensed vocational nurse (LVN)--A nurse who is currently licensed by the Texas Board of Nursing as a licensed vocational nurse.

(65) License holder--A person who holds a license to operate a facility.

(67) Life safety features--Fire safety components required by the Life Safety Code, including, but not limited to, building construction, fire alarm systems, smoke detection systems, interior finishes, sizes and thicknesses of doors, exits, emergency electrical systems, and sprinkler systems.

(68) Life support--Use of any technique, therapy, or device to assist in sustaining life. (See §19.419 of this chapter (relating to Advance Directives)).

(69) Local authorities--Persons, including, but not limited to, local health authority, fire marshal, and building inspector, who may be authorized by state law, county order, or municipal ordinance to perform certain inspections or certifications.

(70) Local health authority--The physician appointed by the governing body of a municipality or the commissioner's court of the county to administer state and local laws relating to public health in the municipality's or county's jurisdiction as defined in Texas Health and Safety Code, §121.021.

(71) Long-term care-regulatory--DADS Regulatory Services Division, which is responsible for surveying nursing facilities to determine compliance with regulations for licensure and certification for Title XIX participation.

(72) Manager--A person, other than a licensed nursing home administrator, having a contractual relationship to provide management services to a facility.

(73) Management services--Services provided under contract between the owner of a facility and a person to provide for the operation of a facility, including administration, staffing,
maintenance, or delivery of resident services. Management services do not include contracts
solely for maintenance, laundry, or food service.

(74) [(69)] MDS--Minimum data set. See Resident Assessment Instrument (RAI).

(75) [(70)] MDS nurse reviewer--A registered nurse employed by HHSC to monitor the
accuracy of the MDS assessment submitted by a Medicaid-certified nursing facility.

(76) [(71)] Medicaid applicant--A person who requests the determination of eligibility to
become a Medicaid recipient.

(77) [(72)] Medicaid nursing facility vendor payment system--Electronic billing and payment
system for reimbursement to nursing facilities for services provided to eligible Medicaid
recipients.

(78) [(73)] Medicaid recipient--A person who meets the eligibility requirements of the Title
XIX Medicaid program, is eligible for nursing facility services, and resides in a Medicaid-
participating facility.

(79) [(74)] Medical director--A physician licensed by the Texas Medical Board, who is
engaged by the nursing home to assist in and advise regarding the provision of nursing and
health care.

(80) [(75)] Medical necessity (MN)--The determination that a recipient requires the services
of licensed nurses in an institutional setting to carry out the physician's planned regimen for total
care. A recipient's need for custodial care in a 24-hour institutional setting does not constitute a
medical need. A group of health care professionals employed or contracted by the state Medicaid
claims administrator contracted with HHSC makes individual determinations of medical
necessity regarding nursing facility care. These health care professionals consist of physicians
and registered nurses.
(81) Medical power of attorney--The legal document that designates an agent to make treatment decisions if the individual designator becomes incapable.

(82) Medical-social care plan--See Interdisciplinary Care Plan.

(83) Medically related condition--An organic, debilitating disease or health disorder that requires services provided in a nursing facility, under the supervision of licensed nurses.

(84) Medication aide--A person who holds a current permit issued under the Medication Aide Training Program as described in Chapter 95 of this title (relating to Medication Aides--Program Requirements) and acts under the authority of a person who holds a current license under state law which authorizes the licensee to administer medication.

(85) Misappropriation of funds--The taking, secretion, misapplication, deprivation, transfer, or attempted transfer to any person not entitled to receive any property, real or personal, or anything of value belonging to or under the legal control of a resident without the effective consent of the resident or other appropriate legal authority, or the taking of any action contrary to any duty imposed by federal or state law prescribing conduct relating to the custody or disposition of property of a resident.

(86) Neglect--The failure to provide goods or services, including medical services that are necessary to avoid physical or emotional harm, pain, or mental illness.

(87) NHIC--This term referred to the National Heritage Insurance Corporation. It now refers to the state Medicaid claims administrator.

