DEPARTMENT OF STATE HEALTH SERVICES
REGULATORY LICENSING UNIT
FACILITY LICENSING GROUP

TITLE 25
TEXAS ADMINISTRATIVE CODE
CHAPTER 448
TREATMENT FACILITIES FOR INDIVIDUALS WITH SUBSTANCE-RELATED DISORDERS

Proposed Draft

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Legend:
Regular Print – Proposed Draft Rule Language

SUBCHAPTER A. GENERAL PROVISIONS.

§448.101. Purpose, Scope and Construction.

(a) The purpose of this chapter is:

(1) to protect the health, safety and welfare of individuals seeking and receiving treatment for a substance-related disorder, and to ensure that those individuals are offered and provided efficient, effective, and appropriate treatment services;

(2) to provide minimum standards for the operation of all treatment facilities for substance-related disorders; and

(3) to implement Health and Safety Code, Chapter 464, which requires facilities treating individuals with a chemical dependency to be licensed by the department; and the department to adopt rules governing the licensing and regulation of chemical dependency treatment facilities. To improve consistency with current usage in the industry, references to chemical dependency regulation, treatment and facility licensure under this chapter and pursuant to Health and Safety Code, Chapter 464, are updated to the extent feasible, without changing the statutory scope or meaning, to refer to treatment of a "substance-related disorder," and regulation and licensure of facilities offering or purporting to offer treatment for such "substance-related disorders."

(b) Nothing in this chapter shall relieve a treatment facility for substance-related disorders, from the requirements of other applicable federal, state, or local laws, codes, rules, and ordinances, nor be read to authorize any conduct prohibited by other law or outside of a facility's license authorization or an individual's licensed scope of practice. Where more than one legal provision is applicable, the stricter requirement applies.

(c) If any portion of this chapter is determined to be invalid, such invalidity shall not affect the validity of, and shall be severable from, other provisions of this chapter capable of being given effect without the portion of the chapter determined to be invalid.

(d) If there is any irreconcilable conflict between the rules in this chapter and applicable statutory provisions, the statute controls.

(e) Reference in these rules to a requirement, obligation, or prohibition imposed on a facility or facility program, its governing authority, and/or its staff or personnel, shall be read as the compliance obligation of the license holder for the facility or facility program, or, for any unlicensed facility, of any person required to hold a license for that facility or program.

§448.102. Definitions.

Notwithstanding the provisions of §441.101 of this title (relating to Definitions), the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Words and phrases used in this chapter that are not defined shall be read in context and construed according to the rules of grammar and common usage. Words and phrases that, in the context used have acquired a technical or particular meaning shall be construed accordingly.

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(1) Abuse--Any of the following committed by an employee, volunteer, or other individual working under the auspices of, or associated with, a facility, or by a client, that causes or may cause, emotional harm or physical injury to, or the death of, a client served by the facility:

(A) An intentional, knowing, or reckless act or omission, including, without limitation,

(i) any form of sexual exploitation, as defined in Civil Practice and Remedies Code, § 81.001, or of sexual abuse, including, without limitation,

(I) rape or sexual assault; or

(II) any sexual conduct that would constitute an offense under Penal Code § 21.08 (relating to indecent exposure); Chapter 22, Penal Code (relating to assaultive offenses); Penal Code, §21.11 (relating to indecency with a child); or Penal Code §21.02 (relating to continuous sexual abuse of a young child or children under Section 21.02);

(ii) striking a client; or

(iii) the use of excessive force when placing a client in seclusion or in a personal restraint or applying personal, chemical, or mechanical restraint in violation of § 448.605 of this title (relating to Restraint and Seclusion) or other law applicable to the restraint; or

(B) the negligent or willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment;

(C) any coercive or restrictive actions that are illegal or not justified by the patient's condition and that are in response to the patient's request for discharge or refusal of medication, therapy, or treatment; or

(D) any other act or omission defined as abuse under Family Code §261.001 (relating to Definitions).

(2) Act--Chapter 464, Health and Safety Code.

(3) Administrative hearing--A contested case hearing conducted by the State Office of Administrative Hearings under the Administrative Procedure Act, Chapter 2001, Government Code.

(4) Administrative Procedure Act (APA)--Government Code, Chapter 2001, which provides minimum standards of uniform practice and procedure for state agency rulemaking and contested cases, and restates the law of judicial review of state agency action.

(5) Admission--The formal acceptance of a prospective client to a treatment facility.

(6) Adolescent--An individual 13 through 17 years of age whose disabilities of minority have not been removed for all purposes relevant to the context in which the term is used.

(7) Adult--An individual 18 years of age or older, or an individual under the age of 18 whose disabilities of minority have been removed for all purposes relevant to the context in which the term is used.

(8) Advanced practice registered nurse (APRN)--A registered nurse licensed by the board of nursing to practice as an advanced practice registered nurse based on completion of an advanced educational program. The term includes a nurse practitioner

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and clinical nurse specialist. The term is synonymous with "advanced nurse practitioner" and "advanced practice nurse".

(9) Ambulatory withdrawal management--Ambulatory withdrawal management is comprised of treatment services provided in an outpatient setting for completing a medically safe withdrawal from substances.

(10) Applicant--The person listed on an application for an initial license to operate a facility that provides substance-related disorder treatment; for approval for a facility to accept court commitments; for a change in a licensed facility's current licensure status; for renewal of a current license; to be placed on inactive status for a currently licensed facility; or, when used in subchapter J of this chapter, for registration as an exempt faith-based treatment program.

(11) Assessment--The process in which a clinician assesses an individual's educational, social, spiritual, financial, emotional, and other resources, history, strengths, preferences, limitations, problems, and needs, and establishes priorities for development of an individualized treatment plan.

(12) Behavioral emergency--A situation involving a client who is behaving in a violent, self-destructive, or overtly or continually threatening manner, and in which preventive de-escalatory or redirection techniques have not effectively reduced the potential for injury, and it is immediately necessary to intervene to prevent:

(A) imminent probable death or substantial bodily harm to a client because the client overtly or continually threatens or attempts to commit suicide, or threatens or attempts to commit serious bodily harm; or

(B) imminent physical harm to another.

(13) Center for Substance Abuse Treatment (CSAT)--Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration, United States Department of Health and Human Services.

(14) Certified Addiction Registered Nurse--A registered nurse who has successfully completed the certification requirements for addiction nursing practice set forth by the Addictions Nursing Certification Board.

(15) Certified clinical supervisor--An individual certified by the department pursuant to Occupations Code §504.1521 (relating to Supervised Work Experience) and §140.411 (relating to Certified Clinical Supervisor (CCS) Certification Requirements) of this title.

(16) Chemical dependency--When used in this chapter, chemical dependency has the inclusive meaning assigned to it in Health and Safety Code, §464.001, and, to the extent consistent with that meaning, includes substance-related disorders, as defined in Paragraph (93) of this section, and substance use disorders and substance withdrawal, as those terms are used in the most current edition of the copyrighted American Psychiatric Association: Diagnostic And Statistical Manual of Mental Disorders (DSM) or in another generally accepted industry source for the terms.

(17) Chemical dependency counseling--Assisting an individual, and as applicable and appropriate, the individual's family or a group, to develop an understanding of problems relating to substance-related disorders; define goals; and plan action that reflects the individual's or group's interests, abilities, and needs, as affected by a claimed or indicated substance-related disorder.

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(18) Chemical restraint--The use of any chemical, including pharmaceuticals, through topical application, oral administration, injection, or other means, as a restraint or to modify maladaptive behavior of an individual, and which is not a standard treatment for the individual's medical or psychiatric condition. The term does not include the appropriate and authorized use of emergency medication.

(19) Chief Executive Officer (CEO)--The licensee, or an individual designated by its governing authority, to have administrative authority and oversight, consistent with the governing authority's policies and direction, for managing and directing the overall day-to-day operations and provision of services at a licensed facility.

(20) Child--For purposes of §448.603 of this title (relating to Abuse, Neglect, Exploitation, and Illegal, Unprofessional and Unethical Conduct), a child is an individual under the age of 18 who is not and has not been married or who has not had the disabilities of minority removed for general purposes. For all other purposes in these rules, child shall mean an individual under the age of 13.

(21) Client--An individual, who may receive, receives or has received services from a substance-related disorder treatment facility, including, without limitation, screening, intake, evaluation or assessment, treatment, follow-up, or referral.

(22) Clinical director--An individual who is designated to plan, direct, and oversee the clinical and behavioral management services and activities of the facility and who is required to be a qualified credentialed counselor with at least two years of documented post-licensure experience providing treatment for substance-related disorders.

(23) Clinical time out--A technique in which an individual, in response to verbal suggestion of a staff member, voluntarily enters and remains for a period of time in a designated area from which the individual is not prevented from leaving.

(24) Clinical training institution (CTI)--A person registered with the department pursuant to Occupations Code §504.1521 (relating to Supervised Work Experience) and §140.410 (relating to Clinical Training Institution (CTI) Registration) of this title.

(25) Consenter--The individual legally authorized and responsible for giving informed consent for a client for substance-related disorder treatment under this chapter. Except as otherwise provided by law, a legally competent adult is his or her own consenter and the consenter for an adolescent or child is the parent, guardian, or managing conservator, except that a minor 16 or 17 years of age or as permitted under Family Code, Chapter 32 (relating to Consent to Treatment of Child by Non-Parent or Child) may consent to his or her own treatment.

(26) Contested case--A proceeding in which the legal rights, duties, or privileges of a party are to be determined by the department after an opportunity for adjudicative hearing.

(27) Co-occurring psychiatric and substance-related disorders--The co-occurring diagnosis of one or more psychiatric and substance-related disorders.

(28) Counseling--Licensed counseling for a substance-related disorder, synonymous with chemical dependency counseling, as defined in paragraph (17) of this section.

(29) Counselor--A qualified credentialed counselor, or, to the extent permitted by and consistent with the individual's license and licensure rules in the context used, another licensed professional.

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(30) Counselor intern--An individual seeking a license as a chemical dependency counselor who is registered with the Department pursuant to Occupations Code §504.1515 (relating to Counselor Interns) and §140.404 (relating to LCDC Licensure Application Standards and Counselor Intern Registration) of this title. The term includes a graduate intern.

(31) Cultural competency--The ability of individuals and systems to provide services effectively to people of various cultures, races, ethnic backgrounds, and religions in a manner that recognizes, values, affirms, and respects the worth of individuals, and protects and preserves their dignity.

(32) Department--The Department of State Health Services.

(33) Diagnostic and Statistical Manual of Mental Disorders (DSM)--The copyrighted Diagnostic and Statistical Manual of Mental Disorders in the version most recently published and updated by the American Psychiatric Association.

(34) Direct care staff or direct care personnel--Individuals whose duties include the responsibility for providing any substance-related disorder treatment, service, care, training, accompaniment and/or interaction, supervision, or other direct client services that involve face-to-face contact with a client.

(35) Direct service day--A full or partial day on which a specific client receives services, including each day that a client resides in a residential or inpatient treatment facility.

(36) Discharge--A facility's termination of a client's active treatment services.

(37) Document--When used as a noun, a written or electronic record. When used as a verb, to record in written or electronic form, the facts that detail and support the matter being, or required to be, documented.

(38) Emergency medication--A psychoactive medication that is used to treat the signs and symptoms of mental illness in a psychiatric emergency, as that term is defined in Chapter 415, Subchapter A of this title (relating to Prescribing of Psychoactive Medication), when other interventions are ineffective or inappropriate.

(39) Exploitation--The illegal or improper act or process of a facility, or of an employee, volunteer, or other individual working under the auspices of, or associated with, a facility or program, that uses or attempts to use a client, identifying information of a client, or the resources of a client, for monetary or personal benefit, profit, or gain.

(40) Facility--Treatment facility, as defined in paragraph (104) of this section. When used as a noun or adjective in identifying the person upon whom a requirement, obligation, or prohibition is imposed, the term refers to the license holder for the subject treatment facility, or, for any unlicensed facility, to any person required to hold a license for that facility.

(41) Family--The children, parents, brothers, sisters, spouse, other significant others or relatives, foster parents, or guardians.

(42) Governing authority--An identified individual or group of individuals, such as a board of directors, with ultimate authority, oversight, and responsibility, exercised directly or, to the extent permitted, through delegation, for setting policy, ensuring regulatory compliance, and providing direction and oversight for the overall management and operations of a licensed facility.

(43) Human Immunodeficiency Virus (HIV)--The virus that causes Acquired Immune Deficiency Syndrome.

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(44) Illegal conduct--Actions or conduct prohibited by law.

(45) Inpatient--A level of service for a substance-related disorder treatment facility or program that provides 24-hour treatment services and more than a supportive level of care.

(46) Intake--The administrative process for gathering information about a prospective client and giving the prospective client information about the treatment facility and the facility's treatment and services.

(47) Knowledge, Skills, and Attitudes--The knowledge, skills, and attitudes of addiction counseling as defined by CSAT Technical Assistance Publication (TAP) 21 "Addiction Counseling Competencies: the Knowledge, Skills, and Attitudes of Professional Practice".

(48) Legally authorized representative--A person authorized by law to act on behalf of an individual in the context in which the term is used in this subchapter, and who may include, if applicable, a parent, legal guardian, or managing conservator of a minor individual, or the legal guardian of an adult individual.

(49) Level of care--The specific intensity of services a facility provides and is required to have licensure approval to provide, including intensive, supportive, day treatment or partial hospitalization, and withdrawal management.

(50) Level of service--The broad category of client placement such as outpatient/ambulatory, and residential/inpatient.

(51) License--The whole or part of any agency permit, certification, approval, registration, or similar form of permission required by law.

(52) Licensed chemical dependency counselor (LCDC)--A counselor licensed by the department pursuant to Occupations Code, Chapter 504, and Chapter 140, Subchapter I, of this title, to engage in the practice of chemical dependency counseling.

(53) Licensed health professional--A physician, physician assistant, advanced practice registered nurse, registered nurse, or licensed vocational nurse authorized to practice in that capacity in the State of Texas.

(54) Licensed vocational nurse (LVN)--An individual licensed under Texas Occupations Code, Chapter 301.

(55) Licensee--Any person to whom the department issued a license under this chapter to operate a substance-related disorder treatment facility; or the facility to which a license applies.

(56) Licensing--The agency process relating to the granting, denial, renewal, revocation, suspension, surrender, retirement, invalidation, expiration, inactive status, amendment, or relinquishment of a license and related processes.

(57) Life skills training--A structured training program designed to help clients with social competencies, such as communication and social interaction, stress management, problem solving, decision-making, and management of daily responsibilities.

(58) Mechanical restraint--The application of any device, material, or equipment that immobilizes or reduces the ability of a client to move his or her arms, legs, body, or head freely for purposes of controlling physical activity.

(59) Medication--Any substance, including prescription and over-the-counter medication, recognized as a drug in the United States Pharmacopoeia, Official Homeopathic Pharmacopoeia of the United States, Texas Drug Code Index or official

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National Formulary, or in any supplement to any of these official documents; and intended either for use in the diagnosis, cure, mitigation, treatment, or prevention of disease, or for use as a component of any substance specified in this definition.

(60) Medication administration--The direct application of a medication or drug to the body of a client.

(61) Medication error--Medication not given according to the written order by the prescribing professional or as recommended on the medication label. Medication errors include without limitation, duplicate doses, missed doses, and doses of the wrong amount or drug.

(62) Minor--A person under the age of 18 for whom the disabilities of minority have not been removed for all purposes relevant to the context in which the term is used.

(63) Neglect--A negligent act or omission by an employee, volunteer, or other individual responsible for, involved in, or associated with a facility or providing services in a facility, which act or omission caused or may have caused emotional harm, physical injury, or death to a facility client, or which placed a client at risk of injury or death, including, without limitation:

(A) the failure to establish or provide services that comply with an appropriate individual treatment plan, plan of care, or individualized service plan for the client;

(B) the failure to provide adequate nutrition, clothing, or health care for the client;

(C) the failure to provide a safe environment for the client, including the failure to maintain adequate numbers of appropriately trained staff;

(D) the failure to provide the goods or services, including medical services, which are necessary to avoid physical or emotional harm or pain; or

(E) any other act or omission defined as neglect under Family Code §261.001 (relating to Definitions).

(64) On duty--Present, awake, and responsible to perform assigned job duties at the physical premises of the clients for whom the on duty individual is responsible.

(65) Outpatient--A level of service for a substance-related disorder treatment facility or program that provides less than 24-hour treatment services.

(66) Party--A person or agency formally named or admitted as a petitioner, respondent, or other named party in a contested case proceeding.

(67) Person--An individual, corporation, organization, government or governmental subdivision or agency, business trust, estate, partnership, association, or any other legal entity recognized as having rights and duties.

(68) Personal restraint--Any manual method by which a person holds or otherwise bodily applies physical pressure that immobilizes or reduces the ability of the client to move his or her body or a portion of his or her body to control physical activity.

(69) Personnel--The members of the governing authority of a licensee and, without limitation, its staff, contractors, consultants, agents, representatives, volunteers, or other individuals working, voluntarily or for compensation, for or on behalf of the licensee through a formal or informal agreement or other arrangement.

(70) Physician--An individual licensed under Texas Occupations Code, Title 3, Subtitle B (relating to Physicians).

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(71) Physician assistant (PA)--An individual licensed under Texas Occupations Code, Chapter 204.

(72) Plan of correction (POC)--A documented and directed response to any compliance issues identified in a report provided to the facility by department staff after a facility inspection or investigation; and the subsequent report completed by the facility stating how and when any compliance issues identified in the report will be corrected.

(73) Practice of chemical dependency counseling--Providing or offering to provide counseling services for a substance-related disorder, as such counseling is described in Paragraph (17) of this section, defining chemical dependency counseling, and which services involve the application of the principles, methods, and procedures of the counseling profession for substance-related disorders, as outlined and described in TAP 21 "Addictions Counseling Competencies: the Knowledge, Skills, and Attitudes of Professional Practice", published by CSAT.

(74) Practitioner--An individual holding a license of a type listed below, who is in good standing with the individual's applicable licensing authority to practice in the State of Texas, and who is acting within the authorized scope of the individual's license and with any applicable and/or required supervision and delegated authority:

(A) Physician licensed under 22 TAC, Chapter 163 (relating to Licensure), pursuant to Texas Occupations Code, Title 3, Subtitle B (relating to Physicians);

(B) Physician assistant (PA) licensed under 22 TAC, Chapter 185 (relating to Physician Assistants), pursuant to Texas Occupations Code, Chapter 204 (relating to Physician Assistants);

(C) Advanced practice registered nurse (APRN) licensed in that capacity pursuant to the applicable provisions of 22 TAC, Chapters 217 (relating to Licensure, Peer Assistance, and Practice), 221 (relating to Advanced Practice Nurses), and 222 (relating to Advanced Practice Registered Nurses with Prescriptive Authority) pursuant to Texas Occupations Code, Chapter 301 (relating to Nurses);

(D) Registered nurse (RN) licensed under 22 TAC, Chapter 217 (relating to Licensure, Peer Assistance, and Practice), pursuant to Texas Occupations Code, Chapter 301 (relating to Nurses);

(E) Vocational nurse (LVN) licensed under 22 TAC, Chapter 217 (relating to Licensure, Peer Assistance, and Practice), pursuant to Texas Occupations Code, Chapter 301 (relating to Nurses);

(F) Pharmacist licensed under the applicable provisions of 22 TAC, Chapter 283 and 295, pursuant to Texas Occupations Code, Title 3, Subtitle J (relating to Pharmacy and Pharmacists);

(G) Chemical dependency counselor (LCDC) licensed under 25 TAC, Chapter 140, Subchapter I (relating to Licensed Chemical Dependency Counselors), pursuant to Texas Occupations Code, Chapter 504 (relating to Chemical Dependency Counselors);

(H) Psychologist licensed under the applicable provisions of 22 TAC, Chapters 463 (relating to Applications and Examinations), 471 (relating to Renewals), and 473 (relating to Fees), pursuant to Texas Occupations Code, Chapter 501 (relating to Psychologists);

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(I) Marriage and family therapist licensed under 22 TAC, Chapter 801 (relating to Licensure and Regulation of Marriage and Family Therapists), pursuant to Texas Occupations Code, Chapter 502 (relating to Marriage and Family Therapists);

(J) Professional counselor licensed under 22 TAC, Chapter 681 (relating to Professional Counselors), pursuant to Texas Occupations Code, Chapter 503 (relating to Licensed Professional Counselors); and

(K) Social worker licensed under 22 TAC, Chapter 781 (relating to Social Worker licensure), pursuant to Texas Occupations Code, Chapter 505 (relating to Social Workers).

(75) Private practice--The individual practice of a private licensed counselor or practitioner who personally renders individual or group services within the scope of the practitioner's license and authority, in the practitioner's offices.

(76) Program--A level of service and care offered or delivered by a treatment facility to a specific and/or special population, at a specific location and to a specific age group and, as applicable, gender.

(77) Qualified credentialed counselor (QCC)--An individual holding a license of a type listed below, who is in good standing with the appropriate licensing authority in the State of Texas; and, in performing the acts of a QCC, is acting within the authorized scope of the individual's license and with any applicable and/or required supervision and delegated authority:

(A) Physician;

(B) Physician Assistant;

(C) Professional Counselor;

(D) Chemical Dependency Counselor;

(E) Psychologist;

(F) Certified Addictions Registered Nurse;

(G) Advanced Practiced Registered Nurse recognized by the Board of Nursing as a clinical nurse specialist or nurse practitioner with a specialty in psychiatric mental health nursing;

(H) Marriage and Family Therapist; or

(I) Social Worker.

(78) Quiet time--A technique in which an individual on the individual's own initiative enters and remains for a period of time in a designated area from which the individual is not prevented from leaving.

(79) Referral--The process of identifying appropriate services for an individual and providing the information and assistance needed for the individual to access them.

(80) Registered nurse (RN)--An individual licensed under Texas Occupations Code, Chapter 301.

(81) Registrant--A religious organization exempt from licensure and registered with the department under Subchapter J of this title (relating to Faith-Based Substance-Related Disorder Treatment Programs) to provide a faith-based substance-related disorder treatment program.

(82) Residential--A level of service for a substance-related disorder treatment facility or program that provides 24-hour treatment services.

(83) Restraint--The use of any personal, chemical, or mechanical restraint or restriction to immobilize or reduce the ability of the client to move his or her arms, legs,

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body, or head freely or to modify maladaptive behavior. Restraint does not include a physical escort or support that a client can readily remove or escape, if it is provided with the explicit or implied consent, and without resistance by statement or action, of the client.

(84) Retaliate--Any action, including, without limitation, suspension or termination of employment, demotion, discharge, transfer, discipline, abuse, neglect, restriction of privileges, harassment, or discrimination, to punish or discourage a person, a client, or facility personnel who reports a violation of law or a rule under this chapter, or cooperates with an investigation or inspection by the department.

(85) Rule--An agency statement of general applicability, including a state rule or federal regulation, that implements, interprets, prescribes or clarifies law or policy, defining general standards of conduct, rights, or obligations of persons, or describes the procedure or practice requirements related to initiating, scheduling, or conducting public business before an agency.

(86) Screening--The process a treatment facility uses to determine whether a prospective client presents sufficient signs, symptoms, or behaviors to warrant after the client is admitted, a more in-depth assessment by an authorized practitioner under 448.707 of this title (relating to Assessment).

(87) Seclusion--The involuntary separation of a client from other clients for any period and the placement of the client in an area from which the client is prevented from leaving.

(88) Self-administration of medication--A client's administration of the client's own medication or treatments without assistance from the facility staff.

(89) Service coordination--Administrative, clinical, and evaluative activities that bring the client, treatment services, community agencies, and other resources together to address issues and needs that are required to be identified in the treatment plan.

(90) Services--Treatment services for individuals with a substance-related disorder, as defined in Paragraph (98) of this section.

(91) Sign--To authenticate a record in accordance with the criteria established in §448.407 of this title (relating to General Documentation Requirements).

(92) Signature--Authentication of a record that meets the criteria established in §448.407 of this title (relating to General Documentation Requirements).

(93) Special population--A licensure term that includes any one of the following: Women and Children; Disciplinary Alternative Education Programs; Therapeutic Communities; and Court Commitment Services.

(94) Staff--An individual working for, or volunteering on behalf of, a facility, in exchange, directly or indirectly, for money or other compensation. It includes individuals performing functions for the facility, whether as an employee, under contract with the facility, or through a staffing agency.

(95) State Office of Administrative Hearings--The agency that adjudicates, under the APA, contested cases referred by the department for an administrative hearing.

(96) Strip Search--A search that requires a client to remove or arrange some or all clothing so as to permit a visual inspection of the person's breasts, buttocks, or genitalia.

(97) Substance intoxication--A diagnostic category for a substance-specific, but reversible, set of significant problematic behavioral and psychological symptoms that result from the physiological effects of recent ingestion of a substance, and not from

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another medical condition or better attributed to another mental disorder, and which may or may not be accompanied by a substance-related disorder, as more fully defined by the copyrighted DSM or another generally accepted industry source for the term.

(98) Substance-related disorder--As used in this chapter, a disorder within the overarching category of disorders that encompasses substance use and substance-induced disorders, including substance intoxication and withdrawal, all as more fully defined by the copyrighted DSM or another generally accepted industry source for the term, but only insofar as any such disorder would fall within the definition of chemical dependency under Health and Safety Code Chapter 464.

(99) Substance-related disorder education--A structured presentation of information related to one or more substance-related disorders.

(100) Substance-use disorder--A diagnostic category encompassing an array of substance-specific disorders measured on a continuum from mild to severe, based upon cognitive, behavioral, and physiological symptoms present in an individual that reflect the individual's persistent use of the substance notwithstanding significant substance-related problems, which may include, among others, substance tolerance and withdrawal, as more fully defined by the DSM or another generally accepted industry source for the term, but only insofar as any such disorder would fall within the definition of chemical dependency under Health and Safety Code Chapter 464.

(101) Substance withdrawal--A diagnostic category for a substance-specific set of problematic behavioral, physiological, and cognitive impacts and significant adverse effects on one or more areas of functioning as the result of an individual ceasing or reducing heavy and prolonged use of the identified substance(s), and not due to another medical condition or better attributed to another mental disorder, and which may or may not be accompanied by a substance-related disorder, as more fully defined by the copyrighted DSM or another generally accepted industry source for the term.

(102) Telehealth service--A health service, other than a telemedicine medical service, that is delivered by a practitioner, acting within the scope of the practitioner's license, and that requires the use of advanced telecommunications technology, other than telephone or facsimile technology, including:

(A) compressed digital interactive video, audio, or data transmission;

(B) clinical data transmission using computer imaging by way of still-image capture and store and forward; and

(C) other technology that facilitates access to health care services or medical specialty expertise.

(103) Telemedicine medical service--A health care service that is initiated by a physician or provided by a licensed health professional acting under appropriate physician delegation and supervision, that is provided for purposes of client assessment by a health professional, diagnosis or consultation by a physician, or treatment, or for the transfer of medical data, and that requires the use of advanced telecommunications technology, other than telephone or facsimile technology, including:

(A) compressed digital interactive video, audio, or data transmission;

(B) clinical data transmission using computer imaging by way of still-image capture and store and forward; and

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(C) other technology that facilitates access to health care services or medical specialty expertise.

(104) Treatment or Treatment for individuals with substance-related disorders--A planned, structured, and organized program for individuals with substance-related disorders designed to initiate and promote a person's chemical-free status or to maintain the person free of illegal drugs. It includes, but is not limited to, the application of planned procedures to restore appropriate levels of physical, psychological, or social functioning, or to identify and change patterns of behavior related to, or resulting from, a substance-related disorder, that are maladaptive, destructive, or injurious to health.

(105) Treatment facility--A facility that offers or purports to offer one or more substance-related disorder treatment programs or levels of service or care and for which a person operating it is not exempt from licensure requirements under Health and Safety Code Chapter 464 and this chapter.

(106)Treatment plan--A written plan for treatment of a client with a substance-related disorder, required to be developed and implemented through a collaborative process between counselor and client to identify and reflect desired treatment outcomes and the strategies for achieving them.

(107) Treatment services or treatment services for substance-related disorders--A comprehensive term intended to describe any of the activities undertaken by a treatment provider to address substance-related disorders or substance withdrawal. The term includes, without limitation, the provision of screening, intake, admission authorization, assessment, referral, treatment, withdrawal management, and individual and group counseling for a substance-related disorder or substance withdrawal, as well as education, life skills, and prevention activities. In an inpatient or residential treatment setting, services include the provision of direct care services. Aftercare is not included within the meaning of “active treatment services” for purposes of determining the date of discharge.

(108) Unethical conduct--Actions or conduct prohibited by the ethical standards adopted by state or national professional organizations for the respective profession or by rules established by the state licensing agency for the respective profession.

(109) Universal precautions--Standard precautions designed to reduce the risk of transmission of blood borne and other pathogens in healthcare facilities, including standard practices and procedures defined by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services relating to: disinfection of equipment, linens and other items; sterilization of reusable medical devices; and the appropriate use of infection control, including hand washing, protective barriers, and the use and disposal of needles and other sharp instruments.

(110) Unprofessional conduct--Actions or conduct prohibited under rules adopted by the state licensing agency for the respective profession.

(111) Withdrawal management--Treatment including pharmacological treatment, to address and moderate physical symptoms, including withdrawal symptoms, accompanying the reduction or discontinuance of heavy and/or protracted use of one or more substances.

SUBCHAPTER B. LICENSING REQUIREMENTS.

§448.201. License Required.

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(a) A person shall not offer or provide, or purport to offer or provide, substance-related disorder treatment in Texas without a license issued under this Chapter by the department unless it is:

(1) a facility maintained or operated by the Federal government or its agencies;

(2) a facility directly operated by the State of Texas;

(3) a substance-related disorder treatment program provided within a general hospital, special hospital, or private psychiatric facility licensed by the department, or otherwise licensed under Health and Safety Code Chapter 241, 243, 248, or 577;

(4) a narcotic treatment program licensed by the department under Health and Safety Code Chapter 466, to the extent that the substance-related disorder treatment is being provided to narcotic treatment program clients as a component of the licensed narcotic treatment program;

(5) an educational program for intoxicated drivers;

(6) the private practice of a licensed counselor or other licensed practitioner who personally renders individual or group substance-related disorder services within the scope of the practitioner’s license and authority, in the practitioner's individual office;

(7) an individual who personally provides authorized counseling or support services to an individual with substance-related disorder but does not offer, purport to offer, or provide a substance-related disorder treatment program;

(9) a religious organization registered with the department under Health and Safety Code Chapter 464, Subchapter C (relating to Faith-based Chemical Dependency Treatment Programs) and Subchapter J of this chapter (relating to Faith-Based Substance-related disorder Treatment Programs);

(10) a 12-step or similar self-help substance-related disorder recovery program:

(A) that does not offer or purport to offer a substance related disorder treatment program;

(B) that does not charge program participants; and

(C) in which program participants may maintain anonymity; or

(11) a substance-related disorder treatment facility or program that is funded through the Criminal Justice Assistance Division of the Texas Department of Criminal Justice, operated by or for a Community Supervision and Corrections Department, and required to operate under the minimum Criminal Justice Assistance Division standards for the operation of a substance related disorder treatment facility or program, adopted by the Texas Board of Criminal Justice under Government Code, §509.003.

(b) Holding a license issued under this chapter does not exempt the licensee from any requirement that the person obtain a license of a type enumerated under subsection (a)(3) of this section, or from any other applicable licensing requirement.

(c) A person described under Paragraph (1)-(11) of subsection (a) of this section who nonetheless obtains a license under the Act and this chapter is subject to this chapter to the same extent as any other person who obtains a license under this chapter.

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(d) A person shall have a license for each facility that provides any level of outpatient or residential or inpatient substance-related disorder treatment, including withdrawal management. Except to the extent expressly permitted in this subsection, a licensee shall only provide services at the facility location approved by the department under the facility license.

(1) A licensee may provide only the levels of care and service to the number of clients, age group, gender, and special population, as designated and authorized on the license certificate.

(2) A licensee shall provide the client's core treatment services, consisting of medical services, individual and group counseling, substance-related disorder education, and life skills training, at the facility. If clinically indicated under a client's individualized treatment plan, the facility's treatment program may include certain treatment services provided or to which access is made available off-site, including, but not limited to, family sessions, recreational activities, social activities, and/or 12-step or similar self-help support services, as appropriate, and where otherwise conducted in compliance with this chapter.

(e) A license is valid for the person and the physical location of the facility listed on the license and may not be transferred to a different legal person or physical location not listed on the license. A person who proposes to operate a facility that is currently licensed to a different legal person or at another physical location shall comply with the requirements of §448.202 of this title (relating to Application and Issuance of Initial License) to become a licensee authorized to operate the proposed facility.

(f) In the event of a licensee's death, the license is null and void and the licensee's authorized representative(s) shall notify the department, transfer clients and maintain client records in accordance with the requirements under §448.205 of this title (relating to Inactive Status and Closure).

