TO: Health and Human Services Commission Executive Council

DATE: February 24, 2017

FROM: Barbara Blankenship, Regulatory Services

AGENDA ITEM: 3.h

SUBJECT: Life Safety Code for an Intermediate Care Facility for Individuals with an Intellectual Disability or Related Conditions (ICF/IID)

BACKGROUND: ☑ Federal Requirement ☐ Legislative Requirement ☑ Other: Agency Initiative

The Centers for Medicare & Medicaid Services (CMS) adopted a rule that made the 2012 edition of two publications of the National Fire Protection Association (NFPA)—the Life Safety Code (NFPA 101) and the Health Care Facilities Code (NFPA 99)—apply to an ICF/IID. Therefore, the proposed amendments refer to the 2012 edition of those publications and make references to the publications consistent throughout the amended sections. Consistent with the CMS rule, the proposed amendments allow an existing small facility until July 5, 2019 to be in compliance with the NFPA provisions in Chapter 33 regarding sprinklers and heat detection systems in attics.

The proposed amendments also delete definitions in §90.61 because they duplicate definitions in §90.3. The proposed amendments change dates in the descriptions of “new construction” and “existing facility” in §90.61. The characterization as “new construction” or an “existing facility” affects which chapter of NFPA 101 applies to a facility. The amendments also correct references to statutes.

ISSUES AND ALTERNATIVES:

The most significant difference between the 2000 edition and the 2012 edition of NFPA 101 is attic fire protection. The CMS final rule at 42 Code of Federal Regulations §483.470(j)(1)(iv) requires an ICF/IID to be in compliance with NFPA 101, Chapter 33.2.3.5.7.1, Sprinklers in attics, or Chapter 33.2.3.5.7.2, Heat detection systems in attics, beginning July 5, 2019.

This means that, if an existing small ICF/IID has an automatic sprinkler system and an attic, a heat detection system or additional sprinklers must be installed in the attic. However, if fuel-fired equipment, such as a furnace or water heater, is located in the attic, the heat detection system is not an option, and NFPA 101 requires additional sprinklers in the attic. If an ICF/IID does not have an automatic sprinkler system and has fuel-fired equipment in the attic, the facility will have to install a sprinkler system or a heat detection system in the attic.

The new requirements will apply to many residential homes in state supported living centers.
For a new ICF/IID that has an automatic sprinkler system, NFPA 101 requires an attic that does not contain fuel-fired equipment to meet one of the following criteria:

- be protected throughout by a heat detection system arranged to activate the building fire alarm system;
- be protected with automatic sprinklers that are part of the required, approved automatic sprinkler system;
- be of noncombustible or limited-combustible construction; or
- be constructed of fire-retardant-treated wood.

**STAKEHOLDER INVOLVEMENT:**

External stakeholders were provided a copy of the proposal by letter sent on November 8, 2016. DADS also posted an alert through GovDelivery email on November 8, 2016, requesting comments by November 28, 2016.

DADS did not receive any comments on the Life Safety Code rules.

**FISCAL IMPACT:**

No cost to state or local governments.

ICF/IIDs will incur a cost to comply with the changes that CMS made effective July 5, 2016, and will have three years from that time to comply with the federal regulations. CMS estimated the fiscal impact for the cost of installing a sprinkler system in the attic is $4,500 and $1,000 for installing a heat detection system in the attic. Because all ICF/IIDs in Texas are federally certified, an ICF/IID will incur this cost regardless of whether DADS amends its licensure rules.

**SERVICES IMPACT STATEMENT:**

Individuals will benefit from ICF/IID providers complying with more current editions of NFPA publications that result in safer residential settings.

**RULE DEVELOPMENT SCHEDULE**

- February 16, 2017: Present to Medical Care Advisory Committee
- February 24, 2017: Present to HHSC Executive Council
- March 31, 2017: Publish proposed rules in Texas Register
- June 30, 2017: Publish adopted rules in Texas Register
- July 6, 2017: Effective date
The Texas Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), proposes amendments to Chapter 90, Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions, §90.3, concerning Definitions; §90.50, concerning Emergency Preparedness and Response; §90.61, concerning Introduction, Application, and General Requirements for Facilities for Persons with an Intellectual Disability or Related Conditions; and §90.74, concerning Safety Operations.

