§98.2. Definitions

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

(1) Abuse--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 sexual abuse of an elderly or disabled person, including any involuntary or nonconsensual sexual conduct that would constitute an offense under Texas Penal Code, §21.08, (indecent exposure) or Texas Penal Code, Chapter 22, (assaultive offenses) committed by the person's caretaker, family member, or other individual who has an ongoing relationship with the person.

(X) Actual harm--A negative outcome that compromises the physical, mental, or emotional well-being of an elderly person or a person with a disability receiving services at a facility.

(2) Adult--A person 18 years of age or older, or an emancipated minor.

(3) Affiliate--With respect to a:

(A) partnership, each partner of the partnership;

(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 the person is an officer, director, principal stockholder, or person with a disclosable interest.

(X) Alzheimer's disease and related disorders--Alzheimer's disease and any other irreversible dementia described by the Centers for Disease Control and Prevention (CDC) or the most current edition of the Diagnostic and Statistical Manual of Mental Disorders.

(4) Ambulatory--Mobility not relying on walker, crutch, cane, other physical object, or use of wheelchair.
(5) Applicant--A person applying for a license under Texas Human Resources Code, Chapter 103.

(6) Authorization--A case manager's decision, before DAHS begins and before payment can be made, that DAHS may be provided to an individual.

(7) Case manager--A DADS An HHSC employee who is responsible for DAHS case management activities. Activities include eligibility determination, individual enrollment, assessment and reassessment of an individual's need, service plan development, and intercession on the individual's behalf.

(8) Caseworker--Case manager.

(9) Change of ownership--An event that results in a change to the federal taxpayer identification number of the license holder of a facility. The substitution of a personal representative for a deceased license holder is not a change of ownership.

(10) Client--Individual.

(XX) Commission--The Health and Human Services Commission.

(11) Construction, existing--See definition of existing building.


(13) Construction, permanent--A building or structure that meets a nationally recognized building code's details for foundations, floors, walls, columns, and roofs.

(14) DADS--The Department of Aging and Disability Services or its successor agency.

(15) DAHS--Day activity and health services. Health, social, and related support services.

(16) DAHS facility--A facility that provides services under a day activity and health services program on a daily or regular basis, but not overnight, to four or more elderly persons or persons with disabilities who are not related by blood, marriage or adoption to the owner of the facility.

(17) DAHS program--A structured, comprehensive program offered by a DAHS facility that is designed to meet the needs of adults with functional impairments by providing DAHS in accordance with individual plans of care in a protective setting.

(18) Days--Calendar days, unless otherwise specified.

(19) Department--Department of Aging and Disability Services or its successor agency.

(20) Dietitian consultant--A registered dietitian; a person licensed by the Texas State Board of Examiners of Dietitians; or a person with a bachelor's degree with major studies in
food and nutrition, dietetics, or food service management.

(21) Direct service staff--An employee or contractor of a facility who directly provides services to individuals, including the director, a licensed nurse, the activities director, and an attendant. An attendant includes a driver, food service worker, aide, janitor, porter, maid, and laundry worker. A dietitian consultant is not a member of the direct service staff.

(22) Director--The person responsible for the overall operation of a facility.

(23) Direct ownership interest--Ownership of equity in the capital, stock, or profits of, or a membership interest in, an applicant or license holder.

(24) Disclosable interest--Five percent or more direct or indirect ownership interest in an applicant or license holder.

(25) Elderly person--A person 65 years of age or older.

(26) Existing building--A building or portion thereof that, at the time of initial inspection by DADS HHSC, is used as an adult day care occupancy, as defined by Life Safety Code, NFPA 101, 2000 edition, Chapter 17 for existing adult day care occupancies; or has been converted from another occupancy or use to an adult day care occupancy, as defined by Chapter 16 for new adult day care occupancies.

(27) Exploitation--An illegal or improper act or process of a caretaker, family member, or other individual, who has an ongoing relationship with the elderly person or person with a disability, using the resources of an elderly person or person with a disability for monetary or personal benefit, profit, or gain without the informed consent of the elderly person or person with a disability.

(28) Facility--A licensed DAHS facility.

(29) Fence--A barrier to prevent elopement of an individual or intrusion by an unauthorized person, consisting of posts, columns, or other support members, and vertical or horizontal members of wood, masonry, or metal.

(30) FM--FM Global (formerly known as Factory Mutual). A corporation whose approval of a product indicates a level of testing and certification that is acceptable to DADS HHSC.

(31) Fraud--A deliberate misrepresentation or intentional concealment of information to receive or to be reimbursed for service delivery to which an individual is not entitled.

(32) Functional impairment--A condition that requires assistance with one or more personal care services.

(33) Health assessment--An assessment of an individual by a facility used to develop the individual's plan of care.
(34) Health services--Services that include personal care, nursing, and therapy services.