(g) A person shall respond to a department request to provide information to determine whether the person is offering or purporting to offer treatment without a required license; shall immediately terminate all treatment services upon notice of a determination, after notice and an opportunity for a hearing under the procedures set forth in Subchapter C of this Chapter, that treatment is being provided without a required license; and shall not resume offering or purporting to offer treatment unless approved for licensure by the department after submission of an application in accordance with the requirements of this subchapter.

(h) By accepting or approving a licensure application under circumstances described in subsection (e) of this section, the department does not waive or otherwise limit its right to pursue any action available by law against a person who offers, provides, or purports to offer or provide, substance-related disorder treatment without a license. Actions may include, as applicable and without limitation, denying an application for licensure, assessing an administrative penalty, seeking injunctive relief, and/or making a referral for civil penalties or criminal prosecution.

(i) Without limiting other applicable law and to the extent that such co-location is otherwise authorized, when multiple services and/or treatment types are provided at the same physical location (co-located setting), the facility shall create the organizational structures for ensuring adequate client, drug, and record protection and full legal compliance in these particular areas of concern. Providers' policies and procedures shall

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be effectively written, adopted, implemented, and enforced, and practices instituted, to address, at a minimum, the following:

(1) Securing of records when no authorized staff is continuously present in the immediate area;

(2) Control of records and limitations on access to staff whose job duties require access, to include:

(A) designating the client records to which each staff person's access applies; and

(B) documenting each instance of access to client/patient records, such as through a check-in/check-out log that includes the date, name of the individual accessing the record, and the client number.

(3) Additional measures to prevent potential drug diversion where narcotic treatment programs are to be co-located with another licensure or treatment/ service type; and

(4) If one or more of the co-located providers is a licensed facility under this chapter or other law, Regulatory Services must be able to determine compliance with all applicable statutes and rules for each license type during inspections or complaint investigations. Operations shall be maintained with required staff and systems of control to ensure that client and business records specific to each license type in co-located licensed facilities are readily identifiable.

§448.202. Application and Issuance of Initial License.

(a) An intended applicant or applicant for initial licensure of a facility, or such person's authorized representative, shall attend a pre-licensure conference at the office designated by the department. The department will consider reasonable requests, on a case-by-case basis, to hold a pre-licensure conference by telephone.

(b) To apply for initial licensure of a facility, an applicant shall submit a complete written licensure application, which shall include all applicable fees and the documents listed on the new applicant checklist and otherwise requested by the department to evaluate compliance with the requirements of this chapter. For any facility that uses well water, documentation reflecting that the facility well water has been tested and meets the requirements for such water set forth in §448.906(a)(3) (relating to Required Outpatient Facility Inspections) and in §448.907(a)(7) of this title (relating to Required Residential or Inpatient Facility Inspections). An applicant that is an entity shall submit with its written application a certificate of status issued by the Texas Secretary of State that establishes the entity's existence and authority to transact business in Texas. If the entity is not required to register, it shall submit evidence of that, and of its legal status and authority to transact business in Texas. If the applicant is issued a license, the applicant shall maintain its active entity status and authority to transact business in Texas; shall notify the department of any change in its entity status from that reflected on the submitted certificate of status; and shall submit any application required under this subchapter based upon the change in entity status.

(1) An applicant accepts full responsibility for any facility license issued to which the application applies, for operation of the facility thereunder, and otherwise for compliance with all rules and laws applicable to the licensee.

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(2) By completing or submitting an application on behalf of an applicant seeking licensure, an individual represents that the individual has the authority to act on behalf of the applicant and that the applicant is responsible for the representations made in the application.

(3) An applicant shall not make or submit any false statement or inauthentic document, or make a material misrepresentation to the department, directly or indirectly, in connection with applying for any initial or renewal license.

(c) Within 30 business days after receipt of the initial submission of the written licensure application, the department will notify the applicant that the written application is materially complete or incomplete, and will specify any additional information required to complete the written application.

(d) If the written application is determined to be incomplete, the applicant shall submit all requested materials and correct any deficiencies identified within the timeframe required by the department.

(e) The department may conduct any on-site inspection it deems necessary and the applicant shall address any compliance issues identified, as requested by the department.

(f) Within 15 business days after the application is complete, the department will issue or propose to deny the license, giving consideration to whether any grounds may exist for adverse licensure action under §448.303 of this title (relating to Enforcement Action). The application will be considered complete under this subsection once the written application and pre-licensure conference are complete and the applicant has satisfactorily completed any on-site inspection and any requested correction related to it. The department may exceed the 15 day period provided for in this subsection with good cause, as defined in Government Code §2005.004 (relating to Good Cause). The license shall expire two years after the date of issuance.

(1) In the event that the application is not processed within the time periods stated in this section, the applicant has the right to make a written request to the Commissioner or the Commissioner's designee, within 30 business days after any processing time period has been exceeded, for timely resolution of any dispute arising from the delay.

(2) If the delay is not resolved to the applicant's satisfaction, the applicant may request reimbursement of the applicant's license fees.

(A) If the Commissioner or the Commissioner's designee determines that the department did not exceed the periods established under this section for license processing or finds, after giving the applicant the opportunity to respond in writing to any apparent good cause basis for exceeding any established period, that good cause existed for exceeding the established periods, the request will be denied. The department will notify the applicant in writing of the denial of the reimbursement within 30 days after the department's receipt of the request for reimbursement.

(B) The applicant's fees will be reimbursed if the Commissioner or the Commissioner's designee determines, after giving the applicant the opportunity to respond in writing as to the alleged delay and any apparent good cause basis for exceeding any established period, that:

(i) The agency exceeded the timeframes set forth in this section for license processing; and

(ii) There was no good cause for the department to have exceeded the established time period for license processing.

(g) If an applicant fails to complete all requirements of this section within six months from the date the applicant's written application is received by the department, the incomplete application will be retired. The applicant may reapply by submitting a new application with the applicable fees.

(h) The applicant shall not provide substance-related disorder treatment before receiving written notice of licensure approval from the department.

(i) The licensee shall prominently display the original license certificate at the facility.

§448.203. Application and Issuance of Renewal License.

(a) To renew a license, the licensee shall, at least 60 days before the license expires, submit to the department:

(1) a timely and complete renewal application with all applicable fees and information required or otherwise requested by the department to evaluate compliance with any requirement of this chapter. An applicant that is an entity shall submit with its written application a certificate of status issued by the Texas Secretary of State that establishes the entity's existence and authority to transact business in Texas. If the entity is not required to register, it shall submit evidence of that, and of its legal status and authority to transact business in Texas. If the applicant's license is renewed, the applicant shall maintain its active entity status and authority to transact business in Texas; shall notify the department of any change in its entity status from that reflected on the submitted certificate of status; and shall submit any application required under this subchapter based upon the change in entity status;

(2) a copy of a current and approved fire safety inspection as required under §448.901(c) of this title (relating to General Environment), for the facility designated under the license to be renewed; and

(3) without limiting the applicability of any other or stricter standard, for any facility that uses well water, documentation reflecting that the facility well water has been tested and meets the requirements for such water set forth in §448.906(a)(3) (relating to Required Outpatient Facility Inspections) and in §448.907(a)(7) of this title (relating to Required Residential or Inpatient Facility Inspections).

(b) The Department may require an inspection before renewing a license, except that the department will accept an accreditation review from an accreditation commission for a treatment facility in lieu of a department inspection for renewal of a license under the following conditions:

(1) the treatment facility is accredited by one of the following accreditation commissions: the Commission on Accreditation of Rehabilitation Facilities, the Joint Commission, or another national accreditation organization recognized by the department;

(2) the accreditation commission maintains and updates an inspection or review program that, for each treatment facility, meets the department's applicable minimum standards;

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(3) the accreditation commission conducts a regular on-site inspection or program review of the treatment facility according to the accreditation commission's guidelines; and

(4) the facility submits to the department a copy of its most recent accreditation review from the accreditation commission in addition to the application, fee, and any report or other document required for renewal of a license.

(c) Once the licensee has complied with all requirements for licensure renewal; and after giving consideration to whether any grounds may exist for adverse licensure action under §448.303 of this title (relating to Enforcement Action), the department will grant or propose refusal of a renewal license for a two-year term.

(d) If the licensee has not submitted a timely and complete renewal application by the date of the license expiration, the license expires. The facility must discontinue providing substance-related disorder treatment services immediately upon expiration, and, within 30 days after any license expires, shall return the original license certificate to the department's facility licensure group.

(e) Subsection (b) of this section does not limit the department in performing any duties, investigations, or inspections, or taking appropriate action, as authorized by law, and does not require a facility to become accredited.

§448.204. Changes Affecting a License.

(a) A licensee shall apply for department approval for changes affecting a license, by submitting an application, including all applicable fees and any documents requested by the department, for any of the following changes, and shall not implement the proposed changes without the notification from the department that the application is approved:

(1) adding a new level of care or service;

(2) providing services for a new special population

(3) increasing the number of slots in an outpatient program;

(4) increasing the number of beds in a residential or inpatient program;

(5) providing services to a new age group (adult or adolescent); or

(6) providing services to a different gender (male or female).

(b) The department may conduct an on-site inspection in connection with a change in status application under subsection (a) of this section and shall notify the applicant of any compliance issues identified in reviewing the application materials and/or during the on-site inspection. The applicant shall provide evidence of sufficient corrective action within the timeframe specified by the department.

(c) A licensee shall notify the department in writing of any of the following program changes, based upon which the department will issue a new license certificate reflecting the change:

(1) decrease in the number of slots in an outpatient program;

(2) decrease in the number of beds in a residential or inpatient program;

(3) discontinuance of a level of care or service, or of a service to a particular age group, gender, or special population; or

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(4) change in the licensee's legal name or program name that does not affect the licensee's or facility's legal form or status or require other application, action, or approval, or invalidate the license under this chapter.

(d) If the licensee fails to provide the information the department requires to process the application for a change in status within six months after the initial date of application, the application will be retired. The licensee may reapply for a change in status by submitting a new application and applicable fees.

(e) An applicant must receive written licensure approval from the department before it may implement any proposed change requiring application under this section.

§448.205. Inactive Status and Closure.

(a) Inactive Status. The department will automatically retire an unexpired license of a facility in which services are suspended or not provided for more than 60 days, unless, before 60 days of inactivity have elapsed, the department receives a written request from the facility to place the license on inactive status.

(1) If the department receives a written request to place the license on inactive status, the department will notify the licensee of its decision in writing. If granted, the inactive status shall be limited to 90 days after the date of notice of the decision, which shall be deemed to be three days after the date the notice is mailed, or the date of confirmed delivery of notice by fax or email. The licensee may apply for inactive status and the department will grant inactive status only once in a twelve-month period. The licensee is responsible for any renewal application and licensure fees due during the period of inactive status, and for proper maintenance of client records while on inactive status. A licensee shall continue to cooperate with any department investigation of a facility while the license is on inactive status. Any pending disciplinary action will remain pending and continue while a license is on inactive status.

(2) To reactivate the license, the licensee, prior to expiration of the approved inactive status, shall submit a written request to reactivate the license.

(3) If the licensee does not submit a written request to reactivate the license prior to the expiration of the inactive status, the department will notify the licensee that the license has met the conditions for automatic retirement, and the department will retire the license, and so notify the licensee, if the department does not receive a written request to reactivate the license, with a showing that the facility is ready to resume active treatment services, within 14 days after the date the department's letter is sent. The licensee shall return the original license certificate to the department's facility licensing group within 30 days after the license's inactive status expires without re-activation.

(4) Emergency or Disaster. The department may modify and/or expedite procedures under this section by approving a verbal request to inactivate a license in an emergency or disaster circumstance for as long as the emergency or disaster conditions persist within a maximum of 120 days. The facility shall seek an extension of the inactive status for emergency or disaster purposes if it asserts that the circumstances of the emergency or disaster and the need for expedited procedures under this section have extended beyond 120 days. Once the circumstances of the emergency or disaster cease to exist, the facility may apply for a variance under the non-expedited procedures provided

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for under §448.207 of this title (relating to Temporary Variance) if an additional period of inactive status is sought.

(b) Facility Closure. The licensee shall notify the department's facility licensing group in writing upon closure of any substance-related disorder treatment for which the licensee holds a license.

(1) The original license certificate and the completed facility closure form shall be returned to the department's facility licensure group within 30 days after closure of a facility.

(2) A facility license becomes invalid when the facility closes, except that, if a licensee closes its facility and returns its license after its presumed receipt of a notice of violation letter relating to that facility, as provided for under §448.303(f) of this title, (relating to Enforcement Action) the department will treat the closure and return of the facility license as a voluntary surrender of the license under §448.303(j) of this title, and may accept or reject the voluntary surrender as provided for in that subsection. If the department rejects the voluntary surrender of the license, or if the facility closes its facility after receipt of a notice of violation letter, but does not return its license, the department will retain jurisdiction over the licensee and the unexpired license to proceed with its formal enforcement action against the license and/or licensee.

(3) The licensee for a facility or facility program that is closing or being discontinued, respectively, shall ensure that all clients are appropriately discharged or transferred before the facility or facility program closes or is discontinued, as applicable, and shall make appropriate arrangements for properly maintaining and disposing of client records in compliance with applicable federal and state statutes and rules, and in compliance with the retention requirements of §448.408 of this title (relating to Client Records). The licensee shall notify the department at the time of a facility closure, where the client records will be stored, and the name, address, and telephone number of the custodian of the records. In addition, the licensee shall notify the department at the time of any subsequent changes to the information if not all facility records have met required retention periods.

§448.206. Licensure Fees.

(a) An applicant or licensee shall pay all applicable licensure fees in full when submitting an application.

(b) All licensure fees are nonrefundable.

(c) The applicant or licensee shall pay licensure fees by cashier's check or money order.

(d) The licensure fee schedule is as follows:

(1) base fee (1st facility) residential, outpatient, or residential and outpatient--$1700;

(2) additional site/facility--$250;

(3) outpatient per slot--$10;

(4) residential or inpatient per bed--$25;

(5) change in status--$200;

(6) replacement license certificate--$50

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(e) For new and renewal applications, the department is authorized under Government Code §2054.252 to collect subscription and convenience fees in amounts necessary to recover the cost of fees imposed by the Department of Information Resources in connection with any new and renewal application processing through texas.gov. The fees may be paid with a credit card when applying for or renewing any license online.

§448.207. Temporary Variance.

(a) The department may grant a temporary variance from a requirement of this chapter to a licensed facility or applicant for licensure.

(b) Request for a variance. An applicant or facility shall submit to the department's Facility Licensing Group and the Compliance Group for Treatment Facilities for Individuals with Substance-Related Disorders a written request, together with any pertinent or requested documentation, that specifies the rule number and specific rule provision(s) from which a variance is sought:

(1) describes how an alternative method will be used to meet the intent of the rule; and

(2) demonstrates that approval of the variance will not jeopardize the health, safety, or welfare of clients or compromise the provision of substance-related disorder treatment services at the licensed facility.

(c) The department will issue a written determination that sets forth the grounds for approval or denial of the requested variance. If the variance is approved, the department will state the term and any conditions of the variance.

(d) The department may expedite procedures under this section for facilities during emergency or disaster situations, but will limit the term of any emergency variance granted to the continuation of the circumstances of the emergency or disaster. The facility shall seek renewal of the emergency variance if it asserts that the circumstances of the emergency or disaster and the need for the variance have extended beyond 120 days. Once the circumstances of the emergency or disaster cease to exist, the facility may apply for a variance under the non-expedited procedures of this section.

(e) The determination of the department will be final.

(f) A variance cannot be granted under any circumstances for a statutory requirement or for a fire safety requirement.

SUBCHAPTER C. INSPECTION AND INVESTIGATION PROCEDURES AND ENFORCEMENT.

§448.301. Inspections and Investigations.

(a) The department may conduct an unannounced on-site inspection or investigation of a facility, at any reasonable time, including at any time treatment services are provided, to evaluate compliance with the Act, the rules of this chapter adopted under the Act, a facility's plan of correction, an order of the commissioner, or the commissioner's designee, a court order granting injunctive relief, or for purposes it otherwise considers necessary.

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(b) An applicant or licensee, by applying for or holding a license, consents to entry and inspection and/or investigation of any of its facilities by the department, as provided for by the Act and this chapter.

(c) Department inspections and investigations to evaluate a facility's compliance with the requirements of the Act and this chapter, are not limited by, but may include:

(1) Initial, pre-licensure, and change in status inspections for the issuance of a new license.

(2) Routine inspection, which may be conducted without notice and at the department's discretion, or prior to renewal.

(3) Follow-up on-site inspection, conducted to evaluate implementation of a plan of correction for deficiencies cited during a department investigation or inspection.

(4) Complaint investigation, conducted in response to a report or complaint, as described in §448.302(d) and (e) of this title (relating to Complaint Investigations).

(5) Inspection to determine if an unlicensed facility is offering or providing, or purporting to offer or provide, substance-related disorder treatment.

(d) A facility shall cooperate with any department investigation or inspection, and shall, consistent with applicable law, permit the department to examine the facility's grounds, buildings, books, records, and other documents and information maintained by or on behalf of the facility, necessary to evaluate compliance with applicable statutes, rules, plans of correction, and orders. The facility shall permit the department access to interview members of the governing authority, personnel, and clients.

(e) The facility shall, consistent with applicable law, permit the department to copy or reproduce, or shall provide photocopies to the department of, any requested records or documents. If it is necessary for the department to remove original documents or other records from the facility premises, as otherwise permitted by law, the department will provide to the facility's governing authority or designee a written description of the information being removed and when it is expected to be returned. The department will make a reasonable effort, consistent with the circumstances, to return on the same day any original records removed.

(f) The department will hold an entrance conference with the facility governing authority or designee before beginning the inspection or investigation, to explain, consistent with applicable law, the nature, scope, and estimated time schedule of the inspection or investigation.

(g) An inspection and, within its limited scope, an investigation or follow-up visit, will include an evaluation of compliance with the Act and this chapter. During the inspection or investigation, the department representative will, unless otherwise provided for by law, inform the facility's governing authority or designee, of the preliminary findings and give the facility a reasonable opportunity to submit additional facts or other information to the department representative in response to those findings.

(h) When the inspection or investigation is complete, the department will hold an exit conference with the facility to inform the facility, to the extent permitted by law, of any preliminary findings of the inspection or investigation and to give the facility the opportunity to provide additional information.

(i) If deficiencies are cited:

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(1) The department will provide the facility with a written deficiency report within 20 calendar days after the exit conference. If the department provides the deficiency report to the facility after the exit conference, the report will be sent through U.S. mail or electronically. The facility will be deemed to have received the report, or other department correspondence mailed under this section, three days after mailing, or upon electronic receipt.

(2) The facility's governing authority, designee, or person in charge at the time of the exit conference shall sign an acknowledgement of receipt of the written deficiency report and return it to the department. The signature does not indicate the facility's agreement with, or admission to, the cited deficiencies unless the agreement or admission is explicitly stated.

(3) Within 20 calendar days after the facility's receipt of the deficiency report, the facility shall return a written plan of correction to the department for each cited deficiency, including timeframes for implementation, together with any additional evidence of compliance the facility may have regarding any cited deficiency. The department will determine if a written plan of correction and proposed timeframes for implementation are acceptable, and, if accepted, notify the facility. If the plan is not acceptable, the department will notify the facility in writing and request a modified plan, and the facility shall modify and resubmit the plan of correction no later than 20 calendar days after the facility's receipt of such request. The facility shall correct the identified deficiencies and submit documentation to the department verifying completion of the corrective action within the timeframes set forth in the plan of correction accepted by the department, or as otherwise specified by the department. The facility will be deemed to have received the deficiency report or other department correspondence mailed under this section three days after mailing.

(4) Regardless of the facility's compliance with this subsection or the department's acceptance of a facility's plan of correction, the department may, at any time, propose to take action as appropriate, under §448.303 (relating to Enforcement Action) and/or §448.304 of this title (relating to Administrative Penalties).

(j) The department will refer issues and complaints relating to the conduct or actions by licensed professionals, interns and applicants for professional licensure to their appropriate licensing boards.

§448.302. Complaint Investigations.

(a) All licensed treatment facilities shall provide each client and applicable consenter at the time of admission, with a written statement identifying the department as the responsible agency for conducting substance-related disorder treatment facility complaint investigations. The statement shall inform persons that they may direct a complaint to the Department of State Health Services, Substance Abuse Compliance Group, PO Box 149347, Mail Code: 1979, Austin, Texas 78714-9347; by phone at 1-800-832-9623; by fax at 1-512-834-6638; or by email at SACG@dshs.texas.gov. If this contact information becomes outdated, the statement shall provide the most current contact information for filing a regulatory complaint against a substance-related disorder treatment facility, including the appropriate agency group, address, local and toll-free telephone number, fax number, and email address for filing a complaint. The facility

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shall maintain the current department contact information for filing complaints and notice shall be posted providing such information in a conspicuous space for public viewing in accordance with §448.406 of this title (related to Required Postings).

(b) The department will evaluate all complaints against substance-related disorder treatment facilities. Any complaint submitted to the department shall be submitted by telephone, fax, electronically, or in writing, using the department's current contact information for that purpose, as described in subsection (a) of this section.

(c) The department will document, evaluate, and prioritize complaints and information received, based on the seriousness of the alleged violation and the level of risk to clients, personnel, and/or the public.

(1) Allegations determined to be within the department's regulatory jurisdiction relating to substance-related disorder treatment facilities are authorized for investigation under this chapter. Complaints received outside the department's jurisdiction may be referred to another appropriate agency for response.

(2) The department may conduct an investigation by on-site and in-person interviews and investigation, by telephone, through written correspondence, and/or by other available methods.

(d) The department will conduct a prompt and thorough investigation of all reports or complaint allegations that may pose a threat of harm to the health and safety of clients or participants.

(e) The department will evaluate complaints that do not allege a significant risk of harm to clients or participants. Based on the nature and severity of the alleged incident, the department will determine whether to investigate the complaint directly or to require the facility to conduct an internal investigation and submit its findings and supporting evidence to the department for review and consideration.

(1) The department will review the findings of a facility's internal investigation and may conduct additional investigation, request a plan of correction to be completed by the facility in accordance with §448.301(i)(3) of this title (relating to Inspections and Investigations), and/or propose to take action against the facility or its license under §448.303 (relating to Enforcement Action) or §448.304 of this title (relating to Administrative Penalties).

(2) The facility under investigation shall provide department staff access to all documents, evidence, and individuals related to the alleged violation, including all evidence and documentation relating to any internal investigations.

(f) Once an internal facility and/or department investigation is complete, the department will review the evidence from the investigation to evaluate whether the evidence supports the complaint.

§448.303. Enforcement Action.

(a) The department may take action against an applicant, license, or licensee for a violation of the Act or this chapter, any other law within the department's regulatory jurisdiction relating to substance-related disorder treatment facilities, or an order issued under any such laws or rules.

(b) The department may deny, refuse to renew, suspend, or revoke a license; place on probation, with conditions for completion of the probation, a facility whose license

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has been suspended; or reprimand a licensee for one or more of the following reasons, or as otherwise permitted by law:

(1) the applicant or licensee, or the owner, director, CEO or other facility administrator, or a clinical staff member of the facility has a documented history of client abuse or neglect;

(2) the applicant or licensee, or the owner, director, CEO or other facility administrator, or a clinical staff member of the facility violates or has violated any provision of the Act or other applicable statute, or a rule or Order adopted under such laws or under this chapter; or

(3) the applicant or licensee knowingly:

(A) makes a false statement in connection with applying for or renewing the license;

(B) makes a material misrepresentation to the department in connection with applying for or renewing the license;

(C) has refused to provide information requested by the department; or

(D) fails to provide all of the licensee's criminal history information in response to the department's request for the information.

(c) The department may deny a person a license or suspend or revoke an existing license because the person has a conviction for one or more of the following offenses, excluding an offense punishable as a Class C misdemeanor:

(1) an offense that directly relates to the duties and responsibilities of holding a treatment facility license;

(A) In determining whether a criminal conviction directly relates to licensure as a treatment facility under paragraph (1) of this subsection or fitness of the applicant or licensee to perform the duties and discharge the responsibilities of holding a treatment facility license, the department will give consideration to the factors outlined in the provisions of the Occupations Code, §53.022 and §53.023. The applicant or licensee shall provide any information requested by the department for the department's consideration of these factors. An applicant or licensee's failure to provide any requested information may result in the applicable factors being construed against the applicant or licensee.

(B) Without limiting paragraph (1)(A) of this subsection, as it relates to a particular applicant, licensee, or conviction, the following offenses generally relate to licensure as a treatment facility, based upon their gravity, nature, and tendency to indicate an inability, incapacity or lack of fitness or suitability to hold a treatment facility license:

(i) an offense involving moral turpitude;

(ii) an offense relating to deceptive business practices;

(iii) an offense relating to the practice of any health-related profession, business, or occupation without a required license;

(iv) an offense related to health care fraud;

(v) an offense under any federal or state law relating to alcohol, drugs, dangerous drugs, or controlled substances, or related to impairment from any of those; or

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(vi) an offense against a person, including, without limitation, a sexual or assaultive offense; or

(vii) any other offense that indicates a tendency for the person to be unable, unfit, or unsuitable to own or operate a facility or to be responsible for or interact with clients, and if action by the department will promote the intent of the Act, this chapter, or Occupations Code, §53.021 - §53.023.

(2) an offense that does not directly relate to the duties and responsibilities of holding a treatment facility license and was committed less than five years before the date the person applies for the license. The department will consider the factors required to be considered under subsection (c)(1)(A), to the extent applicable to an offense under this paragraph, together with other factors that may be relevant in the particular circumstance;

(3) an offense listed in Section 3g, Article 42.12, Code of Criminal Procedure (relating to Limitation on Judge Ordered Community Supervision for certain enumerated offenses); or

(4) a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure (relating to Definitions).

(d) An applicant or licensee shall provide complete and accurate information in response to a department request concerning the applicant or licensee's criminal history, and relevant factors and considerations under subsection (c) of this section, and shall report the applicant or licensee's conviction of any offense, other than an offense punishable as a Class C misdemeanor, to the department. The department is entitled to obtain criminal history information maintained by the Department of Public Safety, as provided for by Government Code §411.122, the Federal Bureau of Investigation, or any other criminal justice agency, as provided for by Government Code §411.087, and may take action based upon that information as provided for in this section.

(e) A licensee's license shall be revoked upon the licensee's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

(f) If the department proposes to deny, refuse to renew, suspend, or revoke a license; place on probation, with or without conditions for completing the probation, a licensee whose license has been suspended; or reprimand a licensee, the department will give the applicant or licensee written notification of the reasons for the proposed action, including a summary of the alleged facts and/or conduct alleged to constitute the violation and to warrant disciplinary action, and the statute or rule allegedly violated. The department will send the notice by certified mail, return receipt requested, to the licensee's current address of record in the licensing records of the department, and offer the applicant or licensee an opportunity for an administrative hearing at the State Office of Administrative Hearings.

(1) The applicant or licensee may request an administrative hearing within 20 days after the date the applicant or licensee receives notice. The applicant or licensee is presumed to have received the notice on the third day after it is mailed by the department to the applicant or licensee's address of record.

(2) A request for an administrative hearing shall be in writing and submitted to the department as instructed in the notice of violation letter, and may include

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a request for an informal conference with department staff to give the applicant or licensee an opportunity to demonstrate compliance with the law.

(3) If the applicant or licensee requests a hearing and an agreed resolution is not reached after an informal conference or otherwise, an administrative hearing will be conducted pursuant to the Government Code, Chapter 2001, APA, State Office of Administrative Hearings Rules of Procedure at 25 Texas Administrative Code, Chapter 155, and the Formal Hearing Procedures of the Department set forth in §§1.21, 1.23, 1.25 and 1.27 of this title (relating to Formal Hearing Procedures).

(4) If the department does not receive a timely request for a hearing under paragraph 1 of this subsection, the department, as of the 30th day after the notice was mailed, may deem the licensee to have waived the opportunity for an administrative hearing and take the proposed action by default order.

(g) If the department suspends a license, the suspension shall remain in effect for the term stated in the suspension order.

(1) During the time of suspension, the licensee whose license is suspended shall return the original license certificate to the department and shall not offer, provide, or purport to offer or provide substance-related disorder treatment or services.

(2) If a suspension overlaps a renewal date, the licensee whose license is suspended shall comply with the renewal procedures in this chapter. However, a renewed license will remain suspended for the remaining term of the suspension.

(h) If the department revokes, denies, or refuses to renew a license, the former licensee is ineligible to re-apply for licensure for a period of two years. If a former licensee applies for licensure after licensure revocation, denial, or renewal refusal, the department may consider, in determining whether to grant the license:

(1) whether the reason for revocation, denial, non-renewal, or voluntary surrender continues to exist;

(2) evidence from the former licensee relating to any change in circumstances or conditions have changed relevant to the previous adverse licensure action or voluntary surrender; or

(3) the former licensee's history of repeated failure to provide clients with a safe environment or to protect client rights.

(i) If a licensee returns a facility license for voluntary surrender after its presumed receipt of a notice of violation letter relating to that facility, as provided for under subsection (f) of this section, the department may accept the voluntary surrender, which shall invalidate the license, or may reject it and proceed with its formal enforcement action. After a voluntary surrender is accepted under this subsection, the former licensee may not reapply for a license for six months after the date of the final order accepting the voluntary surrender. Upon re-application, the department may give consideration to the factors set forth in subsection (h). A surrender accepted under this section will be posted on the department's website with other enforcement actions and may be considered as part of the former licensee's disciplinary history.

(j) After a facility's license has been denied, revoked, refused renewal, or its voluntary surrender accepted, a facility is not eligible to apply for registration of an exemption for a faith-based substance-related disorder treatment program under subchapter J of this chapter (relating to Faith-Based Chemical Dependency Treatment

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Programs) until two years have elapsed since the date of revocation, denial, renewal refusal, or the department's acceptance of the voluntary surrender.

§448.304. Administrative Penalties.

(a) The department may impose an administrative penalty against a person licensed or regulated under the Act or this chapter, any other law within the department's regulatory jurisdiction relating to substance-related disorder treatment facilities, or an order adopted under any such laws or rules, or any other law within the department's regulatory jurisdiction relating to substance related disorder treatment facilities.

(b) The penalty for a violation may be in an amount not to exceed $25, 000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) The amount of the penalty will be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public or clients;

(2) enforcement costs relating to the violation;

(3) history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(d) The procedures and presumptions set forth in §448.303(f) of this title (relating to Enforcement Action), except paragraph (4) of that subsection, will apply to the proposed imposition of an administrative penalty under this section, whether alone or in conjunction with another sanction proposed under §448.303 of this title. The notice letter will constitute the department's report under Health and Safety Code §464.019. If, within 20 days after the notice is received by the licensee, the licensee requests a hearing or fails to respond to the notice, an administrative hearing will be set, the licensee will be notified, and any hearing will be conducted at the State Office of Administrative Hearings, as described in §448.303(f)(3) of this title.

§448.305. Complaint against a Department Inspector or Investigator.

(a) A facility may register a good faith complaint against a department inspector or investigator who conducts an inspection or investigation under §448.301 of this title (relating to Inspections and Investigations).

(b) A facility shall submit the complaint against an inspector or investigator to the Substance Abuse Compliance Group, Department of State Health Services, Mail Code 1979, P.O. Box 149347, Austin, Texas 78714-9347; by phone at 1-800-832-9623; by fax 1-512-834-6638; or by e-mail at SACG@dshs.state.tx.us. If the complaint is received by telephone, the caller will be requested to submit the complaint in writing.

(c) Within 10 calendar days after receipt of the complaint, the department will notify the complainant in writing that the department will review and investigate the complaint.

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(d) The department will notify the complainant in writing of the outcome of the review within 30 calendar days after the complaint was received.

(e) Conclusions made or action taken under this section do not invalidate the inspection or investigation with which the complaint was associated, nor prevent, constitute, or substitute for, final findings or action proposed or taken under §448.303 (relating to Enforcement Action) and/or §448.304 of this title (relating to Administrative Penalties).

SUBCHAPTER D. OPERATIONAL REQUIREMENTS.

§448.401. Governing Authority.