BACKGROUND AND PURPOSE

The Centers for Medicare & Medicaid Services (CMS) adopted a rule that made the 2012 edition of two publications of the National Fire Protection Association (NFPA)—the Life Safety Code (NFPA 101) and the Health Care Facilities Code (NFPA 99)—apply to an intermediate care facility for individuals with an intellectual disability or related conditions (ICF/IID). Therefore, the proposed amendments refer to the 2012 editions of those publications and make references to the publications consistent throughout the amended sections. Consistent with the CMS rule, the proposed amendments allow an existing small facility until July 5, 2019, to be in compliance with the NFPA provisions in Chapter 33 regarding sprinklers and heat detection systems in attics.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §90.3 clarifies that “Life Safety Code” is synonymous with NFPA 101 and adds a definition of the acronym “NFPA.” Definitions of “NFPA 99” and “NFPA 101” are added to specify the edition of the codes adopted by CMS, and to explain how to obtain a copy of NFPA 99 and NFPA 101.

The proposed amendment to §90.50 replaces the term “Life Safety Code, 2000 Edition” with a reference to the newly defined term, “NFPA 101.” The proposed amendment also adds a new requirement that a large facility's fire safety plan must include a provision concerning “emergency phone call to fire department.” The 2012 edition of NFPA 101 added a requirement
that a large facility’s fire safety plan include a provision for calling a fire department, in addition to any automatic notification.

The proposed amendment to §90.61 deletes references to the “Life Safety Code,” using the newly defined term “NFPA 101” in its place. The proposed amendment deletes references to the 2000 and 2001 edition NFPA publications. The proposed amendment deletes the definitions of several terms from subsection (c) because they are included in §90.3. The proposed amendment changes dates in the descriptions of “new construction” and an “existing facility” in new subsection (c) to establish that new construction is any construction work that began on or after July 5, 2016, and an existing facility is one that was operating with a license before November 1, 2016. These descriptions determine which chapters of the 2012 edition of NFPA 101 will apply to an ICF/IID. The amendment also requires an ICF/IID to comply with a Tentative Interim Amendment issued by the NFPA for any of the NFPA publications with which an ICF/IID is required to comply. The amendment includes a list of Tentative Interim Agreements that have been issued for NFPA 101 and NFPA 99. The amendment also corrects references to statutes.

The proposed amendment to §90.74 uses the acronym “NFPA” to refer to a publication, because the acronym is now a defined term. The proposed amendment also removes a reference to the 2000 edition of NFPA 101 to be consistent with the definition of “NFPA 101,” which means the 2012 edition.

FISCAL NOTE

David Cook, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments are in effect, enforcing or administering the amendments does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments will not have an adverse economic effect on small businesses or micro-businesses.

PUBLIC BENEFIT AND COSTS

Mary T. Henderson, Associate Commissioner, has determined that, for each year of the first five years the amendments are in effect, the public will benefit from updated rules that are designed to better protect residents of an ICF/IID from fire.

Ms. Henderson anticipates that ICF/IIDs will incur costs to comply with the rules that CMS adopted effective July 5, 2016. However, because all ICF/IIDs in Texas are federally certified, an ICF/IID would incur those costs, even if DADS did not update the licensing rules. The amendment will not affect a local economy.
TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Barbie Blankenship at (512) 438-5502 in DADS Regulatory Services Division. Written comments on the proposal may be submitted to Barbie Blankenship at 701 West 51st Street, Austin, Texas, 78751, Mail Code E-370; or via email to barbara.blankenship@dads.state.tx.us. To be considered, comments must be submitted no later than 30 days after the date of this issue of the Texas Register. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 16R20" in the subject line.

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; Texas Health and Safety Code, §252.033, which authorizes DADS to license ICF/IIDs; and Texas Health and Safety Code, §252.008, which requires the HHSC executive commissioner to adopt rules related to the administration and implementation of Chapter 252.

The amendment affects Texas Government Code, §531.0055 and §531.021; Texas Human Resources Code, §32.021; and Texas Health and Safety Code, §252.0332 and §252.008.

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

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise. Individual subchapters may have definitions that are specific to the subchapter.