(A) Personal care services include:

(i) bathing;
(ii) dressing;
(iii) preparing meals;
(iv) feeding;
(v) grooming;
(vi) taking self-administered medication;
(vii) toileting;
(viii) ambulation; and
(ix) assistance with other personal needs or maintenance.

(B) Nursing services may include:

(i) the administration of medications;
(ii) physician-ordered treatments, such as dressing changes; and
(iii) monitoring the health condition of the individual.

(C) Therapy services may include:

(i) physical;
(ii) occupational; and
(iii) speech therapy.

(XX) HHSC--the Texas Health and Human Services Commission.

(35) Human services--Include the following services:

(A) personal social services, including:

(i) DAHS;
(ii) counseling;
(iii) in-home care; and
(iv) protective services;

(B) health services, including:

(i) home health;

(ii) family planning;

(iii) preventive health programs;

(iv) nursing facility; and

(v) hospice;

(C) education services, meaning:

(i) all levels of school;

(ii) Head Start; and

(iii) vocational programs;

(D) housing and urban environment services, including public housing;

(E) income transfer services, including:

(i) Temporary Assistance for Needy Families; and

(ii) Supplemental Nutrition Assistance Program; and

(F) justice and public safety services, including:

(i) parole and probation; and

(ii) rehabilitation.

(36) (33) Human service program--An intentional, organized, ongoing effort designed to provide good to others. The characteristics of a human service program are:

(A) dependent on public resources and are planned and provided by the community;

(B) directed toward meeting human needs arising from day-to-day socialization, health care, and developmental experiences; and

(C) used to aid, rehabilitate, or treat people in difficulty or need.

(XX) Immediate threat to the health or safety of an elderly person or a person with a disability--A situation that causes, or is likely to cause, serious injury, harm, or impairment to or the death of an elderly person or a person with a disability receiving services at a facility.
(37) Indirect ownership interest--Any ownership or membership interest in a person that has a direct ownership interest in an applicant or license holder.

(38) Individual--A person who applies for or is receiving services at a facility.

(XX) Isolated--One or a very limited number of elderly persons or persons with disabilities are affected and/or one or a very limited number of staff are involved, or the situation has occurred only occasionally or in a very limited number of locations.

(39) License holder--A person that holds a license to operate a facility.

(40) Licensed vocational nurse (LVN)--A person licensed by the Texas Board of Nursing who works under the supervision of a registered nurse (RN) or a physician.


   (A) addresses the construction, protection, and occupancy features necessary to minimize danger to life from fire, including smoke, fumes, or panic; and

   (B) establishes minimum criteria for the design of egress features so as to permit prompt escape of occupants from buildings or, where desirable, into safe areas within the building.

(42) Long-term care facility--A facility that provides care and treatment or personal care services to four or more unrelated persons, including:

   (A) a nursing facility licensed under Texas Health and Safety Code, Chapter 242;

   (B) an assisted living facility licensed under Texas Health and Safety Code, Chapter 247; and

   (C) an intermediate care facility serving individuals with an intellectual disability or related conditions licensed under Texas Health and Safety Code, Chapter 252.

(43) 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, and delivery of services. Management services do not include contracts solely for maintenance, laundry, or food services.

(44) Manager--A person having a contractual relationship to provide management services to a facility.

(45) Medicaid-eligible--An individual who is eligible for Medicaid.

(46) Medically related program--A human services program under the human services-health services category in the definition of human services in this section.

(47) Neglect--The failure to provide for one's self the goods or services, including
medical services, that are necessary to avoid physical harm, mental anguish, or mental illness; or the failure of a caregiver to provide these goods or services.

(48) (43) NFPA--The National Fire Protection Association. NFPA is an organization that develops codes, standards, recommended practices, and guides through a consensus standards development process approved by the American National Standards Institute.

(49) (44) NFPA 10--Standard for Portable Fire Extinguishers. A standard developed by NFPA for the selection, installation, inspection, maintenance, and testing of portable fire extinguishing equipment.

(50) (45) NFPA 13--Standard for the Installation of Sprinkler Systems. A standard developed by NFPA for the minimum requirements for the design and installation of automatic fire sprinkler systems, including the character and adequacy of water supplies and the selection of sprinklers, fittings, pipes, valves, and all maintenance and accessories.

(51) (46) NFPA 70--National Electrical Code. A code developed by NFPA for the installation of electric conductors and equipment.

(52) (47) NFPA 72--National Fire Alarm Code. A code developed by NFPA for the application, installation, performance, and maintenance of fire alarm systems and their components.

(53) (48) NFPA 90A--Standard for the Installation of Air Conditioning and Ventilating Systems. A standard developed by NFPA for systems for the movement of environmental air in structures that serve spaces over 25,000 cubic feet or buildings of certain heights and construction types, or both.