(88) Nonnursing personnel--Persons not assigned to give direct personal care to residents; including administrators, secretaries, activities directors, bookkeepers, cooks, janitors, maids, laundry workers, and yard maintenance workers.
(89) Nurse aide--An individual who provides nursing or nursing-related services to residents in a facility under the supervision of a licensed nurse. This definition does not include an individual who is a licensed health professional, a registered dietitian, or someone who volunteers such services without pay. A nurse aide is not authorized to provide nursing or nursing-related services for which a license or registration is required under state law. Nurse aides do not include those individuals who furnish services to residents only as paid feeding assistants.

(90) Nurse aide trainee--An individual who is attending a program teaching nurse aide skills.

(91) Nurse practitioner--A person licensed by the Texas Board of Nursing as a registered professional nurse, authorized by the Texas Board of Nursing as an advanced practice nurse in the role of nurse practitioner.

(92) Nursing assessment--See definition of "comprehensive assessment" and "comprehensive care plan."

(93) Nursing care--Services provided by nursing personnel which include, but are not limited to, observation; 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.

(94) Nursing facility/home--An institution that provides organized and structured nursing care and service, and is subject to licensure under Texas Health and Safety Code, Chapter 242. The nursing facility may also be certified to participate in the Medicaid Title XIX program. Depending on context, these terms are used to represent the management, administrator, or other
persons or groups involved in the provision of care to the residents; or to represent the physical
building, which may consist of one or more floors or one or more units, or which may be a
distinct part of a licensed hospital.

(95) [90] Nursing facility/home administrator--See the definition of "licensed nursing home
(facility) administrator."

(96) [94] Nursing personnel--Persons assigned to give direct personal and nursing services
to residents, including registered nurses, licensed vocational nurses, nurse aides, and medication
aides. Unlicensed personnel function under the authority of licensed personnel.

(97) [92] Objectives--See definition of "goals."

(98) [93] OBRA--Omnibus Budget Reconciliation Act of 1987, which includes provisions
relating to nursing home reform, as amended.

(99) [94] Ombudsman--An advocate who is a certified representative, staff member, or
volunteer of the DADS Office of the State Long Term Care Ombudsman.

(100) [(95)] Optometrist--An individual with the profession of examining the eyes for defects
of refraction and prescribing lenses for correction who is licensed by the Texas Optometry
Board.

(101) [(96)] Paid feeding assistant--An individual who meets the requirements of §19.1113
of this chapter (relating to Paid Feeding Assistants) and who is paid to feed residents by a facility
or who is used under an arrangement with another agency or organization.

(102) [(97)] PASARR or PASRR--Preadmission Screening and Resident Review.

(103) [(98)] Palliative Plan of Care--Appropriate medical and nursing care for residents with
advanced and progressive diseases for whom the focus of care is controlling pain and symptoms
while maintaining optimum quality of life.
(104) [(99)] Patient care-related electrical appliance--An electrical appliance that is intended to be used for diagnostic, therapeutic, or monitoring purposes in a patient care area, as defined in Standard 99 of the National Fire Protection Association.

(105) [(100)] Person--An individual, firm, partnership, corporation, association, joint stock company, limited partnership, limited liability company, or any other legal entity, including a legal successor of those entities.

[(101) Person with a disclosable interest--A person with a disclosable interest is any person who owns at least a 5.0 percent interest in any corporation, partnership, or other business entity that is required to be licensed under Texas Health and Safety Code, Chapter 242. A person with a disclosable interest does not include a bank, savings and loan, savings bank, trust company, building and loan association, credit union, individual loan and thrift company, investment banking firm, or insurance company, unless these entities participate in the management of the facility.]

(106) [(102)] Pharmacist--An individual, licensed by the Texas State Board of Pharmacy to practice pharmacy, who prepares and dispenses medications prescribed by a physician, dentist, or podiatrist.

(107) [(103)] Physical restraint--See Restraints (physical).

(108) [(104)] Physician--A doctor of medicine or osteopathy currently licensed by the Texas Medical Board.