(1) - (37) (No change.)


(39) Life safety features--Fire safety components required by the Life Safety Code such as building construction, fire alarm systems, smoke detection systems, interior finishes, sizes and thicknesses of doors, exits, emergency electrical systems, sprinkler systems, etc.

(40) Local authorities--A local health authority, fire marshal, building inspector, etc., who may be authorized by state law, county order, or municipal ordinance to perform certain inspections or certifications.

(41) Local health authority--The physician having local jurisdiction to administer state and local laws or ordinances relating to public health, as described in the Texas Health and Safety Code, §§121.021-121.025.

(42) LVN--Licensed vocational nurse. A person licensed to practice vocational nursing in accordance with Texas Occupations Code, Chapter 301.

(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, or delivery of resident services. Management services shall not include contracts solely for maintenance, laundry, or food services.

(44) Metered dose inhaler--A device that delivers a measured amount of medication as a mist
that can be inhaled.

(45) NFPA--The National Fire Protection Association. If the term is immediately followed by a number, it is a reference to a publication of NFPA, as referenced in NFPA 101.


(48) Oral medication--Medication administered by way or through the mouth and does not include sublingual or buccal.

(49) Person--An individual, firm, partnership, corporation, association, or joint stock company, and any legal successor of those entities.

(50) Personal 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.

(51) Qualified intellectual disability professional (QIDP)--A person who has at least one year of experience working directly with persons with an intellectual disability or related conditions and is one of the following:

(A) a doctor of medicine or osteopathy;

(B) a registered nurse; or
(C) an individual who holds at least a bachelor's degree in one of the following areas:

(i) occupational therapy;

(ii) physical therapy;

(iii) social work;

(iv) speech-language pathology or audiology;

(v) recreation or a specialty area such as art, dance, music or physical education;

(vi) dietetics; or

(vii) human services, such as sociology, special education, rehabilitation counseling, or psychology (as specified in Title 42, Code of Federal Regulations, §483.430(b)(5)(x)(W180)).

(52) [49] Quality-of-care monitor--A registered nurse, pharmacist, or dietitian, employed by DADS, who is trained and experienced in long-term care regulations, standards of practice in long-term care, and evaluation of resident care and functions independently of DADS Regulatory Services Division.

(53) [50] Registered nurse--A person licensed to practice professional nursing in accordance with Texas Occupations Code, Chapter 301.

(54) [51] Remodeling--The construction, removal, or relocation of walls and partitions, or construction of foundations, floors, or ceiling-roof assemblies, including expanding of safety systems (i.e., sprinkler systems, fire alarm systems), that will change the existing plan and use areas of the facility.

(55) [52] Renovation--The restoration to a former better state by cleaning, repairing, or rebuilding, e.g., routine maintenance, repairs, equipment replacement, painting.

(56) [53] Restraint--A manual method, or a physical or mechanical device, material, or equipment attached or adjacent to the resident's body that the resident cannot remove easily, that restricts freedom of movement or normal access to the resident's body. This term includes a personal hold.

(57) [54] Seclusion--The involuntary separation of a resident away from other residents and the placement of the resident alone in an area from which the resident is prevented from leaving.

(58) [55] Small facilities--Facilities with 16 or fewer resident beds.

(59) [56] Specialized staff--Personnel with expertise in developmental disabilities.

(60) [57] Standards--The minimum conditions, requirements, and criteria with which a
facility will have to comply to be licensed under this chapter.

(61) [68] Topical medication--Medication applied to the skin but does not include medication administered in the eyes.

(62) [69] Universal precautions--The use of barrier precautions by facility personnel to prevent direct contact with blood or other body fluids that are visibly contaminated with blood.

(63) [64] 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.

(64) [64] Well-recognized church or religious denomination--An organization which has been granted a tax-exempt status as a religious association from the state or federal government.
§90.50. Emergency Preparedness and Response.

(a) Definitions. In this section:

(1) "emergency situation" means an impending or actual situation that:

(A) may interfere with normal activities of a facility or its residents;

(B) may cause:

(i) injury or death to a resident or staff member of the facility; or

(ii) damage to facility property;

(C) requires the facility to respond immediately to mitigate or avoid the injury, death, damage or interference; and

(D) does not include a situation that arises from the medical condition of a resident such as cardiac arrest, obstructed airway, cerebrovascular accident;

(2) "plan" means a facility's emergency preparedness and response plan; and

(3) "receiving facility" means a facility that has agreed to receive the residents of another facility who are evacuated due to an emergency situation.