(a) A licensee shall have a governing authority, identified in writing, and responsible for each facility for which the licensee holds a license. The licensee, through its governing authority, shall:

(1) determine the mission, goals, and objectives of the facility;

(2) adopt, implement, and enforce written policies and procedures, and ensure that practices are instituted, that ensure compliance with the Act, this chapter, and other applicable law. The governing authority may delegate procedure development, and policy and procedure implementation, review, and enforcement to a CEO, whom the governing authority shall identify in writing and hold accountable for delegated duties;

(3) exercise ultimate responsibility for all services provided on behalf of the facility, whether provided directly or under contract. The governing authority shall ensure that services, including services provided under contract, are provided in a safe and effective manner, consistent with the requirements of this chapter and other law, and that they are evaluated in accordance with §448.405 of this title (relating to Quality Assessment and Performance Improvement). The facility's governing authority shall ensure that the licensee has written agreements relating to any non-employee staff who provide substance-related disorder services for the facility, and that the agreements ensure the facility's compliance with this chapter and other applicable law in relation to those staff, and explicitly address the protection of client rights and confidentiality, as required by this chapter and other applicable law;

(4) keep informed, and provide direction, as needed, about the general, program, operational, and quality assessment and performance improvement activities of the facility and about applicable regulatory requirements, contractual obligations, and compliance and personnel matters;

(5) keep informed about the financial condition of the facility and ensure the adequacy and responsible management of the licensee's and each of its facility's financial resources;

(6) appoint, and identify in writing, direct, and oversee, evaluate, and hold accountable a CEO, who shall:

(A) have overall administrative authority, responsibility, and oversight, consistent with the policy and direction of the governing authority, for the day to day operations, finances, and provision of services at the facility, for the hiring, training, and evaluation of facility staff and personnel, for implementing and enforcing

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policies and procedures, and for informing the governing authority of essential and significant aspects of facility operations;

(B) select, train, and evaluate, or ensure the training and evaluation of, staff and appropriate personnel to conduct the day-to-day operations of the facility;

(C) inform the governing authority about general and program activities of the facility, the financial condition of the facility, and applicable regulatory requirements and significant compliance issues, including any proposed disciplinary actions, and implement related direction from the governing authority;

(7) direct, consult with, and supervise the CEO to ensure the facility's compliance with this chapter and with other applicable law;

(8) designate in writing a person who meets the qualifications of a CEO to act in the absence of the CEO.

(b) The licensee's governing authority shall ensure that its members are trained regarding member duties, responsibilities and liabilities.

(c) The licensee shall maintain on the facility premises documentation adequate to demonstrate compliance with the requirements of this section, or shall provide such documentation to department staff within two hours of a department request.

(1) The governing authority shall meet at least annually and keep minutes or other records necessary for the orderly conduct of the facility. Meetings of the governing authority pertaining to the facility shall be conducted and documented in a manner that allows for retrieval and availability to department staff of meeting records of the governing authority specific to the facility, and identifiable on their face as such, within the timeframes required by this subsection.

(2) If a licensee is an individual or other organizational form in which responsibility for the functions of both the governing authority and the CEO is held by the same individual(s), the licensee shall maintain documentation adequate to demonstrate that the individual responsible for both functions has performed the management and oversight functions required of both the governing authority and the CEO.

§448.402. Facility Organization.

(a) Organizational Structure. The licensee shall maintain current documentation of the organizational structure of the licensee, which shall be in a chart format or written narrative that reflects the lines of authority, the number of staff positions, with the titles for each, and, for filled positions, the name of staff member in each such position.

(b) Facility Contact Information.

(1) The facility shall provide to the department the contact name and telephone number for the CEO of the facility, who must be authorized to represent and act on behalf of the licensee, and who shall act as its primary contact with the department, unless the CEO identifies in writing to the department another representative of the licensee who will act as its primary contact and has been given the authority to represent and act on behalf of the licensee.

(2) The facility contact shall provide the department in writing a current mailing address and electronic mail address (if any) for the department to use as the address of record for the facility licensee, as well as a telephone number for the facility

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contact person. The facility contact shall also provide the name and contact information for the facility's clinical director.

(3) The facility contact shall also ensure that the department has an accurate physical address for the licensed facility, and an accurate, working telephone number for the licensed facility.

(4) The facility shall update in writing or through electronic mail within 10 days after any change in the facility CEO, contact or clinical director; in the telephone number of the facility contact, clinical director, or licensed facility; or in the mailing address to be used as the address of record for the facility licensee.

(5) The most recent mailing address for the facility licensee, as provided by the facility to the department's licensing staff, shall be the facility's address of record for purposes of this chapter, and department correspondence and notices mailed to that address will constitute effective notice of the mailed document.

(c) Operational Plan. The facility shall operate according to a written operational plan approved by the governing authority and consistent with the licensure authorization for the facility. At a minimum, the operational plan shall contain the following for each facility treatment program:

(1) a description of the program purpose or a mission statement;

(2) a description and schedule of program services; and

(3) a description of the population(s) to be served, including any special populations, consistent with the program's licensure authorization.

(d) Proof of Insurance. The facility shall maintain property and general commercial liability insurance and current proof of such insurance, which it shall provide to the department upon request.

§448.403. Policies, Procedures, and Practices.

(a) The licensee's governing authority shall adopt, implement, enforce, and monitor written policies and procedures for all areas of facility operation, in accordance with §448.401(a)(2) of this title (relating to Governing Authority). The policies and procedures as written and implemented, and the practices instituted at the facility, shall ensure that the facility provides treatment that complies with this chapter, and is therapeutically sound, consistent with industry standards, and provided in a safe and professional manner and environment.

(b) The licensee's governing authority shall systematically review the documented policies and procedures whenever needed, but at least every two years. The facility shall have a tracking mechanism that documents, for each policy and procedure, the date of initial adoption, the date of last review, and the dates of any revisions, which shall include a record of any items revised and the revisions made. With respect to all personnel who are required under § 448.503(b) of this title (relating to Personnel Training and Demonstrated Competency) to receive orientation in the facility's policies and procedures, the facility shall notify such personnel of any revisions to those policies and procedures, shall provide any necessary or required training related to the particular revisions made, and shall document the notification and/or the training given, and the date thereof, for all such personnel.

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(c) The policy and procedure manual shall not consist solely of a restatement of department rules, but shall be individualized to the facility and shall contain provisions specific to each level of care and service offered by the facility, and, as warranted, to each gender, age group, and special population included within the facility's licensure authorization. The manual shall specify procedures with sufficient detail to ensure the compliance of each of the facility's programs with all applicable laws and rules, including rules under this chapter, and to reflect the particular needs and practices of each program, consistent with applicable law. An up-to-date manual, specific to the program, shall be easily accessible at all times, in either paper or electronic form, to all personnel for each of the facility's programs and, upon request, to department staff.

(d) The facility shall document its procedures and arrangements for making voluntary, anonymous, and affordable counseling and testing services concerning HIV infection, including HIV antibody testing by an authorized entity with the requisite Clinical Laboratory Improvement Amendments certificate, available and known to clients.

§448.404. Minimum Standards of Conduct.

(a) The facility governing authority shall adopt, implement and enforce written policies on personnel conduct, and shall ensure personnel conduct, consistent with the requirements of this section and with the purpose and programs of the facility. The facility shall adopt, implement and enforce written procedures and institute practices to ensure that the facility and its personnel comply with reporting requirements under this chapter and other applicable laws and rules and to ensure that they report all alleged or reasonably suspected violations of professional and ethical codes of conduct to the appropriate licensing and, if applicable, law enforcement, authorities.

(b) The facility shall plan, supervise, and evaluate each activity that it provides or for which it is otherwise responsible.

(c) The facility shall tailor its treatment programs to clients' individual needs and circumstances, including age and developmental level, and shall ensure that its treatment programs are culturally sensitive. Facility personnel shall be trained in, and shall manifest in their conduct and interactions, an understanding of the various cultural norms of the facility's clients and prospective clients. The facility and its personnel shall provide treatment and direct care in a respectful and non-exploitative manner.

(d) The facility shall ensure that all documentation and any written or verbal information relating to a facility's clients, personnel, treatment, direct care, and other facility operations and services, including any communications with other service providers, professionals, the department, and the general public, is accurately recorded and maintained. The facility shall not misrepresent, directly or by implication, its licensure status or scope, its affiliations, or the professional qualifications of any personnel involved in the provision of treatment on behalf of the facility.

(e) The facility shall ensure that the facility and its personnel maintain, and practice only within the scope of, any required licenses and professional credentials, and that they act in compliance with all applicable licensing and professional standards.

(f) The facility shall not illegally discriminate against any individual based on age, color, disability, national origin, political belief, race, religion, gender identity and

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expression, sexual orientation, or medical condition, including because an individual is, or is perceived to be, HIV-infected. An age or gender restriction that is based solely upon, and required by, a limitation on a facility's licensure authorization for that program, is permissible under this section. The facility may consider financial resources and ability to pay in making eligibility and scope of service determinations, consistent with written criteria, but economic condition shall not affect the manner in which the facility provides treatment, direct care, or other services, once a client or prospective client has been determined to be eligible for those services.

(g) The facility shall protect the privacy and confidentiality of clients and prospective clients and shall not disclose confidential information without express written consent of the client and/or, as applicable, another person authorized to provide consent to disclosure, except as permitted by law. The facility shall train its personnel and ensure that they remain knowledgeable of, and comply with, all applicable state and federal laws and regulations relating to confidentiality and security, including, as applicable and without limitation, Health and Safety Code, Chapters 181 and 611; Occupations Code Chapter 159; 42 United States Code §290dd-2 and 42 Code of Federal Regulations (CFR) Part 2, and the Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191) and its implementing regulations, including its Privacy and Security Rules under 45 CFR Parts 160 and 164, and including amendments to those Rules and the Breach Notification Rule added in Subpart D of Part 164 pursuant to the Health Information Technology for Economic and Clinical Health Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5 (Feb. 17, 2009). Each facility and its personnel shall also protect the confidentiality of HIV information, including as required under Health and Safety Code, Chapter 81, §81.103 (relating to Confidentiality; Criminal Penalty).

(h) The facility shall provide its treatment and ancillary services in a professional, ethical, therapeutic, competent, and respectful manner, and shall ensure that neither the facility licensee nor its personnel:

(1) provide services, interact with clients or prospective clients, or perform any job duties while under the influence of, or impaired by, the use of alcohol or mood altering substances, including prescription medications not used in accordance with a physician's order or causing present impairment;

(2) commit an illegal, unprofessional or unethical act (including acts constituting abuse, neglect, or exploitation), nor assist or knowingly allow another person to commit an illegal, unprofessional, or unethical act, including, without limitation, any act which violates, or causes the facility to violate, the Act, this chapter, any other applicable statute or rule, or any Order issued under any such laws or rules;

(3) falsify, alter, destroy, or omit significant information from, required reports or records, or interfere with their preservation;

(4) retaliate or discriminate against, intimidate, threaten, or harass anyone who reports a violation of this chapter or other law, or cooperates during a department review, inspection, or investigation, an administrative hearing or judicial proceeding, or other related activity;

(5) interfere with a department inspection, investigation, or review, an administrative or judicial proceeding; or related activity, including taking action to

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discourage or prevent someone else, directly or indirectly, from cooperating with any such activity;

(6) either enter into any type of personal or business relationship with a client, other than the treatment relationship, or give a personal gift to, or accept a personal gift of value from, a client, if doing so would violate, or cause any personnel to violate §448.607(b), (c) and (d) of this title (relating to Client Labor and Interactions) or any applicable professional or ethical standard of conduct of a practitioner's license.

(7) discourage, threaten, interfere with, intimidate, harass, or retaliate against any client who tries to exercise a client right or file a grievance;

(8) restrict, discourage, or interfere with any communication with law enforcement, an attorney, or with the department;

(9) allow unqualified persons or entities to provide services;

(10) hire or utilize a registered sex offender; or

(11) categorically deny admission to an individual that presents with co-occurring psychiatric and substance-related disorders, without consideration of individualized facts, and shall not, under any circumstances, deny admission if in violation of any law.

(i) The facility and its personnel shall comply with Health and Safety Code Chapter 164 (Treatment Facilities Marketing and Admission Practices).

§448.405. Quality Assessment and Performance Improvement.

(a) The facility shall adopt, implement, maintain, and enforce a written quality assessment and performance improvement (QAPI) plan that is effective, ongoing, facility-wide, systematic, and data-driven to evaluate the provision of client services.

(b) The QAPI plan shall be individualized to the facility, reflect the complexity of the facility's organization and services, and have a written plan of implementation.

(c) The facility's QAPI program shall identify and document standards that reflect processes for care and generally accepted standards for facility operations, services, and performance. The team shall measure, analyze, and track in writing, the provision of substance-related disorder treatment, client services, staff performance, and other aspects of performance at the facility against those standards. The facility shall evaluate the quality of care, achievement of facility purposes and mission, implementation of facility policies and procedures, and compliance with regulatory requirements.

(d) The facility shall identify opportunities for improvement, develop and implement improvement plans, evaluate the implementation of such plans until resolution is achieved, and document these activities. The facility shall measure, review, track, and identify trends, and shall address through corrective action areas identified as needing improvement, immediately correcting any identified problems that threaten the health or safety of clients.

(e) The facility shall document the QAPI activities performed. Documentation of the facility's QAPI activities shall be available to the department upon request.

(f) A facility's QAPI review conducted under this section is independent of the facility's obligation to effectively address the items listed in subsection (c) and other identified problems at the time they occur and/or are reported, and in accordance with other applicable requirements of this chapter and as warranted by the circumstances.

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§448.406. Required Postings.

(a) The facility shall prominently and conspicuously post a legible and current copy of the following documents in one or more public areas of the facility so that at least one copy of each required posting is readily available and observable to all facility clients, volunteers, personnel and visitors:

(1) a Client Bill of Rights, which shall include the rights described in §448.601 of this title (relating to Client Bill of Rights);

(2) information on reporting complaints and violations, which shall include a statement of the duty to report allegations of abuse, neglect, exploitation, and illegal, unprofessional and unethical conduct. The posting shall include the department's name, its most current address, and a toll-free telephone number for making a complaint or a required report;

(3) the facility's grievance procedure; and

(4) a legible statement that employees, staff, and non-employees are protected from discrimination or retaliation for reporting a violation of law in accordance with Health and Safety Code, §161.134(j) (relating to Retaliation against Employees Prohibited) and §161.135(h) (relating to Retaliation against Nonemployees Prohibited).

(b) These documents shall be displayed in English and in a second language appropriate to the population served.

(c) The facility shall comply with the additional posting requirements contained in §§448.202(h) (relating to Application and Issuance of Initial License), 448.411(c) (relating to Client Emergencies), 448.415(a)(6) (relating to Food and Nutrition Standards), 448.416(a)(2) (relating to Health, Safety, and Sanitation Practices), and 448.903(b) of this title (relating to Fire Safety and Evacuation Plan).

§448.407. General Documentation Requirements.

(a) The facility shall maintain documentation of services provided and of related transactions, including financial records, which shall be adequate to demonstrate compliance with this chapter.

(b) The facility shall keep and maintain complete, current, factual and accurate documentation.

(c) All documents, entries, and orders shall be dated and authenticated in written or electronic form by the person responsible for the content. Signature stamps are prohibited.

(1) Authentication of paper records shall be an original handwritten signature that includes at least the first initial, last name, and credentials, as applicable. Handwritten initials are acceptable if the client record contains a document that identifies all individuals initialing entries, including the full printed name, signature, credentials, and initials.

(2) An individual's digital or electronic authentication may be utilized by the facility, if it meets the standards for attribution to that individual and to be given effect under the Uniform Electronic Transaction Act and other applicable law and accepted technological standards prevailing at the time for digital authentication, and

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where the authentication is intended by the authenticating individual to have the same force and effect as that individual's manual signature.

(3) All verbal or telephone orders must be documented and authenticated by the individual receiving the order, who shall document the date and time of the order. The prescriber or practitioner who gave the order must have authority for the order, and shall confirm the verbal or telephone order by authentication within 72 hours after giving the order, and shall document the date and time of the authentication.

(d) Documentation shall be permanent and legible.

(e) When it is necessary to correct a client record, incident report, or other document that is in paper form, the error shall be marked through with a single line, dated, and initialed by the writer. If the document is an electronic document, the error shall be corrected in a manner that preserves the content of the original entry and tracks the date, text, and author of the correction.

(f) The facility shall create and maintain a list of abbreviations approved by the facility. Facility records shall contain only those abbreviations included on the facility's list of approved abbreviations.

(g) The facility shall not destroy any documentation, property, or any form of record that relates, or may relate, directly or indirectly, to any matter that the facility knows, or should know, is or may be involved in any inspection, investigation, enforcement proceeding, or civil, administrative, or criminal litigation that is pending or reasonably foreseeable until the matter is finally resolved.

§448.408. Client Records.

(a) The facility shall develop and maintain a system for the creation, processing, maintenance, storage, retrieval, authentication, security, and protection of client records. A record shall be maintained for every client, including clients who present to the facility for evaluation and/or screening to determine eligibility for admission, even if they are not admitted and regardless of the scope of service provided.

(b) The content of client records shall be complete, current, accurate, and appropriate to the scope and complexity of the services provided, and shall comply with the documentation requirements of this chapter.

(c) The facility shall protect all active and inactive client records and other client-identifying and protected client and health information from loss, damage, tampering, unscheduled or unauthorized destruction, and unauthorized access, use or disclosure, and shall protect the records and information of all clients and individuals described in subsection (a) of this section to the same degree.

(1) The facility shall store all active client records at, or immediately and directly accessible from, the facility. The facility shall fully protect inactive records, if stored off site, and shall ensure the records are accessible to department staff within 24 hours after a request. The facility shall maintain all active and inactive client records in their original or legally reproduced form.

(2) The confidentiality and security of electronic client records and information shall be protected in accordance with applicable law and accepted security standards prevailing at the time for electronic health records, including, without limitation, in accordance with applicable provisions set forth in §448.404(g) of this title

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(relating to Minimum Standards of Conduct). Client records and information stored electronically shall have a reliable backup system.

(d) The facility shall adopt, implement and enforce written procedures that regulate and control access to, and security and use of, client records and information, including electronic and electronically stored records and information, and shall ensure that only personnel whose documented job duties require access to client records are allowed such access. The facility's procedures and practices shall be specifically tailored to the form and manner in which the facility creates, maintains, protects, stores and transmits client records and information.

(e) The facility shall keep records locked and secured at all times unless authorized staff is continuously present in the immediate area.

(f) The facility shall ensure that all client records can be located and retrieved upon request at all times.

(g) The facility shall comply with federal and state confidentiality, privacy, and security laws and regulations, as required by § 448.404(g) of this title (relating to Minimum Standards of Conduct).

(h) The facility shall not deny clients access to the content of their records except as permitted by applicable law.

(i) If client records are microfilmed, scanned or destroyed, the facility shall take steps to protect confidentiality in accordance with applicable law. The facility shall maintain documentation of all client records destroyed, including the client's name, record number, birth date, and dates of admission and discharge, as well as the method, mode, and date of destruction.

(j) Unless a longer period of retention is required under a facility's policies and procedures, this subsection or chapter, or other law, the facility shall retain inactive client records in their original or legally reproduced form for a period of at least six years after a client's most recent discharge from the facility. The inactive records shall remain accessible for all persons legally entitled to access and made available to department staff within 24 hours after a request by department staff.

(1) The facility shall not destroy client records or information that otherwise meets the retention period if they relate or may relate, directly or indirectly, to any matter that the facility knows, or should know, is or may be involved in any inspection, investigation, enforcement proceeding, or civil, administrative, or criminal litigation that is pending or reasonably foreseeable, until the matter is finally resolved.

(2) For records of a client less than 18 years of age at the time of any facility services to the client, the facility shall retain all client records until after the date of the client's 24th birthday or after the 6th anniversary of the date of the client's most recent discharge from the facility, whichever is later. However, if records that otherwise meet the retention period relate, directly or indirectly, to any matter that the facility knows, or should know, is or may be involved in any inspection, investigation, enforcement proceeding, or civil, criminal, or administrative litigation that is pending or reasonably foreseeable, the facility shall retain the records until the matter is finally resolved.

(3) If the facility plans to close or closes, the facility shall comply with the requirements of §448.205 of this title (relating to Inactive Status and Closure).

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§448.409. Incident Documenting and Reporting.

(a) General Requirements. The facility shall adopt, implement, and enforce policies and procedures, and shall institute practices, regarding reportable and unusual incidents that involve or affect facility clients, operations, treatment services, or related events and are not consistent with the routine operation of a facility, its program(s), or the care of its clients. The facility shall ensure that such incidents are investigated and appropriately addressed, and reported as required in this section and as otherwise warranted under the circumstances.

(b) Documentation Requirements. An incident report form shall be developed by the facility that, at a minimum, provides:

(1) a detailed description of the event, including the date, time and location;

(2) name and title of individuals involved and potential witnesses;

(3) steps taken to protect client safety;

(4) current status of the incident that occurred, and action planned, and any already taken, to appropriately address the situation; and

(5) the name, title and signature of the person completing the form, and the date completed.

(c) The facility shall complete an incident report form for all client incidents, including:

(1) a violation of a client rights, including but not limited to, allegations of abuse, neglect exploitation, and illegal, unprofessional, and unethical conduct;

(2) accidents and injuries;

(3) medical emergencies and any related hospitalization;

(4) psychiatric emergencies and any related hospitalization;

(5) medication errors, theft, or otherwise missing or diverted medication;

(6) illegal or violent behavior;

(7) loss of a client record;

(8) release of confidential information without client consent;

(9) fire;

(10) death of an active outpatient or residential client (on or off the program site);

(11) clients absent without permission from a residential program;

(12) suicide attempt by an active client (on or off the program site); and

(13) any other significant disruptions.

(d) The use of personal restraint or seclusion shall be reported and documented as required under §448.605 of this title (relating to Restraint and Seclusion).

(e) Initial Response to Incident. Upon becoming aware of an incident, and prior to investigation, the facility shall take immediate steps to protect all clients affected or put at risk by the incident. The facility shall ensure all such clients' continued safety and shall address any threat or danger as it becomes known to the facility or its personnel. Otherwise, the facility investigation of the incident shall be completed, and action shall be taken in response to the incident, implemented, and documented, by no later than 14 days after the facility first learned of the incident, unless a longer timeframe is warranted and the justification is documented.

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(f) Reporting Requirements. The facility shall immediately report the following incidents to the department, as circumstances of the event allow, but no later than one business day after learning of the incident:

(1) allegations of client abuse, neglect, exploitation, and illegal, unprofessional, and unethical conduct, as required by §448.603 of this title (relating to Abuse, Neglect, Exploitation, and Illegal, Unprofessional and Unethical Conduct);

(2) on or off-site death of an active client alleged, suspected or known to be, or otherwise potentially related to the care or treatment of the client;

(3) on or off-site suicide attempt by an active client;

(4) admission of a residential or inpatient client to a medical facility alleged, suspected, or known to be related to the care or treatment of the client;

(5) admission of an active client to a psychiatric or medical facility due to a psychiatric emergency alleged, known, or suspected to be related to the care or treatment of the client;

(6) theft or diversion of a controlled substance; or

(7) an event that causes significant disruption in the provision of services.

(g) Reportable Incidents shall be submitted on the incident report form developed by the facility, which, at a minimum, shall include the information required in subsection (b) of this section. The facility shall submit the report by facsimile or email to: the Department of State Health Services (DSHS), Substance Abuse Compliance Group, telephone 1-800-832-9623, fax 1-512-834-6638, SACG@dshs.state.tx.us, If this contact information becomes outdated, the facility shall submit the report to the most current agency contact information available for filing an incident report under this section for a substance-related disorder treatment facility.

(h) All incident reports shall be stored in a single file or capable of retrieval together, and separate from the client record.

§448.410. Emergency and Disaster Preparedness.

(a) Facility personnel shall respond in an effective and timely manner during an emergency or disaster to ensure the health, safety and well-being of each client. The facility shall establish and have in place a written disaster preparedness plan for natural and other disasters and a written emergency response plan. The plans shall be specific to each facility site and program. Each plan shall be based on an assessment of possible emergencies at each facility site and program, the probability and type of disaster in each region, and the local resources available to the facility. Each plan shall include the following:

(1) procedures for individuals with disabilities or special needs;

(2) detailed evacuation and shelter-in-place provisions, designed to minimize harm to clients and staff, and to ensure safe facility operations;

(3) detailed provisions and procedures assigning responsibility among facility staff for direction and control, communication, alert and warning systems, evacuation, and closure, and establishing contingencies for communication if routine systems of communication fail or otherwise become unavailable;

(4) provisions for coordinating with the local disaster management representative; and local and state Emergency Operations Centers. Residential or

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inpatient facilities shall make local agencies aware of each licensed facility and the client population served; and

(5) business and service continuity plans, which shall include provisions to ensure uninterrupted medication tracking, security and administration.

(b) Each inpatient and residential client record shall contain documentation acknowledging, within 24 hours after admission, that the client received a verbal and written summary of the emergency response procedures.

(c) In the event of an impending disaster or need for evacuation, the facility may allow residential or inpatient clients, to the extent consistent with and authorized by the client's circumstances, to furlough to destinations of their choice. Facilities shall ensure the safety and well-being of clients who do not have available the appropriate furloughing resources. Each facility with residential or inpatient clients shall have a written Memorandum of Agreement (MOA) with an external organization to provide for a safe, clean and confidential harbor for clients, unless it has documented arrangements for a safe, clean, and confidential client harbor with one or more of the same licensee's other licensed facilities. The MOA shall be approved by the governing authority; and signed and dated by its authorized representative, and by an authorized representative of the harboring organization. The governing authority shall review the licensee's inter-facility harboring plans or the facility MOA, as applicable, at least annually, and shall make any needed revisions in writing.

(d) The facility shall ensure transportation for all residential or inpatient clients located at the residential or inpatient facility at the time of evacuation to the harboring entity and back to the residential or inpatient site.

(e) The facility shall notify the department's Substance Abuse Compliance Group by telephone, facsimile, or electronic mail of any event described in subsection §448.409(e) of this title (relating to Incident Documenting and Reporting), and in accordance with the reporting requirements and timeframes of §448.409 of this title. The facility shall obtain department approval under §448.207 of this title (relating to Temporary Variance) prior to implementation of emergency or disaster preparedness activities that affect the facility's licensed capacity. If the disaster circumstances prevent prior approval, the facility shall seek such approval as soon as communication with the department is or becomes possible, and shall not continue the activity without department approval or beyond any approval period granted by the department.

(f) The facility shall designate in writing a person to monitor and coordinate disaster preparedness activities. The facility shall maintain documentation of the monitoring and coordination of disaster preparedness activities. All personnel shall be able to demonstrate their role or responsibility in implementing the facility's emergency response plan and disaster preparedness plan.

§448.411. Client Emergencies.

(a) The facility shall provide facility personnel with the training and resources necessary to protect the health and safety of clients and other individuals during medical and psychiatric emergencies, and shall document the training conducted under this subsection.

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(b) The facility shall establish and follow written procedures for responding to medical and psychiatric emergencies and shall respond immediately to each such emergency in a manner that effectively addresses the particular needs of the client.

(c) The facility shall prominently and conspicuously post emergency numbers in one or more public areas of the facility so that the information is readily available and observable to all facility clients, volunteers, personnel and visitors.

(d) The facility shall have emergency equipment and supplies that are visible, labeled and easy for all personnel to access, including, without limitation, fully stocked first aid supplies.

§448.412. Infection Control.

(a) The facility shall develop, implement and enforce written infection control policies and procedures, and shall institute practices designed to provide a safe and sanitary environment that minimizes or prevents the development and transmission of infections and communicable diseases for all clients, personnel, visitors, and the public.

(b) The facility shall adopt, implement, and enforce written policy and procedures for reporting all reportable diseases in accordance with Chapter 97, Subchapter A of this title (relating to Communicable Diseases).

(c) The facility shall adopt, implement and enforce written policies and procedures, and shall institute practices for the control, among its personnel and residential or inpatient clients, of communicable disease, as that term is defined in §97.1 of this title (relating to Definitions). The facility's controls under this subsection shall include, without limitation, tuberculosis (TB) screening.

(1) If any personnel contracts a communicable disease that is transmissible to clients through food handling or direct client care, all such personnel shall be excluded from handling food or providing direct client care for as long as a period of communicability exists. A client with a communicable disease shall also be excluded from food handling or preparation that would otherwise be permitted under this Chapter for as long as a period of communicability exists, and shall be excluded from any otherwise permissible form of interaction with clients or personnel through which the disease is known to be transmissible.

(2) The facility shall screen all clients upon admission for communicable disease, including but not limited to TB, and shall assist the client in locating resources for any testing or treatment needed.

(3) After known exposure of any client or personnel to TB or other communicable disease, the facility, in accordance with recommendations of the person's attending physician or, if none, Center for Disease Control guidelines, shall ensure appropriate screening, and shall assist the client or personnel in locating resources for any testing or treatment needed.

(d) Personnel shall handle, store, process, and transport mattresses and linens so as to prevent the spread of infection, including through use of universal precautions.

(e) The facility shall require staff and personnel to use universal precautions for all client care activities in accordance, as applicable, with 29 Code of Federal Regulations, §1910.1030(d)(relating to Bloodborne Pathogens) and Health and Safety

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Code, Chapter 85, Subchapter I (relating to Prevention of Transmission of HIV and Hepatitis B Virus by Infected Health Care Workers).

§448.413. Client Transportation.

(a) The facility shall adopt, implement, and enforce written policies and procedures, and shall institute practices, regarding facility transportation of clients, which shall comply with all applicable federal, state, and local laws, and the following:

(1) except as otherwise explicitly allowed under this chapter, the facility shall permit only a staff member to transport a client on behalf of the facility. Before doing so, the facility shall obtain a Texas Department of Public Safety Type 2 driver record for the staff member and verify that the staff's driver license is current and valid according to Texas law;

(2) review and verify that the staff's driver record is acceptable according to written standards adopted by the facility; and

(3) vehicle drivers and passengers shall wear seatbelts at all times that the vehicle is in operation.

(b) The facility shall adopt, implement, and enforce written policies and procedures, and shall institute practices, regarding the vehicles used for transportation of clients, which shall comply with all federal, state, and local laws and the following:

(1) The facility shall maintain evidence of repairs and services provided to the vehicle.

(2) Each vehicle used for client transportation shall have an easily accessible and fully stocked first aid kit, and an A:B:C fire extinguisher secured and maintained in accordance with the manufacturer's directions for use.

(3) Each vehicle used for client transportation shall have a consistently maintained travel log. Each use of the vehicle for client transport shall be documented in the log, which shall include, at a minimum, the date and number of individuals being transported, the driver's name and title, and the name of any other personnel present in the vehicle.

(c) The facility's transportation policies, procedures, and practices shall include transportation arrangements, including with respect to any vehicles used for transport that meet the needs of, and legal requirements for clients with disabilities. Without limiting these requirements, if the facility utilizes facility or personal vehicles for these purposes, it shall ensure that drivers and other personnel assisting in transport are appropriately trained to assist clients with disabilities.

§448.414. Medication Standards.

Facilities that provide medication services shall adopt, implement, and enforce written policies and procedures, and institute practices that ensure safe medication-related service delivery and include, without limitation, the following:

(1) A procedure for any physician delegation of medical acts to non-physicians. The procedure must be approved by the delegating physician, who remains medically responsible on behalf of the facility for all delegated acts, and address delegation protocols to advanced practice nurses and/or physician assistants, delegation

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of medical acts to nursing and/or unlicensed staff, and the frequency of physician supervision over the staff member to whom a delegation is made. The procedure and practices must provide for a method and documentation to ensure the staff members are qualified, properly trained, acting under the physician's supervision, and performing only medical acts that are reasonable for the physician to delegate can be properly and safely performed by the person to whom the medical act is delegated; is performed in its customary manner; and does not violate any other statute or conflict with professional restrictions imposed on an individual under the individual's license.

(2) A procedure approved by an RN for RNs to make assignments to LVNs or delegate to unlicensed staff members nursing acts for the care of stable individuals with common, well-defined health problems with predictable outcomes. The procedure must address the types of nursing acts that may be delegated, the method to ensure and document that the staff member is trained and qualified to perform a delegated nursing act, and the frequency of nursing supervision of the unlicensed staff member in accordance with the Nursing Practice Act, Texas Occupations Code, Chapter 301 and Texas Board of Nursing rules in Title 22, Part 11.

(3) A procedure for medication administration by licensed health professionals that addresses who may access and administer medications, timely administration, documentation and monitoring of administration and any side effects, and detecting, documenting, and responding to any adverse medication reaction. The facility's procedures and practices shall comply with applicable laws and professional licensing standards and rules.

(4) A procedure for medication handling that addresses procedures for each of the following with specificity and consistent with applicable legal and licensing requirements, including, without limitation, clear delineation of applicable controls, qualifications and responsibility; documentation requirements; and tracking, monitoring, supervision and training requirements:

(A) dispensing;

(B) labeling of, and record keeping for, sample medications;

(C) limiting and controlling access to physician stock medications;

(D) mechanisms to ensure safe temperature-controlled storage and transport of medication;

(E) controlled drugs;

(F) disposal/destruction of medication; and

(G) locked areas and maintaining security.

(5) A procedure by which a practitioner who is professionally authorized to do so assesses and determines whether an individual can self-administer medication and whether, and to what extent, it can be done without assistance or supervision. A facility may only permit a client's self-administration of medication if it has and implements procedures and practices to ensure the medication is kept secure and the client has been determined to be capable of self-administration without nursing supervision or assistance, with the determination documented. The facility shall ensure that staff properly trained and supervised in accordance with Paragraphs (6) and (7) of this section observes each self-administration of medication by a client.