(109) [(105)] Physician assistant (PA)--

(A) A graduate of a physician assistant training program who is accredited by the Committee on Allied Health Education and Accreditation of the Council on Medical Education of the American Medical Association;
(B) A person who has passed the examination given by the National Commission on Certification of Physician Assistants. According to federal requirements (42 CFR §491.2) a physician assistant is a person who meets the applicable state requirements governing the qualifications for assistant to primary care physicians, and who meets at least one of the following conditions:

(i) is currently certified by the National Commission on Certification of Physician Assistants to assist primary care physicians; or

(ii) has satisfactorily completed a program for preparing physician assistants that:

(I) was at least one academic year in length;

(II) consisted of supervised clinical practice and at least four months (in the aggregate) of classroom instruction directed toward preparing students to deliver health care; and

(III) was accredited by the American Medical Association's Committee on Allied Health Education and Accreditation; or

(C) A person who has satisfactorily completed a formal educational program for preparing physician assistants who does not meet the requirements of paragraph (d)(2), 42 CFR §491.2, and has been assisting primary care physicians for a total of 12 months during the 18-month period immediately preceding July 14, 1978.

(110) [406] Podiatrist--A practitioner whose profession encompasses the care and treatment of feet who is licensed by the Texas State Board of Podiatric Medical Examiners.

(111) [407] Poison--Any substance that federal or state regulations require the manufacturer to label as a poison and is to be used externally by the consumer from the original manufacturer's container. Drugs to be taken internally that contain the manufacturer's poison label, but are dispensed by a pharmacist only by or on the prescription order of a physician, are
not considered a poison, unless regulations specifically require poison labeling by the pharmacist.

(112) Practitioner--A physician, podiatrist, dentist, or an advanced practice nurse or physician assistant to whom a physician has delegated authority to sign a prescription order, when relating to pharmacy services.

(113) PRN (pro re nata)--As needed.

(114) Provider--The individual or legal business entity that is contractually responsible for providing Medicaid services under an agreement with DADS.

(115) Psychoactive drugs--Drugs prescribed to control mood, mental status, or behavior.

(116) Qualified surveyor--An employee of DADS who has completed state and federal training on the survey process and passed a federal standardized exam.

(117) Quality assessment and assurance committee--A group of health care professionals in a facility who develop and implement appropriate action to identify and rectify substandard care and deficient facility practice.

(118) Quality-of-care monitor--A registered nurse, pharmacist, or dietitian employed by DADS who is trained and experienced in long-term care facility regulation, standards of practice in long-term care, and evaluation of resident care, and functions independently of DADS Regulatory Services Division.

(119) Recipient--Any individual residing in a Medicaid certified facility or a Medicaid certified distinct part of a facility whose daily vendor rate is paid by Medicaid.

(120) Registered nurse (RN)--An individual currently licensed by the Texas Board of Nursing as a Registered Nurse in the State of Texas.
(121) Reimbursement methodology--The method by which HHSC determines nursing facility per diem rates.

(122) Remodeling--The construction, removal, or relocation of walls and partitions, the construction of foundations, floors, or ceiling-roof assemblies, the expanding or altering of safety systems (including, but not limited to, sprinkler, fire alarm, and emergency systems) or the conversion of space in a facility to a different use.

(123) Renovation--The restoration to a former better state by cleaning, repairing, or rebuilding, including, but not limited to, routine maintenance, repairs, equipment replacement, painting.

(124) Representative payee--A person designated by the Social Security Administration to receive and disburse benefits, act in the best interest of the beneficiary, and ensure that benefits will be used according to the beneficiary's needs.

(125) Resident--Any individual residing in a nursing facility.

(126) Resident assessment instrument (RAI)--An assessment tool used to conduct comprehensive, accurate, standardized, and reproducible assessments of each resident's functional capacity as specified by the Secretary of the U.S. Department of Health and Human Services. At a minimum, this instrument must consist of the Minimum Data Set (MDS) core elements as specified by the Centers for Medicare & Medicaid Services (CMS); utilization guidelines; and Care Area Assessment (CAA) process.

(127) Resident group--A group or council of residents who meet regularly to:

(A) discuss and offer suggestions about the facility policies and procedures affecting residents' care, treatment, and quality of life;

(B) plan resident activities;
(C) participate in educational activities; or

(D) for any other purpose.

Responsible party--An individual authorized by the resident to act for him as an official delegate or agent. Responsible party is usually a family member or relative, but may be a legal guardian or other individual. Authorization may be in writing or may be given orally.

Restraint hold--

(A) A manual method, except for physical guidance or prompting of brief duration, used to restrict:

(i) free movement or normal functioning of all or a portion of a resident's body; or

(ii) normal access by a resident to a portion of the resident's body.