(b) Administration. A facility must:

(1) develop and implement a written plan as described in subsection (c) of this section;

(2) maintain a current written copy of the plan that is accessible to all staff at all times;

(3) evaluate the plan to determine if information in the plan needs to change:

(A) within 30 days after an emergency situation;

(B) due to remodeling or making an addition to the facility; and

(C) at least annually;

(4) revise the plan within 30 days after information in the plan changes; and
(5) maintain documentation of compliance with this section.

(c) Emergency Preparedness and Response Plan. A facility's plan must:

(1) include a risk assessment of potential internal and external emergency situations, including a fire, failure of heating and cooling systems, a power outage, an explosion, a hurricane, a tornado, a flood, extreme snow and ice conditions for the area, a wildfire, terrorism, or a hazardous materials accident;

(2) include a description of the facility's resident population;

(3) include a description of the services and assistance needed by the residents in an emergency situation;

(4) include a section for each core function of emergency management that complies with subsection (d) of this section and is based on a facility's decision to either shelter-in-place or evacuate during an emergency situation; and

(5) include a fire safety plan that complies with subsection (f) of this section.

(d) Plan Requirements Regarding Eight Core Functions of Emergency Management.

(1) Direction and control. A facility's plan must contain a section for direction and control that:

(A) identifies the emergency preparedness coordinator (EPC), who is the facility staff person with the authority to manage the facility's response to an emergency situation in accordance with the plan;

(B) identifies the alternate EPC, who is the facility staff person with the authority to act as the EPC if the EPC is unable to serve in that capacity; and

(C) documents the name and contact information for the local emergency management coordinator (EMC) for the area in which the facility is located, as identified by the office of the local mayor or county judge.

(2) Warning. A facility's plan must contain a section for warning that:

(A) describes how the EPC will be notified of an emergency situation;

(B) identifies who the EPC will notify of an emergency situation and when the notification will occur, including during off hours, weekends, and holidays; and

(C) ensures monitoring of local news and weather reports.

(3) Communication. A facility's plan must contain a section for communication that:
(A) identifies the facility's primary mode of communication and alternate mode of communication to be used in an emergency situation;

(B) includes procedures for maintaining a current list of telephone numbers for residents' responsible parties;

(C) includes procedures for maintaining a current list of telephone numbers for potential places to which to evacuate, such as hotels, motels, and other facilities licensed under this chapter or certified to participate in the Medicaid ICF/MR Program;

(D) includes procedures for maintaining a current list of telephone numbers for the facility's staff, by residence or unit, that identifies the facility's EPC and administrative staff;

(E) identifies the location of the lists described in paragraphs (B) - (D) of this paragraph, which must be a place where facility staff can obtain the information quickly;

(F) includes procedures to notify:

   (i) facility staff about an emergency situation;

   (ii) a receiving facility about an impending or actual evacuation of residents; and

   (iii) residents, legally authorized representatives, and other persons about an impending or actual evacuation;

(G) provides a method for persons to obtain resident information during an emergency situation; and

(H) includes procedures for the facility to maintain communication with:

   (i) facility staff involved in an emergency situation;

   (ii) a receiving facility, if applicable; and

   (iii) the driver of a vehicle transporting residents, medications, records, food, water, equipment, or supplies during an evacuation.

(4) Sheltering Arrangements. A facility's plan must contain a section for sheltering arrangements that:

   (A) includes procedures for implementing a decision to shelter-in-place that include:

      (i) having access to medications, records, food, water, equipment and supplies; and

      (ii) sheltering facility staff involved in responding to an emergency situation, and
their family members, if necessary;

(B) includes procedures for notifying the DADS regional office for the area in which the facility is located by telephone immediately after a decision to shelter-in-place has been made; and

(C) includes procedures for accommodating evacuated residents, if the facility serves as a receiving facility for a facility that has evacuated.

