



**TEXAS DEPARTMENT OF STATE
HEALTH SERVICES**

**TITLE 25
TEXAS ADMINISTRATIVE CODE**

**Chapter 125
Special Care Facility
Licensing Rules**

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Chapter 125. SPECIAL CARE FACILITIES

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Subchapter A. General Provisions

§125.1. Purpose. The purpose of this chapter is to implement the Texas Special Care Facility Licensing Act as authorized under the Health and Safety Code, Chapter 248, and provide minimum standards for the licensing of special care facilities.

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

(1) Advanced practice nurse – A registered nurse approved by the Texas Board of Nurse Examiners to practice as an advanced practice nurse. The term includes a nurse practitioner, nurse-midwife, nurse anesthetist, and a clinical nurse specialist.

(2) Applicant - The person legally responsible for the operation of the facility, whether by lease or ownership, who seeks a license from the department.

(3) Administration of medication - The direct application of any medication by injection, inhalation, ingestion, or any other means to the body of a patient. The preparation of medication is part of the administration of medication and is the act or process of making ready a medication for administration, including the calculation of a resident's medication dosage; altering the form of the medication by crushing, dissolving, or any other method; pouring a quantity of a liquid to be ingested; reconstitution of an injectable medication; drawing an injectable medication into a syringe; preparing an intravenous admixture; or any other act required to render the medication ready for administration.

(4) AIDS - Acquired immune deficiency syndrome.

(5) Assistance with medication or treatment regimen - Aid provided to a resident who self-administers their own medication or treatment, such as reminding a resident to take a medication at the prescribed time, opening and closing a medication container, returning a medication to the proper storage area, and assisting in reordering medications from a pharmacy. Such ancillary aid shall not include administration of any medication.

(6) Bereavement - The process by which a survivor of a deceased person mourns and experiences grief.

(7) Bereavement services - Support services offered to a family during bereavement. Family includes a significant other(s).

(8) Board - The Texas Board of Health or its successor.

(9) Controlled substance - A drug, controlled substance, or immediate precursor as defined in the Texas Controlled Substance Act, Health and Safety Code, §481.002, or the Federal Controlled Substance Act of 1970, Public Law 91-513.

(10) Dangerous drugs - Any dangerous drug as defined in the Texas Dangerous Drug Act, Health and Safety Code, §483.001.

(11) Department - The Texas Department of Health or its successor.

(12) Dietitian - A person who is currently licensed by the Texas State Board of Examiners of Dietitians.

(13) Director - The director of the Health Facility Licensing and Compliance Division of the Texas Department of Health or his or her designee.

(14) Facility - A special care facility.

(15) Fast-track project - A construction project in which it is necessary to begin initial phases of construction before later phases of the construction documents are fully completed in order to establish other design conditions or because of time constraints such as mandated deadlines.

(16) Hospice services - Services, including services provided by unlicensed personnel under the delegation of a registered nurse or physical therapist, provided to a resident or resident's family as part of a coordinated program which includes palliative care for terminally ill residents and support services for a resident and a resident's family that are available 24 hours a day, seven days a week, during the last stages of illness, during death, and during bereavement; and are provided by a medically directed interdisciplinary team.

(17) Incident - An unusual or abnormal event or occurrence in, at, or affecting the facility or the residents of the facility.

(18) Licensed vocational nurse - An individual who is currently licensed as a licensed vocational nurse (LVN) by the Board of Nurse Examiners in accordance with Texas Occupations Code, Chapter 301.

(19) Local health authority - The physician having local jurisdiction to administer state and local laws or ordinances relating to public health as defined in the Health and Safety Code, Chapter 121, Subchapter B.

(20) Medical care - Care that is:

(A) required for improving life span and quality of life, for comfort, for prevention and treatment of illness, and for maintenance of bodily and mental function;

(B) under the continued supervision of a physician; and

(C) provided by a registered nurse or licensed vocational nurse available to carry out a physician's plan of care for a resident.

(21) Nursing care - Services provided by nursing personnel as prescribed by a physician, including services to:

(A) promote and maintain health;

(B) prevent illness and disability;

(C) manage health care during acute and chronic phases of illness, including end of life care;

(D) provide guidance and counseling of individuals and families; and

(E) provide referrals to physicians, other health care providers, and community resources when appropriate.

(22) Palliative care - Services that focus primarily on the reduction or abatement of physical, psychosocial, and spiritual symptoms of a terminal illness.

(23) Pharmacist – A person who is licensed to practice pharmacy by the Texas Board of Pharmacy in accordance with Texas Occupations Code, Chapter 558.

(24) Physician - An individual who is:

(A) licensed as a physician by the Texas State Board of Medical Examiners in accordance with Texas Occupations Code, Chapter 155; or

(B) authorized to perform medical acts under an institutional permit at a Texas postgraduate training program approved by the Accreditation Council on Graduate Medical Education, the American Osteopathic Association, or the Texas State Board of Medical Examiners.

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

(26) Presurvey conference - A conference held with department staff and the applicant and/or his or her representative to review licensure standards, survey documents, and facility policies and procedures and provide consultation prior to issuance of a license and the on-site licensure inspection.

(27) Registered nurse (RN) - An individual who is licensed as a registered nurse by the Board of Nurse Examiners in accordance with Texas Occupations Code, Chapter 301.

(28) Resident - An individual accepted for care in a special care facility.

(29) Residential AIDS hospice - A special care facility licensed and designated as a residential AIDS hospice in accordance with §125.35 of this title (relating to Residential AIDS Hospice Designation).

(30) Social worker - A person who is currently licensed as a social worker in accordance with Texas Occupations Code, Chapter 505.

(31) Special care facility - An institution or establishment that provides a continuum of nursing or medical care or services primarily to persons with acquired immune deficiency syndrome or other terminal illnesses. The term includes a special residential care facility.

(32) Violation - Failure to comply with the licensing statute, a rule or standard, special license provision, or an order issued by the commissioner of health or the commissioner's designee, adopted or enforced under the licensing statute.

§125.3. Occupancy Classification.

(a) The level of care that the resident requires determines the facility's occupancy classification.

(b) A new facility shall be classified into one of the following two occupancy classifications:

(1) Limited care facility (LCF). A LCF provides medical and nursing care, treatment and other services to residents who require staff attendance and supervision, including staff assistance to evacuate the facility. These residents are not able to participate in fire drills because they are either physically unable to respond to the fire alarm or they are incapable of following directions under emergency conditions.

(2) Residential board and care facility (RBCF). A RBCF provides medical and nursing care, treatment and other services for residents who do not require routine or continuous staff attendance and supervision, and are physically and mentally able to evacuate the facility. These residents must be able to participate in fire drills, be able to transfer and evacuate themselves and be capable of following directions under emergency conditions. A RBCF is further classified as either small or large.

(A) A small RBCF provides sleeping accommodations for up to 16 residents.

(B) A large RBCF provides sleeping accommodations for more than 16 residents.

(c) New applicants shall identify the classification of the facility at the time the license application is submitted.

(d) A licensed special care facility which was licensed prior to the effective date of these rules is considered to be an existing facility and is not required to identify or specify their occupancy classification.

Subchapter B. Facility Licensing.

§125.11. General Licensing Requirements.

(a) License required.

(1) A facility shall obtain a license prior to admitting patients.

(2) A facility shall only admit and provide services for the number of residents which may be accommodated based on the approved number of licensed beds.

(3) All residents receiving services under the license must be admitted for 24-hour residential care.

(b) Display. A facility shall prominently and conspicuously display the license in a public area of the licensed premises that is readily visible to patients, employees, and visitors.

(c) Alteration. A facility license shall not be altered.

(d) Transfer or assignment prohibited. A facility license shall not be transferred or assigned. The facility shall comply with the provisions of §125.12(h) of this title (relating to Application and Issuance of Initial License) in the event of a change in the ownership.

(e) Changes which affect the license. A facility shall notify the department in writing prior to the occurrence of any of the following:

(1) any construction, renovation, or modification of the facility buildings;

(2) changes in designed bed capacity;

(3) cessation of operation of the facility; and

(4) change in facility name, telephone number or administrator.

§125.12. Application and Issuance of Initial License.