(B) Physical guidance or prompting of brief duration becomes a restraint if the resident resists the guidance or prompting.

Restraints (chemical)--Psychoactive drugs administered for the purposes of discipline, or convenience, and not required to treat the resident's medical symptoms.

Restraints (physical)--Any manual method, or physical or mechanical device, material or equipment attached, or adjacent to the resident's body, that the individual cannot remove easily which restricts freedom of movement or normal access to one's body. The term includes a restraint hold.

RN assessment coordinator--A registered nurse who signs and certifies a comprehensive assessment of a resident's needs, using the RAI, including the MDS, as specified by DADS.

RUG--Resource Utilization Group. A categorization method, consisting of 34 categories based on the MDS, that is used to determine a recipient's service and care
requirements and to determine the daily rate DADS pays a nursing facility for services provided to the recipient.

(134) [430] Secretary--Secretary of the U.S. Department of Health and Human Services.

(135) [431] Services required on a regular basis--Services which are provided at fixed or recurring intervals and are needed so frequently that it would be impractical to provide the services in a home or family setting. Services required on a regular basis include continuous or periodic nursing observation, assessment, and intervention in all areas of resident care.

(136) [432] SNF--A skilled nursing facility or distinct part of a facility that participates in the Medicare program. SNF requirements apply when a certified facility is billing Medicare for a resident's per diem rate.

(137) [433] Social Security Administration--Federal agency for administration of social security benefits. Local social security administration offices take applications for Medicare, assist beneficiaries file claims, and provide information about the Medicare program.

(138) [434] Social worker--A qualified social worker is an individual who is licensed, or provisionally licensed, by the Texas State Board of Social Work Examiners as prescribed by the Texas Occupations Code, Chapter 505, and who has at least:

(A) a bachelor's degree in social work; or

(B) similar professional qualifications, which include a minimum educational requirement of a bachelor's degree and one year experience met by employment providing social services in a health care setting.

(139) [435] Standards--The minimum conditions, requirements, and criteria established in this chapter with which an institution must comply to be licensed under this chapter.
(140) [436] State Medicaid claims administrator--The entity under contract with HHSC to process Medicaid claims in Texas.

(141) [437] State plan--A formal plan for the medical assistance program, submitted to CMS, in which the State of Texas agrees to administer the program in accordance with the provisions of the State Plan, the requirements of Titles XVIII and XIX, and all applicable federal regulations and other official issuances of the U.S. Department of Health and Human Services.

(142) [438] State survey agency--DADS is the agency, which through contractual agreement with CMS is responsible for Title XIX (Medicaid) survey and certification of nursing facilities.

(143) [439] Supervising physician--A physician who assumes responsibility and legal liability for services rendered by a physician assistant (PA) and has been approved by the Texas Medical Board to supervise services rendered by specific PAs. A supervising physician may also be a physician who provides general supervision of a nurse practitioner providing services in a nursing facility.

(144) [440] Supervision--General supervision, unless otherwise identified.

(145) [441] Supervision (direct)--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his sphere of competence. If the person being supervised does not meet assistant-level qualifications specified in this chapter and in federal regulations, the supervisor must be on the premises and directly supervising.

(146) [442] Supervision (general)--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his sphere of competence. The person being supervised must have access to the qualified person providing the supervision.
(147) [(150)] Supervision (intermittent)--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his sphere of competence, with initial direction and periodic inspection of the actual act of accomplishing the function or activity. The person being supervised must have access to the qualified person providing the supervision.

(148) [(144)] Texas Register--A publication of the Texas Register Publications Section of the Office of the Secretary of State that contains emergency, proposed, withdrawn, and adopted rules issued by Texas state agencies. The Texas Register was established by the Administrative Procedure and Texas Register Act of 1975.

(149) [(151)] Therapeutic diet--A diet ordered by a physician as part of treatment for a disease or clinical condition, in order to eliminate, decrease, or increase certain substances in the diet or to provide food which has been altered to make it easier for the resident to eat.

(150) [(154)] Therapy week--A seven-day period beginning the first day rehabilitation therapy or restorative nursing care is given. All subsequent therapy weeks for a particular individual will begin on that day of the week.

