

Department of Health and Human Services
Office of Inspector General



Office of Audit Services

March 2025 | A-06-23-05000

**Texas Did Not Fully Comply With
Federal Waiver and State Health,
Safety, and Administrative
Requirements At All 20 Adult Day
Activity and Health Service Facilities
Audited**

REPORT HIGHLIGHTS



March 2025 | A-06-23-05000

Texas Did Not Fully Comply With Federal Waiver and State Health, Safety, and Administrative Requirements at All 20 Adult Day Activity and Health Service Facilities Audited

Why OIG Did This Audit

- The OIG has conducted health and safety audits of adult day care and foster care homes and regulated childcare facilities.
- Previous audits identified multiple health and safety issues that put children and people with special health care needs at risk.
- This audit examines whether the Texas Health and Human Services Commission (Texas) complied with Federal waiver and State requirements in overseeing Day Activity and Health Services (DAHS) facilities that serve people with special health care needs who receive services through the program.

What OIG Found

- Texas did not fully comply with Federal waiver and State requirements in overseeing providers that serve people with special health care needs receiving DAHS services through the program.
- Of the 20 providers that we audited, 19 did not comply with 1 or more health and safety requirements, and 19 did not comply with 1 or more administrative requirements.
- In total, we found 253 instances of provider noncompliance with health, safety, and administrative requirements at the 20 providers that we audited.

What OIG Recommends

We recommend that Texas:

1. ensure that providers correct the 253 instances of provider noncompliance identified in this report;
2. improve its oversight and monitoring of providers; and
3. work with providers to improve their facilities, staffing, and training.

Texas concurred with all our recommendations and detailed steps it has taken and plans to take in response to our recommendations.

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INTRODUCTION

WHY WE DID THIS AUDIT

The Office of Inspector General (OIG) previously conducted health and safety audits of adult day care facilities. (Appendix B lists related OIG reports.) Those audits identified multiple health and safety issues that put people with special health care needs at risk. We wanted to determine whether people with special health care needs participating in Texas' Home and Community-Based (HCB) waiver program (the program) were at risk.

OBJECTIVE

Our objective was to determine whether the Texas Health and Human Services Commission (State agency) complied with Federal waiver and State requirements in overseeing Day Activity and Health Services (DAHS) facilities that serve people with special health care needs who receive services through the program.

BACKGROUND

The Medicaid program provides medical assistance to low-income individuals and individuals with disabilities. The Federal and State Governments jointly fund and administer the Medicaid program. At the Federal level, the Centers for Medicare & Medicaid Services (CMS) administers the Medicaid program. In Texas, the State agency administers its Medicaid program in accordance with a CMS-approved State plan. The State plan establishes which services the Medicaid program will cover.

Section 1915(c) of the Social Security Act authorizes the Secretary of Health and Human Services to waive certain Medicaid statutory requirements so that a State may offer HCB services to a State-specified target group of Medicaid beneficiaries who need a level of institutional care that is provided under the Medicaid State plan.

Before the enactment of section 1915(c), the Medicaid program provided limited coverage for long-term services and support in noninstitutional settings but offered full or partial coverage of institutional care. Section 1915(c) was enacted to enable States to address the needs of individuals who would otherwise receive costly institutional care by furnishing cost-effective services that allow them to remain in their households and communities.

Federal regulations for section 1915(c) waivers require States to provide assurances that they will implement safeguards, including adequate standards for provider participation, to protect the health and welfare of individuals served under the waiver and to assure financial accountability for funds expended for those services (42 CFR § 441.302).

As part of the waiver, the State agency must also provide assurances that State requirements are met for services or for individuals furnishing services that are provided under the waiver (42 CFR § 441.302(a)(2)).

Texas Home and Community-Based Services Waiver Program

The State agency administers and operates Home and Community-Based Services (HCS) under a 1915(c) waiver to its Medicaid State plan. The program allows Texas to use Medicaid funds for community-based services for people with disabilities or special health care needs to help them live in the community. These services are intended to supplement rather than replace services received from other programs or from natural supports, including families, neighbors, or community organizations. The State agency contracts with public and private entities to provide HCS services. The State agency regularly monitors these providers to ensure quality of services. When enrolling in the HCS program, applicants choose their provider from a list of available providers in their area.

Texas Day Activity and Health Services

DAHS facilities provide services in the DAHS program on a daily and regular basis and include health, social, and related support services.¹ These services enable persons with disabilities who have medical or functional impairments and elderly persons to maintain maximum independence and to prevent premature or inappropriate institutionalization.²

The State Agency is responsible for providing adequately regulated supervision for elderly persons and persons with disabilities while enabling them to remain in a family environment and affording the family a measure of normality in its daily activities.³

The State agency must ensure the health and welfare of individuals through licensing standards in State statutes and regulations and the requirements in its application for waiver services. DAHS facilities (facilities) providing program services (providers) must meet the health care needs of program participants and maintain compliance with State requirements, and the State agency must comply with Federal waiver and State requirements for overseeing and monitoring the health and welfare of program participants.⁴

HOW WE CONDUCTED THIS AUDIT

Of the 422 providers in Texas during calendar year 2022, we selected 20 for audit. We selected these providers based on their geographic location and number of participants. To evaluate the State agency's oversight of facilities, we conducted unannounced site visits at the 20 selected

¹ Human Resources Code Title 6, Services For The Elderly Chapter 103 Day Activity And Health Services, Section 103.003, Definitions, (1-a) and (2).

² Human Resources Code Title 6, Services For The Elderly Chapter 103 Day Activity And Health Services, Section 103.001, Purpose.

³ Human Resources Code Title 6, Services For The Elderly Chapter 103 Day Activity And Health Services, Section 103.001, Purpose.

⁴ 42 CFR § 441.302(a)(1-5).

facilities from August 21 through 24, 2023, and we discussed with State officials how the State agency monitors its facilities.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix A contains the details of our audit scope and methodology. Appendix C contains Federal regulations and specific State requirements related to health and safety and administration.

FINDINGS

The State agency did not fully comply with Federal waiver and State requirements in overseeing DAHS facilities that serve people with special health care needs receiving DAHS services through the program. Of the 20 providers that we audited, 19 did not comply with one or more health and safety requirements, and 19 did not comply with 1 or more administrative requirements.⁵ We found 253 instances of provider noncompliance with health, safety, and administrative requirements. Providers did not always meet the needs of program participants or maintain compliance with State requirements, and the State agency's inspections of facilities were insufficient to ensure a continuously safe and nonhazardous environment. As a result, people with special health care needs were at risk in numerous instances. (See Appendix D.)