(a) Application submittal. The applicant shall submit the following documents to the department no earlier than 60 calendar days prior to the projected opening date of the facility:

(1) an accurate and complete application form;

(2) evidence of project and occupancy approval under local codes, if applicable, or in accordance with §125.95 of this title (relating to Construction, Inspections, and Approval of Projects for New or Existing Facilities in the Absence of Local Codes and Regulations).

(3) the appropriate license fee as required in §125.15 of this title (relating to Fees).

(b) Presurvey conference. The applicant or the applicant's representative shall attend a presurvey conference at the office designated by the department. The purpose of the presurvey conference, which is conducted by department staff, is to review licensure rules, survey documents and facility policies and procedures, and provide consultation prior to the on-site licensure survey. The department staff conducting the presurvey conference is responsible for making a recommendation regarding the issuance of the initial license. The department may waive the presurvey conference requirement.

(c) Residential AIDS hospice designation. The designation must be requested at the time of license application. The facility shall provide evidence of compliance with §125.35 of this title (relating to Residential AIDS Hospice Designation) at the time of the presurvey conference.

(d) Issuance of license. When it is determined that the facility has complied with subsections (a) and (b) of this section and, if applicable, subsection (c) of this section, the department shall issue the license to the applicant.

(1) Effective date. The license shall be effective on the date the facility is determined to be in compliance with subsections (a) and (b) of this section, and, if applicable subsection (c) of this section.

(2) Expiration date.

(A) For initial licenses issued prior to January 1, 2005.

(i) If the effective date of the license is the first day of a month, the license expires on the last day of the 11th month after issuance.

(ii) If the effective date of the license is the second or any subsequent day of a month, the license expires on the last day of the 12th month after issuance.

(B) For initial licenses issued January 1, 2005, or after.

(i) If the effective date of the license is the first day of a month, the license expires on the last day of the 23rd month after issuance.

(ii) If the effective date of the license is the second or any subsequent day of a month, the license expires on the last day of the 24th month after issuance.

(e) Withdrawal of application. If an applicant decides not to continue the application process for a license or renewal of a license, the application may be withdrawn. The department shall acknowledge receipt of the request to withdraw.

(f) Denial of a license. Denial of a license shall be governed by §125.71 of this title (relating to License Denial, Suspension, Revocation and Probation).

(g) Survey. During the initial licensing period, the department shall conduct a survey of the facility to ascertain compliance with the provisions of the Health and Safety Code, Chapter 248, and this chapter.

(1) A facility shall request an on-site survey to be conducted after one inpatient has been admitted and provided services.

(2) A facility shall be providing services to at least one inpatient in the facility at the time of the survey.

(h) Change of ownership. A change of ownership occurs when there is a change in the person legally responsible for the operation of the facility, whether by lease or by ownership. If a corporate licensee amends its articles of incorporation to revise its name and the tax identification number does not change, this subsection does not apply, except that the corporation must notify the department within 10 calendar days after the effective date of the name change. The sale of stock of a corporate licensee does not cause this subsection to apply. A change of ownership requires submission of an initial license application.

(1) The new owner shall submit an application for an initial license to the department prior to the date of the change of ownership or not later than 10 calendar days following the date of a change of ownership. The application shall be in accordance with subsection (a) of this section. In addition to the documents required in subsection (a) of this section, the applicant shall include the effective date of the change of ownership.

(2) Surveys. The on-site construction and health surveys required by subsection (g) of this section, and §125.61 of this title (relating to Inspection and Investigation Procedures) may be waived by the department.

(3) Issuance of license. When the new owner has complied with the provisions of subsection (a) of this section, the department shall issue a license which shall be effective the date of the change of ownership.

(4) Expiration of license. The expiration date of the license shall be in accordance with subsection (d)(2) of this section.

(5) License void. The previous owner's license shall be void on the effective date of the new owner's license.

§125.13. Application and Issuance of Renewal License.

(a) Renewal notice. The department may send a renewal notice to a facility up to 60 calendar days before the expiration date of a license.

(1) If the facility has not received the renewal notice from the department within 30 calendar days prior to the expiration date, it is the duty of the facility to notify the department and request a renewal application for a license.

(2) If the facility fails to submit the application and fee within 15 calendar days prior to the expiration date of the license, the department shall send to the facility a letter advising that unless the license is renewed, the facility must cease operations upon the expiration of the license.

(b) Renewal license. The department shall issue a renewal license to a facility that meets the minimum requirements for a license.

(1) The facility shall submit the following to the department prior to the expiration date of the license:

(A) a complete and accurate application form;

(B) a copy of a fire safety survey indicating approval by the local fire authority in whose jurisdiction the facility is based that is dated no earlier than one year prior to the application date;

(C) the renewal license fee;

(2) The department may conduct a survey prior to issuing a renewal license in accordance with §125.61 of this title (relating to Inspection and Investigation Procedures).

(3) Renewal licenses issued prior to January 1, 2005, will be valid for 12 months.

(4) Renewal licenses issued January 1, 2005, through December 31, 2005, will be valid for either 12 or 24 months, to be determined by the department prior to the time of license renewal.

(5) Renewal licenses issued January 1, 2006, or after will be valid for 24 months.

(c) Notice to cease operation and return license. If a facility fails to submit the application, documents, and fee by the expiration date of the license, the department shall notify the facility by certified mail that it must cease operation and immediately return the license by certified mail to the department. If the facility wishes to provide services after the expiration date of the license, it shall apply for a license under §125.12 of this title (relating to Application and Issuance of Initial License).

§125.14. Time Periods for Processing and Issuing Licenses.

(a) General.

(1) The receipt date for an application for an initial license or a renewal license is the date the application is received by the division.

(2) An application for an initial license is complete when the division has received, reviewed, and found acceptable the information described in §125.12(a) of this title (relating to Application and Issuance of Initial License).

(3) An application for a renewal license is complete when the division has received, reviewed, and found acceptable the information described in §125.13(b) of this title (relating to Application and Issuance of Renewal License).

(b) Time periods. An application for an initial license or renewal license shall be processed in accordance with the following time periods.

(1) The first time period begins on the date the division receives the application and ends on the date the license is issued, or, if the application is received incomplete, the period ends on the date the facility is issued a written notice that the application is incomplete. The written notice shall describe the specific information that is required before the application is considered complete. The first time period is 20 working days.

(2) The second time period begins on the date the division receives the last item necessary to complete the application and ends on the date the license is issued. The second time period is 20 working days.

(c) Reimbursement of fees.

(1) In the event the application is not processed in the time periods as stated in subsection (b) of this section, the applicant has the right to request the division to reimburse in full the fee paid in that particular application process. If the division does not agree that the established periods have been violated or finds that good cause existed for exceeding the established periods, the request shall be denied.

(2) Good cause for exceeding the period established is considered to exist if:

(A) the number of applications for licenses to be processed exceeds by 15% or more the number processed in the same calendar quarter the preceding year;

(B) another public or private entity utilized in the application process caused the delay; or

(C) other conditions existed which gave good cause for exceeding the established periods.

(d) Appeal. If the request for full reimbursement authorized by subsection (c) of this section is denied, the applicant may then appeal to the commissioner of health (commissioner) for a resolution of the dispute. The applicant shall give written notice to the commissioner requesting full reimbursement of all filing fees paid because the application was not processed within the adopted time period. The division shall submit a written report of the facts related to the processing of the application and good cause for exceeding the established time periods. The commissioner shall make the final decision and provide written notification of the decision to the applicant and the division.

(e) Contested case hearings. The procedures set out in §1.21 of this title (relating to Formal Hearing Procedures) apply to all hearings requested under this chapter.

§125.15. Fees.

(a) General.

(1) All fees paid to the department are nonrefundable with the exception of fees for surveys that were not conducted.

(2) All fees shall be paid to the department.

(b) License fees. The fee for an initial license or a renewal license is \$35 per bed per 12 months based upon the designed bed capacity. The total fee may not be less than \$300 or more than \$2,500.

(c) Plan review fees. This subsection outlines the fees that must accompany the application for plan review.

(1) Construction plans will not be reviewed or approved until the required fee and an application for plan review are received by the department.