(151) [(147)] Threatened violation--A situation that, unless immediate steps are taken to correct, may cause injury or harm to a resident's health and safety.

(152) [(148)] Title II--Federal Old-Age, Survivors, and Disability Insurance Benefits of the Social Security Act.

(153) [(150)] Title XVI--Supplemental Security Income (SSI) of the Social Security Act.

(154) [(150)] Title XVIII--Medicare provisions of the Social Security Act.

(155) [(144)] Title XIX--Medicaid provisions of the Social Security Act.
Total health status--Includes functional status, medical care, nursing care, nutritional status, rehabilitation and restorative potential, activities potential, cognitive status, oral health status, psychosocial status, and sensory and physical impairments.

UAR--HHSC's Utilization and Assessment Review Section.

Uniform data set--See Resident Assessment Instrument (RAI).

Universal precautions--The use of barrier and other precautions to prevent the spread of blood-borne diseases.

Unreasonable confinement--Involuntary seclusion.

Vaccine preventable diseases--The diseases included in the most current recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.

Vendor payment--Payment made by DADS on a daily-rate basis for services delivered to recipients in Medicaid-certified nursing facilities. Vendor payment is based on the nursing facility's approved-to-pay claim processed by the state Medicaid claims administrator. The Nursing Facility Billing Statement, subject to adjustments and corrections, is prepared from information submitted by the nursing facility, which is currently on file in the computer system as of the billing date. Vendor payment is made at periodic intervals, but not less than once per month for services rendered during the previous billing cycle.

Working day--Any 24-hour period, Monday through Friday, excluding state and federal holidays.

Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification

Subchapter C, Nursing Facility Licensure Application Process

(a) A license holder may not transfer its license as part of a change of ownership. If there is a change of ownership, the license holder's license becomes invalid on the date of the change of ownership. The new owner must obtain a change of ownership license in accordance with subsection (b) of this section. The license holder and new license applicant must notify DADS before a change of ownership occurs.

[(1) Sole proprietor. A change of ownership occurs if:

________ (A) the sole proprietor who is licensed to operate the facility sells or otherwise transfers its business of operating the facility to an entity not licensed to operate the facility; or

________ (B) upon the death of the sole proprietor, the facility continues to operate.

(2) General Partnership (as defined in the Texas Business Organizations Code, §1.002). A change of ownership occurs if:

________ (A) a partner of a general partnership that is licensed to operate the facility is added or substituted;

________ (B) the partnership that is licensed to operate the facility is sold or otherwise transferred to an entity that is not licensed to operate the facility;

________ (C) the entity that is licensed to operate the facility sells or otherwise transfers its business of operating the facility to an entity that is not licensed to operate the facility;

________ (D) for any reason other than correction of an error, the federal taxpayer identification number changes; or

________ (E) the entity that is licensed to operate the facility is terminated and fails or is ineligible to be reinstated, and the facility continues to operate.

(3) Limited Partnership (as defined in the Texas Business Organizations Code, §1.002). A change of ownership occurs if:
(A) a general partner of a limited partnership that is licensed to operate the facility is added or substituted;

(B) ownership of the limited partnership that is licensed to operate the facility changes by 50% or more and one or more controlling person is added;

(C) the partnership that is licensed to operate the facility is sold or otherwise transferred to an entity that is not licensed to operate the facility;

(D) the entity that is licensed to operate the facility sells or otherwise transfers its business of operating the facility to an entity that is not licensed to operate the facility;

(E) for any reason other than correction of an error, the federal taxpayer identification number changes; or

(F) the entity that is licensed to operate the facility is terminated and fails or is ineligible to be reinstated, and the facility continues to operate.

(4) Nonprofit organization. A change of ownership occurs if:

(A) the nonprofit organization that is licensed to operate the facility is sold or otherwise transferred to an entity that is not licensed to operate the facility;

(B) the entity that is licensed to operate the facility sells or otherwise transfers its business of operating the facility to an entity that is not licensed to operate the facility;

(C) for any reason other than correction of an error, the federal taxpayer identification number changes; or

(D) the entity that is licensed to operate the facility is terminated and fails or is ineligible to be reinstated, and the facility continues to operate.