(5) Evacuation. A facility's plan must contain a section for evacuation that:

(A) requires posting building evacuation routes prominently throughout the facility, except in small one-story buildings where all exits are obvious;

(B) includes procedures for implementing a decision to evacuate residents to a receiving facility in an emergency situation, if applicable;

(C) identifies evacuation destinations and routes and includes a map that shows the destinations and routes;

(D) includes a current copy of the agreement with a receiving facility, if the evacuation destinations identified in accordance with subparagraph (C) of this paragraph include a receiving facility that is not owned by the same entity as the facility;

(E) includes procedures for:

(i) ensuring that facility staff accompany evacuating residents;

(ii) ensuring that residents and facility staff present in the building have been evacuated;

(iii) accounting for residents after they have been evacuated;

(iv) accounting for residents absent from the facility at the time of the evacuation;

(v) releasing resident information in an emergency situation to promote continuity of a resident's care;

(vi) contacting the local EMC to find out if it is safe to return to the geographical area; and

(vii) determining if it is safe to re-enter and occupy the building after an evacuation;

(F) includes procedures for notifying the local EMC regarding an evacuation of the facility;
(G) includes procedures for notifying the DADS regional office for the area in which the facility is located by telephone immediately after a decision to evacuate is made; and

(H) includes procedures for notifying DADS regional office for the area in which the facility is located by telephone that residents have returned to the facility, within 48 hours of their return to the facility after an evacuation.

(6) Transportation. A facility's plan must contain a section for transportation that:

(A) provides for a sufficient number of facility-owned vehicles to evacuate all residents and for alternate transportation arrangements if the facility-owned vehicles are not available;

(B) includes procedures for safely transporting residents, facility staff involved in an evacuation and, if necessary, their family members, and the facility's and residents' pets during an evacuation; and

(C) includes procedures to safely transport and have timely access to oxygen, medications, records, food, water, equipment, and supplies needed during an evacuation.

(7) Health and Medical Needs. A facility's plan must contain a section for health and medical needs that:

(A) identifies all of the facility's residents with special medical needs; and

(B) ensures that the needs of those residents are met during an emergency situation.

(8) Resource Management. A facility's plan must contain a section for resource management that:

(A) includes procedures for maintaining accurate and detailed checklists of medications, records, food, water, equipment and supplies needed during an emergency situation;

(B) identifies facility staff who are assigned to locate and ensure the transportation of the items on the list described in subparagraph (A) of this paragraph during an emergency situation; and

(C) includes procedures to ensure that medications are secure and stored at the proper temperatures during an emergency situation.

(e) Training. A facility must:

(1) inform a facility staff member of the staff member's responsibilities under the plan within five working days after assuming job duties;
(2) re-train a facility staff member at least annually on the staff member's responsibilities under the plan and when the staff member's responsibilities under the plan change; and

(3) conduct unannounced, annual drills with facility staff for severe weather and other emergency situations identified by the facility as likely to occur, based on the results of the risk assessment required by subsection (c)(1) of this section.

(f) Fire Safety Plan. A facility's fire safety plan must:

(1) for a large facility, include the provisions described in the Operating Features section of the NFPA 101, [Life Safety Code, 2000 Edition,] Chapter 18 (for new healthcare occupancies) and Chapter 19 (for existing healthcare occupancies) concerning:

(A) use of alarms;

(B) transmission of alarm to fire department;

(C) emergency phone call to fire department;

(D) [A response to alarms;]

(E) [A isolation of fire;]

(F) [A evacuation of immediate area;]

(G) [A evacuation of smoke compartment;]

(H) [A preparation of floors and building for evacuation; and

(I) [A extinguishment of fire;

(2) for a small facility, include the provisions described in the Operating Features section of the NFPA 101, [Life Safety Code, 2000 Edition,] Chapter 32 (for new residential board and care occupancies) and Chapter 33 (for existing residential board and care occupancies) concerning:

(A) use of alarms;

(B) staff response in the event of a fire;

(C) fire protection procedures for a resident;

(D) actions to take if the primary escape route is blocked; and

(E) specification of an assembly point after a resident evacuates from the facility; and
include procedures for:

(A) rehearsing the fire safety plan at least once per quarter on each work shift;

(B) evacuating residents as follows:

   (i) for a small facility that has a prompt or slow evacuation capability, during every fire drill; or

   (ii) for a large facility or facility with an impractical evacuation capability, during at least one fire drill each year on each work shift;

(C) completing the form titled "DADS Fire Drill Report" or a form containing, at a minimum, the information on the DADS form; and

(D) providing residents and facility staff with experience in egressing through all exits and means of escape.