NINETEEN PROVIDERS DID NOT FULLY COMPLY WITH ONE OR MORE HEALTH AND SAFETY REQUIREMENTS

The State agency must inspect providers to ensure compliance with applicable State requirements, including those regarding health and safety.⁶ Providers must meet the health care needs of program participants by, among other things, ensuring the health and welfare of participants.⁷ For example, providers must ensure that the facility is constructed to meet safety and accessibility requirements.^{8, 9} In addition, the facility must be structurally maintained in good condition, cleaned, and free of clutter.¹⁰

⁵ Eighteen providers did not comply with both health and safety and administrative requirements.

⁶ Texas Human Resources Code - Title 6 - section 103.008 (a)(1) & (2).

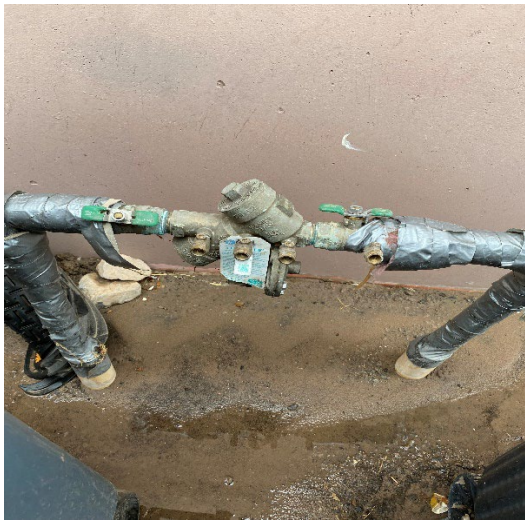
⁷ Social Security Act, section 1915(c)(2)(A).

⁸ Texas Administrative Code, Title, 26, part 1, Chapter 559, Subchapter C, section 559.42, (a)(1) and (3).

⁹ References to the Texas Administrative Code (TAC) are to those provisions in effect as of the dates of our site visits Aug. 21-24, 2023.

¹⁰ Texas Administrative Code, Title 26, part 1, Chapter 559, Subchapter C, section 559.43, (a)(7).

Of the 20 providers we audited, 19 did not comply with 1 or more State health and safety requirements. Specifically, we found 96 instances of provider noncompliance with State health and safety requirements. Among other things, we found outside areas that were either unsafe, unsecure, or unsuitable in eight facilities. We also found insufficient building maintenance in five facilities, a lack of non-slip bottoms for bathing amenities in eight facilities, insufficient rest areas in five facilities, and water stains on the ceiling in two facilities. In addition, we noted unsafe extension cord usage in one facility, an inappropriate smoke detection system in two facilities, and numerous fly tapes hanging from the ceiling in one facility.



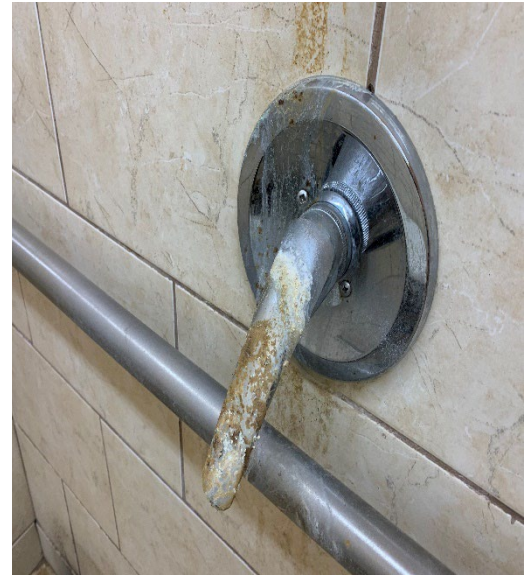
Photograph 1: Insufficient Building Maintenance.



Photograph 2: Clutter.



**Photograph 3: Unsafe Conditions:
Propane tank next to the smoking
area.**



Photograph 4: Unclean Conditions.



**Photograph 5: No Non-slip
flooring in the shower.**



**Photograph 6: Unsecure
smoking area.**

EIGHTEEN PROVIDERS DID NOT FULLY COMPLY WITH ONE OR MORE ADMINISTRATIVE REQUIREMENTS

The State agency must inspect providers to ensure that they comply with applicable State requirements, including those regarding administration.¹¹ Providers must meet the needs of the participants by having enough appropriately qualified staff.¹² For example, before employment, a provider must ensure that all employees are subjected to a criminal background check (or professional license verification) and a tuberculosis screening.¹³

Of the 20 providers we audited, 19 did not fully comply with 1 or more State administrative requirements. We found 157 instances of provider noncompliance with State administrative requirements. Among other things, we found that seven providers did not have licensed or certified medical personnel on staff, or they were not present during primary hours of operation, as required, and six did not receive the appropriate monthly dietician consultation.

We also found that eight providers did not post the most recent fire inspection report, and five did not have a complete Emergency and Preparedness Response Plan. Additionally, five providers did not ensure that staff and participants were free from tuberculosis before employment. Also, we found training issues at eight providers. For example, some staff did not receive the required 3 hours of ongoing training quarterly. We also found that five providers had not conducted criminal background checks on some staff prior to employment, and four did not document in the client record whether the client had an advance directive.

CAUSES OF NONCOMPLIANCE WITH FEDERAL WAIVER AND STATE REQUIREMENTS

The State agency did not fully comply with Federal waiver and State requirements for overseeing and monitoring the health and welfare of Medicaid beneficiaries receiving DAHS services because its inspections of facilities were insufficient to ensure a continuously safe and nonhazardous environment.

From September 11, 2019, through September 7, 2023, the State agency inspected each of the 20 providers that we audited. For 5 of these providers, the State agency's most recent inspection identified no compliance violations; however, 15 providers did have compliance citations, and 7 of those led to investigations. Additionally, inspections were not always sufficient enough to identify non-compliance with staff and participant record requirements. For example, inspections failed to identify that some providers did not perform criminal background checks and tuberculin skin tests. Inspections also failed to identify that some providers did not have licensed medical personnel on staff or that one provider used a driver without a valid driver's license.

¹¹ Texas Human Resources Code - Title 6 - section 103.008 (a)(1) & (2).

¹² Texas Administrative Code, Title 26, part 1, Chapter 559, Subchapter C, section 559.62, (a), (1-5).