(6) A procedure for a practitioner who is professionally authorized to do so to provide documented training for, and to ensure and document demonstrated

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competency of, any staff member in the following areas before the staff member is assigned to observe self-administration of medication by clients who have been found to be capable of self-administration in accordance with Paragraph (5) of this section:

(A) medication actions;

(B) target symptoms;

(C) understanding prescription labels and medical abbreviations;

(D) understanding and detecting potential toxicity;

(E) side effects and adverse reactions;

(F) routes of administration and detecting medication errors or missing medication;

(G) proper and secure storage of medications; and

(H) reporting and documentation requirements.

(7) A procedure for providing and documenting appropriate supervision of staff members who observe patients in self-administration of medication, and documented authority for each act the staff person performs in that role.

(8) A procedure for medication errors and missing medication that defines the most common types of medication errors and provides for:

(A) the accurate documentation of medication error and detection of missing medications;

(B) the reporting of medication errors to the physician and reconciliation of missing medication;

(C) a mechanism for identifying any trends in medication errors or missing medication; and

(D) a mechanism for analyzing and responding to, for quality improvement purposes, both individual instances of, and trends in, medication errors and missing medications, consistent with the requirements of § 448.405 (relating to Quality Assessment and Performance Improvement) and §448.409 of this title (relating to Incident Documenting and Reporting).

§448.415. Food and Nutrition Standards.

(a) Meals in Licensed Facilities. A facility that serves any meals to clients shall ensure that all food service operations, including food preparation, storage, and service areas are maintained and conducted in compliance with applicable state and/or local health requirements, including in compliance with applicable requirements for properly trained and credentialed staff and, as applicable and without limitation, in compliance with the requirements of Health and Safety Code Chapters 437 (Regulation of Food Service Establishments, Retail Food Stores, Mobile Food Units, And Roadside Food Vendors) and 438 (relating to Public Health Measures relating to Food), 25 Texas Administrative Code, Chapter 228 (relating to Retail Food), Chapter 229, Subchapter K (relating to Texas Food Establishments), and Subchapter U (relating to Permitting Retail Food Establishments), and corresponding local requirements.

(1) Food shall be selected, stored, prepared, and served in a safe and healthy manner.

(2) If the facility prepares food in a centralized kitchen on site, the facility, at least annually, shall obtain, and maintain documentation of, a kitchen health inspection

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with a “passing” designation, or, if the inspecting authority uses a different method of evaluation, with a score with respect to which the inspection authority does not require further action from the facility. Without limiting this requirement, and within the annual timeframe, but by no later than the earliest date and time agreed to with, or specified by, the applicable authority, the facility shall implement, and shall maintain documentation to demonstrate that it has implemented, corrective action~~s~~ for any inspection deficiency, and for any rule violation cited by the applicable regulatory and/or inspection authority. The facility shall maintain a copy of the most recent annual kitchen health inspection and documentation of corrective action on site and available upon request to department staff.

(3) The facility shall be able to demonstrate that staff members responsible for food preparation and service are trained and credentialed in the safe preparation, storage, handling, and/or service of food to prevent food-borne illnesses, as required by the applicable local or state regulatory authority and commensurate with each staff person’s job duties, and that properly trained staff are present for food preparation and service, as required by the applicable local or state regulatory authority.

(4) Each residential or inpatient facility shall provide at least three meals daily, which shall include a meal break at rational intervals that are no more than five hours apart, excluding sleeping hours. The facility shall provide packaged meals, as developed and approved in writing by a licensed or registered dietitian, for clients scheduled to be away from the facility during mealtime.

(5) An outpatient facility shall not provide more than five consecutive hours of treatment programming without providing a meal or a meal break.

(6) A facility that is required to provide meals shall provide wholesome, well-balanced meals from a menu developed and approved in writing by a licensed or registered dietitian. A menu for the current week’s meals shall be posted in the dining area at all times.

(7) The facility shall provide modified diets to clients who medically require them, as determined by a licensed health practitioner who is professionally authorized to make such a determination and who shall document the determination in the client record. Modified diet menus shall be developed and approved in writing by a licensed or registered dietitian.

(8) A licensed or registered dietitian shall develop and approve in advance written guidelines for approved substitutions.

(9) If the facility transports food prepared in a centralized location, the meals shall be transported in temperature-controlled containers to ensure that the food remains at temperatures required for food safety and in compliance with applicable requirements under 25 Texas Administrative Code, Chapter 228 and Chapter 229, Subchapter K, and of the local regulatory authority for the facility.

(b) Meals Prepared by Clients. Clients may be requested, required, or permitted to prepare meals only if meal preparation goals, objectives, and strategies are part of the client’s written treatment plan and facility staff train and supervise the client, both of which shall be documented, to ensure compliance with subsection (a) of this section. A licensed or registered dietitian shall develop a client-centered meal planning and preparation training curriculum; and shall train staff or approve staff training for instructing and supervising clients in meal planning and preparation.

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(c) Meals Provided by a Food Service. When meals are provided by an independent food service, the facility shall have a written contract that requires the food service to meet the requirements otherwise applicable to the facility under subsection (a) of this section.

(1) The facility shall obtain and maintain on site, and available to department staff upon request, a copy of the food service's most recent kitchen health inspection and shall require, ensure, and maintain documentation that deficiencies noted are corrected within the timeframes specified for correction under subsection (a) of this section.

(2) The facility shall ensure the meals are transported to the facility in temperature controlled containers to ensure that the food remains at temperatures required for food safety and in compliance with applicable requirements under 25 Texas Administrative Code, Chapter 228 and Chapter 229, Subchapter K, and of the local regulatory authority for the facility.

§448.416. Health, Safety, and Sanitation Practices.

(a) The facility shall provide a cigarette, e-cigarette, and tobacco-free facility, to include facility vehicles and grounds. The facility may, at their own discretion, adopt, implement and enforce a written policy to designate a specified outdoor area where smoking is authorized for adult clients and staff.

(1) All providers shall post "Tobacco-Free Property" signs on property controlled by the facility, which shall contain notice of all applicable prohibitions under this subsection. If designated smoking areas are permitted, they shall be clearly marked as a designated smoking area, shall not be less than 15 feet from any entrance to any building, and shall be cleaned of ashes and/or smokeless tobacco residue at least daily. Facilities that lease property shared with other tenants shall implement and enforce the prohibitions in this subsection in the facility's leased portion(s) of the property and among their personnel, clients, and visitors, and shall work with the lease agent and tenants to prohibit the use of cigarettes, e-cigarettes, and tobacco products inside the buildings and within at least 15 feet of building entrances.

(2) Facilities shall adopt, implement, and enforce a written policy, and shall institute practices, to prohibit and prevent any minor's use, or possession of, or access to, cigarettes, e-cigarettes, or tobacco products in all programs. Use of cigarettes, e-cigarettes, or tobacco products is prohibited during on and off-site structured program activities. The facility shall not provide, or facilitate minor's access, to these products. The policy and facility practice shall ensure compliance with this section and applicable law, including Health and Safety Code §161.252 (relating to Possession, Purchase, Consumption or Receipt of Cigarettes, E-Cigarettes, or Tobacco Products by Minors Prohibited) and §161.082 (relating to Sale of Cigarettes, E-Cigarettes, or Tobacco Products to Persons Younger than 18 Years of Age Prohibited; Proof of Age Required), and applicable local codes and ordinances.

(3) Facilities that have not already implemented cigarette, e-cigarette, and tobacco-free provisions will have up to two years from the effective date of this rule to do so, except in relation to the prohibitions of this section relating to minors and to adolescent programs and facilities.

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(b) The facility shall prohibit and prevent the unlawful presence or possession of firearms, which includes any presence or possession that violates lawful notice of the prohibition, and shall prohibit and prevent other weapons, alcohol (except as provided for in subsections (l) and (m) of this section), illegal drugs, illegal activities and violence inside facility buildings and vehicles, on facility grounds, and during structured program activities.

(c) The facility shall make at least one phone available to clients.

(d) The facility shall adopt, implement and enforce written policies and procedures, and shall institute practices, to ensure urine samples are collected, stored and secured in an appropriate manner to ensure the viability of the sample and to minimize the opportunity for falsification or substitution.

(e) The facility shall adopt, implement and enforce written policies and procedures, and shall institute practices, to ensure a safe and supervised environment when animals are present or allowed as part of therapy or treatment.

(1) The facility shall supervise animals in a manner consistent with program goals and client needs.

(2) The facility shall ensure that animals are current with vaccinations and free of infectious health problems, including internal or external parasites, fleas, ticks, and worms. The facility shall maintain animal vaccination records.

(3) The facility shall establish a process for preventing, reporting, assessing, and treating scratches, bites or injuries from animals.

(4) The facility shall not permit animals in food preparation or storage areas, medication rooms, or any areas containing soiled or contaminated materials.

(f) The facility shall have fully stocked first aid supplies that are visible, labeled and easy to access. The facility shall develop and implement a documented process to check expiration dates and replace any used or out-of-date contents.

(g) The facility shall have an effective, safe and ongoing pest control program. The facility shall ensure and maintain documentation demonstrating that pest control services are provided at least quarterly by facility personnel or by contract with a licensed pest control company.

(h) In a residential or inpatient facility, the facility shall ensure that:

(1) mattresses are clean and free from tears, rips and exposed wiring and springs;

(2) bed pillows and linens are clean; and

(3) clean towels, soap and basic grooming and personal hygiene items are available at all times in a quantity sufficient to meet the needs of the residents.

(i) Showers, tubs, and curtains shall be clean and free of mold and mildew.

(j) The facility shall develop, document and implement a schedule during program hours that allows clients to utilize the washer and dryer, which the facility shall provide in accordance with § 448.904(e)(4) of this title (relating to Residential or Inpatient Physical Plant, Equipment and Supply Requirements). The facility shall supply sufficient laundry soap for each client.

(k) Facility staff shall ensure the safe use and proper storage of any permitted cleaning supplies, and of any poisonous, toxic, or flammable materials, whether by facility personnel or by clients.

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(l) The facility may allow a clergy member to bring four ounces or less of alcohol on site or to a program activity for purposes of presiding over a religious or spiritual rite, as long as the alcohol remains in the possession, custody, or control of the presiding clergy member at all times while on the program site or at the program activity, is not distributed, and is consumed only by the presiding clergy member, if at all.

(m) The facility shall inform any clergy member bringing alcohol on site, or to a program activity, under subsection (l) of this section of the requirements of that subsection and of this subsection. The facility shall document, each date and time alcohol was, brought onto the program site or to a program activity pursuant to this subsection. The documentation shall include the name, address, and title of the clergy member, staff verification that the clergy member was self-identified as such, and that alcohol brought on site or to a program activity was thereafter removed from the site or program activity, or represented by the presiding clergy member as having been personally consumed.

§448.417. Waste and Waste Disposal.

(a) Special waste and liquid/sewage waste management.

(1) The facility shall comply with applicable requirements set forth by the Texas Commission on Environmental Quality (TCEQ) in 30 Texas Administrative Code, §330.1207 (relating to Generators of Medical Waste).

(2) The facility shall dispose of all sewage and liquid wastes into a local or state-approved sewerage system or septic system or otherwise ensure that it is treated and disposed of in accordance with TCEQ and/or other applicable standards and requirements.

(3) The facility shall comply, as applicable, with the requirements set forth in Chapter 1, Subchapter K of this title (relating to the Definition, Treatment, and Disposition of Special Waste from Health Care-Related Facilities).

(b) Waste containers. All waste shall be contained in waste containers appropriate for the quantity and type of waste.

(1) Waste containers shall be conveniently available in all toilet rooms, client areas, staff work areas, public areas, and kitchens.

(2) All containers for waste shall be leak-resistant, rodent-proof, and comply with local sanitation requirements.

(3) Waste containers shall be cleaned, properly maintained, and free of visible residue.

(4) Waste containers shall be of suitable strength to resist animal scavenging, contact with disease carriers, or rupture.

(5) The facility shall empty individual waste containers into closed containers located in a central waste storage location, separate from areas used for the preparation and storage of food. The facility shall not permit waste either to overflow from individual or centrally located waste containers or to prevent a closed variety of waste container from closing. Waste storage areas shall be kept clean and in a state of good repair. Waste shall be removed from the facility's waste storage areas at least weekly.

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SUBCHAPTER E. PERSONNEL PRACTICES AND DEVELOPMENT.

§448.501. Personnel Policies.

(a) The facility shall adopt, implement and enforce written policies and procedures that ensure compliance with, and govern all facility personnel in a manner consistent with, the provisions of this chapter and any applicable state and federal laws. Personnel policies and procedures shall be established, documented, and implemented to promote the facility's mission, goals, and objectives.

(b) The facility's governing authority shall ensure, directly or through a designee identified in writing, that adequate numbers of qualified staff are present at each facility program where clients are receiving services so that the client/staff ratio complies with the provisions of this chapter with regard to the level of care and services provided and the population served, and meets the needs of the clients.

(c) Personnel policies and procedures, as written and implemented, and the facility, in practice, at a minimum:

(1) shall define and delineate responsibilities and authority of all categories of positions;

(2) shall require and ensure the selection of personnel with qualifications commensurate with job responsibilities and authority, including appropriate licensure or certification;

(3) shall be reviewed with employees at the time of employment;

(4) shall provide for sufficient orientation and training to familiarize all personnel with the facility's policies and procedures, practices, and environments, in addition to personnel orientation and training specific to the individual's assigned duties, as required under §448.503(b) of this title (relating to Personnel Training and Demonstrated Competency), and as otherwise required under this chapter;

(5) shall define the facility's policy for a drug-free workplace, which shall be consistent with the requirements of §448.502 of this title (relating to Personnel Practices), and include any testing methods, criteria, and consequences to be utilized under the facility's policy.

(6) shall require participation by all personnel in training specific to the individual's job duties;

(7) shall require the facility to appraise and review each staff person's job performance in writing at specified intervals of not less than annually and to monitor and directly supervise the work of all other personnel;

(8) shall require the facility to monitor and directly supervise the work of all personnel, except that a facility may require a student's educational institution to directly supervise and monitor the student. In such cases, the facility shall remain responsible for the student as described in §448.502(a) of this title (relating to Personnel Practices), including for client protection, services, and confidentiality, and for the general oversight and supervision of the student;

(9) shall require that all personnel having any direct contact with clients or with client records be provided orientation to, and sign a statement acknowledging that they have read, understand, and shall respect the rights of all clients specified under §448.601 of this title (relating to Client Bill of Rights);

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(10) shall require that personnel charged with duties and responsibilities under Civil Practice and Remedies Code Chapter 81, Sexual Exploitation by a Mental Health Services Provider, receive notification of, and orientation training on, those duties and responsibilities, including §81.006 (relating to Duty to Report), and comply with the requirements of that section;

(11) shall require that personnel receive training regarding abuse, neglect, exploitation, and illegal, unprofessional, and unethical conduct, consistent with the training requirements of §448.503(e)(1) of this title (relating to Personnel Training and Demonstrated Competency) and report abuse, neglect, exploitation, and illegal, unprofessional, and unethical conduct in accordance with §448.603 of this title (relating to Abuse, Neglect, Exploitation, and Illegal, Unprofessional and Unethical Conduct), and as otherwise required by law; and

(12) shall protect staff from carcinogens through exposure to second-hand smoke, consistent with the facility's obligations under §411.103 of the Texas Labor Code (relating to Duty of Employer to Provide Safe Workplace) to provide and maintain employment and a place of employment that is reasonably safe and healthful for employees.

(d) The facility shall ensure and document that its personnel possess the qualifications and demonstrate the competencies necessary to serve the comprehensive needs of the clients. All personnel shall possess and maintain, and be able to demonstrate the required competencies, including the skills needed to perform the specific duties of their positions.

(e) A facility whose personnel includes counselor interns acting in that capacity shall be registered with the department as a clinical training institution or employ a certified clinical supervisor as defined in Chapter 140, Subchapter I of this title (relating to Licensed Chemical Dependency Counselors), and shall comply, and ensure that its personnel comply, with all applicable requirements of that subchapter. A counselor intern, graduate intern, or other individual working toward licensure that would qualify the individual as a QCC, may perform services required or permitted to be performed by a counselor only to the extent permitted by, and in compliance with, the applicable licensing board or agency's statutes and rules, and with the supervision required by those statutes and rules. Any screenings, admission authorizations, assessments, treatment plans, treatment plan reviews, discharge plans, and discharge summaries required under this chapter that are performed by such individuals shall include the signature of a QCC authorized by the applicable licensing board or agency to supervise the individual. A QCC's signature on any documentation of clinical work performed by a supervisee shall constitute the QCC's affirmation that the QCC has performed the level of supervision and review required by that board or agency for such clinical work and documentation and is professionally responsible for it on behalf of the facility. The facility shall ensure that all other supervision and compliance with the applicable licensing board or agency's restrictions and requirements are also documented.

§448.502. Personnel Practices.

(a) Except as provided in subsection (b) of this section, the facility shall ensure that a personnel record is maintained, in accordance with the facility's established

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personnel policies and the requirements of this subchapter, for each staff member, which shall contain original documentation demonstrating compliance with this section. The facility is responsible for the actions and omissions of, and services provided by, all students, personnel and staff performing duties and responsibilities for or on behalf of the facility.

(b) For staff working for the facility through a staffing agency, the facility may meet the requirements of this section by requiring the staffing agency to follow the requirements otherwise imposed on the facility under this section for each staff member provided to the facility through the staffing agency. In such cases, the facility shall remain responsible under its license for any failure of the staffing agency to fulfill any of those requirements, and shall make any documentation for such staff that is required under this section available to department staff within 24 hours after a request from department staff.

(c) Before any individual may commence duties as a staff person for the facility, and prior to that individual's interaction with any client, the facility shall conduct a state and national criminal background check for that individual by obtaining information from Texas's Department of Public Safety (DPS), to the maximum extent authorized by, and in accordance with, state and federal law, and shall assess the information as required under this section. The same information shall be obtained and assessed as provided for in this section for non-staff personnel with client access before the individual has any client interaction. The facility shall also check and assess the Texas state and national sex offender registries of DPS and the United States Department of Justice within the same time frame. The requirements of this subsection shall be repeated for each staff person and all applicable non-staff personnel, at a minimum, by the end of each third year after the previous check was due. The facility shall require all such staff and personnel to notify the facility immediately if they are convicted of an offense in the intervening period.

(1) Absent stricter standards adopted in writing, implemented, and enforced by the facility, the facility shall apply the criteria listed in Occupations Code §53.022 and §53.023 to the applicable staff or personnel position for the individual to evaluate the results of the information obtained under subsection (c) of this section, and to justify related personnel decisions.

(2) The facility shall maintain documentation sufficient to demonstrate to department staff, upon request, compliance with subsection (c) and paragraph (c)(1), consistent with security and confidentiality requirements and limitations otherwise imposed by law. The facility shall protect information obtained under subsection (c) from unauthorized use, access or disclosure.

(d) Before assigning an individual any duty for which any form of license is required, and at each scheduled renewal of the individual's license, the facility shall verify and document the verification that the license is current and without restrictions that would prohibit performance of the individual's job duties. The facility shall require licensed personnel to notify the facility immediately in the event of any change in their licensure status or sanction against their license, and the facility shall evaluate an individual's position, duties, and assignments in light of any adverse licensure action and the basis therefore, and shall ensure that any continuation of an individual's duties and assignments are consistent with any change in licensure status. The facility shall

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maintain documentation of its compliance with this subsection, which it shall make available to department staff upon request.

(e) Before any individual may be selected for a position for the facility, the individual shall pass a drug test conducted in accordance with facility policies and procedures, and with applicable law.

(1) This requirement does not restrict facilities from implementing and acting on random drug testing in accordance with written facility policies and procedures and to the extent permitted by law. The facility shall prohibit any illegal use or misuse of drugs or alcohol by any of its personnel.

(2) The facility shall maintain documentation of the results of drug tests, which it shall make available to department staff upon request.

(3) The facility shall protect drug test records from unauthorized use, access or disclosure

(f) The facility shall develop and keep up-to-date for all personnel a written job description that accurately outlines current job duties and minimum qualifications. Upon initial hire of an individual for a position, each job description shall be discussed with and acknowledged in writing by the individual to whom it applies. The individual to whom it applies shall acknowledge in writing any revisions that are made to the job description.

§448.503. Personnel Training and Demonstrated Competency.

(a) The facility shall ensure that all personnel are proficiently trained and competent to perform their assigned duties. The facility shall adopt, implement, and enforce written policies and procedures relating to orientation and training that are consistent with the requirements of this chapter.

(b) Before a staff person, volunteer, or student performs that individual's duties or responsibilities, the facility shall provide and document the individual's orientation. Orientation shall include information addressing:

(1) Chapter 448 rules under this title;

(2) facility policies and procedures;

(3) cultural competency and working with people with disabilities;

(4) client rights and reporting requirements;

(5) client grievance procedures;

(6) confidentiality, privacy, and security of client records and information, including, as applicable and without limitation, under the provisions set forth in §448.404(g) (relating to Minimum Standards of Conduct) and §448.408 of this title (relating to Client Records).

(7) universal precautions, as required by §448.412 of this title (relating to Infection Control);

(8) standards of conduct, as described in §448.404 of this title (relating to Minimum Standards of Conduct) and in facility policies and procedures;

(9) the facility's fire safety and evacuation plan, as required under §448.903 of this title (relating to Fire Safety and Evacuation Plan); and

(10) emergency and disaster preparedness, and the facility's written plans for each, consistent with the requirements of §448.410 of this title (relating to Emergency and Disaster Preparedness).

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(c) Unless otherwise specified, video, manual, computer-based or videoconference training is acceptable. The facility shall not permit staff to engage in training activities at any time they are assigned to direct care responsibilities. Instructors are not exempt from any training requirement to which they are otherwise subject under this chapter.

(d) The facility shall maintain an original record of all required training, which shall be available to department staff upon request, or, in the case of individuals performing functions for the facility under contract with the facility or through a staffing agency, by no later than 24 hours after a request by department staff. The facility shall maintain, for a minimum of five years for each required training, a record that includes, at a minimum, the following:

(1) course documentation that includes the course title or topic, an outline of the course, including training objectives and method of delivery; and the name, credentials, and relevant qualifications of the person providing the training; and

(2) documentation of attendance for each training participant that indicates the course title or topic, date, number of hours, and instructor, of the training.

(e) Applicable facility personnel shall receive and complete the following initial training before they independently perform any function to which the specific training is applicable, but in no event later than 60 days after the date of hire. Subsequent training shall be completed as specified. Documented training may be accepted from another organization to meet initial training requirements, if it was completed within the year prior to hire and meets department requirements. In that instance, the facility shall provide supplemental training to the individual in any facility-specific policies, procedures, and practices applicable to the training topic, and shall use, the actual date of the training accepted from another organization in determining when subsequent training is required under this subsection.

(1) Abuse, neglect, exploitation, and illegal, unprofessional, and unethical conduct. Upon hiring, the facility shall provide staff, students, practitioners and their interns associated with the facility a minimum of 8 hours of initial and, thereafter, eight hours of annual updated training. The facility may count up to 3 hours of crisis intervention training provided in accordance with the requirements of paragraph (4) of this subsection toward the 8-hour requirements of this paragraph. The training shall include, at a minimum, the following elements:

(A) Applicable laws and regulations governing client abuse, neglect, exploitation, and illegal, unprofessional, and unethical conduct, as well as policies and procedures adopted by the governing authority of the facility as required under §448.603 of this title (relating to Abuse, Neglect, Exploitation, and Illegal, Unprofessional and Unethical Conduct).

(B) Procedures and legal requirements, including requirements under §448.603 of this title (relating to Abuse, Neglect, Exploitation, and Illegal, Unprofessional, and Unethical Conduct), for reporting incidents, suspicions, and allegations of client abuse, neglect, exploitation, and illegal, unprofessional, and unethical conduct, together with the applicable penalties for non-reporting.

(C) The legal protection afforded to staff, personnel, associated practitioners and other individuals who report client abuse, neglect, exploitation, or illegal, unprofessional, or unethical conduct.

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(D) Training to assist the staff and professionals associated with the facility in identifying client abuse, neglect, exploitation, and illegal, unprofessional, or unethical conduct by or in the facility.

(2) HIV, Hepatitis B and C, Tuberculosis (TB) and Sexually Transmitted Infections. Upon hire, all personnel with any direct client contact shall receive two hours initial training and thereafter, annual updated training. The training shall include at a minimum, the following elements:

(A) requirements for exposure incident reporting;

(B) education concerning modes of transmission and methods of prevention. As the education relates to HIV infection, it shall be based upon the department's model education program, available as the department's HIV/STD Program Policy Number 035.001 at http://www.dshs.texas.gov/hivstd/ ;

(C) laws governing confidentiality;

(D) facility policies and procedures for TB infection control, consistent with the requirements of §448.412 of this title (relating to Infection Control); and

(E) education concerning the availability of, and requirements and resources concerning referral for, counseling and testing services.

(3) CPR and First Aid. The facility shall require and ensure that all direct care staff in a residential or inpatient program receive and maintain current CPR and First Aid certification. Both training components shall be conducted by a certified trainer or agency. A facility with a program that serves women with their dependent children shall require and ensure that all direct care staff for that program have certification in adult and child/infant CPR. Currently licensed nurses, physicians, PAs, APRNs, and individuals with current EMS certification may be exempt from this requirement with demonstrated competency in CPR and first aid.

(4) Crisis Intervention Training. Regardless of whether the facility allows the use of restraint or seclusion, all personnel with any direct client contact shall receive upon hire, initial training and thereafter, annual updated training. The training shall include at a minimum, training as specified in §448.605(e) of this title (relating to Restraint and Seclusion), regardless of whether the facility allows the use of restraints/seclusion.

(5) Screening and Intake. The facility shall provide to any staff who will be conducting screening as required in §448.702 (relating to Screening), and/or intake, as required under §448.704 of this title (relating to Intake), a minimum of initial and annual 2 hours of in-service training in screening and intake. An individual may not conduct screening or intake without having completed the initial and each subsequent annual in-service training that is then-due for the individual.

SUBCHAPTER F. CLIENT RIGHTS.

§448.601. Client Bill of Rights.

(a) The facility shall respect, protect, implement and enforce each client right set forth in this section.

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(b) Prior to admission, the facility shall provide to the client, and, if applicable, to the client's consenter, a written copy of the Client Bill of Rights. The facility shall provide the written copy of the Client Bill of Rights in the client's primary language, if possible, or in a manner or language the client is able to comprehend.

(c) Within 24 hours after the client is admitted, the facility shall ensure that the rights specified in the written copy are explained to the client, and if applicable, to the client's consenter:

(1) orally, in simple, non-technical terms in the client's primary language, if possible, or in a manner or language the client will comprehend; or

(2) through a reasonable means calculated to communicate with a person who has an impairment of vision or hearing, if applicable.

(d) If an emergency, or the client's physical or mental condition, prevents the explanation from being given or understood by the client within 24 hours after admission, staff shall document the circumstances in the client record and present the explanation as soon as possible, but in no event later than 24 hours after the emergency or condition preventing the required explanation ends.

(e) If the client and/or consenter cannot comprehend the information contained in the Client Bill of Rights because of a non-changing condition that effectively precludes, on an ongoing basis, presentation of the information; or the client or, if applicable, consenter refuses to sign the written copy of the client bill of rights as provided for in paragraph (f) of this subsection, the presentation or attempted presentation of the document, as applicable, and any client or consenter refusal to sign the document, shall be documented and witnessed by two staff members of the facility, and the unsigned client bill of rights shall be placed in the clinical record along with a note signed by the witnesses indicating the reasons for their signatures in lieu of the client's and/or , if applicable, the consenter's.

(f) Except as otherwise provided in this section, at the time the client's rights are explained and provided in written form to the client and, if applicable, the consenter, the facility shall obtain a signed copy, including the date of signature, of the Client Bill of Rights from the client, and, if applicable, from the consenter. The signed copy shall attest that the person signing has read the document, received an oral explanation of the contents, and understands the rights specified in the document. The staff member providing the information shall also sign the document, and include the date of signature. The signed document shall be maintained in the client record. The Client Bill of Rights shall include:

(1) You have the right to accept or refuse treatment or medication after receiving this explanation, to the extent permitted by law and to be informed of the consequences of such refusal;

(2) If you or your consenter agrees to treatment or medication, the person consenting has the right to revoke the consent at any time;

(3) You have the right to a humane treatment environment that provides reasonable protection from harm;

(4) You have the right to appropriate privacy for your personal needs;

(5) You have the right to be free from abuse, neglect, exploitation, including sexual exploitation, and illegal, unethical and unprofessional conduct;

(6) You have the right to be treated with dignity and respect;

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(7) You have the right to appropriate treatment in the least restrictive setting available that meets your needs;

(8) You have the right to be told, and informed in writing of, the program's rules and the consequences for violating those rules;

(9) You have the right to be told, and informed in writing of, the rules and policies related to the facility's use of restraints and seclusion. You have the right not to be mechanically or chemically restrained, or to be separated against your will from other clients and put alone in an area from which you are prevented from leaving. You have the right not to be personally restrained, unless it is used only as a last resort, is done properly, and is immediately necessary to prevent a substantial risk of imminent death or substantial bodily harm to yourself, or imminent physical harm to another, and only when less restrictive methods have been tried unsuccessfully. Even then, you have the right not to be personally restrained if the facility does not have written policies and procedures providing for the safe and appropriate use of personal restraints. Your legally authorized representative, if any, also has the right to be and shall be notified of the rules and policies related to restraints and seclusion;

(10) You have the right to be told and informed in writing of the policy and applicable procedures, related to the facility's use of searches;

(11) You have the right to be told and informed in writing of, and the facility shall provide to each client in writing, prior to admission, the name of your primary counselor (and, if the individual named as the counselor requires supervision, the name of the QCC who will be responsible for and supervise your treatment episode);

(12) You have the right to participate in the development of your own treatment plan designed to meet your individual needs, and you have the right to meet with your counselor to review and update your treatment plan on a regular basis;

(13) You have the right to participate or refuse to participate in a research program, without your participation or refusal affecting any other client right provided by this section;

(14) You have the right to refuse and not to receive unnecessary or excessive medication;

(15) You have the right to personal privacy and confidentiality of information about you and your client record kept confidential as required by law and to be told about the circumstances when the information can be released without your permission;

(17) You have the right to be informed of the services to be provided at the facility and the estimated charges;

(18) You have the right to receive an explanation of any aspect of your treatment or your rights if you have questions while you are in treatment;

(19) You have the right, without retaliation from any facility personnel, to make a complaint and receive a fair response in writing from the facility within seven calendar days after the complaint;

(20) You have the right, without retaliation from any facility personnel, to complain directly to the Texas Department of State Health Services;

(21) You have the right to receive a copy of these rights before you are admitted, including the address and phone number for making a complaint to the Texas Department of State Health Services; and

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(22) You have the right to have your rights explained to you in simple terms, in a way you can understand, within 24 hours after being admitted.

(g) The Client Bill of Rights for a residential or inpatient program at a facility shall also include:

(1) You have the right to communicate with people outside the facility. This includes the right to receive visitors, to communicate by telephone, and by uncensored and sealed mail, subject to limited and reasonable, generally applicable, written rules of the facility. The physician or clinical director responsible for your treatment; or a practitioner who is professionally authorized to do so, and designated by the physician or clinical director, may restrict your right of communication only to the extent that the restriction is necessary to your welfare or to protect another person. If this right is restricted, the physician, clinical director or authorized designee shall document the clinical reasons for the restriction and the duration of the restriction in the clinical record, and shall inform you and, if authorized, your parent, managing conservator, or guardian, of the clinical reasons for the restriction and the duration of the restriction;

(2) You have the right, subject only to limited and reasonable, generally applicable, written rules of the facility, to communicate by telephone and by uncensored and sealed mail with legal counsel, the Department of State Health Services, the courts, and the state attorney general. This right may not be restricted;

(3) You have the right to be free from any type of restrictive discipline that would prohibit you from leaving the facility premises to attend services or activities identified as necessary components of your treatment. The identified services or activities include, but are not limited to, employment, medical or psychiatric appointments, or religious services; and

(4) If you were admitted voluntarily to the facility, you have the right, unless otherwise provided by law, to leave the facility within a reasonable time, which shall generally be within four hours, but which in no event shall be more than 96 hours, after you request in writing to be released. A treatment facility may not represent to a client who requests to leave a treatment facility against medical advice that:

(i) the client will be subject to an involuntary commitment proceeding or subsequent emergency detention unless that representation is made by a physician or on the written instruction of a physician who has evaluated the patient within 48 hours of the representation; or

(ii) the client's insurance company will refuse to pay all or any portion of the medical expenses previously incurred.

(h) For facilities that provide care to clients under the age of 18, the minor’s bill of rights shall also include:

(1) the right to only be admitted to a residential or inpatient facility for treatment of a condition that is generally recognized as responsive to treatment for minors in a residential or inpatient treatment setting;

(2) the right to be treated by persons who have specialized education and training in the treatment of minors and in minors’ emotional and mental health problems, and problems associated with substance-related disorders;

(3) the right to be separated from adult clients; and

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(4) the rights set forth in Title 40 Texas Administrative Code § 748.1101 (relating to What Rights Does a Child in Care Have), which the facility shall set out in full in writing for the client and present as required for all rights set forth in this section.