(2) Plan review fees are based upon the estimated construction project costs which are the total expenditures required for a proposed project from initiation to completion. The plan review schedule is as follows:

(A) \$150,000 or less--\$200;

(B) \$150,001 to \$600,000--\$500;

(C) \$600,001 to \$2,000,000--\$850;

(D) \$2,000,001 to \$5,000,000--\$1,500;

(E) \$5,000,001 to \$10,000,000--\$2,000; and

(F) \$10,000,001 and over--\$3,000.

(3) If an estimated construction cost cannot be established, the estimated cost shall be based on \$105 per square foot. No construction project shall be increased in size, scope, or cost unless the appropriate fees are submitted with the proposed changes.

(d) Construction survey fees. A fee of \$500 and an Application for Survey form for each survey shall be submitted to the department at least three weeks prior to the anticipated survey date. Construction surveys will not be conducted until all required fees are received by the department. If additional construction surveys of the proposed project are requested, or if follow-up construction surveys are required to verify plans of correction, the appropriate additional fees shall be submitted to the department.

(e) Other fees. For all applications and renewal applications, the department is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online, in accordance with Texas Government Code, §2054.111.

Subchapter C. Operational Requirements.

§125.31. General Functions.

(a) Administration and staffing.

(1) Legal responsibility. There shall be an individual or individuals that assume(s) full legal responsibility for the overall conduct of the facility and are responsible for compliance with all applicable laws and rules of the department.

(2) Facility director.

(A) The facility director, who is to be accountable for the overall management of the facility, shall be named in writing.

(B) The director's responsibilities shall be defined in writing.

(C) If the facility can be successfully managed with less than the director's full-time management, the director may be less than full-time. In such instances, the director shall assign another responsible individual who can perform management tasks so that there is administrative management essentially for the usual and customary 40-hours-per-week business operations.

(D) There shall be a competent individual authorized to be in charge of the facility when the director is absent.

(E) The director shall be at least 18 years of age and shall be qualified by education or training to perform the duties required to manage the facility.

(F) The director shall be responsible for coordinating the provision of all services.

(3) Personnel requirements.

(A) The facility shall have written personnel policies and procedures for paid staff and volunteer staff which include at a minimum:

(i) written position descriptions that include responsibilities for all positions in the facility;

(ii) qualifications for employment for all positions in the facility;
and

(iii) the process for filling a position, evaluating performance and termination.

(B) The facility shall maintain personnel records which contain sufficient information to support appropriate placement of an individual in a position. The file shall include a copy of the individual's current license or certification, if applicable, or other evidence that license or certification status was verified.

(C) The facility shall be staffed at all times with sufficient qualified personnel to meet the needs of residents and maintain a clean and safe environment. A minimum of one staff person shall be on duty at all times. A qualified staff person will be designated as in charge on each shift.

(4) Contracted services. If a facility does not employ a person qualified to provide a required or needed service, it shall have a contract with an outside resource to provide the service directly to residents or to act as a consultant to the facility. The facility maintains responsibility for ensuring that contract staff is qualified to perform the services to be provided and that they are appropriately supervised.

(5) Volunteer services. Volunteer staff may be placed in any position for which they are qualified. Requirements in paragraph (6) of this subsection shall apply to all volunteer staff.

(6) Staff development and training.

(A) All staff shall receive orientation training prior to being allowed to work with residents. Orientation shall include information pertaining to the facility's mission and philosophy, position specific responsibilities and all operational policies and procedures.

(B) All staff must participate in periodic staff development training designed to update their knowledge and skills in providing care to residents. Training will also include a review of operational policies and procedures.

(C) The facility shall maintain documentation which verifies each staff person's participation in the orientation training program and staff development training.

(b) Policies and procedures. The facility shall adopt, implement and enforce written policies and procedures detailing the operations of the facility. The policies shall be reviewed and updated annually. In addition to describing the operations of the facility and the manner in which care and services will be provided, the policies and procedures shall include:

(1) Resident admission.

(A) Admission policies shall include qualifications and criteria for admission based on the mission and philosophy of the facility.

(B) Policies may include restriction of admission and retention of individuals with regard to illegal drug use, alcohol abuse, or actions that pose a threat to the health and safety of other residents or staff.

(C) Policies shall require a written admission agreement between the resident and the facility that addresses the care and services to be provided and the method of payment for services.

(D) The facility policy shall require that a chronological register of all residents admitted to and discharged from the facility be maintained. The register shall contain at least the name of the resident, date of birth, date of admission, date of discharge or death, and disposition.

(2) Infection control and universal precautions. There shall be written policies and procedures providing for a safe and sanitary environment, and the control of communicable diseases and infections in staff, residents, and visitors. The policy shall also provide for monitoring compliance of the facility and its staff with universal precautions in accordance with the Health and Safety Code (HSC), Chapter 85, Subchapter I, (relating to the Prevention of Transmission of Human Immunodeficiency Virus and Hepatitis B Virus by Infected Health Care Workers).

(3) Determination of death. If applicable, there shall be a written policy with protocols to be used in determining death that complies with HSC, Title 8, Subtitle A, Chapter 671, Subchapter A (relating to Determination of Death).

(4) Special waste. The facility shall comply with the requirements set forth by the department in §1.131-1.137 of this title (relating to Definition, Treatment, and Disposition of Special Waste from Health Care Related Facilities), and the Texas Commission on Environmental Quality requirements in Title 30, Texas Administrative Code, Subchapter Y, §330.1004 (relating to Generators of Medical Waste).

(5) Confidentiality of records. There shall be a written policy that addresses the confidentiality of resident information.

(6) Advance directives. There shall be policies and procedures regarding the use of advance directives in the facility. These policies and procedures shall be in accordance with the Advance Directives Act, HSC, Chapter 166. Violations of §166.004 may result in the assessment of administrative penalties, in accordance with HSC, §248.0545 (relating to Violation of Law Relating to Advance Directives).

§125.32. Resident Care and Services.

(a) Physician services.

(1) Each resident shall have an attending physician who is charge of the resident's medical care.

(2) The facility shall make a reasonable effort to contact the resident's physician within 72 hours after admission to obtain any information relating to the care of the resident. Any relevant information obtained from the physician will be recorded in the resident's care document.

(3) In the event of an acute illness, condition, or accident requiring medical and/or nursing care beyond the capabilities of the facility, the resident shall be transferred, in a medically appropriate manner, to a hospital or other health care facility as appropriate where needed services and facilities are available.

(b) Nursing services.

(1) Licensed nurses shall function consistent with the nursing practices recognized and authorized by Texas Board of Nurse Examiners.

(2) When nursing services are provided, nursing personnel are responsible for ensuring that residents receive treatments, medications, and diets as prescribed; receive preventive care to prevent and minimize the incidence of skin breakdown; are kept comfortable with personal hygiene needs met; are protected from accident and injury through the initiation of appropriate safety measures; and are treated with kindness and respect.

(3) Nursing or attendant personnel on duty shall be responsible for obtaining emergency medical care when a resident's condition so requires and shall be responsible for notifying the attending physician.

(c) Medications.

(1) Medications shall be provided as required for those residents on a physician or practitioner-ordered medication therapy regimen.

(2) Upon admission, and as part of the plan of care, the admitting physician shall determine whether a resident can self-administer his or her medications or will require administration by qualified personnel in accordance with paragraph (7) of this subsection.

(3) Each resident's health status shall be reviewed at least quarterly, or more often if indicated, to determine if any changes are necessary in the medication administration procedures.

(A) The appropriateness for a resident to self-administer medications shall be reviewed by facility staff and the attending physician or an advanced practice nurse working in collaboration with the attending physician.

(B) A resident's drug regimen review shall be incorporated into the individual's plan of care.

(4) Medications must be kept secured at all times. Only the resident and authorized facility staff shall have access to the secured medications. Residents self-administering their medications may:

(A) keep medications in their possession at all times;

(B) secure their medications within their locked room if the room is not shared with others, or in a locked cabinet in their room; or

(C) allow the facility to keep residents' medications in a central medication storage area under control of facility staff.

(5) The central medication storage shall be kept locked when facility staff is not actually in or at the storage area.

(6) Residents may be permitted entrance or access to the storage area for the purpose of self-administering their medications or treatments or receiving assistance with their medication or treatment regimen. A facility staff member shall remain in or at the storage area the entire time any resident is in the storage area.