(54) (49) NFPA 90B--Standard for the Installation of Warm Air Heating and Air-Conditioning Systems. A standard developed by the NFPA for systems for the movement of environmental air in one- or two-family dwellings and structures that serve spaces not exceeding 25,000 cubic feet.

(55) (50) NFPA 96--Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations. A standard developed by NFPA that provides the minimum fire safety requirements related to the design, installation, operation, inspection, and maintenance of all public and private cooking operations, except for single-family residential usage.

(56) (51) Nurse--A registered nurse (RN) or a licensed vocational nurse (LVN) licensed in the state of Texas.

(57) (52) Nursing services--Services provided by a nurse, including:

(A) observation;

(B) promotion and maintenance of health;

(C) prevention of illness and disability;

(D) management of health care during acute and chronic phases of illness;
(E) guidance and counseling of individuals and families; and

(F) referral to physicians, other health care providers, and community resources when appropriate.

(XX) Pattern of violation--Repeated, but not widespread in scope, failures of a facility to comply with this chapter or a rule, standard, or order adopted under this chapter that:

(A) result in a violation; and

(B) are found throughout the services provided by the facility or that affect or involve the same elderly persons or persons with disabilities receiving services at the facility or the same facility employees.

(58) (59) Person--An individual, corporation, or association.

(59) (65) Person with a disability--A person whose functioning is sufficiently impaired to require frequent medical attention, counseling, physical therapy, therapeutic or corrective equipment, or another person's attendance and supervision.

(60) (66) Physician's orders--An order that is signed and dated by a medical doctor (MD) or doctor of osteopathy (DO) who is licensed to practice medicine in the state of Texas. The DADS HHSC physician's order form used by a DAHS facility that contracts with DADS HHSC must include the MD's or DO's license number.

(61) (67) Plan of care--A written plan, based on a health assessment and developed jointly by a facility and an individual or the individual's responsible party, that documents the functional impairment of the individual and the DAHS needed by the individual.

(62) (68) Protective setting--A setting in which an individual's safety is ensured by the physical environment by staff.

(63) (69) Registered nurse (RN)--A person licensed by the Texas Board of Nursing to practice professional nursing.

(64) (70) Related support services--Services to an individual, family member, or caregiver that may improve the person's ability to assist with an individual's independence and functioning. Services include:

(A) information and referral;

(B) transportation;

(C) teaching caregiver skills;

(D) respite;

(E) counseling;

(F) instruction and training; and
(G) support groups.

(65) (64) Responsible party--A person designated by an individual as the individual's representative.

(66) (62) Safety--Protection from injury or loss of life due to conditions such as fire, electrical hazard, unsafe building or site conditions, and the presence of hazardous materials.

(67) (63) Sanitation--Protection from illness, the transmission of disease, or loss of life due to unclean surroundings, the presence of disease transmitting insects or rodents, unhealthful conditions or practices in the preparation of food and beverage, or the care of personal belongings.

(68) (64) Semi-ambulatory--Mobility relying on a walker, crutch, cane, other physical object, or independent use of wheelchair.

(69) (65) Serious injury--An injury requiring emergency medical intervention or treatment by medical personnel, either at a facility or at an emergency room or medical office.

(70) (66) Social activities--Therapeutic, educational, cultural enrichment, recreational, and other activities in a facility or in the community provided as part of a planned program to meet the social needs and interests of an individual.

(71) (67) UL--Underwriters Laboratories, Inc. A corporation whose approval of a product indicates a level of testing and certification that is acceptable to DADS HHSC.

(XX) Widespread in scope--A violation of this chapter or a rule, standard, or order adopted under this chapter that:

(A) is pervasive throughout the services provided by the facility; or
(B) represents a systematic failure by the facility that affects or has the potential to affect a large portion of or all of the elderly persons or persons with disabilities receiving services at the facility.

(72) (68) Working with people--Responsible for the delivery of services to individuals either directly or indirectly. Experience as a manager would meet this definition; however, an administrative support position such as a bookkeeper does not. Experience does not have to be in a paid capacity.
98.62 Program Requirements