¹³ Texas Administrative Code, Title 26, part 1, Chapter 559, Subchapter H, section 559.225, (a) through (b); 559 Subchapter D, sections 559.61 (b)(2-3) & (b)(C)(3)(ii) and 559.62 (c)(1); and Subchapter D, section 559.63.

Providers did not always meet the needs of program participants or maintain compliance with State requirements, and the State agency's oversight and monitoring did not detect these instances of noncompliance. As a result, people with special health care needs were at risk in numerous instances.

RECOMMENDATIONS

We recommend that the Texas Department of Health and Human Services:

- ensure that providers correct the 253 instances of provider noncompliance identified in this report;
- improve its oversight and monitoring of providers; and
- work with providers to improve their facilities, staffing, and training.

STATE AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In written comments on our draft report, the State agency concurred with all of our recommendations. In addition, it detailed steps it has taken and plans to take in response to our recommendations.

For the first recommendation, the State agency concurred and reports significant progress in addressing our findings. Of the 20 DAHS providers initially surveyed, 16 have undergone re-licensure surveys. Half of those (eight) are now fully compliant. The remaining eight providers were issued citations for noncompliance and seven are now compliant, while one is pending a followup survey. The four providers not yet re-surveyed will be done by May 30, 2025.

For the second recommendation, the State agency concurred with the recommendation and stated that it is experiencing a shortage of surveyors, impacting timely re-licensure surveys for DAHS providers (58 of 366 haven't been surveyed in 2 years). To address this, the State agency increased surveyor numbers in FY 2024 and requested funding for additional surveyors from the Texas Legislature.

Regarding the final recommendation, the State agency concurred and stated that it offers joint computer-based training for surveyors and long-term care providers (including DAHS) and that it will review the DAHS training curriculum to determine whether additional training is needed. In addition, the State agency noted that managed care organizations (MCOs) participating in the STAR+PLUS program are responsible for ensuring their contracted DAHS providers and staff complete all required training within 30 days of being able to serve members and must provide ongoing training. However, the State agency must approve all MCO training materials related to Medicaid. The State agency did not address the part of the recommendation to work with providers to improve staffing and facilities.

The State agency's comments are included in their entirety as Appendix E.

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

Of the 422 providers in Texas during calendar year 2022, we selected 20 for audit. We selected these providers based on their geographic location and number of participants.

To evaluate the State agency's oversight of facilities, we conducted unannounced site visits at the 20 selected facilities from August 21 through 24, 2023. We conducted fieldwork in the Texas cities of Dallas, Garland, Desoto, Houston, El Paso, Socorro, San Antonio, Brownsville, Harlingen, and Edinburg.

During our audit, we did not review the overall internal control structure of the State agency or the Medicaid program. Rather, we reviewed only the internal controls that pertained directly to our objective.

METHODOLOGY

To accomplish our objective, we:

- reviewed applicable Federal laws, State statutes, and regulations for facilities;
- discussed with State officials how the State agency monitors its facilities;
- developed a health, safety, and administrative requirement checklist, from State requirements, as a guide for conducting site visits;
- conducted unannounced site visits at the 20 providers selected for audit;
- evaluated provider compliance using the health, safety, and administrative requirement checklist; and
- discussed the results of our audit with State agency officials.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

APPENDIX B: RELATED OFFICE OF INSPECTOR GENERAL REPORTS

Report Title	Report Number	Date Issued
<i>Florida Did Not Comply With Federal Waiver and State Requirements at 18-20 Adult Day Care Facilities Reviewed</i>	A-04-23-00135	12/26/2024
<i>Washington State's Oversight Could Better Ensure That Adult Family Homes Comply With Health and Safety and Administrative Requirements</i>	A-09-23-02002	11/13/2024
<i>Georgia Did Not Comply With Federal Waiver and State Requirements at All 20 Adult Day Health Care Facilities Reviewed</i>	A-04-22-00134	3/14/2023
<i>New York's Oversight of Medicaid Managed Care Organizations Did Not Ensure Providers Complied With Health and Safety Requirements at 18 of 20 Adult Day Care Facilities Reviewed</i>	A-02-18-01027	3/26/2020
<i>California Needs To Improve Oversight of Community-Based Adult Services Providers' Compliance With Health and Safety and Administrative Requirements</i>	A-09-18-02002	9/30/2019
<i>Kentucky Did Not Comply With Federal Waiver and State Requirements at 14 of 20 Adult Day Health Care Facilities Reviewed</i>	A-04-18-00123	7/9/2019
<i>Four States Did Not Comply With Federal Waiver and State Requirements in Overseeing Adult Day Care Centers and Foster Care Homes</i>	A-05-19-00005	5/16/2019
<i>Wisconsin Did Not Comply With Federal Waiver and State Requirements at All 20 Adult Day Service Centers Reviewed</i>	A-05-17-00030	10/15/2018
<i>Mississippi Did Not Comply With Federal Waiver and State Requirements at All 20 Adult Day Care Facilities Reviewed</i>	A-04-17-00116	8/20/2018
<i>Illinois Did Not Comply With Federal Waiver and State Requirements at 18 of 20 Adult Day Service Centers Reviewed</i>	A-05-17-00028	7/24/2018
<i>Minnesota Did Not Comply With Federal Waiver and State Requirements for All 20 Adult Day Care Centers Reviewed</i>	A-05-17-00009	5/30/2018
<i>Minnesota Did Not Comply With Federal Waiver and State Requirements for 18 of 20 Family Adult Foster Care Homes Reviewed</i>	A-05-16-00044	10/31/2017

APPENDIX C: FEDERAL REGULATIONS AND STATE REQUIREMENTS

FEDERAL REGULATIONS

Section 1915(c) of the Social Security Act authorizes the Secretary of Health and Human Services to waive certain Medicaid statutory requirements so that a State may offer HCB services to a State-specified target group of Medicaid beneficiaries who need a level of institutional care that is provided under the Medicaid State plan.

Prior to the enactment of section 1915(c), the Medicaid program provided limited coverage for long-term services and support in noninstitutional settings but offered full or partial coverage of institutional care. Section 1915(c) was enacted to enable States to address the needs of individuals who would otherwise receive costly institutional care by furnishing cost-effective services while the individuals remain in their households and communities.

Federal regulations for section 1915(c) waivers require States to provide assurance that necessary safeguards will be taken, including adequate standards for provider participation, to protect the health and welfare of individuals serviced under the waiver and to assure financial accountability for funds expended for those services.