(7) Medications that are administered to a resident shall be administered only by a registered professional nurse, licensed vocational nurse, or an individual under direct delegation orders by a physician and in conformance with all laws, rules, and recognized professional standards of practice. A home health agency who is providing services within a special care facility may use a home health medication aide in accordance with 40 Texas Administrative Code, §95.128 (relating to Home Health Medication Aides).

(A) The person administering medications shall properly record the medications administered. This record will be retained in the resident file.

(B) Medications classified as dangerous drugs or controlled substances may not be taken by or administered to residents unless the medication was obtained directly from or under a valid prescription or order of a physician or practitioner. If facility staff administer the medications, they shall only be administered under written orders, or verbal orders which are subsequently verified in writing by the treating physician or practitioner.

(C) All injectable medication, intravenous solutions, or medications administered by way of a tube inserted in a cavity of the body shall be administered under physician's or practitioner's orders by a physician, registered professional nurse, licensed vocational nurse, or other individual qualified under state law.

(D) If administration of medications to residents is performed by a registered professional nurse or licensed vocational nurse the following shall apply.

(i) There shall be a specific area designated for medication that is:

(I) sufficient in size and/or space for the storage of all medications that are being administered to residents and for the preparation of medications for administration to residents;

(II) lockable and shall be maintained locked at all times when not occupied;

(III) accessible only to persons authorized to administer medications to residents;

(IV) equipped with a sink having hot and cold water available at all times; and

(V) adequately ventilated and temperature controlled.

(ii) A medication storage cart may be used in addition to the medication room for the storage of residents' medications. When not in use, the medication storage cart must be kept locked in the locked medication room or in the designated locked storage room that shall be used only for the storage of the cart.

(8) When a resident needs assistance with taking oral medication, only those individuals approved in writing by the director of the facility may provide that assistance.

(A) A mechanism will be developed, implemented and monitored by the facility director to insure that the resident is given only those medications that have been prescribed by the resident's physician or practitioner at the intervals detailed on the resident's medication container.

(B) When assistance with taking oral medication is provided, the facility will maintain a medication record which documents the medication, date, and time taken. The name of the individual who assisted the resident taking the oral medication shall also be documented.

(C) The facility director or designee will monitor the medication records daily to insure accuracy.

(9) Medication requiring refrigeration shall be stored in a separate refrigerator designated for medications which is kept in the secured medication storage area. Medications may be stored in an area within the common refrigerator if they are stored in a manner that prevents contamination of the medications, and allows for the security of the medication to be maintained.

(10) Medication under storage control of the facility shall be returned to the resident upon dismissal from the facility, or as directed by the physician.

(11) Medications of a resident shall not be used for another resident. When a resident is dismissed from or otherwise leaves the facility for a period of time greater than 48 hours, medications which had been under the control of the resident and left in the facility shall be secured under locked storage control of the facility until reclaimed by the resident and no longer than 90 days. Medications of deceased residents shall not remain in the facility for more than 7 days after the resident's death. Medications of deceased residents and medications which have been left unclaimed in the facility for more than 90 days shall be handled in one of the following manners.

(A) Medications may be returned to any licensed pharmacy for destruction in accordance with regulations of the Texas Board of Pharmacy governing the destruction of dangerous drugs or controlled substances. A record shall be maintained by the facility which itemizes the quantity and strength of each medication returned to a pharmacy for destruction. Such record shall be signed by the director of the facility and the pharmacist accepting the drugs for destruction and shall be retained in the resident's file.

(B) Medications may be destroyed beyond reclamation on site by the facility director. Drugs should be destroyed by incineration, if possible. Small amounts of drugs may be flushed into the sewer system unless prohibited by local ordinance. Large quantities of drugs may be destroyed by removing the drugs from the prescription containers, placing them in a strong plastic container, and adulterating the drugs with water or bleach.

(i) A record of the destruction shall be maintained by the facility and include:

(I) the name, strength, and quantity of the drug;

(II) the method of destruction; and

(III) the signature of the facility director who destroyed the drugs and signatures of two other individuals who witnessed the destruction.

(ii) This record shall be retained in the resident's file.

(12) Controlled substances and drugs under storage control of the facility shall be kept separately locked in a permanently affixed compartment within the medicine room or medication storage cart.

(A) A separate record must be maintained for each controlled substance and drug.

(B) The record shall include, but not be limited to, prescription number, name and strength of drug, date received by the facility, date and time each dose is provided, signature of person providing the dose, name of resident, and the original amount received with the balance verifiable by drug inventory at least daily.

(13) All residents' medications shall be properly labeled in accordance with applicable laws and regulations.

(d) Dietary services.

(1) A dining room, rooms, or space with appropriate furnishings shall be provided. The dining space and furnishings should allow the residents who can come to the dining room to dine at one sitting. Where alternate or second meal services are employed, quantity and quality shall be maintained.

(2) The facility shall have a kitchen or dietary area to meet the food service needs of the residents. It shall include provisions for the storage, refrigeration, preparation, and serving of food; for dish and utensil cleaning; and for refuse storage and removal.

(3) Meal service at intervals of at least three meals per day, seven days per week, shall be provided or arranged to be commensurate with the needs of the residents. Meals shall be palatable and meet the nutritional needs of the residents.

(4) Procedures to prevent cross contamination shall be observed in the storage, preparation, and distribution of food; in the cleaning of dishes, equipment, and work area; and in the storage and disposal of waste. The facility shall provide storage of food for emergency use for a minimum of four calendar days.

(5) All dishes and utensils shall be washed in an automatic dishwasher or by the use of manual dishwashing procedures.

(A) A three-compartment sink shall be used if washing, rinsing and sanitizing of utensils and equipment is done manually; or a two-compartment sink may be utilized if single service tableware is provided, or when an approved detergent sanitizer is used.

(B) Cleaning and sanitizing may be done by spray-type or immersion dishwashing machines or by any other type of machine or device if it is demonstrated that it thoroughly cleans and sanitizes equipment and utensils either by chemical or mechanical sanitization.

(6) Sanitary hand washing and drying provisions shall be provided in the kitchen area and shall include soap, water and individual disposable towels.

(e) Social services/pastoral care. Services to meet identified social, spiritual, and emotional needs shall be offered to the resident. Services may also be available to the resident's family, responsible party, and significant other persons. Acceptance of these services will be at the option of the resident.

(f) Personal care services.

(1) The facility shall provide personal care services in accordance with the individualized needs of each resident.

(2) Personal care services shall include normal activities of daily, and may include:

(A) assistance with their medications;

(B) assistance with hygiene;

(C) assistance with dressing;

(D) assistance with ambulation; and

(E) emotional support.

(g) Laboratory services.

(1) A facility that provides laboratory services shall comply with the Clinical Laboratory Improvement Amendments of 1988 (CLIA 1988), in accordance with the requirements specified in 42 Code of Federal Regulations (CFR), Chapter IV, Part 493, §§493.1-493.1780. CLIA 1988 applies to all facilities with laboratories that examine human specimens for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings.

(2) The facility shall ensure that all laboratory services provided to its residents through a contractual agreement are performed in a facility certified in the appropriate specialties and subspecialties of service in accordance with the requirements specified in 42 CFR, Chapter IV, Part 493 to comply with CLIA 1988.

§125.33. Resident Rights.

(a) General. The facility shall promote and protect the rights of all residents. Policies that ensure resident rights shall be adopted, implemented and enforced. The policies shall include:

(1) the right of the resident to considerate and respectful care:

(A) the care of the resident includes consideration of the psychosocial, spiritual, and cultural variables that influence the perceptions of illness; and

(B) the care of the dying resident optimizes the comfort and dignity of the patient;

(2) the right of the patient, in collaboration with his or her physician, to make decisions involving his or her health care;

(3) the right of the resident to formulate advance directives and to appoint a surrogate to make health care decisions on his or her behalf to the extent permitted by law:

(A) a facility shall have in place a mechanism to ascertain the existence of, and, as appropriate, assist in the development of advance directives at the time of the resident's admission;

(B) the provision of care shall not be conditioned on the existence of an advance directive; and

(C) an advance directive(s) shall be in the resident's record and shall be reviewed periodically with the patient or surrogate decision maker if the patient has executed an advance directive;

(4) the right of the resident, within the limits of law, to personal privacy and confidentiality of information;

(5) the right to receive care in a safe setting:

(A) all accidents, whether or not they result in injury, and any unusual incidents or abnormal events, including allegations of mistreatment of residents by staff, personnel, or visitors, shall be investigated by the facility; and

(B) documentation shall be maintained in separate administrative records, to be filed in the facility director's office.