§448.602. Client Grievances.

(a) The facility shall adopt, implement and enforce a written policy and procedure for the initiation, review, resolution, and disposition of client grievances.

(b) The facility shall give each client and consenter a copy of the grievance procedure at the time of admission and, within 24 hours after admission, facility staff shall explain the client grievance procedure in clear, simple terms that the client can understand.

(c) The grievance procedure shall inform a client that the client may, and the facility shall enable a client to:

(1) file a grievance with the facility and/or the department about any violation of client rights or department rules involving the facility or its personnel;

(2) submit a grievance in writing to the facility and/or the department and get help from facility personnel in writing it if the client is unable to read or write; and

(3) request and receive from the facility writing materials, postage, and access to a telephone for the purpose of filing a grievance; and

(4) submit a complaint directly to the department at Department of State Health Services, Substance Abuse Compliance Group, Mail Code 1979, PO Box 149347, Austin, Texas 78714-9347, telephone 1-800-832-9623, fax 1-512-834-6638, by email at SACG@dshs.state.tx.us. If this contact information becomes outdated, the facility shall provide the client with the most current contact information for filing a regulatory complaint against a substance-related disorder treatment facility, including the appropriate agency group, address, local and toll-free telephone number, fax number, and email address for filing a complaint, and shall enable the client to submit a direct complaint using current contact information.

(d) The facility shall implement and enforce procedures for staff to follow when responding to client grievances, and shall conduct and document an investigation of each grievance. Investigation documentation shall include its conclusions and final disposition. The facility shall provide a written response to the client for each grievance filed within seven calendar days after receiving the complaint, and shall maintain a copy of the written response. The facility shall maintain all grievance documentation in a central grievance file.

(e) The facility shall not:

(1) discourage, interfere with, threaten, intimidate, harass, or retaliate against any client who tries to exercise a client right or to file a grievance; or

(2) restrict, discourage, or interfere with client communication with an attorney or with the department for the purposes of filing a grievance.

§448.603. Abuse, Neglect, Exploitation, and Illegal, Unprofessional, and Unethical Conduct.

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(a) General Requirements. A facility shall adopt, implement and enforce policies and procedures and implement practices to ensure that its staff are trained in accordance with §448.503(e)(1) of this title (relating to Personnel Training and Demonstrated Competency); to minimize the potential for abuse, neglect, and exploitation of facility clients and of illegal, unprofessional, and unethical conduct; and to ensure that allegations of such conduct are promptly reported, investigated and appropriately addressed in accordance with Family Code, Chapter 261; Health and Safety Code, Chapters 161 and 464; Human Resources Code, Chapter 48 and Civil Practice and Remedies Code, Chapter 81; and as required by this section.

(b) Initial Response to Allegation. Upon receiving an allegation of abuse, neglect or exploitation, or of illegal, unprofessional, or unethical conduct, and prior to investigation of the allegation, the facility shall take immediate steps to protect the client and to prevent any potential that any abuse, neglect or exploitation, or any illegal, unprofessional, or unethical conduct might continue or recur.

(c) Reporting Requirements. Each facility's policies, procedures, practices, and training shall ensure that the facility, its personnel, and any person associated with the facility comply with the following reporting requirements:

(1) A facility, its personnel, and any person associated with the facility who believes, or has cause to believe that a client's physical or mental health or welfare has been, is, or will be, adversely affected by abuse, neglect or exploitation by any person or client associated with the facility, shall immediately, unless justification for a longer timeframe is warranted and documented, but no later than one business day after learning of the allegation, make a report to the department using the incident form specified under §448.409 of this title (relating to Incident Documenting and Reporting).

(A) A facility shall be responsible for failure of its personnel to report allegations of abuse, neglect and exploitation as required under this section.

(i) Facility personnel who become aware of an allegation of abuse, neglect or exploitation of a client, shall immediately report the allegation to the license holder's governing authority, CEO, or written designee.

(ii) If the license holder's governing authority or CEO is allegedly involved in the allegation, facility personnel are not required to report the allegation under clause (i) of this subparagraph, but still shall report the allegation directly to the department.

(B) A report to the department required under this section shall be submitted by facsimile or email to: the Department of State Health Services (DSHS), Substance Abuse Compliance Group, telephone 1-800-832-9623, fax 1-512-834-6638, SACG@dshs.state.tx.us; or, if that information becomes outdated, to the department's most current contact information, as listed on its web site.

(C) In addition to reporting allegations of abuse, neglect and exploitation of any client to the department as required under this section, the facility and its personnel shall comply with all applicable requirements to otherwise report any conduct to the Department of Family and Protective Services, another licensing agency, and/or to another government agency, including under Civil Practice and Remedies Code, Chapter 81, §81.006 (Relating to Duty to Report); Family Code, Chapter 261 (Relating to Investigation of Report of Child Abuse or Neglect); and Human Resources Code, Chapter 48 (Investigations and Protective Services for Elderly Persons and Persons with

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Disabilities). Without limiting this requirement, if the allegation involves the abuse, neglect or exploitation of a client by a licensed professional, the facility shall report the allegation to the professional's licensing agency or board.

(2) A facility, its personnel, and any other person associated with the facility, who reasonably believes or who knows of information that would reasonably cause a person to believe that the facility, any of its personnel, or any other person associated with the facility is or has engaged, or will be engaged in conduct that is or might be illegal, unprofessional, or unethical, and that relates to the operation of the facility or services provided in the facility, shall, as soon as possible, but in no event later than the first business day after learning of the allegation, report the information supporting the belief to the department. Paragraph (1)(A) and (B) of this subsection shall also apply to any report required under this Paragraph.

(d) Investigation and Facility Response. The facility shall initiate an investigation of any allegation of abuse, neglect, or exploitation, or of illegal, unethical, or unprofessional conduct immediately, but no later than one business day after the facility first learned of the allegation.

(1) The facility's investigation shall be conducted by facility staff who were not alleged to be involved in the allegations.

(2) The facility shall thoroughly document its investigation, supporting evidence, and investigative findings, and shall take and document whatever action is needed to effectively address the findings on both a systemic and individual level.

(3) If allegations are substantiated, the facility's individual and systemic responses shall, at a minimum, ensure that steps are taken to permanently stop the current incidence of abuse, neglect or exploitation, or of illegal, unethical, or unprofessional conduct, as applicable, and to minimize the potential for any future recurrence.

(4) The facility investigation shall be completed, and the action taken in response to the investigation shall be implemented and documented, by no later than 14 days after the facility first learned of the allegation, unless justification for a longer timeframe is warranted and documented.

(e) A licensee shall maintain documentation in compliance with this section and any additional documentation requirements of §448.409(b) of this title (relating to Incident Documenting and Reporting).

§448.604. Retaliation.

(a) In accordance with Health and Safety Code, §161.134(a), a facility shall not suspend or terminate the employment of, discipline, or otherwise discriminate against, an employee for reporting to the employee's supervisor, the facility administrator, a state or federal regulatory agency, or a law enforcement agency a violation of law, including, without limitation, a violation of Health and Safety Code, Chapter 464 or 161, of this chapter, or of a rule of another agency. The facility shall post notice of the prohibition in compliance with the posting requirements provided in §448.406 of this title (relating to Required Postings) and Health and Safety Code §161.134(j).

(b) In accordance with Health and Safety Code §161.135(a), a facility shall not retaliate against a person who is not an employee for reporting a violation of law, including, without limitation, a violation of Health and Safety Code, Chapter 464 or 161,

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of this chapter, or of a rule of another agency. The facility shall post notice of the prohibition in compliance with the posting requirements provided in §448.406 of this title (relating to Required Postings) and Health and Safety Code §161.135(h).

(c) In accordance with Health and Safety Code §322.054, a facility shall not discharge or otherwise retaliate against an employee, client or other person because the person files a complaint, presents a grievance, or otherwise provides, in good faith, information relating to the misuse of restraint or seclusion at the facility.

(d) In accordance with Health and Safety Code §322.054, a facility shall not discharge or otherwise retaliate against a client because someone on behalf of the client files a complaint, presents a grievance, or otherwise provides, in good faith, information relating to the misuse of restraint or seclusion at the facility.

§448.605. Restraint and Seclusion.

(a) General Requirements. The use of chemical restraint or any form of mechanical restraint is strictly prohibited in a treatment facility for individuals with substance-related disorders. The use of personal restraint or seclusion in such a facility is permissible only when a facility has, through its governing authority, developed written policies and procedures that comply with this section, which it shall implement and enforce, regarding the use of any personal restraint or seclusion authorized under its policies and procedures. The facility's policies and procedures shall establish, and the facility shall institute, safe and appropriate practices, consistent with Health and Safety Code, Chapter 322 (relating to Use of Restraint and Seclusion in Certain Health Care Facilities), this chapter, and any other applicable law. The written policies and procedures shall include procedures that specifically address ensuring the safety of all clients if an emergency evacuation or evacuation drill occurs while a client is in personal restraint or seclusion.

(b) Minimum Requirements for all treatment facilities for individuals with substance-related disorders. A facility shall, by written policy, address, as to both personal restraint and seclusion, whether the facility prohibits or, if it is otherwise authorized under this section and the facility's policies and procedures, permits it. The facility shall address such prohibitions or permissions for each:

(1) level of service and care it is licensed to provide;
(2) special population included in its licensure authorization; and
(3) age group and gender it is licensed to serve.

(c) Additional Standards. This subchapter represents minimum standards and does not supersede stricter state or federal requirements relating to restraint or seclusion to which the facility is subject. The facility may adopt more stringent standards and practices, consistent with this chapter, if they do not conflict with applicable:

(1) department rules;
(2) state or federal law; or
(3) accreditation standards.

(d) Prohibited Practices. A treatment facility for individuals with substance-related disorders shall not use personal restraint or seclusion:

(1) as a means of discipline, retaliation, punishment, or coercion;
(2) for the convenience of staff members or other clients;

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(3) except as permitted under this section and when used appropriately and as a last resort in a behavioral emergency; or

(4) using any method or technique, or administered in a way, that:

(A) obstructs the client's airway, including a procedure that places anything in, on, or over the client's mouth or nose;

(B) impairs the client's breathing, including applying pressure to the client's torso or neck;

(C) restricts circulation;

(D) causes pain to restrict a client's movement, such as pressure points or joint locks;

(E) inhibits, reduces, or hinders the client's ability to communicate; or

(F) restrains a client in a prone or supine position, except as a last resort, when other less restrictive interventions have proven to be ineffective, and the prone or supine restraint is solely transitional in nature, in which case staff shall not hold the client in the prone or supine position, but shall immediately move the client onto the client's side or into some other appropriate position that is not prone or supine.

(e) Staff Member Training. A facility shall ensure that:

(1) staff members are informed of, and adhere to, this section and the facility's policies and procedures relating to restraint and seclusion, as well as staff members' related roles and responsibilities;

(2) before staff members assume job duties involving direct care responsibilities, and at least annually thereafter, staff are trained in, and demonstrate competence in, at least those elements of training required to be taught under this subsection, which the facility shall ensure that staff implement in their practices relating, as applicable, to the performance and/or prevention of restraint and seclusion;

(3) the training program is consistent with the requirements of this subchapter. The training program shall:

(A) target the specific needs of each client population being served and the facility size and type;

(B) be tailored to the qualifications and job duties of the staff members being trained;

(C) emphasize the importance of reducing and preventing the use of personal restraint and seclusion, except as a last resort in a behavioral emergency; and

(D) teach evidence-based best practices and the knowledge and applied skills that staff need to:

(i) use teamwork, roles and techniques for facilitating team communication and cohesion;

(ii) identify the causes of, and what constitutes, aggressive or threatening client behavior, including behavior that may be related to a client's non-psychiatric medical condition;

(iii) identify underlying issues related to cognitive functioning, and medical, physical, and emotional issues;

(iv) identify medications and substances, and their potential effects;

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(v) identifying how age, weight, cognitive functioning, developmental level or functioning, gender, culture, ethnicity, and elements of trauma-informed care, including history of abuse or trauma and prior experience with restraint or seclusion, may influence behavioral emergencies and affect the individual's response to physical contact and behavioral interventions, including, but not limited to, personal restraint and seclusion;

(vi) explain how the psychological consequences of personal restraint and seclusion and the behavior of staff members, can affect a client's behavior, and how the behavior of clients can affect a staff member;

(vii) effectively use communication strategies and a range of verbal, active listening, and other non-physical methods and techniques for prevention, early intervention, de-escalation, mediation, problem-solving, and crisis management, which may include, among other strategies, voluntary clinical timeout and quiet time;

(viii) monitor the physical and psychological status and comfort of a client in personal restraint or seclusion, including respiratory status, and monitor, recognize, and respond appropriately to, signs of physical distress in clients who are restrained or secluded;

(ix) understand the risks, and be able to identify signs, of positional, compression, or restraint asphyxiation, aspiration, and trauma, and understand the risks associated with prohibited prone and supine holds; and

(x) use only safe methods, techniques, and holds, if a personal restraint is otherwise authorized and warranted in a behavioral emergency; and

(xi) use only safe and appropriate initiation and methods of seclusion, if it is otherwise authorized and warranted in a behavioral emergency;

(4) staff members can effectively assess when the continuation of a personal restraint or seclusion is no longer justified by a behavioral emergency and capably end the restraint or seclusion;

(5) staff members can recognize when to contact emergency services to evaluate and/or treat a client for an emergency medical/psychiatric condition;

(6) staff are trained to manage emergency medical/psychiatric conditions in accordance with the facility's policies and procedures and other applicable requirements;

(7) training and competency in at least each element of training required to be taught under this subsection is documented for each staff member and includes the list of successfully completed competencies, completion dates and the names of the instructor and person who assessed the competency; and

(8) staff training curriculum is reviewed at least annually, and revised, as necessary, to ensure that training, as designed and implemented, meets the requirements of this subsection and is and remains competency-based; appropriate for the facility’s size and type, levels of care and service, and age groups, gender, and populations served; and incorporates any new or revised generally accepted techniques or training methods for early intervention, de-escalation, and appropriate use of personal restraint and seclusion as a last resort. The facility shall make its training curriculum available to department staff at routine inspections and otherwise upon request. The department will review each facility’s training curriculum for compliance with this subsection during its routine inspections of the facility and at any other time if may deem appropriate.

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(f) Authorization.

(1) Any use of restraint by the facility requires authorization from the supervising QCC, either before the restraint is initiated, or as soon as possible after initiation or implementation. A verbal authorization must be based upon a determination that restraint is appropriate under this section and shall be documented more fully in writing in accordance with the requirements of paragraph 3 of this subsection.

(2) Physician's Order. A staff member may initiate the use of seclusion only in a behavioral emergency, and must obtain a physician's order before initiating the use of seclusion.

(3) The QCC authorization or physician's order under paragraph 1 or 2 or this subsection, as applicable, shall:

(A) specify the date, time of day, and maximum length of time the intervention and procedures may be used, consistent with the time limitations provided for under §448.605(i) of this title (relating to Time Limitation on an Order for Restraint or Seclusion);

(B) describe the specific behaviors which constituted the behavioral emergency and circumstances forming the basis for the applicable QCC authorization for that restraint or physician's order for seclusion was needed; and

(C) be signed and dated, including the time of the applicable authorization or order, by the QCC authorizing restraint or by the physician authorizing seclusion. If a staff member accepts the prescribing physician's telephone order for seclusion or the QCC's authorization for the restraint, the staff member shall document the applicable verbal order or authorization. If restraint or seclusion was ordered by telephone, the authorizing QCC or ordering physician, as applicable, shall personally sign and date the telephone order, including the time of the written order, within 72 hours of the time the initial verbal order was issued.

(g) Initiation of Personal Restraint or Seclusion in a Behavioral Emergency. A facility shall ensure that:

(1) only staff members authorized by the facility's policies and procedures who have met facility requirements for personal restraint and seclusion training and for demonstrated competency that comply with §448.503(e)(4) of this title (relating to Personnel Training and Demonstrated Competency) and subsection (e) of this section initiate a personal restraint in a behavioral emergency; and

(2) when implementing a personal restraint or seclusion, staff members shall:

(A) first determine and attempt to utilize the least restrictive interventions that will be effective to protect the client, staff members and other clients from harm;

(B) use only the amount of physical force that is reasonable and necessary to implement a particular personal restraint;

(C) respect and preserve the rights of the client; and

(D) provide a protected and private environment that safeguards the personal privacy, dignity and well-being of the client as much as the situation permits, without compromising the safety of other clients or staff members during the episode.

(h) Observation and Monitoring.

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(1) All staff members involved in the behavioral emergency shall continuously monitor clients in a personal restraint or seclusion for physical and psychological status and comfort, and any signs of distress.

(2) Seclusion rooms shall be constructed to prevent clients from harming themselves and shall allow staff to observe staff easily in all parts of the room.

(3) A staff member shall maintain continuous face-to-face observation of an individual in seclusion for at least one hour. After one hour, the staff member may monitor the individual continuously using simultaneous video and audio equipment in close proximity to the individual.

(i) Time Limitation on Personal Restraint and Seclusion.

(1) A staff member may apply a personal restraint to a client in response to a behavioral emergency for only as long as it is justified by continuation of the behavioral emergency, but in no event for a period that exceeds 15 minutes.

(2) Original Order. The facility shall obtain a physician's order for seclusion in response to a behavioral emergency for a period of time not to exceed:

(A) one hour for seclusion for individuals under the age of 9;

(B) two hours for seclusion for clients ages 9 - 17; and

(C) four hours for seclusion for clients age 18 and older.

(3) Order continuing use of seclusion. A physician may renew the original order provided it would not result in the use of:

(A) seclusion beyond two hours total from the time of initiation of the original seclusion, for individuals under age 9;

(B) seclusion beyond four hours total from the time of initiation of the original seclusion, for individuals ages 9 - 17; or

(C) seclusion beyond eight hours total from the time of initiation of the original seclusion, for individuals age 18 and older.

(4) Issuing and renewal documentation. The physician shall document the clinical justification for continuing the seclusion before issuing or renewing an order that continues the use of seclusion.

(j) Release from Personal Restraint and Seclusion. Notwithstanding a longer maximum period specified under the requirements of paragraph (i)(1) or (2), when a staff member determines that the client's behavior has changed sufficiently to no longer constitute a behavioral emergency that cannot be managed except by personal restraint or seclusion, the staff member must:

(1) immediately release the client from the personal restraint or seclusion;

(2) remain with and observe the client for at least 15 minutes;

(3) ascertain whether the client's physical and psychological well-being, comfort, and right to privacy were addressed;

(4) counsel the client in relation to any emotional trauma that may have resulted from the episode;

(5) when indicated, make appropriate modifications to the client's treatment plan;

(6) take action, as appropriate, to facilitate the client's reentry into the social milieu;

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(7) when clinically indicated or upon request of individuals who witnessed the personal restraint or seclusion, provide such individuals with appropriate counseling and/or support; and

(8) document in the client record actions taken and observations of the client's behavior during this transition period.

(k) Emergency Medical Condition or Evacuation. The facility shall ensure the following:

(1) If a client experiences an emergency medical condition while in a personal restraint or seclusion, the staff member must immediately release the client from all personal restraint and seclusion occurring at the time and ensure that the client's medical condition is promptly assessed, treated, and otherwise addressed in accordance with the facility's policies and procedures for management of emergency medical conditions.

(2) If an emergency evacuation of the facility occurs while a client is in a personal restraint or seclusion, the staff member must, as soon as possible under the circumstances that prompted the emergency evacuation or drill, release the individual from all personal restraint and seclusion occurring at the time, and staff members shall implement the facility's established procedures and otherwise act to ensure the safety of the client released and of other clients.

(l) Documentation. The facility shall document the precipitating circumstances, initiation, applicable order or authorization, monitoring, and evaluation of a client for each incident of personal restraint and of seclusion. The facility shall maintain documentation of each personal restraint and seclusion in the facility's central file and the client's clinical record that includes:

(1) the date and time that, each instance of personal restraint or seclusion began and ended;

(2) name, age, gender, and race of the client;

(3) names and titles of staff members present and their role in the applicable personal restraint or seclusion, and of the authorizing QCC or ordering physician;

(4) description of the client’s behavior that necessitated each instance of personal restraint or seclusion and the specific potential for harm it was initiated to avert;

(5) description of less restrictive interventions and de-escalation techniques attempted and the client’s response;

(6) each type of personal restraint and circumstances of seclusion used and for how long;

(7) time and results of any type and occurrence of assessment, observation, monitoring, and evaluation of the client that resulted in each instance of personal restraint or seclusion, or occurred during or after the personal restraint or seclusion;

(8) the client's response to the use of each instance of personal restraint or seclusion;

(9) any death or injury of a client or staff member that is associated with a personal restraint or seclusion of the client;

(10) facility actions taken to address any death or injury of a client or staff member that is associated with a personal restraint or seclusion; and

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(11) the name, title and dated signature of the person completing the documentation.

(m) Staff and Facility Responsibilities. The facility shall ensure the following:

(1) staff members shall immediately, as circumstances of the event allow, report to the facility governing authority or designee, any use of a personal restraint or seclusion; and

(2) the facility's governing authority or designee shall take, and maintain documentation in the facility's central file of, the following actions, which shall include meeting with, and soliciting the input and perspective of, the client restrained or secluded, and, separately, that of staff involved, with respect to the incident and in order to address, at a minimum, subparagraphs (C) and (D) of this paragraph. The facility shall also ensure the participation of appropriately qualified QCCs in completing each of the following:

(A) any immediate intervention as needed to ensure the client's safety;

(B) the conduct of a thorough review of each instance of personal restraint and of seclusion;

(C) identification of what led to the episode and what could have been handled differently;

(D) identification of strategies to prevent future personal restraint and seclusion of the client;

(E) action to address, with the implementation of a corrective action plan, each use of personal restraint and seclusion that is determined to be, or suspected of being, improper at the time it occurred; and

(F) appropriate action to identify and correct, on an individual and systemic basis, unusual or unwarranted utilization patterns.

(n) Report to Department. Without limiting any other reporting requirement to which the facility is otherwise subject in relation to behavioral interventions, the facility shall submit the following reports to the department at the address designated for filing complaints in §448.302 of this title (relating to Complaint Investigations):

(1) By the next business day following an individual's death or serious injury, facilities shall report:

(A) Each death or serious injury that occurs while an individual is in restraint or seclusion;

(B) Each death that occurs within 24 hours after the individual has been removed from restraint or seclusion.

(C) For each report required to be submitted under clauses (A) and (B) of this paragraph, at least the information under §448.409(b) of this title (relating to Incident Documenting and Reporting).

(2) No later than the end of each quarter after the effective date of this rule, the facility shall complete and submit an online report to the department from the immediately preceding quarter relating to interventions used during a behavioral emergency or otherwise administered, using the link provided for that purpose on the Department's website. The report shall include the following information:

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(A) rate of personal restraints (per 1,000 bed days), including any that may have occurred at the facility notwithstanding their prohibition under this section, or may have otherwise failed to meet the requirements of this section;

(B) rate of seclusions (per 1,000 bed days), including any that may have occurred at the facility notwithstanding their prohibition under this section, or may have otherwise may have failed to meet the requirements of this section;

(C) number of serious injuries related to the use of a personal restraint, seclusion, or other intervention in a behavioral emergency; and

(D) number of deaths related to the use of a personal restraint, seclusion, or other intervention in a behavioral emergency.

(E) the information required for personal restraints and seclusion under subparagraphs (A)-(D) of this paragraph for any use of prohibited mechanical or chemical restraint and for any use of emergency medication.

(o) Continuous Improvement. The facility shall use its personal restraint and seclusion data maintained in the facility's central file to continuously improve and ensure:

(1) a positive environment that minimizes the use of personal restraint and seclusion;

(2) the safety of every client and staff member; and

(3) policies and training curriculum that incorporate the requirements of this subchapter.

§448.606. Client Program Rules.

(a) The facility, through its governing authority or designee, as applicable, shall develop, implement and enforce therapeutically sound written program rules addressing client behavior that are designed to protect the health, safety, welfare and rights of all clients.

(b) The consequences for violating program rules shall be defined in writing and shall clearly identify those violations that may result in discharge. The consequences shall be reasonable, take into account the client's diagnosis and progress in treatment, and shall not include:

(1) physical discipline or measures involving the denial of food, water, sleep, or bathroom privileges;

(2) any consequence or form of discipline or verbal or nonverbal communication that threatens, curses, shames, or degrades a participant or client, or is designed or intended to do so; or

(3) discipline that is determined, authorized, supervised, initiated or carried out by clients.

(c) The facility shall enforce the rules fairly and objectively and shall not implement consequences for the convenience of staff.

§448.607. Client Labor and Interactions.

(a) The facility shall adopt, implement and enforce written policies and procedures that address client labor and interactions and comply with the provisions of this section.

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(b) The facility licensee shall not hire or utilize a current client of the licensee to fill a facility staff or personnel position, or to perform a facility contracted service, job duty or work assignment on behalf of the facility. Regardless of compensation arrangements or of a facility's designation of a position, the prohibition of this subsection applies, without limitation, to administration, as well as to clerical, security, and direct care positions, even if the client provides voluntary written consent.

(c) Unless doing so would violate an applicable, professional, or ethical standard of conduct of a facility practitioner, the facility may hire or utilize a former client to fill a facility staff or personnel position, or to perform a facility contracted service, job duty or work assignment on behalf of the facility under the following circumstances:

(1) if the position is one, such as a janitorial or food service position, that does not involve providing direct client care or treatment services, the facility may hire a former facility client immediately after the client's documented discharge from the facility; and

(2) if the position is one that involves providing direct client care or treatment services, such as a recovery coaching or counseling position, the facility may hire: a former facility client one year after the client's documented discharge from the facility.

(d) Unless doing so would violate an applicable, professional, or ethical standard of conduct of a facility practitioner, a facility which is not the substance-related disorder facility from which the former client was discharged, and which does not utilize practitioners, students, or interns from that facility, may hire a former client of another facility.

(e) The facility shall not require any client to solicit or participate in any fundraising or publicity activity for the facility, and shall not condition admission to the facility, compliance with a treatment plan or program rules, or participation in any facility service, benefit, or privilege on a client's participation in any fundraising or publicity activity for the facility. A facility shall obtain a client's written, voluntary consent before permitting a client to participate in any fundraising or publicity activity. The facility shall not permit a client's participation in any fundraising or publicity activity to interfere with any treatment service or activity required under this chapter or under the client's treatment plan, or described in the facility's Operational Plan as part of the program in which the client is participating; with compulsory educational requirements; with a client's enrollment in a degree program or full participation in such a program in which a client is enrolled; or with any meal, an adequate opportunity for personal recreation, or at least eight continuous hours of sleep, and shall limit each client's participation in such activities to no more than a maximum of eight hours per week.

§448.608. Client Searches.

(a) The facility shall adopt, implement and enforce a written policy that authorizes or prohibits client searches by the facility. The policy and facility practices shall ensure the protection of client rights and compliance with this section. A client search includes, without limitation, a search of the client's person, and/or a search of a client's personal property, designated storage area at the facility, and/or assigned sleeping area.

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(b) Client searches shall only be conducted to protect the health, safety, and welfare of clients, personnel, or the facility.

(c) Any search the facility conducts shall be conducted only by authorized facility staff and shall be conducted in a professional manner that maintains respect and dignity for the client. Any search of a client's person or belongings shall be conducted outside the view of other clients and personnel not involved in conducting or witnessing the search. A staff witness who is not otherwise involved in the search shall be present to monitor and observe the conduct of any search of a client's person or belongings.

(d) The facility shall not conduct a strip search or, with the exception of a search of a client's mouth, a body cavity search, of any client.

(e) Staff and witnesses involved in the search of a client's person shall be the same gender as the client, unless contraindicated for the client and the contraindication is documented.

(f) All client or property searches of a client shall be documented and include the date and reason for the search, the result of the search, and the signatures of the individual conducting the search and of the witness.

(g) If collection of a urine specimen is ordered to be observed, staff observing the specimen collection shall be the same gender as the client, unless contraindicated for that client and the contraindication is documented.

(h) To the extent otherwise permitted by law and subject to applicable federal and state confidentiality, privacy, and security laws and regulations, as set forth in §448.404(g) of this title (relating to Minimum Standards of Conduct), surveillance cameras are allowed in common areas, outdoor areas, and hallways to monitor the safety of clients, personnel and the facility. However, surveillance cameras are prohibited in client bedrooms, dressing areas, and bathrooms and may not be used in any instance other than for purposes authorized under this subsection or otherwise by law.

SUBCHAPTER G. ADMISSION AND TREATMENT PROCESS.

§448.701. Admission Criteria.

(a) The facility shall adopt, implement, and enforce written admission policies and procedures, criteria, and practices for each level of service and care, and for each special population and age group authorized under its license, which shall only permit client admission for treatment within the facility's licensure authorization and appropriate to the type and severity of the disorder of, and the needs of, the individual admitted. The policies, criteria, and practices shall comply with the minimum standards of this section.

(1) Adolescent programs are authorized to serve youth age 13 through 17 years.

(2) Adult programs are authorized to serve individuals 18 years of age and older.

(b) The criteria shall prohibit the denial of admission to any otherwise qualified prospective client solely on the basis of age, color, disabilities, national origin, political belief, race, religion, gender identity and expression, sexual orientation, the particular substance(s) upon which one's substance-related disorder is based, or known or perceived HIV status, if the prospective client is eligible and appropriate for the facility's program

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and admitting the prospective client is within the scope of the facility's licensure approval.

(c) In determining an individual's initial and ongoing eligibility for treatment service at the facility, the facility shall not categorically deny admission to an individual that presents with co-occurring psychiatric and substance-related disorders without consideration of individualized facts and the qualifications of facility staff to address the needs of the individual.

(d) The facility's admission criteria and practices shall ensure that the principal disorder of any individual admitted to a level of service and care authorized under the facility's license meets the current generally accepted diagnostic criteria for a type and severity level of substance-related disorder appropriate to be treated in that level of service and care, and with any special population with which the individual is designated to be treated.

(1) With the exception of clients appropriate for admission, and being admitted, to a residential or inpatient withdrawal management program under §448.802 of this title (relating to Requirements for Residential or Inpatient Withdrawal Management Programs), the facility's admission criteria and practices shall permit only individuals who are medically stable at the time of admission and capable of participation in the facility's treatment program to be admitted to the facility.

(2) The facility shall identify in writing the generally accepted standards it uses to develop its admission criteria. In each withdrawal management facility, the medical director shall approve the admission criteria, policies, and procedures.

(e) The facility's admission criteria and practices for each level of service and care authorized under its license shall also adhere to the age restrictions set forth in this chapter for adult and adolescent programs providing that level of care and service; and

(f) To be admitted to a facility program, an individual must meet applicable requirements of this chapter and the current, generally accepted diagnostic criteria for a substance-related disorder that is consistent with the level of service and care for the program below to which the client is proposed to be admitted, and, if designated to be treated with a special population, the individual must be appropriate for that designation:

(1) Residential or Inpatient withdrawal management program;
(2) Ambulatory program for withdrawal management;
(3) Intensive residential or inpatient program;
(4) Supportive residential program;
(5) Partial hospitalization or day treatment program;
(6) Intensive outpatient program;
(7) Supportive outpatient program.

§448.702. Screening.

The facility shall conduct and document a screening for each individual seeking treatment for a substance-related disorder. Each screening shall be conducted by a person who has completed the requisite initial and annual two-hour training in screening and intake, in accordance with §448.503(e)(5) of this title (relating to Personnel Training and Demonstrated Competency). Screening shall be used to determine whether a prospective client presents sufficient signs, symptoms, or behaviors indicative of a substance-related

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disorder to warrant a more in-depth assessment after the client is admitted. Each screening shall be reviewed and approved in writing by a practitioner who is professionally authorized to do so.

§448.703. Admission Determination and Justification.

(a) Clinical documentation of a client's admission to a facility shall include designation of the appropriate level of service and care, if any, including any special population designation, to meet the needs of the individual, determined in accordance with §448.701 of this title (relating to Admission Criteria). If the individual is determined to be inappropriate for admission, then an appropriate referral for recommended services shall be provided to the individual and documented. The facility shall assist the individual in making initial contact with the referral source, if requested.

(b) Subject to any more specific or limiting requirements set forth in Subchapter H, a practitioner who is professionally authorized to do so shall evaluate the client, in person, prior to admission and shall document the evaluation.

(c) Subject to any more specific or limiting requirements set forth in Subchapter H, a practitioner who is professionally authorized to do so shall determine whether the client meets the facility's admission criteria. The practitioner who makes the determination shall document, sign, and date the resulting determination, indicating whether the client is eligible and appropriate for admission, the recommended level of service and care, including any special population designation, and any referral that the client may need. The justification for admitting the client shall be clearly stated and sufficiently documented in the client's record to demonstrate that the client meets the facility's admission criteria and is appropriate for any special population designation and for the designated level of service and care.