(g) Reporting Fires. A facility must report a fire at the facility to DADS as follows:

   (1) by calling 1-800-458-9858 within 24 hours after the fire; and

   (2) by submitting a completed DADS form titled "Fire Report for Long Term Care Facilities" within 15 days after the fire.
§90.61. Introduction, Application, and General Requirements for ICFs/IID.

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

(b) Purpose.

(1) The concept of requirements for fire safety with regard to the residents is based on evacuation capability as published in National Fire Protection Association (NFPA) in NFPA 101 [Life Safety Code]. These standards are written with the premise that the residents will be capable of self-evacuation without continuous staff assistance. Residents that are not normally capable of self-evacuation nor capable of negotiating stairs unassisted shall not be housed above or below the floor of exit discharge unless the facility meets the construction requirements of NFPA 101, Chapter 18, [titled “New Health Care Occupancies”] or Chapter 19, [titled “Existing Health Care Occupancies”] for large facilities, or the "impractical" requirements for small facilities as found in NFPA 101, Chapter 32, [titled “New Residential Board and Care Occupancies”] or Chapter 33, [titled “Existing Residential Board and Care Occupancies.”]

Examples of residents who may not be capable of self-evacuation are as follows:

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

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

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

(2) The method of determining the evacuation capability of residents under NFPA 101, Chapter 32 or 33, is by rating each resident and each staff member to determine an evacuation difficulty score (E-score). If the E-score is 1.5 or less, the evacuation capability of the facility is prompt, greater than 1.5 to five is slow, greater than five is impractical. The worksheets to be completed are located in NFPA 101A, Guide on Alternative Approaches to Life Safety, [2004 edition.] Chapter 6. Intermediate care facilities for persons with an intellectual disability (ICF/ID) with 16 beds or less must meet the evacuation requirement for their designated Chapter 32 or 33 rating. The ratings and their requirements follow:

(A) Impractical rating.
(i) The facility must have one fire drill per shift each calendar quarter (minimum of 12 drills per year).

(ii) The facility must actually evacuate clients once a year on each shift.

(iii) All facility staff, including relief and substitute staff, must participate in drills as soon as possible after beginning employment on their shift.

(iv) For initial certification, one client must be admitted.

(v) E-scores are not required for certification under this rating.

(B) Slow rating.

(i) The facility must have one fire drill per shift each calendar quarter (minimum of 12 drills per year).

(ii) The facility must actually evacuate clients during all drills.

(iii) Staff on each shift must participate in drills.

(iv) New, relief, and substitute staff must participate in a drill within ten days of employment on their assigned shift.

(v) For initial certification, two clients must be admitted.

(vi) E-scores must be calculated as soon as possible, but within ten calendar days of admission.

(vii) Initial E-scores are based on four drills, as follows:

   (I) two conducted during the daytime, and

   (II) two conducted during the nighttime, after the first 30 minutes and within the first three hours of sleep.

(viii) After the initial E-scores are obtained, a worksheet for rating residents must be completed for all newly admitted clients to obtain an E-score. The evacuation capability is calculated as described in clause (vii) of this subparagraph.

(ix) E-scores must be updated annually or sooner if significant changes occur in any client's evacuation capability. These updated scores are based on the group's overall performance during fire drills as they are conducted throughout the year. Scores do not have to be calculated in accordance with the drills required for newly admitted clients based on the requirements stated in clause (vii) of this subparagraph.
(C) Prompt rating.

(i) The facility must have one fire drill per shift each calendar quarter (minimum of 12 drills per year).

(ii) The facility must actually evacuate clients during all drills.

(iii) Staff on each shift must participate in drills.

(iv) New, relief, and substitute staff must participate in a drill within ten days of employment on their assigned shift.

(v) For initial certification, all six clients must be admitted.

(vi) E-scores must be calculated as soon as possible, but within ten calendar days of admission.