(6) the right to have unlimited freedom to move to and from the facility;

(7) the right to only be discharged from the facility for reasons specified in the admission policies and to have due notification;

(8) the right to keep and maintain his or her personal belongings in his or her possession:

(A) within 72 hours of admission, the facility must prepare a written inventory of the personal property a resident brings to the facility (inventory of the resident's clothing is not required);

(B) if requested by the resident or responsible party, the inventory shall be updated; and

(C) the facility shall have a mechanism to protect resident clothing.

(9) the right to keep and maintain his or her own finances;

(10) the right to participate in, or abstain from, religious observances;

(11) the right to receive and send mail unopened and without undue delay; and

(12) the right to receive visitors at reasonable hours, within reasonable limitations, as may be required by the facility in its operation policies.

(b) Rights of the elderly. Rights of the elderly specified in Human Resources Code, Title 6, Chapter 102, shall apply to residents 60 years of age or older.

(c) Abuse, neglect and exploitation. The facility shall adopt, implement and enforce policies which ensure that residents are protected from abuse, neglect and exploitation.

(1) Reporting requirements.

(A) Abuse or neglect of a child, as defined in §1.204(a) and (b) of this title (relating to Investigations of Abuse, Neglect, or Exploitation of Children or Elderly or Disabled Persons), which occurs in a facility shall be reported to the Texas Department of Health (department).

(B) Abuse, neglect or exploitation of an elderly or disabled person, as defined in §1.204(a) and (b) of this title, which occurs in a facility shall be reported to the department.

(2) Investigations.

(A) Submission of complaints. A complaint alleging abuse, neglect or exploitation may be submitted in writing or verbally to the Health Facility Licensing and Compliance Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199, telephone, (888) 973-0022.

(B) Investigations by the department. A complaint containing allegations of abuse, neglect or exploitation as defined in §1.204(a) and (b) of this title shall be investigated by the department.

(C) Allegations of abuse, neglect or exploitation which are not under the jurisdiction of the department will be referred to law enforcement agencies or other agencies, as appropriate.

§125.34. Resident Records.

(a) The facility shall maintain for each resident admitted, a separate record with all entries kept current, dated and signed by the recorder. The record shall be accurately written, promptly completed, properly stored and filed, and accessible. At a minimum, the record shall include:

(1) identification data. The facility shall secure at the time of admission appropriate identifying information, including full name; sex; date of birth; usual occupation; social security number; family/friend name, address, and telephone number; and physician names and telephone numbers including emergency numbers;

(2) medical history and physical exam reports, if available;

(3) any physician orders and progress notes, if available;

(4) any documentation of the resident's change in health condition requiring emergency procedures, and health services provided by facility personnel;

(5) other documents or reports related to the care of the resident as required by facility policy;

(6) if appropriate, documentation of nursing services provided and nursing staff observation as required by facility policy; and

(7) a list of medications the resident is taking.

(b) The facility director shall be responsible for the organization and management of the resident file.

(c) The facility will protect the resident file against loss, damage, destruction, and unauthorized use by:

(1) safeguarding the confidentiality of the resident file and allowing access or release only as specifically allowed by federal or state laws;

(2) maintaining files in an organized manner and filing them using an organized system;

(3) recording entries in ink, computer, or typewritten format and keeping original reports and records; and

(4) storing files in a lockable area during non-use and after resident's discharge.

(d) Resident files must be retained for at least five years after services end. In the case of a minor, the resident file must be retained for at least three years after the minor reaches majority under state law.

(e) The facility may not destroy resident files that relate to any matter that is involved in litigation if the facility knows the litigation has not been finally resolved.

§125.35. Residential AIDS Hospice Designation.

(a) General. A special care facility designated as a residential AIDS hospice shall meet the standards of this section. These standards are in addition to the other standards described in this chapter that apply to special care facilities.

(b) Service requirements.

(1) Palliative care. The facility shall provide palliative care that is reasonable and necessary to meet the needs of a resident and the management of the resident's terminal illness and related conditions.

(2) Support services. Support services shall be available to both the resident and the family. Support services shall:

(A) include social, spiritual and emotional care provided to a resident and the family; and

(B) be under the supervision of a qualified individual who may be a person with a master's degree in social work, an accredited or ordained member of the clergy, or other individual with appropriate training and experience.

(3) Counseling services. Counseling services shall be available to the resident and the family. If provided, counseling services shall be identified as a need in the resident's plan of care described in subsection (c) of this section.

(4) Bereavement services. Bereavement services shall be available to the family. The provision of bereavement services shall be:

(A) provided in an organized program under the supervision of a qualified person who may be a person with a master's in social work, an accredited or ordained member of the clergy, or other individual with appropriate training and experience;

(B) available to families for up to one year following the death of the resident; and

(C) identified as a need for the family in the resident's plan of care described in subsection (c) of this section.

(c) Plan of care.

(1) An interdisciplinary team shall develop an individual plan of care for each resident receiving hospice services.

(A) The interdisciplinary team shall consist of the resident, a physician, a registered nurse and other appropriate members who are involved with the resident's care.

(B) Members of the interdisciplinary team may also include a volunteer, an employee of the facility, an individual under contract with facility, or an employee or representative of a home and community support services agency employed by the resident to provide services.

(C) The interdisciplinary team shall review and revise the resident's plan of care as needed based on changes in the resident's needs, but not less than once a month.

(2) The plan of care shall identify the need for counseling and bereavement services, as appropriate.

(3) A physician shall conduct a clinical and medical review of the care and services provided to a resident receiving hospice services. The physician conducting the review shall serve as a member of the interdisciplinary team described in paragraph (1) of this subsection. The physician may be an employee, a volunteer, or a contracted consultant to the facility.

(d) Designation process. The department must approve a special care facility's designation as a residential AIDS hospice prior to the facility's implementation of hospice services.

(1) A special care facility may request designation as a residential AIDS hospice on the initial application form, or by submitting a written request to the department at any time during the licensing period.

(2) The department will evaluate the facility's compliance with subsections (a) (c) of this section prior to approving the residential AIDS hospice designation. This evaluation may be accomplished through a presurvey conference with review of required policies and documents or by means of an onsite inspection.

(3) The department will send a written notice to the facility regarding the approval or denial of the residential AIDS hospice designation. If denied, the written notice will state the deficient items that resulted in the denial of the application. The facility may submit additional information and request reconsideration of the application.

(4) The facility may withdraw the residential AIDS hospice designation by submitting a written request to the department. The request shall include the effective date of withdrawal.

§125.36. Criminal History and Nurse Aide Registry Checks of Employees and Applicants for Employment.

(a) As used in this section, an unlicensed applicant or employee excludes licensed health professionals. A licensed health professional is an individual who is authorized and holds a license issued by the State of Texas to practice in the health care field. This term "licensed health professional" includes, but is not limited to, a physician, physician assistant, advanced practice registered nurse, registered nurse, licensed vocational nurse, social worker, counselor, dietitian, pharmacist, or psychologist.

(b) Each facility shall comply with the provisions of Health and Safety Code, Chapter 250 (relating to Nurse Aide Registry and Criminal History Checks of Employees and Applicants for Employment in Certain Facilities Serving the Elderly, Persons with Disabilities, or Persons with Terminal Illnesses).

(c) The facility shall obtain criminal history record information from the Department of Public Safety (DPS) for all unlicensed applicants for employment.

(1) A facility shall obtain the information directly from the DPS or by paying a private agency to obtain criminal history record information directly from the DPS.

(2) If an applicant has been convicted of an offense under Health and Safety Code, §250.006 (relating to Convictions Barring Employment), the facility shall determine whether the conviction bars the applicant from employment or whether the conviction is a contraindication to employment with the patients the facility serves.