(5) For-profit corporation or limited liability company. A change of ownership occurs if:
(A) ownership of the business entity that is licensed to operate the facility changes by 50% or more and one or more controlling person is added;

(B) the business entity that is licensed to operate the facility is sold or otherwise transferred to an entity that is not licensed to operate the facility;

(C) the entity that is licensed to operate the facility sells or otherwise transfers its business of operating the facility to an entity that is not licensed to operate the facility;

(D) for any reason other than correction of an error, the federal taxpayer identification number changes; or

(E) the entity that is licensed to operate the facility is terminated and fails or is ineligible to be reinstated, and the facility continues to operate.

(6) City, county, state or federal government authority, hospital district, or hospital authority. A change of ownership occurs if:

(A) the governmental entity that is licensed to operate the facility sells or otherwise transfers its business of operating the facility to an entity that is not licensed to operate the facility; or

(B) the entity that is licensed to operate the facility is terminated and the facility continues to operate.

(7) Trust, living trust, estate or any other entity type not included in paragraphs (1)-(6) of this subsection. A change of ownership occurs if:

(A) the entity that is licensed to operate the facility is sold or otherwise transferred to an entity that is not licensed to operate the facility;

(B) the entity that is licensed to operate the facility sells or otherwise transfers its business of operating the facility to an entity that is not licensed to operate the facility;
(C) for any reason other than correction of an error, the federal taxpayer identification number changes; or

(D) the entity that is licensed to operate the facility is terminated and the facility continues to operate.

(8) For license holders that have multiple-level ownership structures, a change of ownership also occurs if any action described in paragraphs (1)–(7) of this subsection occurs at any level of the license holder's entire ownership structure.

(9) For paragraphs (3)(B) and (5)(A) of this subsection, the substitution of the executor of a decedent's estate for a decedent is not the addition of a controlling person.

(10) A conversion as described in Subchapter C of Chapter 10 of the Texas Business Organizations Code is not a change of ownership if no controlling person is added.

(b) The prospective new owner must submit to DADS:

(1) a complete application for a change of ownership license under §19.201 of this subchapter (relating to Criteria for Licensing) or an incomplete application with a letter explaining the circumstances that prevented the inclusion of the missing information;

(2) the application fee, in accordance with §19.216 of this subchapter (relating to License Fees); and

(3) signed, written notice from the facility's existing license holder of his intent to transfer operation of the facility to the applicant beginning on a date specified by the applicant.

(c) To avoid a facility operating while unlicensed, an applicant must submit all items in subsection (b) of this section at least 30 days before the anticipated date of the sale or other transfer to the new owner. DADS considers an application as submitted timely if the application is postmarked at least 30 days before the anticipated date of the change of ownership.
other transfer to the new owner] and received in DADS Licensing and Credentialing Section, Regulatory Services Division within 15 days after the date of the postmark.

(d) The 30-day notification from the applicant or the 30-day notification from the existing license holder or both may be waived if DADS determines that the applicant presented evidence showing that circumstances prevented the submission of the 30-day notice and if DADS determines that not waiving the 30-day notification would create a threat to resident welfare or health and safety. If the applicant submits a timely and sufficient application for a change of ownership license and meets all requirements for a license, DADS issues a change of ownership license effective on the date requested by the applicant.

(e) A change of ownership license is a 90-day temporary license issued to an applicant who proposes to become the new operator of a nursing facility that exists on the date the application is submitted. Upon receipt of a complete application, fee, and signed, written notice from the facility's existing license holder of the intent to transfer the operation of the facility to the applicant beginning on a date specified by the applicant, DADS issues a change of ownership license to the prospective new owner if DADS finds that the prospective new owner and any other persons listed in §19.201(e) of this subchapter meet the requirements in §19.201(d)(1) and (f) of this subchapter.

(1) All applications must be made on forms prescribed by and available from DADS. Each application must be completed in accordance with DADS instructions, signed, and notarized, and must contain all forms required by DADS.

(2) DADS approves or denies an application for a change of ownership license not later than the 31st day after the date of receipt of the complete application, fee, and signed, written notice from the facility's existing license holder of his intent to transfer the operation of the
facility to the applicant beginning on a date specified by the applicant. The effective date of the license is the later of the date requested in the application or the 31st day after the date DADS receives the application, fee, and signed, written notice from the existing license holder, unless waived in accordance with subsection (d) of this section. The effective date of the change of ownership license cannot precede the date the application is received in DADS Licensing and Credentialing Section, Regulatory Services Division.