(a) Staff qualifications.
   (1) Director. A facility must employ a director.
      (A) The director must:
         (i) have graduated from an accredited four-year college or university and have no less than
             one year of experience in working with people in a human service or medically related
             program, or have an associate degree or 60 semester hours from an accredited college or
             university with three years of experience working with people in a human service or
             medically related program;
         (ii) be an RN with one year of experience in a human service or medically related
             program;
         (iii) meet the training and experience requirements for a license as a nursing facility
             administrator under Texas Administrative Code (TAC), Title 40, Chapter 18, Nursing Facility
             Administrators; or
         (iv) have met, on July 16, 1989, the qualifications for a director required at that time and
             have served continuously in the capacity of director since that date.
      (B) The director must show evidence of 12 hours of annual continuing education in at least
          two of the following areas:
          (i) individual and provider rights and responsibilities, abuse, neglect, exploitation and
              confidentiality;
          (ii) basic principles of supervision;
          (iii) skills for working with individuals, families, and other professional service providers;
          (iv) individual characteristics and needs;
          (v) community resources;
          (vi) basic emergency first aid, such as cardiopulmonary resuscitation (CPR) or choking; or
          (vii) federal laws, such as Americans with Disabilities Act, Civil Rights Act of 1991, the
      (C) The activities director may fulfill the function of director if the activities director meets
          the qualifications for facility director.
      (D) One person may not serve as facility nurse, activities director, and director, regardless
          of qualifications.
      (E) The facility must have a policy regarding the delegation of responsibility in the
          director's absence from the facility.
      (F) The facility must notify the DAHS IHSC regional office in which the facility is located
          if the director is absent from the facility for more than 10 working days.
   (2) Nurse. A facility must employ a nurse.
      (A) An RN must have a license from the Texas Board of Nursing and practice in
          compliance with the Nurse Practice Act and rules and regulations of the Texas Board of
          Nursing.
      (B) An LVN must have a license from the Texas Board of Nursing and practice in
          compliance with the Nurse Practice Act and rules and regulations of the Texas Board of
          Nursing.
      (C) If a nurse serving as director leaves the facility to perform other duties related to the
          DAHS program, an LVN or another RN must fulfill the duties of the facility nurse.
      (D) A facility that does not have a DAHS contract, but has a Special Services to Persons
          with Disabilities contract, is not required to have an RN on duty, if the individual receiving
          services has no medical needs and is able to self-administer medication.
   (3) Activities director. A facility must employ an activities director.
      (A) Except as provided in subparagraph (B) of this paragraph, an activities director must
have graduated from a high school or have a certificate recognized by a state of the United States as the equivalent of a high-school diploma and have:

(i) a bachelor's degree from an accredited college or university, and one year of full-time experience working with elderly people or people with disabilities in a human service or medically related program;

(ii) 60 semester hours from an accredited college or university, and two years of full-time experience working with elderly people or people with disabilities in a human service or medically related program; or

(iii) completed an activities director's course, and two years of full-time experience working with elderly people or people with disabilities in a human service or medically related program.

(B) An activities director hired before May 1, 1999, with four years of full-time experience working with elderly people or people with disabilities in a human service or medically related program is not subject to the requirements of subparagraph (A) of this paragraph.

(4) Attendants. An attendant must be at least 18 years of age and may be employed as a driver, aide, cook, janitor, porter, housekeeper, or laundry worker.

(A) If a facility employs a driver, the driver must have a current operator's license, issued by the Texas Department of Public Safety, which is appropriate for the class of vehicle used to transport individuals.

(B) If an attendant handles food in the facility, the attendant must meet requirements of the Department of State Health Services rules on food service sanitation as described in 25 TAC, Chapter 228, Subchapters A - J (relating to Texas Food Establishments).

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(5) Food service personnel. If a facility prepares meals on site, the facility must have sufficient food service personnel to prepare meals and snacks. Food service personnel must meet the requirements of the Department of State Health Services rules on food service sanitation as described in 25 TAC, Chapter 228, Subchapters A - J (relating to Texas Food Establishments).

(6) Additional requirements for a facility that contracts with DADS HHSC.

(A) Housekeeper. A facility that contracts with DADS HHSC may employ a part-time or full-time housekeeper.

(B) Driver. If a facility that contracts with DADS HHSC employs a driver, the driver must:

(i) operate the facility's vehicles in a safe manner; and

(ii) maintain adult cardiopulmonary resuscitation (CPR) certification.

(b) Staffing. A facility must ensure that:

(1) the ratio of direct service staff to individuals is at least one to eight, which must be maintained during provision of all DAHS except during facility-provided transportation;

(2) at least one RN or LVN is working at the facility for at least eight hours per day and sufficient nurses are at the facility to meet the nursing needs of the individuals at all times;

(3) the facility director routinely works at least 40 hours per week performing duties relating to the provision of the DAHS program;

(4) the activities director routinely works at least 40 hours a week;

(5) individuals whose needs cannot be met by the facility are not admitted or retained; and

(6) sufficient staff are on duty at all times to meet the needs of the individuals who are served by the facility.

(c) Staff health. All direct service staff must be free of communicable diseases.