(3) If a facility determines that a conviction bars an applicant from employment in a facility, or is a contraindication to employment, the facility shall notify the applicant.

(4) A facility shall not employ an unlicensed applicant who has been convicted of an offense listed in Health and Safety Code, §250.006, if the facility determines that the conviction bars employment or is a contraindication to employment with the patients the facility serves.

(d) Before a facility employs any unlicensed applicant, the facility shall search the nurse aide registry (NAR) and the employee misconduct registry (EMR) by calling the toll-free number, 1-(800) 452-3934, or by using the Employability Status Search website at <http://www.dads.state.tx.us/providers/employability/eseach.cfm>.

(1) The facility shall receive the search results and verify that an unlicensed applicant is not designated in the NAR or the EMR as having a finding concerning abuse, neglect, or mistreatment of a patient, or misappropriation of a patient's property before employing the applicant.

(2) A facility shall not employ a nurse aide until the facility verifies that the applicant is listed in the NAR and verifies that the applicant is not designated in the NAR or the EMR as having a finding concerning abuse, neglect, or mistreatment of a patient of a facility, or misappropriation of a patient's property.

(e) In addition to the initial verification of employability, a facility shall comply with the following requirements for all unlicensed employees:

(1) conduct criminal history checks;

(2) if the employee is a nurse aide, search the NAR annually as set forth in subsection (c) of this section to determine whether the employee is listed in the NAR;

(3) search the NAR and the EMR annually as set forth in subsection (d) of this section to determine whether any employee is designated in the NAR or the EMR as having a finding concerning abuse, neglect, or mistreatment of a patient, or misappropriation of a patient's property;

(4) maintain in each unlicensed employee's personnel file a copy of the results of the search conducted under this subsection; and

(5) provide written information about the EMR to all unlicensed employees, including information that a person may not be employed if the person is listed in the EMR.

(f) A facility shall notify any employee if the facility determines that a conviction bars the employee from employment in a facility under Health and Safety Code, §250.006, or is a contraindication to employment.

(g) A facility shall immediately discharge any employee who is designated in the NAR and the EMR as having committed an act of abuse, neglect, or mistreatment of a patient of a facility, or misappropriation of a patient's property.

(h) A facility shall immediately discharge any employee whose criminal history check reveals conviction of a crime that bars employment under Health and Safety Code, §250.006, or that the facility determines is a contraindication to employment.

(i) In an emergency that requires immediate employment, a facility may hire an applicant on a temporary or interim basis before obtaining the results of a criminal conviction check.

(1) The facility shall justify and document the emergency.

(2) The facility shall verify that the applicant is not designated in the NAR or the EMR as having a finding concerning abuse, neglect, or mistreatment of a patient of a facility, or misappropriation of a patient's property.

(3) The facility shall verify that a nurse aid applicant is listed in the NAR.

(4) The facility shall request the DPS criminal conviction check within 72 hours of employment.

(5) The facility shall ensure that the applicant/employee has no direct contact with a patient until the facility obtains the person's criminal history record information and verifies the person's employability.

(j) The facility shall ensure that the criminal history records are used exclusively by the facility on behalf of the applicant or employee who is the subject of the records.

(1) All criminal records and reports and the information they contain are privileged information.

(2) The facility shall ensure that this information is not released or otherwise disclosed to any person or agency except on court order or with the written consent of the person being investigated.

(k) A person commits an offense if the person releases or otherwise discloses any information received under this chapter except as allowed in subsection (j) of this section. An offense under this section is a Class A misdemeanor.

(l) A facility or an officer or employee of a facility is not civilly liable for failure to comply with this chapter if the facility makes a good faith effort to comply.

Subchapter D. Waivers.

§125.51. Waivers, Modifications, and Variations to Provisions.

(a) Physical plant waiver. On the request of the facility, the department may grant a waiver or modification for certain provisions of the physical plant and environment that, in the opinion of the department, would be impractical for the facility to meet. Waivers will not be granted for fire safety requirements required by the National Fire Protection Association (NFPA). The facility's written request must specify the specific provision for which waiver is requested.

(b) Facility operation waiver. On the request of the facility, the department may grant a waiver or approve a variation for certain provisions of facility operation that, in the opinion of the department, would be impractical or inappropriate for the facility to meet. The facility's written request must specify the specific provision for which waiver is requested.

(c) Consideration. In considering the waiver or modification request, the department shall consider information submitted by the facility and whether the waiver or modification:

(1) will adversely affect the health and safety of the facility patients, employees, or the general public;

(2) if not granted, would impose an unreasonable hardship on the facility in providing adequate care for patients;

(3) will facilitate the creation or operation of the facility; and

(4) is appropriate when balanced against the best interests of the individuals served or to be served by the facility.

(d) Supporting documentation. The department may request written documentation from the facility to support the waiver or modification including, but not limited to:

(1) a statement addressing each of the criteria in subsection (c) of this section;

(2) evidence of approval by the local building and fire authorities;

(3) evidence of provisions in the Act or this chapter which will mitigate any adverse effect of the waiver or modification; and

(4) evidence of any mitigating act in excess of the Act or this chapter which will be used by the hospital to offset any adverse effect of the waiver or modification.

(e) Written recommendation. The director shall submit a written recommendation for granting or denying the waiver to the commissioner of health (commissioner).

(f) Granting order. If the director recommends that the waiver or modification be granted, the commissioner may issue a written order granting the waiver or modification.

(g) Denial of order. If the director recommends that the waiver or modification be denied, the commissioner may issue a written order denying the waiver or modification.

(h) File documentation. The licensing file for the facility maintained by the Texas Department of Health shall contain a copy of the request, the written recommendation of the director, and the order of the commissioner. The facility shall also maintain a copy of the order.

Subchapter E. Inspections and Investigations.

§125.61. Inspection and Investigation Procedures.

(a) Routine inspections. The department may conduct an inspection of a facility prior to the issuance or renewal of a license.

(b) Complaint investigations.

(1) Complaint investigations are unannounced and are conducted to ensure compliance of the facility with the provisions of Health and Safety Code (HSC), Chapter 248, this chapter, special license conditions, or orders of the commissioner of health (commissioner).

(2) Complaints received by the department concerning abuse, neglect, or exploitation will be investigated in accordance with §125.33(c)(2) of this title (relating to Resident Rights).

(3) If an individual wishes to report an alleged violation of the Act or this chapter, the individual shall notify the department in persons, by telephone at (888) 973-0022, by facsimile or by writing the department at Health Facility Licensing and Certification Division, 1100 West 49th Street, Austin, Texas 78756-3199, or electronic medium.

(c) General.

(1) The department may make any survey, inspection or investigation that it considers necessary. A department representative(s) may enter the premises of a facility at any

reasonable time to make an inspection or an investigation to ensure compliance with or prevent a violation of HSC, Chapter 248, this chapter, an order or special order of the commissioner, a special license provision, a court order granting injunctive relief, or other enforcement procedures. Ensuring compliance includes permitting photocopying of any records or other information by or on behalf of the department as necessary to determine or verify compliance with the statute or rules adopted under the statute.

(2) The department representative(s) is entitled to access to all books, records, or other documents maintained by or on behalf of the facility to the extent necessary to enforce HSC, Chapter 248, this chapter, an order or special order of the commissioner, a special license provision, a court order granting injunctive relief, or other enforcement procedures. The department shall maintain the confidentiality of facility records under federal or state law.

(3) By applying for or holding a facility license, the facility consents to entry and inspection or investigation of the facility by the department in accordance with HSC, Chapter 248, and this chapter.

(d) Inspection and investigation protocol.

(1) The department representative(s) shall hold a conference with the facility director or designee before beginning the on-site inspection or investigation to explain the nature, scope, and estimated time schedule of the inspection or investigation.

(2) The department representative(s) may conduct interviews with any person with knowledge of the facts.

(3) The department representative(s) shall inform the facility director or designee of the preliminary findings of the inspection or investigation and shall give the person a reasonable opportunity to submit additional facts or other information to the department representative in response to those findings.