(vii) Initial E-scores are based on four drills, as follows:

(I) two conducted during the daytime, and

(II) two conducted during the nighttime, after the first 30 minutes and within the first three hours of sleep.

(viii) After the initial E-scores are obtained, a worksheet for rating residents must be completed for all newly admitted clients to obtain an E-score. The evacuation capability is calculated as described in clause (vii) of this subparagraph.

(ix) E-scores must be updated annually or sooner if significant changes occur that would affect a client's evacuation capability. These updated scores are based on the group's overall performance during fire drills as they are conducted throughout the year. Scores do not have to be calculated in accordance with the drills required for newly admitted clients based on the requirements stated in clause (vii) of this subparagraph.

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

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

[(1) Addition The addition of floor space.]

[(2) Large facilities Facilities with 17 or more resident beds.]
(3) Life safety features - Fire safety components required by NFPA 101 such as building construction, fire alarm systems, smoke detection systems, interior finishes, sizes and thicknesses of doors, exits, emergency electrical systems, sprinkler systems, etc.

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

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

(6) Small facilities - Facilities with 16 or fewer resident beds.

(c) [4d] Construction.

1. New construction is any construction work that began on or after July 5, 2016 [March 11, 2003]. The provisions of NFPA 101, Chapter 18 are applicable for large facilities, and Chapter 32 for small facilities.

2. An existing facility is one that was operating with a license as a facility for persons with an intellectual disability and related conditions before November 1, 2016 [September 11, 2003], and has not subsequently become unlicensed. The provisions of NFPA 101, Chapter 19 are applicable for large facilities, and Chapter 33 for small facilities.

3. Alterations or new installations of building services equipment, such as mechanical and electrical systems, generators, fire alarm, and detection systems, etc., must be accomplished in conformance with the requirements for new construction as required by NFPA 101.

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

5. Facilities that renovate must provide documentation for the flame spread rate of any new materials applied as an interior finish.

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

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

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

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

(d) [except] Applicable codes and standards. Except as provided in paragraph (9) of this subsection, a facility [Facilities] must comply with [meet the requirements of] NFPA 101, [2000 edition,] NFPA 99, and a Tentative Interim Amendment (TIA) issued by the NFPA for NFPA 99 or NFPA 101, including the TIAs listed in paragraphs (1) and (2) of this subsection. A facility must also comply with other NFPA publications referenced in this chapter and a TIA issued for a publication referenced in this chapter, unless [and any other codes and standards of NFPA listed in this section, except as may be] otherwise approved or required by DADS.

(1) The following TIAs have been issued for NFPA 101:

(A) TIA 12-1 to NFPA 101, issued August 11, 2011;

(B) TIA 12-2 to NFPA 101, issued October 30, 2012;

(C) TIA 12-3 to NFPA 101, issued October 22, 2013; and

(D) TIA 12-4 to NFPA 101, issued October 22, 2013.

(2) The following TIAs have been issued for NFPA 99:

(A) TIA 12-2 to NFPA 99, issued August 11, 2011;

(B) TIA 12-3 to NFPA 99, issued August 9, 2012;

(C) TIA 12-4 to NFPA 99, issued March 7, 2013;

(D) TIA 12-5 to NFPA 99, issued August 1, 2013; and

(E) TIA 12-6 to NFPA 99, issued March 3, 2014.

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

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

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

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

(7) The facility must meet all applicable provisions and requirements concerning accessibility for individuals with disabilities in the following laws and regulations: the Americans with Disabilities Act of 1990 ([Public Law 101–336; Title 42, United States Code, Chapter 126]; Title 28, Code of Federal Regulations, Part 35; Government Code, Chapter 469, Elimination of Architectural Barriers [Texas Civil Statutes, Article 9102]; and Title 16, Texas Administrative Code, Chapter 68. Plans for new construction, substantial renovations, modifications, and alterations must be submitted to the Texas Department of Licensing and Regulation (Attention: Elimination of Architectural Barriers Program) for accessibility approval under Chapter 469 [Article 9102].

(8) A facility with a boiler must meet all applicable provisions and requirements of [All boilers not exempted by the] Texas Health and Safety Code, Chapter 755 [Annotated §755.022 shall be inspected and certified for operation by the Texas Department of Licensing and Regulation].