(1) A facility must screen all employees for tuberculosis within two weeks of employment and annually, according to Center for Disease Control and Prevention (CDC) screening guidelines. All persons providing services under an outside resource contract must also screen
all employees for tuberculosis within two weeks of employment and annually according to
CDC screening guidelines.
(2) If an employee contracts a communicable disease that is transmissible to individuals
through food handling or direct individual care, the facility must exclude the employee from
providing these services while the employee is infectious.
(d) Staff responsibilities.
(1) The facility director:
   (A) manages the DAHS program and the facility;
   (B) trains and supervises facility staff;
   (C) monitors the facility building and grounds to ensure compliance;
   (D) maintains all financial and individual records;
   (E) develops relationships with community groups and agencies for identification and
referral of individuals;
   (F) maintains communication with an individual's family members or responsible parties;
   (G) assures the development and maintenance of the individual's plan of care; and
   (H) ensures that, if the facility director serves as the RN consultant, the facility director
fulfills the responsibility as director.
(2) The facility nurse:
   (A) assesses an individual's nursing and medical needs;
   (B) develops an individual's plan of care;
   (C) obtains physician's orders for medication and treatments to be administered;
   (D) determines whether self-administered medications have been appropriately taken,
applied, or used;
   (E) enters, dates, and signs monthly progress notes on medical care provided;
   (F) administers medication and treatments;
   (G) provides health education; and
   (H) maintains medical records.
(3) The activities director:
   (A) plans and directs the daily program of activities, including physical fitness exercises or
other recreational activities;
   (B) records the individual's social history;
   (C) assists the individual's related support needs;
   (D) assures that the identified related support services are included in the individual's plan
of care; and
   (E) signs and dates monthly progress notes about social and related support services
activities provided.
(4) An attendant:
   (A) provides personal care services to assist with activities of daily living;
   (B) assists the activities director with recreational activities; and
   (C) provides protective supervision through observation and monitoring.
(5) Food service personnel:
   (A) prepare meals and snacks; and
   (B) maintain the kitchen area and utensils in a safe and sanitary condition.

(6) A facility must obtain consultation at least four hours per month from a dietitian
consultant.
   (A) The dietitian consultant plans and reviews menus and must:
   (i) approve and sign snack and luncheon menus;
(ii) review menus monthly to ensure that substitutions were appropriate; and
(iii) develop a special diet for an individual, if ordered by a physician.

(B) A facility must obtain consultation from a dietitian consultant, even if the facility has meals delivered from another facility with a dietitian consultant or the facility contracts for the preparation and delivery of meals with a contractor that employs a registered dietician. A consultant who provides consultation to several facilities must provide at least four hours of consultation per month to each facility.

(7) If a facility employs an LVN as the facility nurse, the facility must ensure that an RN consultant provides consultation at the facility at least four hours per week. The RN consultant must document the consultation provided. The RN consultant must provide the consultation when individuals are present in the facility. The RN consultant may provide the following types of assistance:

(A) review plans of care and suggest changes, if appropriate;
(B) assess individuals' health conditions;
(C) consult with the LVN in solving problems involving care and service planning;
(D) counsel individuals on health needs;
(E) train, consult, and assist the LVN to maintain proper medical records; and
(F) provide in-service training for direct service staff.

(e) Training.
(1) Initial training.

(A) A facility must:

(i) provide direct service staff with training in the fire, disaster, and evacuation procedures within three workdays after the start of employment and document the training in the facility records; and

(ii) provide direct service staff a minimum of 18 hours of training during the first three months after the start of employment and document the training in the facility records.

(B) The training provided in accordance with subparagraph (A)(ii) of this paragraph must include:

(i) any nationally or locally recognized adult CPR course or certification;
(ii) first aid; or
(iii) orientation to health care delivery, including the following topics:
   (I) safe body function and mechanics;
   (II) personal care techniques and procedures; and
   (III) overview of the population served at the facility; and
(iv) identification and reporting of abuse, neglect, or exploitation.

(2) Ongoing training.

(A) A facility must provide at least three hours of ongoing training to direct service staff quarterly. The facility must ensure that direct delivery staff maintain current certification in CPR.

(B) A facility must practice evacuation procedures with staff and individuals at least once a month. The facility must document evacuation results in the facility records.
(3) Direct Care Staff Training Requirements for Persons with Alzheimer’s disease or Other Related Disorders.

(a) In accordance with section 326.002 of the THSC, a facility must adopt, implement, and enforce a written policy that:

(1) requires a facility employee who provides direct care to a person with Alzheimer’s disease or related disorder to successfully complete training in the provision of care to persons with Alzheimer’s disease and related disorders; and

(2) ensures the care and services provided by a facility employee to a person with Alzheimer’s disease or a related disorder meet the specific identified needs of the person relating to the person’s diagnosis of Alzheimer’s disease or a related disorder.

(f) Medications.

(1) Administration.