(4) Following an inspection or investigation of a facility by the department, the department representative(s) shall hold an exit conference with the facility director or designee and other invited staff and provide the following information:

(A) the nature of the inspection or investigation;

(B) an overview of the findings regarding alleged violations or deficiencies identified by the department representative(s);

(C) identity of any records that were duplicated; and

(D) if there are no deficiencies found, a verbal statement indicating this fact.

(5) If deficiencies are cited, the facility shall provide a plan of correction (POC) to the department either at the time of the exit conference or within 10 calendar days following the facility's receipt of a statement of deficiencies (SOD).

(A) The POC shall include the facility's planned action to correct the deficiency and the expected completion date. The POC shall be specific and realistic, stating exactly how the deficiency was or will be corrected. The director or their designee must sign the POC.

(B) A facility may refute the accuracy of a cited deficiency or survey finding.

(i) Objections may be recorded on the SOD form, however, a POC is still required to be submitted; or

(ii) A facility may record an objection on the SOD form and not submit a POC, however, the facility must submit a convincing argument and documented evidence that the cited deficiency or survey finding is invalid.

(iii) Should the department agree with the supporting documentation, the cited deficiency or survey finding shall be deleted from the SOD form.

(iv) Should the department sustain the cited deficiency, the department will inform the facility in writing that a POC is required. The facility shall submit a POC to the department within 10 calendar days of the facility's receipt of the department's decision.

(6) The department representative(s) shall inform the director or their designee of the facility's right to an informal administrative review when there is disagreement with the representative's findings and recommendations or when additional information bearing on the findings is available.

(7) If the department determines that the POC is not acceptable, the department shall notify the facility in writing that it is responsible to provide the department an acceptable POC. The facility shall submit the new POC within 10 calendar days of the facility's receipt of the department's written notice.

(8) The facility shall come into compliance by the completion date provided on the POC.

(9) The department may verify the correction of deficiencies either in writing or by an on-site survey or investigation.

§125.62. Complaint Against a Texas Department of Health Representative.

(a) A facility may register a complaint against a department representative who conducts a survey or investigation in accordance with this section. The complaint must be registered within 10 working days of the facility's receipt of the statement of deficiencies (SOD).

(b) A complaint against a department representative shall be registered with the Health Facility Licensing and Compliance Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199, telephone (512) 834-6650 or (888) 973-0022.

(1) A complaint against a department representative which is received by telephone will be referred within two working days to the appropriate supervisor. The caller will be requested to submit the complaint in writing.

(2) When a complaint is received in writing, it will be forwarded to the appropriate supervisor within two working days. Within 10 calendar days of receipt of the complaint, the Health Facility Licensing and Compliance Division will inform the complainant in writing that the complaint has been forwarded to the appropriate supervisor.

(3) Within 10 calendar days of the supervisor's receipt of the complaint, the supervisor will notify the complainant in writing that an investigation will be done.

(4) The supervisor will review the documentation in the survey packet and interview the department representative identified in the complaint to obtain facts and assess the objectivity of the department representative in the department representative's application of this chapter during the inspection or investigation.

(5) The supervisor shall offer to meet with the complainant to resolve the issue. The department representative identified in the complaint will participate in the discussion. The resolution meeting may be conducted at the division's office or during an on-site follow-up visit to the facility.

(6) Changes and deletions will be made to the SOD, if necessary.

(7) The supervisor will notify the complainant in writing of the status of the investigation within 30 calendar days of the date the supervisor received the complaint.

(8) The supervisor will forward all final documentation to the director of the Health Facility Licensing and Compliance Division and notify the complainant of the results.

Subchapter F. Enforcement.

§125.71. License Denial, Suspension, Revocation and Probation.

(a) The department may deny, suspend, suspend on an emergency basis, or revoke a license if the applicant or facility fails to comply with any provision of the Act or this chapter.

(b) The department may take action under subsection (a) of this section for fraud, misrepresentation, or concealment of a material fact on any documents required to be submitted to the department or required to be maintained by the facility pursuant to the provisions of this chapter.

(c) The department may suspend or revoke an existing valid license, or disqualify a person from receiving a license because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of the ownership or operation of a facility.

(1) In determining whether a criminal conviction directly relates, the department shall consider:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for requiring a license to engage in the occupation;

(C) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.

(2) In addition to the factors that may be considered under paragraph (1) of this subsection, the department, in determining the present fitness of a person who has been convicted of a crime, shall consider the provisions of Texas Occupations Code, §53.022 and §53.023 (relating to Ineligibility for License).

(3) The following felonies and misdemeanors directly relate because these criminal offenses indicate an ability or a tendency for the person to be unable to own or operate a facility:

(A) a violation of the Act;

(B) an offense involving moral turpitude;

(C) an offense relating to deceptive business practice;

(D) an offense of practicing any health-related profession without a required license;

(E) an offense under any federal or state law relating to drugs, dangerous drugs, or controlled substances;

(F) an offense under Title 5 of the Texas Penal Code involving a patient or client of a health care facility or agency; or

(G) an offense under various titles of the Texas Penal Code:

(i) Title 5 concerning offenses against the person;

(ii) Title 7 concerning offenses against property;

(iii) Title 9 concerning offenses against public order and decency;

(iv) Title 10 concerning offenses against public health, safety, and morals;

(v) Title 4 concerning offenses of attempting or conspiring to commit any of the offenses in this subsection; or

(H) other misdemeanors or felonies which indicate an inability or tendency for the person to be unable to own or operate a facility if action by the department will promote the intent of the Act, this chapter or Texas Occupations Code, §53.022 and §53.023.

(d) Upon a licensee's felony conviction, felony probation revocation, revocation of parole, or revocation of mandatory supervision, his license shall be revoked.

(e) If the department proposes to deny, suspend, or revoke a license, the director shall notify the applicant or the facility by mail of the reasons for the proposed action and offer the applicant or facility an opportunity for a hearing. The applicant or facility must request a hearing within 30 calendar days of receipt of the notice. The request must be in writing and submitted to the Health Facility Licensing and Compliance Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. A hearing shall be conducted pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, and the department's formal hearing procedures in Chapter 1 of this title (relating to Texas Board of Health). If the applicant or facility does not request a hearing, in writing, within 30 calendar days of receipt of the notice or does not appear at a scheduled hearing, the applicant or facility is deemed to have waived the opportunity for a hearing and the proposed action shall be taken. Receipt of the notice is presumed to occur on the tenth calendar day after the notice is mailed to the last

address known to the department unless another date is reflected on a United States Postal Service return receipt.

(f) The department may suspend or revoke a license to be effective immediately when the department has reasonable cause to believe the health and safety of persons are threatened. The department shall notify the facility of the emergency action by mail or personal delivery of the notice. If requested by the license holder, the department shall conduct a hearing, which shall be not earlier than ten calendar days from the effective date of the suspension or revocation. The effective date of the emergency action shall be stated in the notice. The hearing shall be conducted pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, and the department's formal hearing procedures in Chapter 1 of this title (relating to the Texas Board of Health).

(g) If a person violates a requirement of the Act or this chapter, the department may petition the district court to restrain the person from continuing the violation.

(h) In lieu of suspending or revoking the license, the department may schedule the facility for a probation period of not less than 30 days if the facility is found in repeated non-compliance and the facility's noncompliance does not endanger the health and safety of the public.

§125.72. Civil and Criminal Penalties.

(a) A license holder or person who violates the Act or any rule adopted by the board under the Act is liable for a civil penalty, to be imposed by a district court, of not more than \$1,000 for each day of violation.

(b) A person who knowingly establishes or operates a special care facility without a license issued under this Act commits an offense. An offense under this section is a Class B misdemeanor. Each day of a continuing violation constitutes a separate offense.

§125.73. Administrative Penalties.

(a) Imposition of penalty. The department may impose an administrative penalty on a person licensed under this chapter who violates the Act, this chapter, or order adopted under this chapter.

(b) Deposit of penalty. A penalty collected under this section shall be deposited in the state treasury in the general revenue fund.

(c) Contested case. A proceeding to impose the penalty is considered to be a contested case under Government Code, Chapter 2001.

(d) Amount of penalty.

(1) The amount of the penalty may not exceed \$1,000 for each violation, except for violations of §125.31(b)(6) of this title (pertaining to General Functions), which are limited to \$500. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The total amount of the penalty assessed for a violation continuing or occurring on separate days under this paragraph may not exceed \$5,000.