As part of the waiver, the State agency must also provide assurances that State requirements are met for services or for individuals furnishing services that are provided under the waiver. (42 CFR § 441.302(a)(2); 1915(c) waiver, Appendix C).

STATE REQUIREMENTS

The State identifies provider licensure requirements for the operation of DAHS programs and the services to be provided by DAHS programs in its *Human Resource Code*, Title 6, Chapter 103. Additionally, the State identifies coverage provisions and requirements for DAHS facilities in its *Administrative Code*, Title 26, part 1, Chapter 559.¹⁴

TAC § 559.42(b)(2)(D)(i-vii)

(b) Life Safety Code, NFPA 101, 2000 edition.

(2) Interpretations of the Life Safety Code, NFPA 101, 2000 edition, chapters 16 and 17, are as follows:

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

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

¹⁴ References to the Texas Administrative Code (TAC) are to those provisions in effect as of the dates of our site visits August 21-24, 2023

- (ii) 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 72 for a service provided under the contract.
- (iii) The facility must ensure fire alarm system components that require visual inspection are visually inspected in accordance with NFPA 72.
- (iv) The facility must ensure fire alarm system components that require testing are tested in accordance with the NFPA 72.
- (v) The facility must ensure fire alarm system components that require maintenance are maintained in accordance with NFPA 72.
- (vi) The facility must ensure smoke dampers are inspected and tested in accordance with NFPA 101, 2000 edition.
- (vii) The facility must maintain onsite documentation of compliance with this subsection and have available for examination by DADS, operation and maintenance manuals, and a written sequence of operation.

TAC § 559.42(b)(2)(E)(vi)

- (b) Life Safety Code, NFPA 101, 2000 edition.
- (2) Interpretations of the Life Safety Code, NFPA 101, 2000 edition, chapters 16 and 17, are as follows:
- (E) If the facility has a complete NFPA 13 system, the facility must have a program to inspect, test, and maintain the sprinkler system and must execute the program at least once every six months.
- (vi) The facility must ensure that individual sprinkler heads are inspected and maintained in accordance with NFPA 13 and 25.

TAC § 559.42(b)(2)(F)(ii-iii)

- (F) All facilities must follow the Life Safety Code, NFPA 101, 2000 edition, chapters 16 or 17, including the following:
- (ii) Each floor occupied by clients must have access to two remote exits in accordance with Chapter 7, Means of Egress. (I) Doors in the means of egress must be equipped with hardware that opens with a single motion. (II) Doors must swing in the direction of egress for occupant loads greater than 50 occupants.
- (iii) Every room or space normally subject to client occupancy, other than bathrooms or any room with attended individual clients, must have at least one outside window for emergency rescue or ventilation. Such window must be able to be opened from the inside without the use of tools and provide a clear opening of not less than 20 inches in width, 24 inches in height, and 5.7 sq. ft. (821 sq. in.) in area (minimum width of 20 inches by 41.2 inches high and minimum height of 24 inches by 34.2 inches wide). The bottom of the opening must be not more than 44 inches (112 cm.) above the floor. In rooms located greater than three stories above grade, the openable clear height, width, and

area of the window may be modified to the dimensions necessary for ventilation. Exceptions are:

- (I) buildings protected throughout by an approved, supervised automatic sprinkler system in accordance with § 9.7;
- (II) rooms or spaces with a door leading directly to the outside of the building; or
- (III) in existing facilities, rooms smaller than 250 square feet.

TAC § 559.42(b)(2)(F)(vi)

All facilities must follow the Life Safety Code, NFPA 101, 2000 edition, chapters 16 or 17, including the following: (vi) A smoke detection system must be installed in accordance with §9.6 with placement of detectors in each story in front of the doors to the stairways and in the corridors of all floors occupied by the day-care occupancy. Detectors also must be installed in lounges, recreation areas, dining areas, and sleeping rooms in the center.

TAC § 559.42(b)(6)

(6) Adult day care facilities must be of recognized permanent type construction as distinguished from movable buildings or construction. Buildings must be structurally sound with regard to actual or expected dead, live, and wind loads. DADS may require submission of evidence to this effect. Foundations must be permanent, structurally sound for local soil conditions, and in good repair. A letter from a registered professional engineer may be required as validation of a permanent and structurally sound foundation.

TAC § 559.42(b)(7)

(7) The walking surface in a facility and at the exit discharge must be consistent, nominally level, and without abrupt changes in elevation, trip hazards, or gaps. Floor surfaces may be on different elevations if connected with ramps or steps in accordance with the Life Safety Code, NFPA 101, 2000 edition, means of egress chapter.

TAC § 559.42(c)(1)(A)

(c) Personal safety.

(1) Fire safety.

(A) The facility must maintain an onsite copy of the annual fire marshal inspection report by the local fire marshal.

TAC § 559.42(c)(1)(B)

(B) Storage items must be neatly arranged and placed in the facility to minimize fire hazard. Gasoline, volatile materials, paint, and similar products must not be stored in the building housing clients unless approved by the local fire marshal. Accumulations of extraneous material and refuse are not permitted in the facility.

TAC § 559.42(c)(1)(C)

(C) The building must be kept in good repair.

TAC § 559.42(c)(1)(D)

(D) The facility's electrical, mechanical, heating, and cooling systems must be maintained in a safe manner and in working order. DADS may require the facility sponsor or licensee to submit evidence to this effect, consisting of a report from the fire marshal or city or county building official having jurisdiction or a report from a registered professional engineer.

TAC § 559.42(c)(1)(E)

(E) Electrical appliances, devices, and lamps used in the facility must be used in a manner that prevents overloaded circuits.

TAC § 559.42(c)(1)(G)

(G) Smoking regulations must be established and enforced by the facility and conspicuously posted in the facility.

TAC § 559.42(c)(1)(G)(i)

(i) All smoking must be supervised.

TAC § 559.42(c)(1)(G)(ii)

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

TAC § 559.42(c)(1)(G)(iii)

(iii) Ashtrays of noncombustible material and safe design must be provided in all areas where smoking is permitted.

TAC § 559.42(c)(1)(G)(iv)

(iv) Metal containers of substantial gauge or any UL- or FM-approved containers with self-closing cover devices into which ashtrays can be emptied must be provided in all areas where smoking is permitted.

TAC § 559.42(c)(1)(H)

(H) The facility must have an emergency fire lane for access of fire apparatus if required by local authorities.

TAC § 559.42(c)(1)(L)

(L) Portable fire extinguishers of appropriate type and placed in the appropriate location must be provided by the facility in accordance with NFPA 10.