(9) A facility that is required to comply with NFPA 101, Chapter 33, must be in compliance with Chapter 33.2.3.5.7.1 or 33.2.3.5.7.2 by July 5, 2019.

(c) General requirements.

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

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

(3) There must be at least one telephone (other than a pay phone) in the facility, accessible to residents for use in making calls to summon help in case of emergency.

(4) The facility must have:

(A) floors that are free of irregularities and are substantially level (floor areas may be at different elevations with connecting stairs or ramps);
(B) floors that have a resilient, nonabrasive, and slip-resistant surface;

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

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

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

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

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

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

(9) Wastebaskets must be of noncombustible material.

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

(11) The IES recommendations must be followed to achieve proper illumination characteristics and lighting levels throughout the facility. Minimum illumination must be 10 foot candles in resident rooms during the day and 20 foot candles in corridors, staff stations, dining rooms, lobbies, toilets, bathing facilities, laundries, stairways, and elevators during the day. Illumination requirements for these areas apply to lighting throughout the space and should be measured at approximately 30 inches above the floor anywhere in the room. Minimum illumination for medication preparation or storage areas, kitchens, and staff station desks must be 50 foot candles during the day. Illumination requirements for these areas apply to the task performed and should be measured on the tasks.

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

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

(a) The facility must have a program to inspect, test, and maintain the fire alarm system and must execute the program at least once every three months for large facilities and at least once every six months for small facilities.

(1) The facility must contract with a company that is registered by the State Fire Marshal's Office to execute the program.

(2) The person who performs a service under the contract must be licensed by the State Fire Marshal's Office to perform the service and must complete, sign, and date an inspection form similar to the inspection and testing form in NFPA [National Fire Protection Association (NFPA)] 72 for a service provided under the contract.

(3) The facility must ensure that fire alarm system components that require visual inspection are visually inspected in accordance with NFPA 72.

(4) The facility must ensure that fire alarm system components that require testing are tested in accordance with NFPA 72.

(5) The facility must ensure that fire alarm system components that require maintenance are maintained in accordance with NFPA 72.

(6) The facility must ensure that smoke dampers are inspected and tested in accordance with NFPA 101 [2000 Edition].

(7) The facility must maintain onsite documentation of compliance with this subsection.

(b) The facility must have a program to inspect, test, and maintain the sprinkler system and must execute the program at least once every three months for large facilities and at least once every six months for small facilities.

(1) The facility must contract with a company that is registered by the State Fire Marshal's Office to execute the program.

(2) The person who performs a service under the contract must be licensed by the State Fire Marshal's Office to perform the service and must complete, sign, and date an inspection form similar to the inspection and testing form in NFPA 25 for a service provided under the contract.

(3) The facility must ensure that sprinkler system components that require visual inspection are visually inspected in accordance with NFPA 13, NFPA 13D, or NFPA 13R and in accordance with NFPA 25.
(4) The facility must ensure that sprinkler system components that require testing are tested in accordance with NFPA 13, NFPA 13D, or NFPA 13R and in accordance with NFPA 25.

(5) The facility must ensure that sprinkler system components that require maintenance are maintained in accordance with NFPA 13, NFPA 13D, or NFPA 13R and in accordance with NFPA 25.

(6) The facility must ensure that individual sprinkler heads are inspected and maintained in accordance with NFPA 13, NFPA 13D, or NFPA 13R and in accordance with NFPA 25.

(7) The facility must maintain onsite documentation of compliance with this subsection.

(c) The facility must formulate, adopt, and enforce smoking policies.

(1) The facility's policies must comply with all applicable codes, regulations, and standards, including local ordinances.

(2) The facility must inform residents, staff, visitors, and other affected parties of the facility’s smoking policies.

(3) The facility must prohibit smoking in any room, ward, or compartment where flammable liquids, combustible gas, or oxygen is used or stored and in any other hazardous location. The facility must post a "No Smoking" sign in these areas.

(4) The facility must provide ashtrays of noncombustible material and safe design in all areas where smoking is permitted.

(5) The facility must provide a metal container with a self-closing cover device into which ashtrays can be emptied in all areas where smoking is permitted.