(A) A facility must ensure that a person who holds a current license under state law that authorizes the licensee to administer medications to individuals who choose not to or cannot self-administer their medications.

(B) A facility must ensure that all medication prescribed to an individual that is administered at the facility is dispensed through a pharmacy or by the individual's treating physician or dentist.

(C) A facility may administer physician sample medications at the facility if the medication has specific dosage instructions for the individual.

(D) A facility must record an individual's medications on the individual's medication profile record. The recorded information must be obtained from the prescription label and must include the medication name, strength, dosage, amount received, directions for use, route of administration, prescription number, pharmacy name, and the date each medication was issued by the pharmacy.

(2) Assistance with self-administration. A nurse may assist with self-administration of an individual's medication if the individual is unable to administer the medication without assistance. Assistance with self-administration of medication is limited to the following activities:

(A) reminding an individual to take medications at the prescribed time;

(B) opening and closing containers or packages;

(C) pouring prescribed dosage according to the individual's medication profile record;

(D) returning medications to the proper locked areas;

(E) obtaining medications from a pharmacy; and

(F) listing on an individual's medication profile record the medication name, strength, dosage, amount received, directions for use, route of administration, prescription number, pharmacy name, and the date each medication was issued by the pharmacy.

(3) Self-administration.

(A) A nurse must counsel an individual who self-administers medication or treatment at least once per month to ascertain if the individual continues to be able to self-administer the medication or treatment. The facility must keep a written record of the counseling.

(B) A facility may permit an individual who chooses to keep the individual's medication locked in the facility's central medication storage area to enter or have access to the area for the purpose of self-administering medication or treatment. A facility staff member must remain in or at the storage area the entire time the individual is present.

(4) General.
(A) A facility director, an activities director, or a facility nurse must immediately report to an individual's physician and responsible party any unusual reactions to a medication or treatment.

(B) When a facility supervises or administers medications, the facility must document in writing if an individual does not receive or take the medication and treatment as prescribed. The documentation must include the date and time the dose should have been taken, and the name and strength of medication missed.

(5) Storage.
(A) A facility must provide a locked area for all medications, which may include:
   (i) a central storage area; and
   (ii) a medication cart.
(B) A facility must store an individual's medication separately from other individuals' medications within the storage area.
(C) A facility must store medication requiring refrigeration in a locked refrigerator that is used only for medication storage or in a separate, permanently attached, locked medication storage box in a refrigerator.
(D) A facility must store poisonous substances and medications labeled for "external use only" separately within the locked area.
(E) A facility must store drugs covered by Schedule II of the Controlled Substances Act of 1970 in a locked, permanently attached cabinet, box, or drawer that is separate from the locked storage area for other medications.

(6) Disposal.
(A) A facility must keep medication that is no longer being used by an individual for the following reasons separate from current medications and ensure the medication is disposed of by a registered pharmacist licensed in the State of Texas:
   (i) the medication has been discontinued by order of the physician;
   (ii) the individual is deceased; or
   (iii) the expiration date of the medications has passed.
(B) A facility must dispose of needles and hypodermic syringes with needles attached as required by 25 TAC , Chapter 1, Subchapter K (relating to the Definition, Treatment, and Disposal of Special Waste from Health Care Related Facilities).
(C) A facility must obtain a signed receipt from an individual or the individual's responsible party if the facility releases medication to the individual or responsible party.

(g) Accident, injury, or acute illness.
(1) A facility must stock and maintain in a single location first aid supplies to treat burns, cuts, and poisoning.
(2) In the event of accident or injury to an individual requiring emergency medical, dental, or nursing care, or in the event of death of an individual, a facility must:
   (A) make arrangements for emergency care or transfer to an appropriate place for treatment, including:
      (i) a physician's office;
      (ii) a clinic; or
      (iii) a hospital;
   (B) immediately notify an individual's physician and responsible party, or agency who admitted the individual to the facility; and
   (C) describe and document the accident, injury, or illness on a separate report. The report must contain a statement of final disposition and be maintained on file.

(h) Menus.
(1) A facility must plan, date, and post a menu at least two weeks in advance and maintain a copy of the menu. A facility must serve meals according to approved menus.
(2) A facility must ensure that a special diet meal ordered by an individual's physician and developed by the dietician consultant is labeled with the individual's name and type of diet.

§98.105. Administrative Penalties.