TAC § 559.42(c)(1)(M)(i)

(M) The facility must inspect and maintain portable fire extinguishers.

(i) Portable fire extinguishers must be visually inspected monthly by facility staff. Facility staff conducting the monthly visual inspection must assure portable fire extinguishers are protected from damage, kept on their mounting brackets or in cabinets at all times, and kept in proper condition and working order.

TAC § 559.42(c)(1)(M)(ii)

(ii) Portable fire extinguishers must be inspected and maintained at least once every 12 months in accordance with NFPA 10 by a person licensed by the State Fire Marshal's office, to include hydrostatic testing as recommended by the manufacturer.

TAC § 559.42(c)(1)(M)(iii)

(iii) A record of all fire extinguisher inspections and maintenance performed must be kept onsite by the facility.

TAC § 559.42(c)(2)(A)

(2) General requirements.

(A) All exterior site conditions must be designed, constructed, and maintained in the interest of clients' safety. Newly constructed ramps must not exceed 1:12 slope. Ramps, walks, and steps must be of slip-resistive texture and be smooth and uniform, without irregularities. Guard rails, fences, and hand rails must be provided as required.

TAC § 559.42(c)(2)(B)

(B) All stairways must have substantial hand rails properly secured.

TAC § 559.42(c)(2)(C)

(C) Tubs or showers for client use must have non-slip bottoms or floor surfaces, either built in or applied to the surface.

TAC § 559.42(c)(2)(D)

(D) Elevators for client use must be in safe operating condition.

TAC § 559.42(c)(2)(F)

(F) There must be no occupancies or activities adversely affecting the safety of the clients in the buildings or on the premises of the facility.

TAC § 559.42(c)(2)(G)

(G) Licensure capacity will be calculated at 40 square feet per client. This space may not include the kitchen/food service area, rest rooms, bath areas, office, corridors, stairways, storage areas, and outdoor space. Facilities licensed before October 1, 2000, will be allowed to meet the requirements in effect before

October 1, 2000, of 35/50 square feet for ambulatory and semi-ambulatory clients. If a facility licensed before October 1, 2000, chooses to increase its capacity, changes ownership, or relocates, the facility will be required to meet the current standards for usable space, outdoor area, and rooms for privacy.

TAC § 559.42(c)(2)(H)

(H) An office area must be provided in a central location to record and maintain files for each client.

TAC § 559.42(c)(2)(I)

(I) An area for rest, other than the treatment and/or exam room, must be provided with a sufficient number of reclining lounge chairs or beds to accommodate the needs of clients.

TAC § 559.42(c)(2)(J)

(J) The facility must provide a separate room or rooms with beds and with walls from floor to ceiling for those clients who prefer privacy. Facilities licensed on or after May 1, 1999, must ensure that the room(s) with beds provide space for a minimum 5% of the licensed capacity. The usable space in the room(s) must provide not less than 80 square feet per bed for a one-bed room and not less than 60 square feet per bed for multiple-bed rooms. A bedroom shall be not less than eight feet in its smallest dimension, unless otherwise approved by DADS.

TAC § 559.42(c)(2)(K)

(K) The facility must have at least one room available as a treatment or examination room for use by the nursing staff or the client's physician. The client may not be treated or examined in an area other than the treatment room.

TAC § 559.42(c)(2)(L)

(L) The facility must have a safe, secure, and suitable outdoor recreation or relaxation area for clients. This area must be connected to, be a part of, be controlled by, and be directly accessible from the facility. This area must be enclosed by a wall or a fence or located in a courtyard and supervised by staff to prevent wandering and large enough to conduct outdoor activities. A chain-link fence must provide protection on top to prevent injury from wire points. This area must be suitably furnished. The required outdoor space for facilities licensed on or after May 1, 1999 is: (i) 400 square feet for facilities up to 59 clients; (ii) 600 square feet for facilities up to 99 clients; and (iii) 800 square feet for facilities with 100 or more clients.

TAC § 559.43(a)(5)

(a) General.

(5) The facility must make every effort possible to guard against insects, rodents, rainwater, and other conditions adversely affecting a sanitary environment or the well-being of the client.

TAC § 559.43(a)(6)

(6) A pest control program must be provided by qualified facility staff or by contract with a licensed pest control company. The least toxic and least flammable effective chemicals must be used. Documented evidence of routine efforts to remove rodents and insects must be maintained.

TAC § 559.43(a)(7)

(7) The facility must be kept free of offensive odors, accumulations of dirt, rubbish, dust, and hazards. Floors must be maintained in good condition and cleaned regularly; walls and ceilings must be structurally maintained, repaired, and repainted or cleaned as needed. Storage areas, attics, and cellars must be free of refuse and extraneous materials.

TAC § 559.43(a)(8)

(8) There must be complete, separate, and adequate rest room facilities for men and women. Toilets must be provided as necessary to meet the needs of the clients; however, there must be not less than one toilet and one lavatory for every 15 clients or fraction thereof. A urinal may be substituted as the third required toilet in the men's bathroom. Multiple toilets must be compartmented. All toilets must be equipped with grab bars. Lavatories must be provided with hot and cold water, soap, and individual towels. A minimum of one bathing unit must be provided. Facilities licensed on or after May 1, 1999, must provide a minimum of one bathing unit that does not interfere with the use of the restroom by other clients. Each tub or shower must be in an individual room or enclosure that provides space for the private use of the bathing fixture, for drying and dressing, and for the client and attendant.

TAC § 559.43(a)(9)

(9) All bathrooms, toilet rooms, and other odor-producing rooms or areas for soiled and unsanitary operations must be ventilated to the exterior for odor control; the use of windows is not permissible.

TAC § 559.43(a)(10)

(10) In kitchens and laundries, there must be procedures that prevent cross contamination between clean and soiled utensils and clean and soiled linens.

TAC § 559.43(b)(2)

(b) Kitchen.

(2) Facilities licensed after May 1, 1999, must provide three compartment sinks. A three-compartment sink must be used if washing, rinsing, and

sanitizing utensils and equipment is done manually. Sinks must be large enough to permit the complete immersion of utensils and equipment and each compartment sink must be supplied with hot and cold potable water. A two-compartment sink will be acceptable where only single-service tableware is provided.

TAC § 559.43(b)(3)

(3) Food preparation kitchens must have separate hand-washing fixtures including hot and cold water, soap, and individual towels, preferably paper towels, in accordance with DSHS rules in 25 TAC §§ 229.161 - 229.171 and §§ 229.173 - 229.175.