(d) Once an individual is admitted and begins receiving services, the facility shall maintain the client in active status until treatment services for the client's substance-related disorder have stopped and the client has been discharged as defined in §448.102(36) of this title (relating to Definitions).

§448.704. Intake.

(a) The facility shall conduct an intake to gather information about the client and to provide the individual with information about the treatment facility and the facility's treatment and services. Intake shall be conducted by a staff person who has completed the requisite initial and annual training in screening and intake in accordance with §448.503(e)(5) of this title (relating to Personnel Training and Demonstrated Competency). During the intake process, the facility, at a minimum, shall document and review information about each client's finances and insurance benefits.

(b) A facility staff person who meets the requirements of subsection (a) of this section shall provide the following intake information in writing to each client and shall explain the information to the individual in specific terms and in simple, nontechnical language:

(1) the Client Bill of Rights, provided in compliance with §448.601 of this title (relating to Client Bill of Rights);

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(2) the client grievance procedure, provided in compliance with the requirements of §448.602 of this title (relating to Client Grievances);

(3) program rules and schedule of services;

(4) program rule violations that can lead to disciplinary action or discharge;

(5) any consequences or searches used to enforce program rules;

(6) the facility's estimated daily charges and refund policy, including an explanation of any services that may be billed separately to a third party or to the client, based on an evaluation of the client's financial resources and insurance benefits. The facility shall not misrepresent to a client or to the client's parent, guardian, managing conservator, or spouse of a client, the availability or amount of insurance coverage available to the client, or the amount and percentage of a charge for which the client will be responsible;

(7) general information concerning the facility's services and treatment process; and

(8) general information about opportunities for family to be involved in treatment.

(c) The facility shall document that the client received and understood the information required in this section. The documentation shall be dated and signed by the client and the staff person providing the information, and shall be maintained in a client's clinical record.

(d) For facilities that authorize the use of personal restraint or seclusion, prior to or at the time of admission, the facility shall collect the following information from the client:

(1) techniques, methods, or tools that would help the individual effectively cope with his or her environment;

(2) pre-existing medical conditions, physical disabilities and limitations, age, emotional maturity, and/or other factors that might place the individual at greater risk during personal restraint or seclusion, including, without limitation, a mental health disorder, particular aspects of the individual's substance-related disorder, obesity, or pregnancy;

(3) any history of sexual abuse, physical abuse, neglect, or trauma that would place the individual at greater psychological risk during personal restraint or seclusion;

(4) any history or trauma to be considered before personal restraint or seclusion is initiated or authorized;

(5) cultural factors; and

(6) information or advance agreement about an individual's preferences for procedures in a behavioral emergency.

§448.705. Informed Consent to Treatment.

(a) The facility shall obtain written informed consent to treatment from the client or by a person authorized by law to consent to treatment on the client's behalf in accordance with this section before providing any treatment.

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(b) Written consent given by a client or by an authorized consenter for treatment is valid only if:

(1) the consent is given voluntarily and without coercive or undue influence; and

(2) before initiating treatment or therapy, a practitioner acting within the practitioner's professional authority and scope of practice, explains to the client and to any authorized consenter in simple, nontechnical language:

(A) the specific condition to be treated;

(B) the beneficial effects on that condition expected from the therapy or treatment;

(C) the probable health and mental health consequences of not consenting to the therapy or treatment;

(D) the side effects and risks associated with the therapy or treatment;

(E) the generally accepted alternatives to the therapy or treatment, if any, and whether an alternative might be appropriate for the client; and

(F) the proposed course of the therapy or treatment.

(c) The consent to therapy or treatment shall be documented on a consent form dated and signed by the client and, as applicable, any authorized consenter. This consent shall be maintained in the client's clinical record. The consent shall include a signed statement from the practitioner who obtained the consent that the consent was given by the appropriate person, and the circumstances under which the consent was obtained. Any such statement of the licensed practitioner shall be acknowledged by the signature of the client and of any authorized consenter and shall acknowledge the receipt and understanding of the explanations required under the applicable paragraphs in subsection (b) of this section and that consent to the therapy or treatment was given voluntarily and without coercive or undue influence.

(d) A client and, if appropriate, the client's authorized consenter, shall be informed in writing that consent to therapy or treatment may be revoked at any time and for any reason, regardless of the client's capacity. Revocation of consent is effective immediately and further therapy or treatment may not be administered unless new consent is obtained in accordance with this section.

(e) Consent given by a client or by a person authorized by law to consent to treatment on the client's behalf applies to multiple therapies or treatments for which consent was previously granted. If the practitioner obtains new information relating to a therapy or treatment for which consent was previously obtained, the practitioner must explain the new information and obtain new consent.

(f) At the time of admission, each client shall be informed in writing of the name and credentials of the primary counselor assigned to the client; and how the counselor can be contacted. If the primary counselor is a counselor intern, the client shall also be informed in writing of the name and credentials of the counselor intern's supervising QCC. If the primary counselor changes during the course of the client's treatment, the client shall be informed in writing of the name and credentials of the primary counselor and the supervising QCC, if the primary counselor is a counselor intern.

§448.706. Informed Consent to Prescription Medication.

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(a) The facility shall obtain written informed consent for the administration of prescription medication from the client or by a person authorized by law to consent to treatment on the client's behalf in accordance with Health and Safety Code §§462.011 – 462.014 and with this section before providing any prescription medication.

(b) Consent given to the administration of prescription medication by an individual or by an authorized consenter is valid only if:

(1) the consent is given voluntarily and without coercive or undue influence.

(2) The client, and, if appropriate, the client's representative authorized by law to consent on behalf of the client are informed in writing that consent may be revoked at any time and for any reason, regardless of the client's capacity. Revocation of consent is effective immediately and medication ordered for treatment may not be administered unless new consent is obtained in accordance with this section. The client's treating physician shall be notified of the revoked consent.

(3) the consent is evidenced in the client's clinical record by a signed form prescribed by the treatment facility or by a statement of the treating physician or a practitioner designated by the physician that documents that consent was given by the appropriate person and the circumstances under which the consent was obtained.

(c) Before prescription medication is administered, the treating physician of the client or a person designated by the treating physician must explain to the client and to any authorized consenter in the client's primary language, if possible, or in a manner or language the client will comprehend, information relating to the medications ordered by the physician. At a minimum, the required information must:

(1) identify the major types of prescription medication; and

(2) specify for each major type:

(A) the conditions the medications are commonly used to treat;

(B) the beneficial effects on those conditions generally expected from the medications;

(C) side effects and risks associated with the medications;

(D) commonly used examples of medications of the major type; and

(E) sources of detailed information concerning a particular medication.

(d) If the treating physician designates another person to provide the information under Subsection (c), then, not later than two working days after that person provides the information, excluding weekends and legal holidays, the physician shall meet with the client and, if appropriate, the client's representative who provided authorized consent for the administration of the medications under subsection (a), to review the information and answer any questions.

(e) The treating physician or the person designated by the physician shall also provide the information to the client's family on request, but only to the extent not otherwise prohibited by state or federal confidentiality laws.

(f) A client has the right to refuse unnecessary or excessive medication. Medication may not be used by the treatment facility:

(1) as punishment; or

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(2) for the convenience of the staff.

(g) On the request of a client, a person designated by the client, or the client's legal guardian or managing conservator, if any, the facility shall provide to the client, the person designated by the client, and the client's legal guardian or managing conservator, if any, a list of the medications prescribed for administration to the client while the client is in the treatment facility.

(1) The list must include for each medication:

(A) the name of the medication;

(B) the dosage and schedule prescribed for the administration of the medication; and

(C) the name of the physician who prescribed the medication.

(2) The list must be provided before the expiration of four hours after the facility receives a written request for the list from the client, a person designated by the client, or the client's legal guardian or managing conservator, if any. If sufficient time to prepare the list before discharge is not available, the list may be mailed before the expiration of 24 hours after discharge to the client, the person designated by the client, and the client's legal guardian or managing conservator, if any.

(3) A client or the client's legal guardian or managing conservator, if any, may waive the right of any person to receive the list or any portion of the list of medications while the client is participating in a research project if release of a full or partial list would jeopardize the results of the project.

§448.707. Assessment.

(a) Within three service days after a client's admission, a practitioner, as defined in §448.102(74) of this title (relating to Definitions), who is professionally authorized to do so shall complete, in consultation with others, as needed, a face to face assessment of the client to further define the nature of the client's substance-related problem and to determine the appropriate treatment services.

(b) The assessment shall include, as applicable, the following information:

(1) assessment of the presence or indication of intoxication or withdrawal symptoms;

(2) physical and mental health history, including the client's current physical condition and any mental health disorders, issues or exhibited signs or symptoms;

(3) treatment history for substance-related and mental health issues, including any past or present suicidal thoughts or attempts;

(4) past and current experiences of substance use and withdrawal, including occupational, economic and legal impact;

(5) the readiness and interest in changing behaviors to foster recovery, avoid continued use, or relapse;

(6) the client's problems, strengths and needs;

(7) available support network; and

(8) any other information relevant to the assessment of the client.

(c) When, at any time, the facility identifies a need for a mental health evaluation, a practitioner within the facility who is professionally authorized to do so shall initiate a

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mental health evaluation of the client within 72 hours of that assessment, or the facility shall refer the client within 72 hours for evaluation and applicable diagnosis from a practitioner with such professional authorization. With the client's written consent, or to the extent otherwise permitted by law, the outcome, recommendations, and plan of action resulting from the evaluation shall be reviewed by the primary counselor and, with the client's participation, incorporated into the client's treatment plan, as applicable. Documentation of, or relating to, any mental health evaluation conducted by or on behalf of the facility, or based on a referral, shall be filed in the client record within five service days after the date the evaluation was completed. Should the client decline a referral recommendation, the facility shall document in the clinical record, with the client's signed acknowledgement, the services that were recommended and declined.

(d) The assessment shall be completed, dated, and signed by the practitioner conducting the assessment and prior to the development of an individualized treatment plan.

(e) The program may accept an assessment from an outside source if the assessment:

(1) meets the criteria set forth in this section;

(2) was completed during the 30 days preceding admission and is received directly from the outside source that conducted the assessment; and

(3) an authorized practitioner reviews and updates the information in writing with the client or prospective client, as applicable, and initials and dates each update.

(f) A facility may use an assessment previously conducted by a facility practitioner for a former client of the facility for whom there has not been an interruption in service for longer than 30 days if:

(1) it meets the criteria set forth in this section; and

(2) a practitioner reviews and updates the information with the client and each signs and dates the still-current and updated information on the previous assessment, and signs and dates any separately documented updated information.

§448.708. Treatment Plan and Progress Notes.

(a) General Requirements. Each client's treatment shall be based on an individualized treatment plan developed from the client's ongoing assessment. The facility shall ensure, through written and chronological documentation in the client record, compliance with the following requirements:

(1) A treatment plan shall be developed by the counselor and client that identifies services and support resources necessary to address the client's problems, strengths and needs, as identified in the assessment. A physician or authorized practitioner shall identify such services and support resources necessary to address the medical needs of a client in a withdrawal management program or any other level of care. A treatment plan shall include the following:

(A) Client-specific goals;

(B) Objectives that are realistic, measurable, time-specific, appropriate to the level of care and service and any special population designation for the client, and clearly stated in behavioral terms.

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(C) Strategies that describe the type and frequency of specific, identified services and interventions needed to help the client achieve identified goals; and

(D) Initial discharge criteria that specifies the condition under which a client will be considered eligible for discharge or ineligible for continued participation in the program.

(2) Implementation of the treatment plan and the client's progress shall be clearly documented. The documentation shall include:

(A) client behavior and level of functioning;

(B) interventions utilized, the client's response to each intervention and the outcome of each intervention;

(C) any changes to the client's level of service;

(D) the date, nature and substance of all services rendered to the client;

(E) the response of significant others to events in the course of treatment, as applicable; and

(F) information and developments relevant to the client's discharge status.

(3) Within three direct service days after individual counseling, group counseling, substance-related disorder education, or life skills training are provided, each such service provided shall be documented in the client record. The documentation shall contain:

(A) the date, nature, substance, and duration of the contact; and

(B) the signature and credentials of the individual providing the service.

(4) Individual counseling notes shall include the goals addressed, clinical observations, the level of client participation, the client's response to treatment, and new issues or needs identified during the session.

(5) Appropriate referrals shall be made if the client requires services that the facility does not offer.

(6) The justification shall be documented whenever client needs are temporarily deferred or not addressed during treatment.

(7) The completed treatment plan shall be reviewed, signed and dated by the client, the counselor or counselor intern, and the supervising QCC, or practitioner acting within their scope of practice, as applicable.

(8) The facility shall provide the client with a copy of the treatment plan and maintain the original, signed plan in the client record.

(9) The treatment plan shall be filed in the client record within five direct service days after the date of admission.

(b) Treatment Plan Review. The treatment plan shall be reviewed and revised to reflect the ongoing reassessment of the client's problems, strengths, needs, response to treatment and the continued appropriateness of the current level of service and care as follows:

(1) The primary counselor shall meet with the client to review and update the treatment plan as needed. Absent an earlier need for review, the treatment plan shall

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be reviewed and updated midway through the projected duration of the client's stay, or every 30 days, whichever is sooner.

(2) After six months of continuous treatment, the primary counselor shall meet with the client to review and update the treatment plan as needed, but in no event less than every 90 days.

(3) The treatment plan review shall include:

(A) an evaluation of the client's progress toward each goal and objective;

(B) any revision of the client's goals, objectives, and/or strategies warranted by the review, or documentation of the rationale for keeping the client's goals and/or objectives unmodified;

(C) justification for continuing treatment and for any change in the client's level of care or service; and

(D) amendments to the initial plan for discharge and discharge criteria, as appropriate to the client's needs and progress in treatment.

(4) When a client's level of care or service is changed, the client record shall contain:

(A) clear documentation of the rationale for a new level of care or service, the decision date, and signature of the QCC; and

(B) a revised treatment plan.

(5) A revised treatment plan under this subsection shall be reviewed, signed and dated by the client, the counselor or counselor intern, and the supervising QCC as applicable.

(6) The facility shall provide the client with a copy of the revised treatment plan and maintain the original signed and revised plan in the client record.

(7) The revised treatment plan shall be filed in the client record within five service days after the date of revision.

§448.709. Discharge.

(a) Discharge Planning. The counselor and client's plan for the client's discharge shall be developed in writing in conjunction with treatment planning, as provided for under §448.708 of this title (relating to Treatment Plan and Progress Notes), and shall identify clinical and social resources needed by, and available to, the client upon discharge to support the client's ongoing recovery.

(1) The discharge plan shall include:

(A) the client's individual goals, objectives, activities, or services, such as peer support, vocational, educational and employment services, medical/behavioral health and medication assisted treatment, and needs, such as living arrangements, to sustain the client's recovery after discharge from treatment;

(B) strategies for the client to make and sustain use of such resources to promote the client's discharge goals and objectives in maintaining recovery; and

(C) specific referrals and initial appointments for the identified services.

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(2) The program shall involve the client's family or an alternate support system in the discharge planning process, when appropriate and when consented to by the client, to engage them in supporting the client's ongoing recovery and needs at discharge.

(3) The completed discharge plan shall be reviewed, revised as necessary, signed and dated by the client, the counselor or counselor intern, and the supervising QCC as applicable.

(4) The facility shall provide the client with a copy of the discharge plan and shall maintain the original and signed discharge plan in the client record.

(b) Discharge Summary. The program shall complete a discharge summary for each client within 30 calendar days after discharge. The discharge summary shall be signed by a QCC and include:

(1) dates of admission and discharge;

(2) needs and problems identified at the time of admission, during treatment, and at discharge;

(3) summary of services provided during treatment;

(4) summary of the client's progress towards goals;

(5) reason for discharge; and

(6) referrals and recommendations, including arrangements for aftercare.

SUBCHAPTER H. TREATMENT SERVICES.

§448.801. Requirements for All Treatment Services.

(a) The facility shall adopt, implement, and enforce written policies and procedures and institute practices that comply with the minimum standards of this section to ensure that the program provides clients with the full range of applicable treatment services required under this subchapter, are sufficient to meet the client's needs and to achieve the client's treatment goals.

(b) Group counseling sessions shall be limited to a maximum of 16 clients, regardless of the number of counselors present in the group.

(c) Substance-related disorder education and life skills training shall:

(1) follow a written curriculum;

(2) be age and culturally appropriate;

(3) allow for discussion of the material presented and be relevant to the clients' treatment goals;

(4) be taught by qualified staff with applicable education and expertise, which the facility shall document; and

(5) be limited to 35 clients, if there is only one qualified staff present in the group, or a maximum of 50 clients, when two or more qualified staff are present in the group. This limit does not apply to multi-family educational groups, seminars, events with outside speakers, or other events designed for a large audience;

(d) In addition to meeting the requirements of subsection (c) of this section, substance-related disorder education shall:

(1) include education about Tuberculosis, HIV, Hepatitis B and C, and sexually transmitted infections and make the same education regarding methods of HIV

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infection required for staff under §448.503(e)(2)(B) of this title (relating to Personnel Training and Demonstrated Competency) available to facility clients; and

(2) include education about the health risks of tobacco products and nicotine addiction. The facility shall provide all tobacco users with tobacco cessation services, referral options, and educational and informational resources.

(e) The facility shall ensure and document that staff who provide HIV counseling to clients are trained and provide counseling in accordance with the current model protocol for counseling related to HIV infection developed by the department under Health and Safety Code §85.081, as specified by the department's HIV/STD Program, and with other applicable requirements of law.

(f) The facility shall facilitate access to physical health, mental health, and ancillary services, if those services are not available through the program, and are necessary to meet treatment goals or client needs, and shall document these efforts. The facility shall screen each client for TB, Hepatitis B and C, HIV antibody and sexually transmitted infections and, as appropriate, provide access to testing and follow up.

(g) If it is the policy of the facility to treat a client's co-occurring psychiatric disorders through its own program(s), it shall do so with qualified staff, and the services provided shall:

(1) address both psychiatric and substance-related use disorders as primary;

(2) be provided within established practice guidelines for this population; and

(3) assist individuals in accessing any additional appropriate and available services they need and choose.

(h) The facility shall maintain an adequate number of qualified staff to comply with licensure rules, provide appropriate and individualized treatment, and protect the health, safety, and welfare of clients. The facility shall exclude students and volunteers in determining its staffing needs under this subsection and in meeting applicable staff to client ratios required under this chapter.

(i) The required ratio of direct care staff for each of the facility's programs shall be awake and on duty where the program clients are located during all hours of program operation. Staff shall not have job duties that prevent active and continuous supervision.

(j) The facility shall specify and justify counselor caseload sizes in writing, based upon all relevant factors, including the program design; the characteristics and needs of the population served; the counselor's hours and mix of clients assigned; and the minimum client service hours required to be or actually provided, if the latter is greater than the required minimum. The caseload sizes specified shall ensure effective, individualized treatment, considering the relevant factors.

(k) When a client is referred or transferred to another substance-related disorder or mental health service provider for continuing care, the facility shall, with appropriate consent from the client and, as applicable, the consenter, contact the receiving program before the client is discharged or transferred to arrange for the referral or transfer.

(l) The facility shall designate a clinical director who is responsible for planning, directing, and overseeing the clinical portion of the facility's treatment program. The clinical director shall maintain a regular and consistent presence at the facility. The

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clinical director shall be a QCC with at least two years of documented post-licensure experience providing substance-related disorder treatment.

(m) If a client reports or manifests physical or mental health problems, the client's condition shall be:

(1) assessed by qualified staff for level of urgency and level of intervention;

(2) appropriately addressed in a timely manner; and

(3) documented in the client record.

(n) Referral of non-urgent client issues to treatment and/or other service providers of appropriate type and qualification to meet the client's needs shall be initiated no later than 72 hours after the issue is reported or identified. The referral and follow-up information shall be documented in the client record on the date of the referral.

§448.802. Requirements for Residential or Inpatient Withdrawal Management Programs.

(a) A facility providing a residential or inpatient withdrawal management program shall ensure that every individual admitted to that program meets the current, generally accepted diagnostic criteria for substance withdrawal, or either substance intoxication or a substance-related disorder with clinical presentation indicating that significant withdrawal is imminent. A residential or inpatient treatment program shall provide a 24-hour program, seven days per week, where clients reside, and which provides comprehensive substance-related disorder treatment, including professional and direct care services, in a structured therapeutic environment.

(b) The program shall have a medical director who is a physician licensed in the state of Texas. Admission, diagnosis, medication management, and client care shall be conducted by or under the direction of the medical director.

(1) The medical director shall approve all policies and procedures, guidelines, tools, and the medical content of all forms, which shall include, without limitation:

(A) screening instruments and admission criteria, policies, and procedures;

(B) protocols or standing orders for managing withdrawal from each major drug class of abusable drugs, which shall be consistent with applicable laws and with guidelines published by nationally recognized agencies and organizations, such as the Substance Abuse and Mental Health Services Administration, American Society of Addiction Medicine, and American Academy of Addiction Psychiatry. Major drug classes of abusable drugs include, without limitation, sedatives, hypnotics, or anxiolytic drugs; opioids; alcohol; inhalants; cannabinoids; stimulants; and hallucinogens;

(C) procedures to deal with medical and other emergencies;

(D) medication and monitoring procedures for all clients and for pregnant clients that address the effects on the fetus of withdrawal and medications used in withdrawal management; and

(E) special consent forms for pregnant clients that identify the risks, for both the mother and fetus, associated with substance use, withdrawal, and withdrawal management, including medications used in withdrawal management.

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(2) The facility shall adopt, implement and enforce the written policies and procedures approved by the medical director.

(c) Admission process. A facility that provides a residential or inpatient withdrawal management program to a client shall ensure the following requirements are met:

(1) Prior to admission:

(A) A physician, PA, APRN, or an RN shall conduct and document an in-person evaluation of the client to be utilized in an admission determination under (B) of this paragraph.

(B) A physician, PA, or APRN shall determine and document whether the client meets the facility's admission criteria and shall authorize all admissions.

(C) If the potential client is not admitted, the physician, PA, or APRN shall provide any indicated referral to other appropriate treatment or services, and document any referrals and the basis for referral.

(2) Not later than 24 hours after admission, the physician shall conduct an in-person face-to-face examination, including a history and physical examination, to establish the client's principal diagnosis, and assess the level of intoxication and withdrawal, and/or withdrawal potential. The physician shall document the need for treatment, the type of treatment needed, and the placement decision. All orders and treatments shall be individualized to each client's assessed needs and condition. The physician may permit a PA or APRN to meet any portion of the requirements of this paragraph for which the individual is professionally authorized.

(A) The documentation under this Paragraph and under Paragraph 1 of this subsection shall be maintained in the client record and shall clearly demonstrate that the client meets the diagnostic and eligibility criteria required for admission to the program.

(B) Without limiting the requirements of Paragraph 1 of this subsection, or its documentation requirements, the facility may accept an a history and physical examination that was conducted by a an outside physician, if it is approved in writing by the Medical Director within 24 hours after admission, meets the requirements of this Paragraph, and has been completed within 24 hours preceding admission.

(3) The program shall not require a client to obtain an outside history and physical examination to meet the requirements of Paragraph (2) of this subsection, or as a condition of admission.

(d) Monitoring. The facility shall ensure client monitoring is conducted in accordance with physician orders and such monitoring shall be documented in the client's record. Monitoring shall be conducted by a licensed health professional, as defined in §448.102(53) of this title (relating to Definitions), or by staff trained in accordance with subsection (h) of this section.

(1) The program shall use generally recognized and accepted clinical instruments or tools appropriate to the client's condition, such as, for alcohol, the Clinical Institute Withdrawal Assessment of Alcohol scale, revised©, or, for opiates, the Clinical Opiate Withdrawal Scale©, to assess and monitor the client's withdrawal from applicable substances.

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(2) The program shall have medications available to meet client needs for management of withdrawal and/or intoxication from all classes of abusable drugs.

(e) The treatment team, comprised of the appropriate practitioners, shall develop an individualized written treatment plan for each client that otherwise complies with the requirements of §448.708 of this title (relating to Treatment Plan and Progress Notes) and includes the goals of successful and safe withdrawal and a plan for transfer to another level of service and/or care.

(f) In addition to managing the client's withdrawal and intoxication, the facility shall ensure that an RN, counselor, or counselor intern provides at least one daily individual counseling session with each client. The session shall be designed to:

(1) assess the client's readiness for change;

(2) offer the client general and individualized information on substance-related disorders, and substance intoxication and withdrawal;

(3) enhance client motivation;

(4) engage the client in treatment; and

(5) review the treatment plan, which shall contain the goals of successful and safe withdrawal and a plan for transfer to another level of service and/or care.

(g) A facility shall arrange for client transfer to the appropriate level of service and care, and/or any other appropriate referrals, for any client who, at any time, is no longer appropriate for.an ambulatory withdrawal management level of service and care.

(h) The facility shall ensure continuous access to emergency medical care.

(i) Staff requirements. A facility's withdrawal management program shall comply with the following requirements:

(1) The facility shall have a licensed nurse present, awake, and on duty whenever clients are present. Each such nurse must be working within the limitations of the nurse's licensure, present competencies, and supervision requirements, based upon the needs of the client population at the time.

(2) The facility shall have a physician, PA, or APRN who is present in the facility or available on-call 24 hours a day.

(3) Direct care staff with the training required under subsection (j) of this section shall be present, awake and on duty where program clients are located at all times.

(A) During day and evening hours, at least two direct care staff shall be on duty where program clients are located for the first 12 clients, with at least one more staff on duty for each additional one to 16 clients.

(B) During sleeping hours, at least one direct care staff member shall be on duty where program clients are located for the first 12 clients, with at least one more staff on duty for each additional one to 16 clients. Sleeping hours shall be identified in writing in the facility's program service schedule.

(j) Training. Each program shall maintain documentation of the training, credentials, and experience of all direct care staff, which must demonstrate that each such staff person has specific knowledge, skills, and competency pertaining to withdrawal management services commensurate with the individual's job duties and credentials. Training shall be conducted by a physician, PA, APRN or RN, and shall include, without limitation, the following topics:

(1) identifying and responding to signs of withdrawal;

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(2) observation and monitoring procedures;
(3) procedures to deal with medical and other emergencies;
(4) pregnancy-related complications (if the program admits females);
(5) complications requiring transfer;
(6) appropriate interventions; and
(7) frequently used medications, including their purpose, applicable precautions, and side effects.

§448.803. Requirements for Ambulatory Withdrawal Management Programs.

(a) A facility providing an ambulatory withdrawal management program shall ensure that every individual admitted to the program meets the current, generally accepted diagnostic criteria for substance withdrawal, or either substance intoxication or a substance-related disorder with clinical presentation indicating that significant withdrawal is imminent. However, only individuals whose condition is medically stable may be admitted to an ambulatory withdrawal program.

(b) The program shall have a medical director who is a physician licensed in the state of Texas. Admission, diagnosis, medication management, and client care shall be conducted by or under the direction of the medical director.

(1) The medical director shall approve all medical policies, procedures, guidelines, tools, and the medical content of all forms, which shall include:

(A) screening instruments and admission criteria, policies and procedures;

(B) protocols or standing orders for managing withdrawal symptoms and withdrawal from each major drug category of abusable drugs, which shall be consistent with other applicable laws and with guidelines published by nationally recognized agencies and organizations, such as the Substance Abuse and Mental Health Services Administration, American Society of Addiction Medicine, American Academy of Addiction Psychiatry). Major drug classes of abusable drugs include, without limitation, opioids, alcohol and other sedatives, hypnotic and anxiolytic drugs, inhalants, cannabinoids, stimulants, and hallucinogens;

(C) procedures to deal with medical and other emergencies;

(D) medication and monitoring procedures for clients, including pregnant clients that address the effects on the fetus of withdrawal and medications used in withdrawal management; and

(E) special consent forms for pregnant clients that identify the risks, for both the mother and fetus, associated with substance use, withdrawal, and withdrawal management, including medications used in withdrawal management.

(2) The ambulatory withdrawal management program shall implement and enforce the written policies and procedures approved by the medical director.

(c) Admission process. Ambulatory withdrawal management shall not be a stand-alone service. A facility that provides an ambulatory withdrawal management program to a client shall ensure that the client is receiving concurrent treatment or counseling services to meet the client's substance-related disorder needs. Ambulatory withdrawal management programs shall comply with the following requirements:

(1) Prior to admission:

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(A) A physician, PA, APRN, or an RN, shall conduct and document an in-person evaluation of the client to be utilized in an admission determination under (B) of this paragraph.

(B) A physician, PA, or APRN shall determine and document whether the client meets the facility's admission criteria and shall authorize all admissions.

(C) If the potential client is not admitted, the physician, PA, or APRN shall provide any indicated referral to other appropriate treatment or services, and document any referrals and the basis for referral.

(2) Not later than 24 hours after admission, the physician shall conduct an in-person face-to-face examination, including a history and physical examination, to establish the client's principal diagnosis, and assess the level of intoxication and withdrawal, and/or withdrawal potential. The physician shall document, and determine the need for treatment, the type of treatment needed, and the placement decision. All orders and treatments shall be individualized to each client's assessed needs and condition. The physician may permit a PA or APRN to meet any portion of the requirements of this paragraph for which the individual is professionally authorized.

(A) The documentation under this Paragraph and under Paragraph 1 of this subsection shall be maintained in the client record and shall clearly demonstrate that the client meets the diagnostic eligibility criteria for admission to the program.

(B) Without limiting the requirements of Paragraph 1 of this subsection, or its documentation requirements, the facility may accept an history and physical examination that was conducted by an outside physician, if it is approved by the Medical Director within 24 hours after admission, meets the requirements of this Paragraph, and has been completed within 24 hours preceding admission.

(3) The program shall not require a client to obtain an outside history and physical examination to meet the requirements of Paragraph (2) of this subsection, or as a condition of admission.

(d) Monitoring. The facility shall ensure client monitoring is conducted in accordance with physician orders and such monitoring shall be documented in the client's record. Monitoring shall be conducted by a licensed health professional, as defined in §448.102(53) of this title (relating to Definitions), or by staff trained in accordance with subsection (h) of this section.

(1) The program shall use generally recognized and accepted clinical instruments or tools appropriate to the client's condition, such as, for alcohol, the Clinical Institute Withdrawal Assessment for Alcohol scale, revised©, or, for opiates, the Clinical Opiate Withdrawal Scale©, to assess and monitor the client's withdrawal from applicable substances.

(2) The program shall have medications available to meet client needs for management of withdrawal and/or intoxication from all classes of abusable drugs.

(e) The treatment team, comprised of the appropriate practitioners (shall develop an individualized written treatment plan for each client that otherwise complies with the requirements of §448.708 of this title (relating to Treatment Plan and Progress Notes) and includes the goals of successful and safe withdrawal management and a plan for transfer to another level of service or care.

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(f) In addition to managing the client's withdrawal and intoxication, the facility shall ensure that an RN, counselor, or counselor intern provides at least one daily individual counseling session with each client. The session shall be designed to:

(1) assess the client's readiness for change;

(2) offer the client general and individualized information on substance-related disorders, and substance intoxication and withdrawal;

(3) enhance client motivation;

(4) engage the client in treatment; and

(5) review the treatment plan, which shall contain the goals of successful and safe withdrawal and a plan for transfer to another level of service and/or care.

(g) A facility shall arrange for client transfer to the appropriate level of service and care, and/or any other appropriate referrals, .for any client who, at any time, is no longer appropriate for.an ambulatory withdrawal management level of service and care.

(h) The facility shall ensure continuous access to emergency medical care.

(i) Staff requirements. A facility's ambulatory withdrawal management program shall:

(1) staff its program at all times with licensed practitioners onsite and on duty with the professional authorization necessary to meet the needs of each client present at the time, and in a number sufficient to do so.

(2) have a physician, PA, or APRN who is present in the facility or available on-call 24 hours a day.

(j) Training. Each withdrawal management program shall maintain documentation of the training, credentials and experience of all direct care staff, which must demonstrate that each such staff person has specific knowledge, skills, and competency pertaining to withdrawal management services commensurate with the individual's job duties and credentials. Training shall be conducted by a physician, PA, APRN, or RN, and shall include, without limitation, the following topics:

(1) identifying and responding to signs of withdrawal;

(2) observation and monitoring procedures;

(3) procedures to deal with medical and other emergencies;

(4) pregnancy-related complications, if the program admits females;

(5) complications requiring transfer;

(6) appropriate interventions; and

(7) frequently used medications, including their purpose, applicable precautions, and side effects.

(k) A facility's ambulatory withdrawal management program shall maintain a service schedule of a duration and frequency sufficient to meet each of the client's current withdrawal management treatment needs. The program service hours and emergency contact information must be posted at the program location and visible to the outside. The program shall provide each of its clients with access to an on-call physician, PA, APRN, or RN with withdrawal management experience, 24 hours a day.