(a) DADS HHSC may assess an administrative penalty if a facility an adult day care facility:

(1) violates Texas Human Resources Code (THRC), Chapter 103, Texas Health and Safety Code, Chapter 326, a rule, standard, or order adopted under this chapter, or a term of a license issued under this chapter;

(2) makes a false statement of a material fact that the facility knows or should know is false:

(A) on an application for a license or a renewal of a license or in an attachment to the application; or

(B) with respect to a matter under investigation by DADS HHSC;

(3) refuses to allow a DADS an HHSC representative to inspect:

(A) a book, record, or file required to be maintained by a facility an adult day care facility; or

(B) any portion of the premises of a facility an adult day care facility;

(4) willfully interferes with the work of a representative of DADS HHSC or the enforcement of this chapter;

(5) willfully interferes with a DADS HHSC representative who is preserving evidence of a violation of THRC Chapter 103, a rule adopted under this chapter, or a term of a license issued under this chapter;

(6) fails to pay a penalty assessed under THRC Chapter 103 or a rule adopted under this chapter not later than the 30th day after the date the assessment of the penalty becomes final; or

(7) fails to notify DADS HHSC of a change of ownership before the effective date of the change of ownership.

(b) DADS HHSC assesses administrative penalties against a facility an adult day care facility in accordance with the schedule of appropriate and graduated penalties established in this section. DADS HHSC considers the following in determining the amount of an administrative penalty:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the situation, and the hazard or potential hazard created by the situation to the health or safety of the public;
(2) the history of previous violations by a facility;

(3) the amount necessary to deter future violations;

(4) the facility's efforts to correct the violation; and

(5) any other matter that justice may require.

c) Each day of a continuing violation constitutes a separate violation. The administrative penalties for each day of a continuing violation cease on the date the violation is corrected. A violation that is the subject of a penalty is presumed to continue on each successive day until it is corrected. The date of correction alleged by the facility in its written plan of correction will be presumed to be the actual date of correction unless it is later determined by DADS HHSC that the correction was not made by that date or was not satisfactory.

d) The administrative penalty schedule includes violations that warrant an administrative penalty.
<table>
<thead>
<tr>
<th>Isolated Pattern</th>
<th>Immediate Threat</th>
<th>Actual Harm</th>
<th>Potential for Actual Harm</th>
<th>Potential for Minimum Harm</th>
</tr>
</thead>
<tbody>
<tr>
<td>Isolated Pattern</td>
<td>$350 - $500</td>
<td>$200 - $350</td>
<td>$100 - $200</td>
<td>$0</td>
</tr>
</tbody>
</table>

| J | K | L | G | H | I | D | E | F | A | B | C |

<table>
<thead>
<tr>
<th>Widespread</th>
</tr>
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| S | E | V | E | R | I | T | Y |
Note: To assist in reading the administrative penalty table, the following example is provided: a facility cited for a violation that constitutes an immediate threat to the health or safety of elderly persons or persons with disabilities and is widespread in scope will receive a penalty amount that falls within the range reflected for box “L” on the facility Scope and Severity chart.

(e) DADS HHSC may not collect an administrative penalty from a facility an adult day care facility if, not later than the 45th day after the date the facility receives notice under subsection (j) of this section, the facility corrects the violation.

(f) Subsection (e) of this section does not apply to:

(1) a violation that DADS HHSC determines:

   (A) results in serious harm to or death of a person attending the adult day care facility;

   (B) constitutes a serious threat to the health and safety of a person attending the facility; or

   (A) is a pattern of violation that results in actual harm;

   (B) is widespread in scope and results in actual harm;

   (C) is widespread in scope, constitutes a potential for actual harm, and relates to:
(i) staffing, including staff training, ratio, and health under §98.62(b), §98.62(c), and §98.62(e) of this chapter;

(ii) administration of medication under §98.62(f) of this chapter; or

(iii) emergency preparedness and response under §98.64 of this chapter.

(D) is an immediate threat to the health or safety of an elderly person or a person with a disability receiving services at a facility; or

(E) (C) substantially limits the facility's capacity to provide care;

(2) a violation described by subsection (a)(2) - (7) of this section; or

(3) a violation of THRC Chapter 102;

(4) a second or subsequent violation of §98.62(e)(3) of this chapter that occurs on or before the second anniversary of the date of the first violation.

(g) A facility An adult day care facility that corrects a violation must maintain the correction. If the facility fails to maintain the correction until at least the first anniversary after the date the correction was made, DADS HHSC may assess and collect an administrative penalty for the subsequent violation. An administrative penalty assessed under this subsection is equal to three times the amount of the original penalty assessed but not collected. DADS HHSC is not required to provide the facility with an opportunity to correct the subsequent violation.

(h) DADS HHSC issues a preliminary report stating the facts on which DADS HHSC concludes that a violation has occurred after DADS HHSC has:

(1) examined the possible violation and facts surrounding the possible violation; and

(2) concluded that a violation has occurred.

(i) In the report, DADS HHSC may recommend the assessment of an administrative penalty for each violation and the amount of the administrative penalty.