TAC § 559.43(b)(4)

(4) Where kitchen provisions consist of serving kitchens only, and cooking equipment is used only to warm food, prepare hot drinks, or provide similar food service, the kitchen is not required to have separate hand-washing fixtures.

TAC § 559.61(b)(3)(C)(ii)

(b) A facility must:

(3) before offering employment, search the employee misconduct registry (EMR) established under § 253.007, Health and Safety Code, and the DADS nurse aide registry (NAR) to determine if an individual is designated in either registry as unemployable. Both registries can be accessed on the DADS Internet website.

(C) In addition to the initial search of the EMR and NAR, a facility must:

(ii) keep a copy of the results of the initial and annual searches of the NAR and EMR in the employee's personnel file;

TAC § 559.61(c)(1)(A-C)

(c) A facility must maintain policies and procedures regarding the following rules with respect to all adult clients receiving services provided by the facility:

(1) The facility must provide a client with the following written information:

(A) the client's rights under Texas law (whether statutory or as recognized by the courts of the state) to make decisions concerning medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate advance directives;

(B) the facility's policies respecting the implementation of these rights; and;

(C) a written list of the client's rights, as outlined under the Human Resource Code §102.004, Rights of the Elderly.

TAC § 559.61(c)(2)

(2) The facility must document in the client's record whether the client has

executed an advance directive.

TAC § 559.61(c)(6)

(6) The facility must provide the attending physician with any information relating to a known existing Directive to Physicians or Living Will or Durable Power of Attorney for Health Care, and assist with coordinating physicians' orders with any directive.

TAC § 559.61(d)(1-2)

(d) A facility must:

- (1) contact DADS at 1-800-458-9858 on learning of alleged abuse or neglect of a client and send a written investigation report to DADS no later than the fifth working day after the oral report;
- (2) maintain incident reports;

TAC § 559.61(e)(1)

(e) A facility must prominently and conspicuously post for display in a public area of the facility that is readily available to clients, employees, and visitors:

- (1) the license issued under this chapter;

TAC § 559.61(e)(2)

(2) a sign prescribed by DADS that describes complaint procedures and specifies how complaints may be filed with DADS;

TAC § 559.61(e)(3)

(3) a notice in the form prescribed by DADS stating that inspection and related reports are available at the facility for public inspection and providing DADS' toll-free telephone number that may be used to obtain information concerning the facility;

TAC § 559.61(e)(4)

(4) a copy of the most recent inspection report relating to the facility;

TAC § 559.61(e)(5)

(5) a brochure or letter that outlines the facility's hours of operation, holidays, and a description of activities offered; and

TAC § 559.61(e)(6)

(6) emergency telephone numbers, including the abuse hotline telephone number, near all telephones.

TAC § 559.62(a)(1)(A)(i-iv), (b)(3)

(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) Staffing. A facility must ensure that:

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

TAC § 559.62(a)(1)(D)

(a) Staff qualifications.

(1) Director. A facility must employ a director.

(D) One person may not serve as facility nurse, activities director, and director, regardless of qualifications.

TAC § 559.62(a)(2)(A-D),

(a) Staff qualifications.

(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.

TAC § 559.62(a)(3)

(a) Staff qualifications.

(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.

TAC § 559.62(a)(4)(A)

(a) Staff qualifications.

(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.

TAC § 559.62(b)(1, 6)

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

TAC § 559.62(b)(2)

(b) Staffing. A facility must ensure that:

- (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;

TAC § 559.62(b)(4)

(b) Staffing. A facility must ensure that:

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

TAC § 559.62(c)

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

TAC § 559.62(c)(1)

(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.

TAC § 559.62(c)(2)

(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.

TAC § 559.62(d)(1)

(d) Staff responsibilities.

(1) The facility director:

(A) manages the DAHS program and the facility;

TAC § 559.62(d)(2)

(d) Staff responsibilities.

(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.

TAC § 559.62(d)(6)(A)(i-iii)

(d) Staff responsibilities.

(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.

TAC § 559.62(d)(6)(B)

(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 dietitian. A consultant who provides consultation to several facilities must provide at least four hours of consultation per month to each facility.

TAC § 559.62(d)(7)

(d) Staff responsibilities.

(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.

TAC § 559.62(e)(1)(A)(i)

(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;

TAC § 559.62(e)(1)(A)(ii)

(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.

TAC § 559.62(e)(1)(B)(i-iv)

(e) Training.

(1) Initial training.

(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.

TAC § 559.62(e)(2)(A)

(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.

TAC § 559.62(f)(1)(A)

(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.

TAC § 559.62(f)(1)(B)

(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.

TAC § 559.62(f)(1)(D)

(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.

TAC § 559.62(f)(2)(A-F)

(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.

TAC §559.62(f)(3)(A)

(f) Medications.

(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.

TAC § 559.62(f)(5)(A)

(f) Medications.

(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.

TAC § 559.62(f)(5)(B)

- (B) A facility must store an individual's medication separately from other individuals' medications within the storage area.

TAC § 559.62(f)(5)(C)

- (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.

TAC § 559.62(f)(5)(D)

- (D) A facility must store poisonous substances and medications labeled for "external use only" separately within the locked area.

TAC § 559.62(f)(5)(E)

(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.

TAC § 559.62(f)(6)(A)(i-iii)

(f) 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.

TAC § 559.62(f)(6)(B)

(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 Disposition of Special Waste from Health Care-Related Facilities).

TAC § 559.62(g)(1)

(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.

TAC § 559.62(g)(2)(A-C)

(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.

TAC § 559.64(b)(1-3)

(b) Administration. A facility must:

- (1) develop and implement a written plan as described in subsection (c) of this section;
- (2) maintain a written copy of the plan that is accessible to all staff at all times;
- (3) evaluate and revise the plan as necessary:
 - (A) within 30 days after an emergency situation;
 - (B) as soon as possible after the remodeling or construction of an addition to the facility; and
 - (C) at least annually;

TAC § 559.64(c)(1-5)

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

- (1) include a risk assessment of all potential internal and external emergency situations relevant to the facility operations and geographical area, such as a fire, failure of heating and cooling systems, a power outage, an explosion, a hurricane, a tornado, a flood, extreme snow and ice for the area, a wildfire, terrorism, or a hazardous materials accident;
- (2) include a description of the facility's client population;
- (3) include a description of the services and assistance needed by the clients in an emergency situation;
- (4) include a section for each core function of emergency management, as described in subsection (d) of this section, that is based on a facility's decision to either shelter-in place or evacuate during an emergency; and
- (5) include a fire safety plan that complies with subsection (f) of this section.