§448.804. Requirements for Intensive Residential or Inpatient Treatment or Supportive Residential Treatment Programs.

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(a) Intensive residential or inpatient and supportive residential treatment programs shall provide a 24-hour program, seven days per week, where clients reside, and which provides comprehensive substance-related disorder treatment, including professional and direct care services, in a structured therapeutic environment.

(b) The facility shall ensure that the program provides clients with the full range of treatment services required under this section, as applicable, and that the client's level of care and service, the treatment services provided, and their frequency and duration are sufficient to meet the client's needs and to achieve the client's treatment goals.

(c) When an intensive residential or inpatient or a supportive residential direct care staff person is included in that respective intensive or supportive program's staff-to-client ratio, that staff person shall not be actively involved in job duties, tasks or assignments that prevent the staff person from providing active and uninterrupted client supervision. A staff member who is away from the facility site for job duties, tasks or assignments shall not be included in the staff to client ratio for the program during that time, except with respect to any applicable residential program clients under that staff person's direct supervision at the time.

(d) Each residential or inpatient program shall have at least one counselor on duty and at the facility's program site at least eight hours a day, six days a week.

(e) The facility shall have a licensed vacant bed available for each client at admission and prior to permitting the client or prospective client to stay overnight at the facility.

(f) The facility's designated sleeping hours shall provide clients in all residential and all inpatient programs the opportunity for eight continuous hours of sleep each night without missing offered or required program activities or treatment services. Staff shall conduct and document at least two randomly spaced bed checks while adult clients are sleeping. Bed checks shall be conducted more frequently for clients in an adolescent program, as required under § 448.807(d)(3) of this title (relating to Additional Requirements for Adolescent Services) and for any client who needs closer monitoring.

(g) Compulsory education. The facility shall ensure that any client subject to compulsory education has access to education approved by the Texas Education Agency, as well as any transportation needed. Not later than the third day after the date an individual 22 years of age or younger is placed in a residential or inpatient facility or program, and unless otherwise provided by Texas Education Code, §29.012(a)(relating to Residential Facilities) and Title 19, Texas Administrative Code, §89.1115(d)(1)(B) (relating to Memorandum of Understanding Concerning Interagency Coordination of Special Education Services to Students with Disabilities in Residential Facilities), the residential or inpatient facility or program shall, consistent with applicable disclosure authorization, notify the local educational authority, as defined in Title 19, Texas Administrative Code, §89.1115(c)(4), in which the residential or inpatient facility or program is located.

(1) A residential or inpatient facility or program shall share with a local educational authority, within a reasonable period of time, to the extent permitted by other applicable statutes and regulations, and in accordance with Title 19, Texas Administrative Code §89.1115(d)(2)(A), all appropriate records and relevant information relating to a student with a disability.

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(2) When educational services are provided at a residential or inpatient facility or program, the residential or inpatient facility or program shall agree in writing with the local educational authority to the staffing levels that will be maintained by both the residential or inpatient facility and the local educational authority, consistent with other applicable requirements of these rules and Title 19, Texas Administrative Code, § 89.1115(d)(5), to ensure the safety of students and teachers while educational services are provided at the residential or inpatient facility or program. The residential or inpatient facility or program shall communicate to the local educational authority staff applicable safety, emergency, and security procedures to be followed while educational services are provided at the residential or inpatient facility or program.

(h) A facility program for intensive residential or inpatient treatment shall comply with the following additional requirements:

(1) Each intensive residential or inpatient program shall provide a minimum of 30 hours of treatment services per week for each client, consistent with the client's treatment plan and assessed needs, and comprised of at least:

(A) 10 hours of counseling for the client's substance-related disorder, at least one hour of which shall be individual counseling;

(B) 10 hours combined of additional counseling, substance-related disorder education, life skills training, and relapse prevention education; and

(C) 10 hours of staff-planned, structured activities at which staff shall be present and supervising. At least five hours of these services shall occur during weekends and evenings.

(2) A program for adults shall maintain a direct care staff-to-client ratio when clients are awake (including at program-sponsored activities away from the facility) of at least one direct care staff person on duty where the program clients are located for the first 16 clients, with at least one more staff on duty for each additional one to 16 clients. The program shall maintain a direct care staff-to-client ratio during sleeping hours of at least one direct care staff person on duty where the program clients are located for the first 32 clients, with at least one more staff on duty for each additional one to 32 clients. Waking and sleeping hours shall be identified in writing in the facility's program service schedule. An adolescent program shall meet the staff to client ratios required under § 448.807(e) of this title (relating to Additional Requirements for Adolescent Services).

(i) A facility program for Supportive Residential Treatment shall comply with the following Additional Requirements:

(1) Supportive residential treatment shall provide a minimum of six hours of treatment services per week for each client, consistent with the client's treatment plan and comprised of at least:

(A) three hours of counseling for the client's substance-related disorder, at least one hour each month of which shall be individual counseling; and

(B) three hours consisting of substance-related disorder education, life skills training, and relapse prevention education.

(2) An adult program shall maintain a direct care staff-to-client ratio when clients are awake (including at program-sponsored activities away from the facility) of at least one direct care staff person on duty where the program clients are located for the first 20 clients, with at least one more staff on duty for each additional one to 20 clients.

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The program shall maintain a direct care staff-to-client ratio during sleeping hours of at least one direct care staff person on duty where the program clients are located for the first 50 clients, with at least one more staff on duty for each additional one to 50 clients. Waking and sleeping hours shall be identified in writing in the facility's program service schedule. An adolescent program shall meet the staff to client ratios required under §448.807(f) of this title (relating to Additional Requirements for Adolescent Services).

§448.805. Requirements for Day Treatment or Partial Hospitalization.

(a) Each individual admitted to a day treatment or partial hospitalization program shall be appropriate for that level of care, based on the facility's written admission criteria, with written justification that supports the admission.

(b) A day treatment or partial hospitalization program shall provide each client a minimum of 15 hours of services per week, consistent with the client's treatment plan and comprised of at least:

(1) one hour of individual counseling; and

(2) 14 hours combined of additional counseling, which must include some group counseling, and substance-related disorder education, life skills training, and relapse prevention education.

(c) Facilities providing day treatment or partial hospitalization programs shall:

(1) ensure the program's treatment services, lectures, and written materials are age-appropriate and capable of being easily understood by clients; and

(2) involve, as permitted by law, the client's family or an alternate support system in the treatment process, or document why family involvement is not feasible or appropriate.

(d) In adult day treatment or partial hospitalization, at least one direct care staff person shall be on duty where the program clients are located for the first 16 clients, with one more direct care staff on duty where the program clients are located for each additional one to 16 clients. An adolescent day treatment or partial hospitalization program shall meet the staff to client ratios required under §448.807(g) of this title (relating to Additional Requirements for Adolescent Services).

§448.806. Requirements for Outpatient Treatment.

(a) Each individual admitted to an outpatient program, including a program subject to §448.805 of this title (relating to Requirements for Day Treatment or Partial Hospitalization), shall be appropriate for that level of care, based on the facility's written admission criteria, with written justification that supports the admission. Outpatient treatment shall be designed to meet the needs of clients who do not require the more structured environment of residential or inpatient treatment to maintain sobriety.

(b) A facility with one or more outpatient treatment program levels of care shall provide the full range of required outpatient treatment services and shall ensure that the client's level of service, the treatment services provided, and their frequency and duration are developed and sufficient to meet the client's needs and to achieve the client's treatment plan goals.

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(c) An intensive outpatient treatment program shall provide each client a minimum of nine hours of treatment services per week, consistent with subsection (d) of this section and with the client's treatment plan. In addition to the nine-hour weekly minimum of treatment services, intensive outpatient treatment shall provide at least one hour of individual counseling monthly. A supportive outpatient treatment program shall provide each client a minimum of three hours of treatment services per week. At least one hour of individual counseling monthly shall be included in supportive outpatient treatment service.

(d) At a minimum, all outpatient treatment program levels of care shall include in the minimum number of hours of outpatient treatment services it is required to provide to each client: substance-related disorder and relapse prevention education; life skills training; and group and individual counseling for the client's substance-related disorder.

§448.807. Additional Requirements for Adolescent Services.

(a) Each individual admitted to adolescent treatment shall be appropriate for that level of service, based on the facility's written admission criteria, with written justification that supports the admission. A facility shall limit admission to its adolescent program in accordance with §448.701 of this title (relating to Admission Criteria).

(b) All facilities providing services to adolescents shall:

(1) maintain separation between adult and adolescent clients at all times;

(2) comply with the treatment requirements set forth in this title that are applicable to the level of service and care to which the client is admitted, as well as with any additional or stricter requirements specified in this section and title that relate to adolescent programs and/or their clients and personnel;

(3) ensure the program's treatment services, lectures, and written materials are age-appropriate and capable of being easily understood by clients; and

(4) involve, as permitted by law, the client's family or an alternate support system in the treatment process, or document why family involvement is not feasible or appropriate.

(c) Training. Facilities providing treatment services to adolescents shall demonstrate through documented and verified credentials and/or experience, that all direct care staff are proficient in supervising, monitoring, and, consistent with their level of qualification, providing appropriate treatment services to adolescents. Facilities shall maintain documentation to demonstrate and track that all direct care staff have the knowledge, skills, and competency to provide age-appropriate and culturally appropriate services to adolescents, consistent with the individual's job duties. Direct care staff shall have the following specialized education and training, which shall be documented, and shall demonstrate competence pertaining to adolescent services, to a degree consistent with their job duties and professional qualifications. Education, training, and demonstrated competency is required and shall be documented in at least the following areas:

(1) substance-related disorder problems specific to adolescent treatment;

(2) appropriate treatment strategies, including family engagement strategies; and

(3) emotional, developmental, and mental health issues for adolescents.

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(d) Facilities providing adolescent residential or inpatient treatment services shall:

(1) have separate sleeping areas, bedrooms, and bathrooms for males and females;

(2) ensure that treatment does not interfere with compulsory education, including access, attendance, or homework, and complies with the applicable requirements and timeframes of §448.804(g) of this title (relating to Requirements for Intensive Residential or Inpatient Treatment or Supportive Residential Treatment Programs);

(3) ensure clients are supervised at all times. Staff shall conduct and document randomly spaced bed checks at least once each hour that clients are sleeping;

(4) facilitate regular communication between an adolescent client and the client's family or an alternate support system and not arbitrarily restrict any such communications. If a restriction is clinically justified, including when necessary to protect the client or a family member, the physician or clinical director responsible for the client's treatment, or a practitioner who is professionally authorized to do so, and designated by the physician or clinical director, shall document a clear, individualized clinical justification and specify the duration of the restriction in the client record. The physician, clinical director, or authorized designee shall inform the client and, if appropriate, the consenter, of the restriction and duration of the restriction and its clinical rationale;

(5) develop, implement and enforce written policies and procedures addressing notification of parents or guardians in the event an adolescent leaves a residential or inpatient program without authorization; and

(6) prohibit and prevent adolescent use, access, and possession of cigarettes, e-cigarettes, or tobacco products by complying with the requirements of §448.416(a) of this title (relating to Health, Safety, and Sanitation Practices).

(e) Facilities providing adolescent intensive residential or inpatient treatment services shall:

(1) Provide, in addition to the treatment services required under §448.804(h)(1)(A) and (B) of this title (relating to Requirements for Intensive Residential or Inpatient Treatment or Supportive Residential Treatment Programs), a minimum of 15 hours weekly of staff-planned, structured age-appropriate and culturally appropriate activities at which staff shall be present and supervising. At least 10 of those minimum 15 hours shall be conducted during evenings and weekends. Attendance in school may be counted toward five hours of the planned, structured activities that are permitted to be met during the time of day that the client is in school.

(2) Ensure the direct care staff-to-client ratio during waking hours (including at program-sponsored activities away from the facility) is at least one direct care staff person on duty where the program clients are located for the first eight clients, with at least one more staff on duty for each additional one to eight clients. Direct care staff-to-client ratio during sleeping hours shall be one direct care staff person on duty where the program clients are located for the first 16 clients, with at least one more staff on duty for each additional one to 16 clients. The facility shall identify in writing the facility's program service schedule, which shall include designated waking and sleeping hours.

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(f) Facilities providing adolescent supportive residential services shall ensure the direct care staff-to-client ratio during waking hours (including at program-sponsored activities away from the facility) is at least one direct care staff person on duty where the program clients are located for the first ten clients, with at least one more staff on duty for each additional one to ten clients. Direct care staff-to-client ratio during sleeping hours shall be one direct care staff person on duty where the program clients are located for the first 20 clients, with at least one more staff on duty for each additional one to 20 clients. The program shall identify in writing the facility's program service schedule, which shall include designated waking and sleeping hours.

(g) Facilities providing adolescent day or partial day treatment services shall:

(1) Provide the treatment service hours as specified in §448.805 of this title (relating to Requirements for Day Treatment or Partial Hospitalization);

(2) Exclude compulsory education hours from the calculation of treatment hours; and

(3) Ensure the direct care staff-to-client ratio (including at program-sponsored activities away from the facility) is at least one direct care staff person on duty where the clients are located for the first eight clients, with at least one more staff on duty for each additional one to eight clients.

§448.808. Additional Requirements for Residential or Inpatient Treatment Services for Women and Children.

(a) A facility providing residential or inpatient treatment for women and children shall provide gender-specific, culturally appropriate services in a specialized program.

(b) When appropriate, pre-admission service coordination shall be provided to reduce barriers to treatment, enhance motivation, stabilize life situations, and facilitate engagement in treatment.

(c) The facility shall provide supervision of any child who is not involved in any treatment service or in other necessary health or rehabilitative activities in which the child's mother is engaged.

(d) A QCC who is professionally authorized to do so for the facility shall address any relationship issues, including sexual, physical, and emotional abuse, and make and document any appropriate referrals.

(e) The facility shall maintain documentation of training, credentials and/or experience to demonstrate and track that all direct care staff for any facility program that treats women and children have the knowledge, skills, and competency relating to the needs of, and provision of services to, women and children, as required by the individual's job duties.

(f) Training. Individuals responsible for the planning and supervision of the facility's program for women and children shall participate in at least 15 clock hours of training annually in understanding children, child development, and/or early childhood education. The facility shall maintain documentation of the training.

(g) The facility shall provide clients with access to appropriate primary medical care, including prenatal care and reproductive health education and services.

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(h) The facility shall provide parenting education and support services to pregnant clients, women who have custody of one or more children, and women with dependent children.

(i) The facility shall provide children with, or ensure their access to, services to address their needs and to support healthy development, including primary pediatric care, early childhood intervention services, substance-related disorder prevention services, and/or other therapeutic interventions.

(j) In addition to complying with the requirements relating to cigarettes, e-cigarettes, and tobacco products in §448.416(a) of this title (relating to Health, Safety, and Sanitation Practices), the facility shall ensure that children are not exposed to such products or to second-hand smoke.

(k) Regardless of whether it is otherwise subject to those provisions, a facility housing children shall comply with the provisions of 40 Texas Administrative Code Chapter 746 (relating to Minimum Standards for Child-Care Centers) set forth below, except that it shall treat the department or its successor regulatory authority as the regulatory agency in complying with those provisions for purposes of this chapter, except that it shall remain subject to and comply with any stricter standard that applies under this chapter or other applicable law:

(1) Subchapter B, Administration and Communication §§ 746.307(a) and (b), 746.405(a) (1), (2), and (3), and 746.501(6)-(16);

(2) Subchapter C, Record Keeping, §§ 746.603(a) (3)-(6), 746.605, 746.607, 746.609, 746.611, 746.613, 746.615, 746.617, 746.619, 746.621, 746.625, 746.627, 746.801(22) and 746.901(3);

(3) Subchapter D, Personnel §§ 746.1105(2) and 746.1303(2) and (3);

(4) Subchapter E, Child/Caregiver Ratios and Group Sizes;

(5) Subchapter F, Developmental Activities and Activity Plan;

(6) Subchapter H, Basic Care Requirements for Infants;

(7) Subchapter I, Basic Care Requirements for Toddlers;

(8) Subchapter J, Basic Care Requirements for Pre-Kindergarten Age Children;

(9) Subchapter K, Basic Care Requirements for School-age Children;

(10) Subchapter L, Discipline and Guidance;

(11) Subchapter N, Field Trips § 746.3001(1) and (8);

(12) Subchapter Q, Nutrition and Food Service §§ 746.3301, 746.3307 and 746.3311;

(13) Subchapter R, Health Practices §§ 746.3407, 746.3423, 746.3501 and 746.3503;

(14) Subchapter S, Safety Practices §§ 746.3701, 746.3709, 746.3901, 746.3903, 736.3905, 746.4001, 746.4003, and 746.4101;

(15) Subchapter T, Physical Facilities §§ 746.4201, 746.4217, 746.4301, 746.4305 746.4307, 746.4309, 746.4419, 746.4421, 746.4501, 746.4505 and 746.4509; and

(16) Subchapter U, Indoor and Outdoor Active Play Space and Equipment; and

(17) Subchapter V, Swimming Pools and Wading/Splashing Pools.

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(l) The sleeping areas for women and children shall comply with the requirements of §448.904 of this title (relating to Residential or Inpatient Physical Plant, Equipment and Supply Requirements).

(m) The facility shall adopt, implement, and enforce program-specific rules and shall institute practices regarding childcare to ensure compliance with the requirements of this subsection and subsections (c), (k), and (o) of this section.

(1) Without limiting the requirements of this subsection, the program rules shall include provisions addressing:

(A) restriction of clients supervising the children of other clients, and

(B) opportunities for indoor and outdoor activities for the children.

(2) The facility shall not allow a client to supervise children other than the client's own children.

(3) A facility's women and children's program may only utilize a separate facility to provide daycare to a child that resides in that program if the separate daycare provider is licensed by the Texas Department of Family and Protective Services or, if applicable, its successor licensing agency, or documented as being exempt from licensure.

(4) If more than 30 children are present at the program at lunch or dinnertime, dedicated staff shall be provided for meal preparation, serving and cleanup. In that case, the staff providing meal services shall not be included in staff to child ratios during that time. Staff may be included in staff to child ratios during meal preparation, serving and cleanup when fewer than 30 children are present only if will not prevent supervision of the children at all times.

(n) The facility shall comply with the requirements and applicable timeframes of §448.804(g) of this title (relating to Requirements for Intensive Residential or Inpatient Treatment or Supportive Residential Treatment Programs) relating to education, and shall otherwise assist the parent/guardian as necessary to ensure educational opportunities for school age children in accordance with the requirements of the Texas Education Agency and other applicable law.

(o) The facility shall document any services provided to children, including referrals made for daycare and community support. The record shall document the child's developmental, physical, emotional, social, and educational needs, and family background and status.

§448.809. Additional Requirements for Therapeutic Communities.

(a) This section applies only to a licensee, which has an adult program designated as a Therapeutic Community (TC) on its license certificate. Except as specifically excepted in this section, each approved TC shall remain subject to all provisions of Subchapters A through I of this Chapter that apply to the level of service and care provided by the TC and the adult age group it serves.

(b) If the initial assessment or any subsequent assessment identifies that a client or prospective client has a potential mental health problem, the TC program shall arrange for the client to obtain a mental health evaluation from a practitioner who is

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professionally authorized to conduct one. The facility shall document arrangements made and ensure access to any mental health treatment recommended.

(1) If the mental health evaluation reflects that a client's principal disorder is or includes a mental health disorder and/or a moderate to severe intellectual or developmental disability, the TC program shall, prior to providing treatment in the TC, obtain written authorization from a licensed psychiatrist or a licensed physician for the client to receive treatment in a TC program. The authorizing psychiatrist or physician must have experience in treating substance-related disorders and an understanding of the TC model of treatment.

(2) A QCC who is acting within the scope of the QCC's license, and who has at least one year of documented experience in treating individuals with mental illness or intellectual or developmental disability, shall act as the primary counselor for a client admitted pursuant to Paragraph (1) of this subsection, and shall confer at least monthly with the authorizing psychiatrist or physician.

(c) The facility's TC program shall ensure that clients are admitted to the program voluntarily. In addition to meeting other applicable requirements under this chapter, the facility, at the time of admission, shall provide the client, in writing, with the information listed under Paragraphs (1) – (5) of this subsection; implement its program in a manner consistent with the information required to be provided; maintain a copy of the information provided; and ensure the document is signed by the client acknowledging receipt and understanding of the following:

(1) TCs are highly structured residential or inpatient programs intended to treat criminal and antisocial behaviors occurring in association with substance-related disorders.

(2) The TC model views recovery from substance-related disorders as a developmental learning process in which the social and psychological characteristics of the client must be changed to one of "right living" by the client adopting appropriate morals and values promoted by the program, as opposed to solely recovering from the substance-related disorder itself.

(3) The model utilizes the community itself and TC-specific group meetings as the primary modality of change. The TC model uses constructive confrontation among clients to promote mutual accountability regarding their behaviors and attitudes, a consequence-reward system, and a hierarchical structure as the primary treatment approaches, in addition to counseling and therapy.

(4) The client length of stay under the TC model is client-driven, based on attainment of treatment goals.

(5) The program is divided into three phases: The Orientation Phase (Information Dissemination), Primary Treatment Phase (Personal Application), and Re-Entry Phase (Social Application).

(d) The facility's TC program shall require any prospective client known to be pregnant at the time of admission to provide the program, prior to admission, with written medical clearance from a licensed physician for the prospective client to receive treatment in a therapeutic community.

(1) Within five calendar days of learning that a client is or may be pregnant, and before the TC program may continue to provide the client with treatment

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services in its program, the TC program shall arrange for an appropriate assessment and obtain written medical clearance from a licensed physician.

(2) If a pregnant client is medically cleared for treatment in a TC program, the facility shall ensure, on at least a monthly basis, or more often, as needed, that a physician, physician assistant, or advanced practice registered nurse, monitors the client's response to treatment in the TC program and extends the medical clearance in writing.

(e) Training. In addition to training otherwise required under this chapter, the TC program shall ensure and document that all direct care staff for the program receive training in the TC model within the first 30 days after the start of employment with the program. The training shall include, at a minimum, 16 hours of training in TC theory, TC methods, and TC intervention techniques.

(f) Intensive residential or inpatient TC programs shall provide a minimum of 30 hours of TC services per week, at least 10 hours of which shall be provided in the evenings and on weekends. The 30 hours, at a minimum, shall consist of:

(1) Six hours of counseling (which shall include two hours of individual counseling per month);

(2) Additional counseling, CD education, and life skills training totaling six hours;

(3) Eight hours of TC groups, such as cognitive restructuring, morning and evening development, and encounter-confrontation groups. A counselor shall supervise and monitor the activity and maintain structure in the TC groups. The counselor responsibilities shall include, but not be limited to, keeping the group on track, preventing negative direction and interaction, ensuring clients' psychological and physical safety by enforcing group rules, and engaging inactive clients; and

(4) ten hours of peer-driven activities, such as community meetings, house meetings, peer support, recreation, seminars, and self-help groups.

(g) Facility documentation for peer-driven activities shall specify the date, duration and type of activity and the clients who participated. There is no specific size limitation or staffing requirement for peer driven activities, except that the facility shall remain responsible for adequate client supervision and adhering to program-wide staffing requirements.

(h) Adult supportive TC residential programs shall provide at least six hours of treatment services per week for each client comprised of at least:

(1) two hours of counseling for a client's substance-related disorder (one hour per month of which shall be individual counseling);

(2) Additional counseling, substance-related disorder education, and life skills training totaling two hours; and

(3) two hours of TC groups, such as cognitive restructuring, morning and evening development, and encounter-confrontation groups. A counselor shall supervise and monitor the activity, and maintain structure in the TC groups. The counselor responsibilities shall include, but not be limited to, keeping the group on track, preventing negative direction and interaction, ensuring clients' psychological and physical safety by enforcing group rules, and engaging inactive clients.

(i) The TC program shall set limits on counselor caseload size that ensure effective, individualized treatment. The TC program shall define and justify the caseload size in writing based upon all relevant factors, including the program design;

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characteristics and needs of the population served; the counselor's hours and mix of clients assigned; and the minimum client service hours required under this section, or actually provided by the TC, if greater than the required minimum.

(j) In intensive residential or inpatient TC programs, during scheduled waking hours, which shall be defined by the facility in writing, at least one direct care staff person shall be on duty where the program clients are located for the first 16 clients, with one more direct care staff on duty for each additional one to 16 clients. During scheduled sleeping hours, which shall be defined by the facility in writing, at least one direct care staff person shall be on duty where the program clients are located for the first 32 clients, with one more direct care staff on duty for each additional one to 32 clients.

(k) In supportive residential TC programs, during scheduled waking hours, which shall be defined by the facility in writing, at least one direct care staff person shall be on duty where the program clients are located for the first 20 clients, with one more direct care staff on duty where the program clients are located for each additional one to 20 clients. During scheduled sleeping hours, which shall be defined by the facility in writing, at least one direct care staff person shall be on duty for the first 50 clients, with one more direct care staff on duty for each additional one to 50 clients.

(l) The TC program shall adopt, implement and enforce a policy and procedure manual, which, at a minimum, shall contain the following components, with which TC practices, as instituted, shall be consistent:

(1) a written program description explaining how the therapeutic community functions;

(2) a written description of the program structure, including rules, methods, and service schedule;

(3) a specific description of the TC program's consequences and rewards system

(4) a policy stating that a client's access to medical and psychiatric care and treatment shall not be denied; and

(5) a policy stating that interventions, including consequences, shall not be used as punishment. The TC shall use the least severe intervention or consequence needed to maximize learning. Interventions and consequences shall not be punitive, but shall be part of the learning process, with an explicitly identified outcome, such as a specific behavioral change, as the goal. The intervention or consequence, its rationale, and its desired outcome shall be clinically justified, explained to the client (unless there is a clinical rationale for delaying the explanation), and documented in the client record.

(m) A TC program shall comply with §448.413 of this title (relating to Client Transportation), except that a TC program may permit a client to operate a facility vehicle, including transporting one or more other clients, if the TC program adopts, implements and enforces policies and procedures, and institutes practices, that comply with and include, the following requirements:

(1) The TC program shall require, and maintain documentation to verify, that the client is at least 23 years of age and has a valid driver's license for every type of vehicle the facility permits the client to drive.

(2) The TC program shall require and document that a client has passed a drug screening test, and completed a minimum of 60 days of treatment, before driving a facility vehicle or transporting other facility clients, and shall require a client to pass a

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drug screening test at least every 30 days thereafter to be allowed to continue to drive a facility vehicle or transport other facility clients.

(A) The TC program shall maintain original documentation of the results of drug tests, which shall be available to department staff upon request.

(B) The TC program shall ensure that drug test records are used exclusively for purposes of this paragraph. All tests and results shall be protected from unauthorized use or disclosure.

(3) The client's counselor shall document the counselor's evaluation of the client's time and progress in treatment and the client's degree of responsibility relative to the proposed driving assignment, and shall document that any driving assignment made is consistent with the client's clinical progress and needs, and the client's demonstrated responsibility. If a TC program assigns a client driving responsibilities, the assignment shall be documented as part of the client's treatment plan, with defined treatment goals, objectives, and strategies related to the client's driving function and responsibilities. The client's counselor shall conduct and document a reevaluation under this paragraph at least every 90 days or, if sooner, any time an event relevant to the assignment and reevaluation occurs, in order for the client to be allowed to continue to drive a facility vehicle or other facility clients.

(4) The TC program shall require, and maintain documentation to verify, that, within the past 12 months, the client has taken and passed a driving safety course approved by the Texas Education Agency.

(5) The TC program shall require, and maintain documentation to verify, that the client has not been convicted, in any vehicle or in any state, of driving while intoxicated or any other driving offense involving or related to alcohol, marihuana, a controlled substance, or a drug or dangerous drug, within the past two years.

(6) The TC program shall require, and maintain documentation to verify, that the client's driving record has been clear of moving violations for a minimum of two years.

(7) The TC program shall apply and enforce the transportation policy that it is required to adopt and implement in §448.413 of this title (relating to Client Transportation) with respect to any client permitted to drive under this subsection.

(8) The TC program shall have vehicle insurance that applies to each vehicle utilized by the facility or by a client under this subsection, which shall explicitly cover any client who is permitted to drive a facility vehicle or other clients under this subsection. The TC program shall obtain requisite client consent for any disclosure of client information required to comply with this subsection and shall disclose no client information beyond the information required to comply with this section. The TC program shall not require a client to accept a driving position and shall not penalize any client who chooses not to accept a driving position.

(9) Regardless of whether a client meets the conditions of this subsection, the TC program shall reserve and, when appropriate, exercise the right to terminate a client's driving privileges at any time to ensure the protection of all clients. The TC program shall immediately terminate or suspend a client's driving privileges if the client has not passed a drug screening test or if the facility otherwise has reason to believe that the client may have relapsed or otherwise be active in the client's use of drugs or alcohol.

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(n) A TC program shall comply with §448.607 of this title (relating to Client Labor and Interactions) and may permit a client to have a job duty, work assignment or other responsibility, if the following conditions are met and documented:

(1) Except as provided in subsection (m), a facility shall not permit a client to have job duties or work assignments within or on facility grounds, beyond maintaining the client's own sleeping quarters and/or client activity areas.

(2) any client job duty or work assignment outside of the facility or under subsection (m) of this section, shall be based upon the client's documented treatment needs, and shall include the job duty or work assignment in the client's written treatment plan, with individualized goals, objectives and strategies related to the identified job duty or work assignment. The facility shall ensure and document that the client receives the necessary training and supervision to benefit therapeutically from the job duty or work assignment and that the job duty or work assignment does not exceed 45 hours per week.

(3) the facility shall ensure that any job duty, work assignment or other responsibility is consistent with this section and applicable labor laws. Under no circumstances shall the facility permit such activities or the time spent on them to interfere with:

(A) treatment services or activities required under this chapter or under the client's treatment plan;

(B) compulsory educational requirements;

(C) enrollment in a degree program or full participation in any such program in which a client is enrolled;

(D) any meal;

(E) an adequate opportunity for personal recreation; or

(F) at least eight continuous hours of sleep.

(4) the facility shall not permit any client access to another client's records or other confidential information, and shall prohibit any client from performing any job duty or work assignment that might involve access or exposure to confidential information.

(5) The facility shall not permit a client to perform any job duty or work assignment that involves supervision of any other client.

§448.810. Additional Requirements for Court Commitment Services.

(a) Court commitment, as used in this chapter, shall refer to any involuntary placement of an individual with a facility under the provisions of Health and Safety Code, Chapter 462, Subchapters C or D, including, without limitation, under apprehension without a warrant, emergency detention, order of protective custody, temporary detention, court commitment, or other court-ordered placement or treatment under those subchapters.

(b) A facility that accepts court commitments shall be licensed to provide either the level of service and care required by the applicable court order, or, if there is not a court order or a level of service or care is not specified, the level of care and service appropriate for the needs of the individual. Without limiting these requirements, a facility accepting such an individual shall be licensed, at a minimum, to provide the

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following levels of service and care for the age and gender category of the client or proposed client:

(1) apprehension without a warrant, emergency detention, order of protective custody, or detention based upon a probable cause hearing: intensive residential or inpatient withdrawal management or intensive residential or inpatient treatment;

(2) temporary detention: residential or inpatient treatment that includes, at a minimum, a license to provide intensive residential or inpatient treatment;

(3) adult inpatient involuntary commitments in a civil or criminal proceeding: residential or inpatient treatment for adults that includes, at a minimum, a license to provide intensive residential or inpatient treatment. An order of community supervision does not constitute a commitment in a criminal proceeding under Health and Safety Code §462.081;

(4) adult outpatient involuntary commitments: day treatment or partial hospitalization treatment for adults;

(5) juvenile inpatient commitments: residential or inpatient treatment for adolescents that includes, at a minimum, a license to provide intensive residential or inpatient treatment; and

(6) juvenile outpatient commitments: day treatment or partial hospitalization treatment for adolescents.

(c) A facility shall apply for and receive department approval to accept court commitments before accepting a client or proposed client under Health and Safety Code §462.069 (relating to Court Order and Place of Treatment), 462.071 (relating to Order for Temporary Detention), 462.072 (relating to Modification of Order for Outpatient Services), 462.075 (relating to Renewal of Order for Court-Ordered Treatment), or 462.081 (relating to Commitment by Courts in Criminal Proceedings; Alternative Sentencing), except that a facility licensed for the appropriate level of treatment may accept a temporary detention under Health and Safety Code §462.071 if an appropriate approved residential or inpatient treatment facility is not available. To apply for approval, a facility shall complete a department application and provide all information requested by the department.