(3) If the applicant meets the requirements of §19.201 of this subchapter and passes an initial inspection, desk review, or a subsequent inspection before the change of ownership license expires, a regular three-year license is issued. The effective date of the regular three-year license is the same date as the effective date of the change of ownership and cannot precede the date the application is received by DADS Licensing and Credentialing Section, Regulatory Services Division.

(4) When an applicant has not previously held a license in Texas, a probationary license is issued following the change of ownership license. The effective date of the probationary one-year license is the same date as the change of ownership license and cannot precede the date the application is received in DADS Licensing and Credentialing Section, Regulatory Services Division.

(5) A change of ownership license expires on the 90th day after its effective date.

(6) Except as provided in paragraph (7) of this subsection, DADS conducts an on-site inspection to verify compliance with the licensure requirements after issuing a license as a result of a change of ownership [change of ownership license].

(7) DADS may conduct a desk review in lieu of an on-site inspection if a license holder undergoes a change of ownership, and:
(A) less than 50 percent of the direct or indirect ownership interest of the license holder was transferred or sold; or

(B) no person with a disclosable interest was added to the license holder.

(7) DADS may allow a desk review in lieu of an on-site inspection or survey if:

(A) the facility specifically requests a desk review and submits evidence during the application process that no new controlling person is added;

(B) DADS determines the change does not involve a new controlling person; and

(C) the facility meets the standards for operation based on the most recent on-site inspection.

(f) A nursing facility license holder may be eligible to acquire, on an expedited basis, a license to operate another existing nursing facility. A license holder that appears on the expedited change of ownership list may be granted expedited approval in obtaining a change of ownership license to operate another existing nursing facility in Texas.

(1) DADS maintains and keeps current a list of nursing facility license holders that operate an institution in Texas and that have met the criteria to qualify for an expedited change of ownership according to the information available to DADS.

(2) In order to establish and maintain the expedited change of ownership list, DADS uses the criteria found in §19.2322(e) of this chapter (relating to Medicaid Bed Allocation Requirements). A [nursing facility] license holder meeting these criteria appears on the list and is eligible to be issued, on an expedited basis, a change of ownership license to operate another existing institution in Texas.

(3) A [nursing facility] license holder appearing on the list must submit an affidavit that demonstrates the license holder continues to meet the criteria established for being listed on the
expedited change of ownership list, and continues to meet the requirements in §19.201(d)(1) and (f) of this subchapter.

(4) DADS processes a change of ownership license application on an expedited basis for a [nursing facility] license holder on the list if DADS finds that the license holder and any other persons listed in §19.201(e) of this subchapter meet the requirements in §19.201(d)(1) and (f) of this subchapter.

(5) If the [nursing facility] license holder requesting a change of ownership license on an expedited basis complies with subsections (b)-(e) of this section, DADS approves or denies the application for a change of ownership license not later than the 15th day after the date of receipt of the complete application, fee, and signed, written notice from the facility's existing license holder of the intent to transfer the operation of the facility to the applicant beginning on a date requested in the application. The effective date of the license is the later of the date requested in the application or the 31st day after the date DADS receives the application fee, and signed, written notice from the existing license holder, unless waived in accordance with subsection (d) of this section. The effective date of the change of ownership license cannot precede the date the application is received in DADS Licensing and Credentialing Section, Regulatory Services Division.

(6) An applicant for a change of ownership license on an expedited basis must meet all applicable requirements that an applicant for renewal of a license must meet. Any requirement relating to inspections or to an accreditation review applies only to institutions operated by the license holder at the time the application is made for the change of ownership license.

(g) If a license holder changes its name, but does not undergo a change of ownership, the license holder must notify DADS and submit a copy of a certificate of amendment from the
Secretary of State's office. On receipt of the certificate of amendment, DADS re-issues the current license [will be re-issued] in the license holder's new name.

(h) If a license holder adds an owner who holds a disclosable interest, but does not undergo a change of ownership, the license holder must notify DADS of the addition.