TAC § 559.64(d)(1)(A-D)

(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) designates by name or title 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) designates by name or title 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;
 - (C) documents the name and contact information for the local emergency management coordinator (EMC) for the area where the facility is located, as identified by the office of the local mayor or county judge; and

(D) documents coordination with the local EMC as required by the local EMC's guidelines relating to emergency situations.

TAC § 559.64(d)(2)(A-C)

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

TAC § 559.64(d)(3)(A-E)(i-iii)

- (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 the event of power failure or the loss of the facility's primary mode of communication in an emergency situation;
 - (B) includes procedures for maintaining a current list of telephone numbers for clients and responsible parties;
 - (C) includes procedures for maintaining a current list of telephone numbers for the facility's staff that also identifies the facility's EPC;
 - (D) identifies the location of the lists described in subparagraphs (B) and (C) of this paragraph where facility staff can obtain the lists quickly;
 - (E) includes procedures to notify:
 - (i) facility staff about an emergency situation;
 - (ii) a receiving facility about an impending or actual evacuation of clients; and
 - (iii) clients, legally authorized representatives and other persons about an emergency situation;

TAC § 559.64(d)(5)(A-G)

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

- (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 evacuating clients to a pre-arranged location in an emergency situation, if applicable;
 - (C) includes a mutual aid agreement with a receiving facility which must specify the arrangements for receiving clients in the event of an evacuation;

- (D) identifies primary and alternate evacuation destinations and routes, and includes a map that shows the destination and routes;
- (E) includes procedures for:
 - (i) ensuring facility staff accompany evacuating clients;
 - (ii) ensuring that all persons present in the building have been evacuated;
 - (iii) accounting for clients and staff after they have been evacuated;
 - (iv) accounting for clients who are absent from the facility at the time of the evacuation;
 - (v) contacting the local EMC, if required by the local EMC guidelines, to find out if it is safe to return to the geographical area; and
 - (vi) 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, if required by the local EMC guidelines;
- (G) includes procedures for notifying HHSC by telephone, at 1-800-458-9858, within 24 hours after an evacuation that clients have been evacuated;

TAC § 559.64(d)(6)(A-E)(i-ii)

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

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

- (A) provides for a sufficient number of vehicles that are safe and suitable for any special needs of the clients or requires that the facility maintain a contract for transporting clients during an evacuation;
- (B) identifies facility staff authorized to drive a vehicle during an evacuation;
- (C) establishes alternate transportation arrangements if the vehicles or contracted transportation described in subparagraph (A) of this paragraph are not available;
- (D) includes procedures for safely transporting oxygen tanks currently being used by clients and any extra oxygen tanks that may be needed during an evacuation; and
- (E) includes procedures that will ensure:
 - (i) safe transport of records, food, water, equipment, and supplies needed during an evacuation; and
 - (ii) that the records, food, water, equipment, and supplies, described in clause (i) of this subparagraph, arrive at the receiving facility at the same time as the clients.

TAC § 559.64(d)(7)(A-B)

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

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

- (A) identifies all of the facility's special needs clients including clients with conditions requiring assistance during an evacuation; and
- (B) ensures the needs of those clients are met during an emergency.

TAC § 559.64(f)(1)(A-H)

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

(1) include the provisions described in the Operating Features section of the NFPA 101 Life Safety Code, 2000 Edition, Chapter 16 (for new day-care occupancies) and Chapter 17 (for existing day-care occupancies) concerning:

- (A) use of alarms;
- (B) transmission of alarm to fire department;
- (C) response to alarms;
- (D) isolation of fire;
- (E) evacuation of immediate area;
- (F) evacuation of smoke compartment;
- (G) preparation of floors and building for evacuation; and
- (H) fire extinguishment;.

TAC § 559.64(f)(2)

(2) include procedures to contact HHSC by telephone, at 1-800-458-9858, within 24-hours after a fire in accordance with §559.42 of this chapter (relating to Safety); and

TAC § 559.64(f)(5)(F)

(5) establish procedures to:

(F) post a copy of the most recent fire prevention inspection report, described in subparagraph (D) of this paragraph, in a conspicuous place in the facility.

TAC § 559.92(a-c)

(a) Any facility staff who has reasonable cause to believe that a client is in a state of abuse, neglect, or exploitation must report the abuse, neglect, or exploitation to DADS state office at 1-800-458-9858 and must follow the facility's internal policies regarding abuse, neglect, or exploitation.

(b) The following information must be reported to DADS:

- (1) name, age, and address of the client;

- (2) name and address of the person responsible for the care of the client, if available;
 - (3) nature and extent of the elderly or disabled person's condition;
 - (4) basis of the reporter's knowledge; and
 - (5) any other relevant information.
- (c) The facility must investigate the alleged abuse, neglect, or exploitation and send a written report of the investigation to DADS state office no later than the fifth day after the oral report and be available for inspection by DADS.

TAC § 559.94(a)

- (a) DADS only investigates complaints of abuse, neglect, or exploitation when the act occurs in the facility, when the licensed facility is responsible for the supervision of the client at the time the act occurs, or when the alleged perpetrator is affiliated with the facility. Other complaints of abuse, neglect, or exploitation not meeting this criteria must be referred to the Department of Family and Protective Services.

APPENDIX D: INSTANCES OF NONCOMPLIANCE AT EACH FACILITY

	Health and Safety		Administrative Requirements				
Provider	Physical Environment	Participant Welfare	Policy Requirements	Participant Records	Personnel Records	Staffing Policies	Total
1	8	0	6	0	3	3	20
2	9	0	5	1	0	0	15
3	5	4	3	1	1	1	15
4	3	1	5	0	0	1	10
5	11	1	8	1	0	3	24
6	3	0	4	0	3	1	11
7	1	0	0	0	1	3	5
8	1	1	0	2	2	1	7
9	2	0	4	0	1	0	7
10	3	0	6	0	3	2	14
11	5	0	7	0	4	5	21
12	7	5	10	4	3	9	38
13	3	0	2	0	0	2	7
14	2	1	2	0	1	1	7
15	2	0	1	0	1	0	4
16	0	1	0	0	0	0	1
17	0	0	3	0	0	0	3
18	5	0	7	2	0	1	15
19	6	0	5	0	0	0	11
20	6	0	11	0	0	1	18
Total	82	14	89	11	23	34	253

Notice: We provided to the State agency under a separate cover the specific facilities audited and their specific violations.