(j) DADS HHSC provides a written notice of a preliminary report to the facility adult day care facility not later than 10 days after the date DADS HHSC issues the preliminary report. The written notice includes:

(1) a brief summary of each violation;

(2) the amount of each recommended administrative penalty;

(3) a statement of whether a violation is subject to correction in accordance with subsection (e) of this section and, if the violation is subject to correction, a statement of:

(A) the date on which the facility must file with DADS HHSC a plan of correction for approval by DADS HHSC; and
(B) the date on which the facility must complete the plan of correction to avoid assessment of the administrative penalty; and

(4) a statement that the facility has a right to an administrative hearing on the occurrence of the violation, the amount of the penalty, or both.

(k) Not later than 20 days after the date on which a facility an adult day care facility receives a written notice of a preliminary report, the facility may:

(1) give DADS HHSC written notice that the facility agrees with DADS HHSC report and consents to the recommended penalty; or

(2) make a written request for an administrative hearing.

(l) If a violation is subject to correction under subsection (e) of this section, the facility adult day care facility must submit a plan of correction to DADS HHSC for approval not later than 10 days after the date on which the facility receives the written notice.

(m) If a violation is subject to correction, and the facility adult day care facility reports to DADS HHSC that the violation has been corrected, DADS HHSC inspects the correction or takes any other step necessary to confirm the correction and notify the facility that:

(1) the correction is satisfactory and DADS HHSC will not assess an administrative penalty; or

(2) the correction is not satisfactory and DADS HHSC recommends an administrative penalty.

(n) Not later than 20 days after the date on which a facility an adult day care facility receives a notice that the correction is not satisfactory and DADS HHSC recommends an administrative penalty, the facility may:

(1) give DADS HHSC written notice that the facility agrees with DADS HHSC determination and consents to the recommended administrative penalty; or

(2) make a written request to the Texas Health and Human Services Commission (HHSC) for an administrative hearing.

(o) If a facility an adult day care facility consents to the recommended administrative penalty or does not timely respond to a notice sent under subsection (j) of this section (written notice of the preliminary report), the DADS HHSC commissioner or commissioner's designee assesses the recommended administrative penalty. If the DADS HHSC commissioner or commissioner's designee assesses the penalty, DADS HHSC gives written notice of the penalty to the facility and the facility must pay the penalty within 30 days after receiving the notice.

(p) An administrative hearing is held in accordance with Chapter 91 of this title (relating to Hearings Under the Administrative Procedure Act) and HHSC rules at 1 Texas Administrative Code Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act).
(q) An administrative law judge sets a hearing and gives notice of the hearing if a facility an adult day care facility that is assessed a penalty requests a hearing.

(r) The hearing is held before an administrative law judge who makes findings of fact and conclusions of law regarding the occurrence of a violation under THRC Chapter 103, a rule adopted under this chapter or a term of a license issued under this chapter.

(s) Based on the findings of fact and conclusions of law and the recommendation of the administrative law judge, the DADS HHSC commissioner or commissioner's designee, by order, finds:

   (1) a violation has occurred and assesses an administrative penalty; or
   (2) a violation has not occurred.

(t) DADS HHSC commissioner or the commissioner's designee provides notice of the findings made under subsection (s) of this section to the facility adult day care facility charged with a violation. If the DADS HHSC commissioner finds that a violation has occurred, the commissioner or commissioner's designee provides written notice to the facility of:

   (1) the findings;
   (2) the amount of the administrative penalty;
   (3) the rate of interest payable on the penalty and the date on which interest begins to accrue; and
   (4) the facility's right to judicial review of the order of the commissioner.

(u) Not later than the 30th day after the date on which the order of the DADS HHSC commissioner or commissioner's designee is final, the facility adult day care facility assessed an administrative penalty must:

   (1) pay the full amount of the penalty; or
   (2) file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

(v) Notwithstanding subsection (o) of this section, DADS HHSC may permit a facility an adult day care facility to pay an administrative penalty in installments.

(w) If a facility an adult day care facility does not pay an administrative penalty within the period provided by subsection (o) or (u) of this section or in accordance with the installment plan permitted by DADS HHSC:

   (1) the penalty is subject to interest; and
   (2) DADS HHSC may refer the matter to the attorney general for collection of the penalty and interest.
(x) Interest accrues:

(1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and

(2) for the period beginning on the day after the date on which the penalty becomes due and ending on the date the penalty is paid.

(y) If the amount of a penalty is reduced or the assessment of a penalty is not upheld on judicial review, DADS HHSC commissioner or commissioner's designee must:

(1) remit to the facility adult day care facility the appropriate amount of any penalty payment plus accrued interest; or

(2) execute a release of the supersedeas bond if one has been posted.

(z) Accrued interest on the amount remitted by the DADS HHSC commissioner or commissioner's designee must be paid:

(1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and

(2) for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted to the facility adult day care facility.