(d) A facility approved by the department to accept court commitments shall:

(1) comply and document its compliance with all applicable requirements of Health and Safety Code, Chapter 462, Subchapters C and D, and of this section, and shall adopt, implement and enforce written policies and procedures and institute practices adequate to ensure full compliance with those requirements;

(2) adopt, implement and enforce policies and procedures, institute practices, and conduct training that conform to the requirements of §448.503 (relating to Personnel Training and Demonstrated Competency) and §448.605 of this title (relating to Restraint and Seclusion);

(3) provide the judiciary with sufficient written information to document the facility's approval from the department and about the facility's applicable program designs, treatment methods, admission processes, average lengths of stay, and licensed levels of service and care to assist the judiciary in committing appropriate clients to the facility;

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(4) accept any court commitment for which it is appropriately licensed and has capacity, except where the facility's agreement to accept the client is required under Health and Safety Code, Chapter 462, Subchapters C or D, and is reasonably withheld by the facility for reasons documented in writing by the facility; and

(5) provide training for at least two designated staff to ensure that the staff understand, and the facility complies with, the requirements of Health and Safety Code, Chapter 462, Subchapters C and D, this section, and the facility's policies and procedures established under this section. At least one trained staff person shall be available in person or by telephone at all times to ensure facility compliance with applicable provisions.

(e) An administrative hearing required under Health and Safety Code §462.079 shall be conducted in accordance with that section, using the fair hearing procedures in §§1.51-1.55 of this title.

(f) An admission consistent with the provisions of this section may be authorized based on the authority of Health and Safety Code, Chapter 462, Subchapters C or D, but the facility shall still comply, in providing treatment services, with the provisions of Subchapters G (relating to Admission and Treatment Process) and H (relating to Treatment Services) of this chapter in providing treatment to such clients, to the extent consistent with the involuntary admission, and shall document the clinical or legal justification, as applicable, for any lack of compliance necessitated by the involuntary admission.

(g) Except as otherwise provided herein or as otherwise limited by the applicable provisions of Health and Safety Code, Chapter 462, Subchapters C or D, a facility accepting a court commitment shall remain subject to all applicable requirements of this chapter.

(h) The client record shall contain documentation of the basis for a peace officer's apprehension of the client without a warrant or copies of the legal documents authorizing and supporting the client's court commitment, consistent with the requirements of Health and Safety Code, Chapter 462, Subchapters C or D.

§448.811. Treatment Services Provided by Electronic Means.

A facility that provides any treatment service using telehealth or telemedicine medical services shall adopt, implement, and enforce policies and procedures and implement practices to ensure that the services are provided in a manner that complies with federal and state requirements in effect at the time the services are provided.

SUBCHAPTER I. PHYSICAL PLANT, FIRE PREVENTION AND SAFETY REQUIREMENTS.

§448.901. General Environment.

(a) The facility shall provide a safe, clean, well-lighted and well-maintained physical environment that protects the health, safety, welfare, and privacy of clients, personnel, and the public.

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(1) The physical premises and grounds, and the physical environment of the facility (inside and outside of the facility building) that are used by the clients, personnel, and visitors (including all stairwells, halls/corridors, passageways, and walkways) shall meet the local building and fire safety codes as they relate to safe access.

(2) The facility site, including all grounds; buildings; electrical, natural or propane gas, lighting, plumbing, sanitation, ventilation, and mechanical systems; appliances; equipment; and furniture shall be structurally sound, fully functioning and in good repair.

(3) The water supply shall be of safe, sanitary quality, suitable for use, and adequate in quantity and pressure. A facility that uses a public water system for human consumption shall ensure that it maintains the drinking water standards required by the Texas Commission on Environmental Quality (TCEQ) under Chapter 290, Subchapter F (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems) of Title 30, and shall use and furnish to its clients, personnel, and visitors an alternative source if it receives notice or information that the system is not in compliance with TCEQ requirements under that subchapter. Without limiting the applicability of any other or stricter standard, a facility that uses well water shall, at a minimum, meet the requirements for that water set forth in §448.906(a)(3) (relating to Required Outpatient Facility Inspections) and §448.907(a)(7) of this title (relating to Required Residential or Inpatient Facility Inspections) as applicable;

(4) The facility shall be kept free of all noxious and hazardous odors and environmental conditions, including, without limitation, second-hand smoke, uncontained garbage, mold, mildew, landscaping overgrowth and debris, and other health or safety hazards.

(b) The facility shall comply with the Americans with Disabilities Act of 1990, Public Law 101-336, 42 United States Code §§12101 et seq., and its amendments and applicable implementing regulations, including applicable accessibility standards. Facilities shall also comply, to the extent applicable under Texas Government Code §469.003, with the Texas Accessibility Standards adopted under Texas Government Code, Chapter 469 (relating to the Elimination of Architectural Barriers).

(c) Each licensed facility shall annually obtain, and maintain documentation of, a facility fire safety inspection that reflects approval by the fire authority in whose jurisdiction the facility is based or by the State Fire Marshal.

(d) The facility shall have a certificate of occupancy or an official green tag from the local authority that reflects the current use by the occupant, or documentation that the locality does not issue occupancy certificates.

(e) The facility site shall have sufficient lighting to illuminate the interior and exterior of all buildings to the extent needed to provide a safe environment. Light bulbs shall have shades, wire guards or other protective shields. Egress corridors shall have emergency lighting.

(f) The facility shall have physical space, rooms, furniture, and supplies sufficient to supply personnel and the licensed number of clients during all hours of operation and for all program activities and services.

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(g) The facility shall provide a private room for confidential interactions, including all individual and group counseling sessions. Cubicles and partitions shall not be used for confidential interactions, counseling, or group sessions.

(h) Without limiting any other legal requirements to which the facility might otherwise be subject, major remodeling, renovations, additions and alterations to an existing facility shall also comply with the requirements of §448.905 of this title (relating to Construction Requirements for a Newly Constructed or Newly Licensed Treatment Facility for Individuals with Substance-Related Disorders). All areas of an existing facility that are not part of a major remodel, renovation, addition or alteration to the facility, are not required to meet new construction requirements as long as such existing portions of the facility met the rules and codes that were in effect when the facility was originally constructed and licensed; meet rules and codes currently applicable to the existing facility; and meet rules and codes that were applicable to any prior remodeling, renovations, additions, and alterations made to the existing facility.

(1) Any alteration, modification, replacement, or any installation of new building equipment, such as mechanical or electrical equipment, emergency power equipment, energy or utility management equipment, conveying systems, plumbing, fire protection equipment, or other equipment with a primary function of providing service that affects life safety or infection control, changes the physical operations of the facility, or affects the health, safety or welfare of clients or staff, shall comply with the requirements of §448.905 of this title.

(2) All remodeling or alterations that involve alterations to load bearing members or partitions, change physical operations of the facility, or affect fire safety, shall comply with the requirements of §448.905 of this title.

(3) When existing conditions make compliance with the requirements of §448.905 of this title impractical, the facility may apply for a variance in accordance with §448.207 of this title (relating to Temporary Variance) for minor deviations from the requirements of §448.905 of this title, if the requirement is not a statutory requirement or one required by other law. A variance will not be granted if it will jeopardize the operation of the facility, accessibility for individuals with disabilities, or the safety of the clients.

§448.902. Fire Prevention and Protection.

(a) The facility shall comply with the provisions of this section with respect to fire prevention and protection, and with applicable fire codes.

(b) The facility shall comply with the fire reporting and documentation requirements of §448.409 of this title (relating to Incident Documenting and Reporting).

(c) A residential or inpatient facility or program shall have an electrical smoke detection system and an electrical fire alarm system, which shall be installed, tested, operable and maintained in accordance with applicable local and state regulations and codes.

(1) Electrical fire and smoke alarm systems shall be installed by an installer holding an appropriate license or otherwise authorized under 28 Texas Administrative Code, Chapter 34, Subchapter F (relating to Fire Alarm Rules) and Insurance Code, Chapter 6002 (relating to Fire Detection and Alarm Device Installation).

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The facility shall maintain a copy of the fire and smoke detection alarm installation certificate.

(2) The alarm on the facility's fire and smoke detection system shall be audible throughout all portions and structures of the facility and above ambient noise levels that are normal conditions of occupancy for the facility.

(d) A residential or inpatient facility or program shall have one or more devices for automatically transmitting an alarm concerning a fire or other emergency to the local fire authority. For existing installations without a means for automatic transmission notification, the facility shall have and follow a plan approved by the governing authority for notification of the municipal fire department.

(e) The facility shall adopt, implement, and enforce a written policy and procedure, and shall institute practices, for periodic inspection, testing, and maintenance of firefighting equipment, including, but not limited to, fire and smoke detection systems and alarms, portable fire extinguishers, and, when installed, sprinkler systems. Maintenance shall be conducted whenever required to repair any inoperable, damaged, or malfunctioning equipment, alarm, or system. If not otherwise specified in this chapter, periodic inspection and testing, shall be conducted at intervals no less frequent than one year, and any identified maintenance needs shall be performed at the time.

(f) The facility shall mount and maintain every portable fire extinguisher, located in the facility or upon facility property, in accordance with the manufacturer's directions.

(1) Facility staff shall conduct and document monthly inspections of fire extinguishers, which shall include the following, and the facility shall keep current on the required inspection and maintenance service, as required under subparagraph (B) of this paragraph.

(A) Monthly documentation shall include the date of inspection, the location of each extinguisher, the charge on the fire extinguisher gauge and any visible damage to the extinguisher.

(B) Each extinguisher shall have the required maintenance service tag attached reflecting annual inspection and maintenance of fire extinguishers in accordance with the standards set forth in, and by an individual licensed under, 28 Texas Administrative Code Chapter 34, Subchapter E (relating to Fire Extinguisher Rules).

(C) The facility shall replace any fire extinguisher in accordance with the manufacturer's recommendations if it is not fully charged, or is damaged.

(2) The facility shall have at least one portable A:B:C extinguisher immediately available within each laundry and walk-in mechanical room, or within five feet of the door.

(3) The facility shall have at least one B:C fire extinguisher in kitchens without a commercial kitchen hood.

(4) When a kitchen is equipped with a commercial kitchen ventilation hood, the fire-suppression system for the kitchen shall include a mechanism to disconnect the gas and/or electrical power, as applicable, from equipment below the ventilation hood. The kitchen ventilation hood shall meet the following requirements:

(A) The fire extinguishing system shall be inspected and serviced at least every 6 months by a person holding an appropriate license or otherwise authorized under 28 Texas Administrative Code Chapter 34, Subchapter E (relating to

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Fire Extinguisher Rules) and Insurance Code Chapter 6001 (relating to Fire Extinguisher Service and Installation).

(B) Fusible links (including fusible links on fire damper assemblies) and automatic sprinkler heads shall be replaced as needed.

(C) The fusible link shall be marked on the system inspection tag by year of manufacture and date of installation and signed or initialed by the installer.

(D) One or more Class "K" fire extinguishers shall be available in the kitchen within reach of the kitchen ventilation hood. In addition to the fire extinguisher, a placard shall be placed conspicuously near the Class "K" fire extinguisher. The placard shall read: "Fire protection system must be activated prior to using a fire extinguisher."

(g) The facility shall have not less than two means of escape that are remotely located from each other, in each normally occupied story. Fire escapes shall comply with applicable requirements of Chapter 791, Health and Safety Code, and shall be located as described in Health and Safety Code, §791.005 (relating to Location of Fire Escapes).

(1) The facility shall provide a primary means of escape. Every sleeping room and living area shall have access to a safe path of travel to the outside.

(A) Sleeping rooms shall have a door leading directly to the outside or an exit to a hall or corridor that leads directly to an exit with safe access to grade level.

(B) Where sleeping rooms or living areas are above or below the level of exit discharge, the primary means of escape shall be an interior stair, exterior stair, a horizontal exit, or a fire escape stair.

(C) Key-locking or electronic access devices that restrict access to the facility's exit access door from the outside shall be permitted, provided that such devices do not restrict egress from the inside and do not require the use of a key, a tool, an access card or code, or special knowledge or effort for operation from the egress side.

(2) In addition to the primary means of escape, the facility shall provide a secondary means of escape from each sleeping room, which shall consist of one of the following:

(A) A door, stairway, passage, hall or corridor providing a way of unobstructed travel to the outside of the dwelling at street or ground level that is independent of, and remotely located from, the primary means of escape.

(B) A passage through an adjacent non-lockable space, independent of, and remotely located from, the primary means of egress, and leading to a means of egress approved by the local fire authority.

(C) An outside window or door operable from the inside without the use of tools, keys, or special knowledge or effort that provides a clear opening of not less than 5.7 square feet. The width shall not be less than 20 inches and the height shall not be less than 24 inches. The bottom of the opening shall be no more than 44 inches above the finished floor. Such means of escape shall meet one of the following requirements:

(i) The window is within 20 feet of grade.

(ii) The local fire authority has approved the window in writing as being directly accessible to the fire department rescue apparatus.

(iii) The window or door opens onto an exterior balcony.

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(D) A second means of escape from each sleeping room shall not be required where the facility is protected by an automatic fire suppression sprinkler system approved by the local fire authority.

(3) Halls and corridors providing access to an exit from a client sleeping room or living area shall have at least three feet eight inches of clear and unobstructed width throughout the access area and a ceiling that is not less than seven feet six inches in height.

(4) Items including, but not limited to drinking fountains and vending machines shall be so located as not to project into a hall or corridor that provides exit access, or to reduce the width of an exit hall or corridor below the required minimum specified in paragraph (3) of this subsection. Portable equipment shall not be stored to project into a hall or corridor that provides exit access or reduces the width of an exit hall or corridor below the required minimum specified in paragraph (3) of this subsection.

(5) Battery-powered emergency lighting shall be provided separate and independent from the normal electrical power source, and shall be capable of functioning effectively in all halls, corridors and living spaces for a minimum of two hours after the loss of electrical power. Battery powered emergency lighting shall be capable of providing sufficient illumination to allow safe evacuation from the building. The facility shall inspect and test each battery-powered emergency lighting device every three months and take corrective action identified as being needed. The facility shall document inspections, testing, and any maintenance required and completed.

(h) The facility shall have exit doors that swing out in rooms with a capacity for 50 or more people.

(i) No motor vehicles, including gasoline powered standby generators, or any amount of gasoline, shall be located within the facility building. Other devices which may cause or convey fire, and which are not necessary for client treatment or care, shall not be stored within the facility building. All such devices and materials, when necessary, shall be used within the building only with precautions ensuring maximum safety from fire.

§448.903. Fire Safety and Evacuation Plan.

(a) The facility shall formulate and have in effect a written fire safety plan for the protection of clients, personnel, and visitors.

(1) The plan shall include the process for notifying the fire department in the event of a fire.

(2) The plan shall include procedures for the facility to meet the needs and ensure the safety of any personnel and clients with special needs. Whenever a client with any special needs is admitted to the facility, the plan shall be reviewed and modified in writing, as needed, to ensure that the plan is adequate to meet that client's specific needs, and all personnel and clients shall be updated on the changes that affect them or their designated roles. Such training updates are in addition to the requirements of subsection (c) of this section and Paragraph (5) of this subsection.

(3) The plan shall include contingency provisions, and the training required under subsection (c) of this section shall include instruction on actions to take if the primary escape route is blocked.

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(4) All supervisory personnel shall have a copy of the plan. The plan shall be readily available within the facility to all personnel at all times.

(5) At admission, each client shall receive, and acknowledge receipt in writing of, a verbal and written summary of the plan. The documentation acknowledging the client's receipt shall be maintained in the client's record.

(6) All personnel shall be informed of, and able to demonstrate their specific role or responsibility in, implementing the facility's fire safety and evacuation plan.

(b) The facility shall prominently and conspicuously post in all public areas of the facility evacuation floor plans that are readily visible to clients, personnel, and visitors.

(c) The facility shall conduct and document training, upon hire and annually thereafter, for all personnel on the fire safety and evacuation plan. The training shall include, the location and use of firefighting equipment, including, but not limited to, fire and smoke detection systems and alarms, portable fire extinguishers, and, when installed, sprinkler systems.

(d) The facility shall conduct at least one fire drill per quarter per calendar year.

(1) The fire drill shall include, in coordination with the local fire authority, the transmission of the fire alarm signal and simulation of an emergency fire condition, evacuation of clients, and other occupants, and simulated or actual use of fire-fighting equipment. Each drill shall include discussion with personnel about the drill and evacuation plan after its completion.

(2) The facility shall maintain written reports, which shall include the date of the drill, identification of problems, if any, and corrective action taken.

§448.904. Residential or Inpatient Physical Plant, Equipment and Supply Requirements.

(a) Each residential or inpatient facility or program shall comply with the requirements of this section.

(1) Each residential or inpatient facility or program shall provide for client leisure and dining with an area of 15 square feet per licensed residential or inpatient bed or a total area of no less than 150 square feet, whichever is greater. If leisure and dining areas are used simultaneously, each shall comply with the minimum dimensions required. If the same space is used at separate times for dining and for leisure, at least the single space used for each at separate times shall comply with the minimum dimensions required under this paragraph.

(2) A client's sleeping room or suite shall include an outside window, with window coverings that provide privacy, and shall provide each client at least the following:

(A) storage space for personal effects;

(B) storage facilities for hanging clothing; and

(C) a separate bed of solid construction, including a mattress that meets the requirements of §448.416(g)(3) of this title (relating to Health, Safety, and Sanitation Practices).

(3) For a single client room, each client shall have, at a minimum, an area of 80 square feet from wall to wall, excluding closet and bathroom space.

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(4) For multiple-occupancy rooms and excluding closet and bathroom space, each client shall have 60 square feet of room space or 50 square feet if bunk beds are used. A facility shall not allow clients in withdrawal management programs to use bunk beds.

(5) Sleeping areas for children in facilities authorized to treat women with children shall have at least 40 square feet of room space, excluding closet and bathroom space, for each child 18 months and older, and 30 square feet of room space, excluding closet and bathroom space, for each infant under 18 months.

(b) Client sleeping rooms and areas may be located in manufactured, modular, or pre-fabricated structures that are on a permanent foundation and are designated or otherwise encompassed as part of the facility's licensed location, if the facility maintains documentation that the structure complies with any applicable fire safety codes and construction standards and codes. Mobile homes, recreational vehicles, and campers shall not be used for client sleeping areas. Recreational vehicles and campers may not be used for administrative areas or for any group activity or assembly.

(c) The facility shall provide hot and cold water sufficient to meet the usage needs of the facility, clients and personnel. Hot water shall not exceed 110 degrees Fahrenheit at the discharge end use.

(d) There shall be at least one hand-washing sink, one shower, and one toilet for the first eight residential or inpatient beds, or, if greater, licensed number of beds, with one additional shower, toilet and hand-washing sink for each additional one to eight such beds.

(1) An enclosed dispenser containing liquid or foam soap shall be located at each hand-washing sink available for use by personnel and non-residents.

(2) The facility shall provide, at each hand-washing sink available for use by personnel and non-residents, a hot air dryer or an enclosed dispenser containing paper towels that dispenses paper towels in single units.

(3) The facility shall provide clients with individual soap and towels for personal use only, in quantity sufficient to meet the needs of the clients. If the facility does not provide individual soap for clients' personal use, it shall provide an enclosed dispenser containing liquid or foam soap.

(4) The facility shall provide one washing machine and one clothes dryer for the first 25 clients, with one more washing machine and dryer for each additional one to 25 clients.

(e) The facility shall dispose of all sewage and liquid wastes as required in §448.417 of this title (relating to Waste and Waste Disposal).

(f) The indoor temperature in all areas within the facility shall be maintained for the comfort of residents. The cooling and heating systems shall be capable of maintaining the rooms between 68 and 78 degrees Fahrenheit.

(g) Portable space-heating devices are prohibited. When fixed fuel-fired heaters, such as fireplaces, are provided, the fuel-fire heaters shall be vented directly to the exterior of the building. Each fixed fuel-fire heater and the vent shall be inspected annually.

(h) The facility shall be well ventilated with windows, mechanical ventilation, or a combination of the two. Windows used for ventilation shall be screened. All window

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and door screens used for ventilation shall be maintained in clean condition, free of holes or tears.

(i) The facility shall label and appropriately store all cleaning supplies utilized by employees or clients.

(j) Poisonous, flammable and toxic materials shall be stored securely and in accordance with manufacturer's instructions, and shall not be stored in client living, sleeping, or food preparation areas.

(k) The facility shall not use electrical extension cords and cables for permanent wiring. When temporary electrical cords or cables are used, they shall be secured and protected.

§448.905. Construction Requirements for a Newly Constructed or Newly Licensed Treatment Facility for Individuals with Substance-Related Disorders.

(a) A newly constructed treatment facility for individuals with substance-related disorders, or one applying for initial licensure, shall comply with applicable local building code.

(1) Every building and every portion thereof shall be designed and constructed to sustain all dead and live loads in accordance with accepted engineering practices and standards and local building codes applicable to facility construction.

(2) Where there is no local building code governing the new facility construction, the facility shall be constructed in accordance with the current edition of the International Building Code®, published by the International Code Council, (888) ICC-SAFE (888-422-7233), **www.iccsafe.org/Pages/default.aspx**, pursuant to Local Government Code, Chapter 214, §214.216 (relating to International Building Code).

(b) A previously licensed treatment facility, which has been vacated or used for other purposes, shall be treated as a facility applying for initial licensure under subsection (a) of this section, and shall comply with the requirements of this section in order to be licensed.

(c) At the completion of new construction, additions, remodels or alterations that require a building permit, the facility shall maintain a copy of the certificate of occupancy or official green tag from the local authority and for review by the department on request.

(d) Whether the facility is in an existing building or new construction, the facility shall maintain documentation of a fire safety inspection, indicating approval by the local, jurisdictional fire authority, or the State fire marshal. Documentation of the fire inspection shall be provided to the department upon request.

(e) The requirements of this section shall apply to all major remodeling, renovations, additions and alterations to an existing facility, as provided for in §448.901(h) of this title (relating to General Environment). All areas of an existing facility that are not part of a major remodel, renovation, addition or alteration to the facility shall comply with the requirements of §448.901(h) of this title applicable to those areas.

§448.906. Required Outpatient Facility Inspections.

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(a) The facility shall maintain documentation of all required inspections for five years, including all initial and follow-up inspections, reports and other documentation to demonstrate that all inspections are current and the facility is in compliance with applicable laws and regulations. The documented inspections shall include, without limitation:

(1) an annual inspection of the premises by the local, jurisdictional fire authority or by the State fire marshal;

(2) if the facility serves prepared foods to clients, an annual kitchen health inspection by the applicable local health authority or the department, as required under §448.415 of this title (relating to Food and Nutrition Standards);

(3) without limiting the applicability of any other or stricter standard, for any facility that uses well water, documented testing of the facility's well water, which shall reflect that the well water meets the minimum quality standards and maximum contaminant levels for drinking water otherwise applicable to a public water system summarized in §290.104 (relating to Summary of Maximum Contaminant Levels, Maximum Residual Disinfectant Levels, Treatment Techniques, and Action Levels) and §290.105 (Summary of Secondary Standards) of Title 30, and any stricter standards for such systems set forth in National Primary Drinking Water Regulations, Title 40, Parts 141 or required by any local authority; and

(4) any other required state inspections or inspections required under this subchapter, with the date of inspection and signature of the responsible person; and plans of correction that are dated and signed by a facility representative, and implemented as required by the responsible authority and by subsection (b) of this section.

(b) The facility shall perform any corrective action required on an inspection within the period required by the inspection, with documentation of the corrective action taken and a timely follow-up inspection. If a follow-up inspection is not available from the responsible authority, the facility shall maintain documentation to verify its corrective action addressing all deficiencies cited in the initial inspection. Facilities shall remain responsible for all deficiencies cited in an initial inspection that exist at the time of a Department inspection and that constitute a violation of a requirement of this chapter, regardless of compliance with this subsection. The minimum requirements of this section do not supersede any more stringent requirement to which a facility might otherwise be subject by law.

§448.907. Required Residential or Inpatient Facility Inspections.

(a) The facility shall obtain or otherwise ensure, at a minimum, the following inspections, and shall maintain, and provide to the Department upon request, inspection documentation. The facility shall maintain documentation of all required inspections for five years, including all initial and follow-up inspections, reports and other documentation to demonstrate that all of the following inspections are current and that the facility complies with applicable laws and regulations:

(1) annual inspection of the premises by the local fire authority in whose jurisdiction the facility is based, or by the State fire marshal;

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(2) annual inspection of the fire alarm system in accordance with and by an individual licensed under 28 Texas Administrative Code Chapter 34, Subchapter F (relating to Fire Alarm Rules);

(3) fire extinguisher inspection in accordance with §448.902(g) of this title (relating to Fire Prevention and Protection);

(4) annual kitchen inspection by the local health authority or the department, as required under §448.415 of this title (relating to Food and Nutrition Standards);

(5) gas pipe pressure test at least once every three years by the local gas company or a licensed plumber;

(6) annual inspection of any liquefied petroleum gas systems by an inspector certified by the Railroad Commission of Texas;

(7) without limiting the applicability for any facility that uses well water, documented testing of the facility's well water, which shall reflect that the well water meets the minimum quality standards and maximum contaminant levels for drinking water otherwise applicable to a public water system summarized in §290.104 (relating to Summary of Maximum Contaminant Levels, Maximum Residual Disinfectant Levels, Treatment Techniques, and Action Levels) and §290.105 (Summary of Secondary Standards) of Title 30, and any stricter standards for such systems set forth in National Primary Drinking Water Regulations, Title 40, Parts 141 or any local authority;

(8) annual inspection of any elevator in, or utilized by the facility, in accordance with 16 Texas Administrative Code Chapter 74 (relating to Elevators, Escalators, and Related Equipment), and by an inspector registered with the Department of Licensing and Regulation under that chapter and pursuant to Health and Safety Code, Chapter 754, Subchapter B (relating to Inspection, Certification, and Registration; and

(9) any required state inspections, with the date of inspection and signature of the responsible person, with plans of correction that are dated and signed by a facility representative and implemented as required by the responsible authority and by subsection (b) of this section.

(b) The facility shall perform or otherwise ensure any corrective action required on an inspection within the period required by the inspection, with documentation of the corrective action taken and a timely follow-up inspection. If a follow-up inspection is not available from an authorized inspector, the facility shall maintain documentation to verify that, with its documentation of corrective action addressing all deficiencies cited in the initial inspection. Regardless of compliance with this section, facilities shall remain responsible for deficiencies on an initial inspection that exist at the time of a Department inspection, and which otherwise violate a requirement of this chapter. The minimum requirements of this section do not supersede any more stringent requirement to which a facility might otherwise be subject by law.

SUBCHAPTER J. FAITH BASED SUBSTANCE-RELATED DISORDER TREATMENT PROGRAMS.

§448.1001. Definitions.

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The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Medical care--Diagnosis or treatment of a physical illness or injury or mental disorder for which the training and/or credentials of a licensed health professional are required.

(2) Medical withdrawal management services--Substance withdrawal treatment designed to systematically reduce the amount of alcohol and other toxic chemicals in a client's body, manage withdrawal symptoms, and encourage the client to seek ongoing treatment for a substance-related disorder.

(3) Program--For the purposes of this subchapter, program means a system of care delivered to individuals with a substance-related disorder at a particular location.

(4) Religious Organization--A church, synagogue, mosque, or other religious institution:

(A) the purpose of which is the propagation of religious beliefs; and

(B) that is exempt from Federal income tax 26 United States Code §501(a) by being listed as an exempt organization under 26 United States Code §501(c).

§448.1002. Exemption for Faith-Based Treatment Programs.

(a) A substance-related disorder treatment program is exempt from licensure under Health and Safety Code, Chapter 464, Subchapter C (relating to Faith-Based Chemical Dependency Treatment Programs) if it:

(1) is conducted by a religious organization;

(2) is exclusively religious, spiritual, or ecclesiastical in nature;

(3) does not treat minors; and

(4) is registered under this subchapter.

(b) An exempt program registered under this subchapter shall not provide medical care, medical withdrawal management, or other medical withdrawal services.

(c) This subchapter does not affect the authority of a local, regional, or state health department official, the state fire marshal, or a local fire prevention official to inspect a facility used by a program exempted under this subchapter.

§448.1003. Registration of Exemption for Faith-Based Treatment Programs.

(a) To register an exemption under this subchapter for a proposed program, a religious organization shall complete and submit to the department, for each program location for which registration as a faith-based exempt program is sought, the following documents:

(1) a registration application;

(2) a copy of the determination letter from the Internal Revenue Service documenting that the organization is exempt from Federal income tax under 26 United States Code §501(a) by being listed as an exempt organization under 26 United States Code §501(c), including any documentation requested by the department to verify that the exemption is current;

(3) a copy of the organization's articles of incorporation documenting that the primary purpose of the organization is the propagation of religious beliefs or a letter

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from the State of Texas Comptroller's Office documenting the organization's state tax exemption as a religious organization;

(4) a statement by an authorized representative of the religious organization that the religious organization will conduct the proposed program for which the organization seeks to register a faith-based exemption; that the proposed program meets the standards for a faith-based exemption under §448.1002(a)(1)-(3) of this title (relating to Exemption for Faith-Based Treatment Programs); and that the content of the statements required under §448.1004 (relating to Admission to Faith-Based Treatment Programs) and §448.1005 of this title (relating to Advertisement) accurately describe the program for which the registration is sought;

(5) a copy of the proposed admission statement required by §448.1004 of this title (relating to Admission to Faith Based Treatment Programs) for the proposed program for which registration as a faith-based exempt program is sought;

(6) a copy of any advertisement or literature that has been developed for proposed or potential use by the religious organization or program, and that promotes or describes the program, the nature of the program, or the program services for which registration is sought; and

(7) written verification that the religious organization or program has not had a license issued under this chapter or a registration issued under this subchapter revoked within the last two years. If it has, it will be ineligible to apply for registration of an exemption for a faith-based program until after two years have elapsed.

(b) The department will issue a letter documenting the registered faith-based exemption for the religious organization's program if the application packet satisfies the requirements in this section.

(c) A program with a registered faith-based exemption under this section shall notify the department in writing within fourteen calendar days after any change affecting the program's registration for a faith-based exemption.

(d) If an applicant fails to submit an application packet that is complete and compliant with subsection (a) of this section within six months after the department receives the applicant's initial submission, the deficient application will be deemed withdrawn.

§448.1004. Admission to Faith-Based Treatment Programs.

(a) An exempt program registered under this subchapter shall not admit an individual unless the individual signs and dates the following admission statement at the time of admission: "DECLARATION: I understand that: the treatment and recovery services at [name of program] are exclusively religious in nature and are not subject to licensure or regulation by the Department of State Health Services; and [name of program] offers only nonmedical treatment and recovery methods, such as prayer, moral guidance, spiritual counseling and scriptural study".

(b) The program shall keep the original signed admission statement and give a copy of it to the individual admitted.

§448.1005. Advertisement.

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An exempt program registered under this section shall conspicuously include the following notice in any advertisement or literature that promotes or describes the program or its substance-related disorder treatment services: “The treatment and recovery services at [name of program] are exclusively religious in nature and are not subject to licensure or regulation by the Department of State Health Services. This program offers only non-medical treatment and recovery methods, such as prayer, moral guidance, spiritual counseling, and scriptural study.”

§448.1006. Revocation of Exemption.

(a) The department may revoke the exemption after notice and hearing if:

(1) the religious organization conducting the program fails to inform the department of any material changes in the program's registration information in a timely manner, including any change that results in the program no longer meeting the standards for a faith-based exemption under §448.1002(a)(1)-(3) of this title (relating to Exemption for Faith-Based Treatment Programs);

(2) any program advertisement or literature fails to include the statements required under §448.1005 of this title (relating to Advertisement); or

(3) the organization violates Health and Safety Code Chapter 464, Subchapter C, or any rule in this subchapter.

(b) The department shall notify the religious organization in writing of the department’s proposal to revoke a registered program’s exemption and shall offer the organization the opportunity for an administrative hearing at the State Office of Administrative Hearings and an opportunity, prior to that, for an informal conference with department staff. The notice will include a summary of the factual and legal basis for the proposed revocation.

(c) The religious organization shall have 20 calendar days after receiving the notice to submit a written request for an administrative hearing, which may also include a request for an informal conference with department staff to give the registrant an opportunity to demonstrate compliance with the law. The registrant is presumed to have received the notice on the third day after it is mailed by the department to the registrant’s address of record, and notice sent to that address by first class or certified mail shall constitute effective notice, regardless of the department’s ability to prove the registrant’s actual receipt of the notice.

(d) If the religious organization does not timely request an administrative hearing, the registrant will be deemed to have waived the opportunity for an administrative hearing, the allegations will be deemed to be admitted as true, and the programs registered exemption may be revoked, as proposed by the department, by default order.

(e) If the religious organization requests an administrative hearing, and the request includes a request for an informal conference, the department will schedule an informal conference with department staff to give the organization and its program the opportunity to show compliance with the law.

(f) If an agreed resolution is not reached based upon the informal conference, an administrative hearing will be conducted pursuant to the APA, Government Code, Chapter 2001, State Office of Administrative Hearings Rules of Procedure at 25 Texas

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Administrative Code, Chapter 155, and §§1.21, 1.23, 1.25, and 1.27 of this title (relating to Formal Hearing Procedures).

(g) When a program's exemption has been revoked, the religious organization conducting the program will be ineligible to apply to re-register the program's exemption until at least two years after the effective date of the revocation.

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