APPENDIX E: STATE AGENCY COMMENTS



TEXAS
Health and Human
Services

Texas Health and Human Services Commission

Cecile Erwin Young
Executive Commissioner

January 23, 2025

Ms. Patricia Wheeler
Regional Inspector General for Audit Services
Department of Health and Human Services
Office of Inspector General
1100 Commerce Street, Room 632
Dallas, Texas 75242

Re: Report Number A-06-23-05000

Dear Ms. Wheeler:

The Texas Health and Human Services Commission (HHSC) has reviewed the draft report titled "Texas Did Not Fully Comply With Federal Waiver and State Health, Safety, and Administrative Requirements At All 20 Adult Day Activity and Health Service Facilities Audited."

Texas remains committed to ensuring Day Activity and Health Services (DAHS) are delivered in safe, supportive environments that meet individual needs. We take the audit findings seriously and have addressed each recommendation thoughtfully. However, we do not believe the violations identified are representative of all DAHS facilities in Texas.

Attachment A outlines HHSC's responses to the recommendations. We appreciate the opportunity to work with the Office of the Inspector General (OIG) and provide feedback on the draft audit report.

Please let us know if you have any questions or need additional information. Michelle Dionne-Vahalik, Associate Commissioner of Long Term Care Regulation, serves as the lead staff on this matter and she can be reached by telephone at (512) 438-5261 or by email at michelle.dionne-vahalik@hhs.texas.gov.

Sincerely,

Cecile Erwin Young

P.O. Box 13247 • Austin, Texas 78711-3247 • 512-424-6500 • hhs.texas.gov

Ms. Patricia Wheeler
January 23, 2025
Page 2

Attachment

cc: Jordan Dixon, Chief Policy and Regulatory Officer
Lisa Glenn, Deputy Chief Policy and Regulatory Officer
Stephen Pahl, Deputy Executive Commissioner, Regulatory Services Division
Michelle Dionne-Vahalik, Associate Commissioner, Long Term Care
Regulation
Camisha Banks, Deputy Executive Commissioner, Managed Care
Trinita Harris, Deputy Associate Commissioner, Managed Care Contracts and
Oversight
Michelle Erwin, Deputy Associate Commissioner, Office of Policy
Melissa Towb, Manager, Medicaid and CHIP Services Audit Management

Attachment A
Texas Health and Human Services Commission (HHSC) Management Responses to
U.S. Department of Health and Human Services Office of Inspector General
Draft Report dated November 2024 | A-06-23-05000 and Titled
"Texas Did Not Fully Comply With Federal Waiver and State Health, Safety, and
Administrative Requirements At All 20 Adult Day Activity and Health Service
Facilities Audited."

OIG Recommendation No. 1: Ensure that providers correct the 253 instances of provider noncompliance identified in this report.

HHSC Response to Recommendation No. 1: HHSC concurs with this recommendation and notes that many instances of noncompliance have already been corrected. Day Activity and Health Services (DAHS) providers in Texas are licensed in accordance with state statutes and the Texas Administrative Code (TAC). These federal audit surveys were conducted from August 21, 2023, through August 24, 2023. Since then, of the 20 providers sampled, 16 have had a re-licensure survey. Eight of these 16 providers were found in compliance with state regulations. The remaining eight providers received citations for noncompliance. Seven of these eight have come back into compliance with regulations, with one pending a follow-up survey as of the writing of this response. A follow-up survey will be scheduled for this facility to determine if it has come back into compliance.

The four providers that have not had a re-licensure survey as of the dates of the audit surveys will be scheduled for a re-licensure survey, and the survey will be completed by May 30, 2025.

OIG Recommendation No. 2: Improve oversight and monitoring of providers.

HHSC Response to Recommendation No. 2: HHSC concurs with this recommendation. Texas is experiencing a shortage of full-time surveyor positions to complete the full scope of licensing oversight for DAHS providers. Of the 366 DAHS providers, 58 have not had a re-licensure survey in the past 24 months. During fiscal year 2024, Texas increased the number of DAHS surveyors and submitted a preliminary request for additional surveyors to the Texas Legislative Budget Board in preparation for the 89th Texas Legislature, which convened on January 14, 2025.

The Legislature will make the final decision regarding this request. In the meantime, HHSC will continue to work on backlogged surveys with available staffing. All priority level one complaints and incidents alleging abuse and neglect will remain our top priority and will be initiated within 24 hours of receipt.

Attachment A
Texas Health and Human Services Commission (HHSC) Management Responses to
U.S. Department of Health and Human Services Office of Inspector General
Draft Report dated November 2024 | A-06-23-05000 and Titled
“Texas Did Not Fully Comply With Federal Waiver and State Health, Safety, and
Administrative Requirements At All 20 Adult Day Activity and Health Service
Facilities Audited.”

OIG Recommendation No. 3: Work with providers to improve their facilities, staffing, and training.

HHSC Response to Recommendation No. 3: HHSC concurs with this recommendation. HHSC provides joint training for surveyors and long-term care providers, including DAHS providers, through the following computer-based trainings:

- Top 10 Frequently Cited Deficiencies in DAHS
- DAHS Licensure Rules: Preparing for an Inspection
- DAHS Writing an Acceptable Plan of Correction

Additionally, a DAHS Hurricane and Flooding Readiness class is taught each summer.

However, STAR+PLUS managed care organizations (MCOs) are responsible for ensuring their contracted providers and their staff complete all required training ([STAR+PLUS Scope of Work, Section 2.6.8.3](#)). Initially, training must be completed within 30 days of the provider being able to serve members, and the MCO must provide ongoing training through web-based sessions and regional outreach to new and existing providers, upon request, and as required by the MCO or HHSC. All provider training and education materials and associated presentations specific to Medicaid benefits, services, and programs must be submitted to HHSC for approval prior to use by the MCO.

By March 31, 2025, HHSC will review the DAHS training curriculum to see if additional training should be developed and delivered to providers.

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Who Is Protected?

Anyone may request confidentiality. The Privacy Act, the Inspector General Act of 1978, and other applicable laws protect complainants. The Inspector General Act states that the Inspector General shall not disclose the identity of an HHS employee who reports an allegation or provides information without the employee's consent, unless the Inspector General determines that disclosure is unavoidable during the investigation. By law, Federal employees may not take or threaten to take a personnel action because of [whistleblowing](#) or the exercise of a lawful appeal, complaint, or grievance right. Non-HHS employees who report allegations may also specifically request confidentiality.

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