(2) In determining the amount of an administrative penalty assessed under this section, the department shall consider:

(A) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(B) the threat to health or safety caused by the violation;

(C) the history of previous violations;

(D) the amount necessary to deter a future violation;

(E) whether the violator demonstrated good faith, including when applicable whether the violator made good faith efforts to correct the violation; and

(F) any other matter that justice may require.

(e) Report and notice of violation and penalty.

(1) If the department initially determines that a violation occurred, the department will give written notice of the report by mail to the person alleged to have committed the violation.

(2) The notice must include:

(A) a brief summary of the alleged violation;

(B) a statement of the amount of the recommended penalty based on the factors listed in subsection (d)(2) of this section; and

(C) a statement of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(f) Penalty to be paid or hearing requested.

(1) Within 20 days after the date the person receives the notice sent under subsection (e) of this section, the person in writing may:

(A) accept the determination and recommended penalty of the department; or

(B) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(2) If the person accepts the determination and recommended penalty or if the person fails to respond to the notice, the commissioner of public health (commissioner) or the commissioner's designee by order shall approve the determination and impose the recommended penalty.

(g) Hearing.

(1) If the person requests a hearing, the commissioner or the commissioner's designee shall refer the matter to the State Office of Administrative Hearings (SOAH).

(2) As mandated by Health and Safety Code, §248.105(a), the SOAH shall promptly set a hearing date and give written notice of the time and place of the hearing to the person.

(A) An administrative law judge of the SOAH shall conduct the hearing.

(B) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the commissioner a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty.

(h) Decision by commissioner.

(1) Based on the findings of fact, conclusions of law, and proposal for a decision made by the administrative law judge under subsection (g)(2) of this section, the commissioner or the commissioner's designee by order may find that a violation has occurred and may impose a penalty or may find that no violation has occurred.

(2) The commissioner or the commissioner's designee shall give notice of the commissioner's order under paragraph (1) of this subsection to the person alleged to have committed the violation in accordance with Government Code, Chapter 2001. The notice must include:

(A) a statement of the right of the person to judicial review of the order;

(B) separate statements of the findings of fact and conclusions of law;
and

(C) the amount of any penalty assessed.

(i) Options following decision. Within 30 days after the date the order of the commissioner under subsection (h) of this section that imposes an administrative penalty becomes final, the person shall:

(1) pay the penalty; or

(2) appeal the penalty by filing a petition for judicial review of the commissioner's order contesting the occurrence of the violation, the amount of the penalty, or both.

(j) Stay of enforcement of penalty.

(1) Within the 30-day period prescribed by subsection (i) of this section, a person who files a petition for judicial review in accordance with subsection (i)(2) of this section may:

(A) stay enforcement of the penalty by:

(i) paying the penalty to the court for placement in an escrow account; or

(ii) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the commissioner's order is final; or

(B) request the court to stay enforcement of the penalty by:

(i) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(ii) sending a copy of the affidavit to the commissioner by mail.

(2) If the commissioner receives a copy of an affidavit under paragraph (1)(B) of this subsection, the commissioner may file with the court, within five days after the date the copy is received, a contest to the affidavit. In accordance with Health and Safety Code (HSC), §248.108(b), the court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

(k) Collection of penalty.

(1) If the person does not pay the penalty and the enforcement of the penalty is not stayed, the department may refer the matter to the attorney general for collection of the penalty.

(2) As provided by HSC, §248.109(b), the attorney general may sue to collect the penalty.

(l) Decision by court. A decision by the court is governed by HSC, §248.110, and provides the following.

(1) If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

(2) If the court does not sustain the finding that a violation occurred, the court shall order that no penalty is owed.

(m) Remittance of penalty and interest and release of supersedeas bond. The remittance of penalty and interest is governed by HSC, §248.111, and provides the following.

(1) If the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person within 30 days after the date that the judgment of the court becomes final.

(2) The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(3) The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

(n) Release of bond. The release of supersedeas bond is governed by HSC, §248.112, and provides the following.

(1) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond.

(2) If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

Subchapter G. Safety Requirements and Fire Protection.

§125.81. General Safety.

(a) The building must be kept in good repair. Electrical, heating and cooling must be maintained in a safe manner. The department may require the licensee to submit evidence to this effect, consisting of a report from the fire marshal, city or county building official having jurisdiction, licensed electrician, or a registered professional engineer.

(b) Use of electrical appliances, devices, and lamps, must be such as not to overload circuits or cause excessive lengths of extension cords.

(c) In facilities of 16 beds or less, all draperies and other window coverings in public or common areas, and in bedrooms and living units shall be flame resistant. In facilities of 17 beds or more, draperies shall be flame resistant, where smoking is permitted.

(d) In facilities of 17 beds or more, all floor carpet installed in public or common spaces shall be Class I or II based on the "Critical Radiant Flux" ratings. Proper documentation must be provided.

(e) Open flame heating devices are prohibited. All fuel burning heating devices must be vented. Working fireplaces are accepted if of safe design and construction and if screened or otherwise enclosed.

(f) There must be a least one telephone in the facility available to both staff and residents for use in case of an emergency. Emergency telephone numbers, including at least fire, police, ambulances, EMS, and poison control center, must be posted conspicuously at or near the telephone.

(g) An initial pressure test of facility gas lines from the meter must be provided. Additional pressure tests will be required when the facility has major renovations or additions where the gas service is interrupted. All gas heating systems must be checked prior to the heating season for proper operation and safety by persons who are licensed or approved by the State of Texas to inspect such equipment. A record of this service must be maintained by the facility. Any unsatisfactory conditions must be corrected promptly.

(h) Exterior and interior stairs must have handrails that are firmly secured to prevent falls.

(i) Cooling and heating must be provided for occupant comfort. Conditioning systems must be capable of maintaining the comfort ranges of 68 degrees Fahrenheit to 82 degrees Fahrenheit in resident-use areas. Heating, ventilating, and air conditioning (HVAC) equipment must comply with the provisions of National Fire Protection Association (NFPA) 90A, Standard for the Installation of Air Conditioning and Ventilating Systems, 1999 edition, or NFPA 90B, Standard for the Installation of Warm Air Heating and Air Conditioning Systems, 1999, as applicable. NFPA 90A requires automatic shut down upon activation of the fire alarm in HVAC systems of over 2,000 cubic feet per minute (CFM) capacity. All documents published by NFPA as referenced in these rules may be obtained by writing or calling the

NFPA at the following address or telephone number: National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169-7471 or (800) 344-3555.

(j) For existing facilities which were licensed prior to the effective date of these rules, illumination shall be provided to meet the needs of the residents and staff without eye strain or glare. Each resident bedroom shall have sufficient illumination for reading and general use. For new facilities, minimum illumination must be 10 foot-candles in resident rooms during the day and 20 foot-candles in corridors, staff stations, dining rooms, lobbies, toilets, bathing facilities, laundries, stairways and elevators during the day. Illumination requirements for these areas apply to lighting throughout the space and should be measured at approximately 30 inches above the floor anywhere in the room. Minimum illumination for medication preparation or storage areas, kitchen, and staff station desks must be 50 foot-candles during the day. Illumination requirements for these areas apply to the task performed and should be measured on the tasks.

(k) All buildings three floors or higher and in facilities that provide services, treatment, or social activities of floors above or below the level of discharge shall have a passenger elevator. The lowest level of discharge will be the first floor for determining floor level.

(l) Floor, ceiling, and wall finish materials must be complete and in place to provide a sanitary and structurally safe environment.

(m) All equipment requiring periodic maintenance, testing, and servicing must be reasonably accessible. Necessary equipment to conduct these services, such as ladders, specific tools, and keys, must be readily available on site. Access panels (20 inches x 20 inches minimum) must be provided for building maintenance and must be located for reasonable access to equipment or barriers installed in the attic or other concealed spaces.

(n) The facility shall implement procedures, in accordance with the standards and recommendations of Compressed Gas Association in its publication, Safe Handling of Compressed Gases in Containers, 1991 edition, that assure safe and sanitary use and storage of oxygen. Liquid oxygen containers must be certified by Underwriters Laboratory (UL) or other approved testing laboratory for compliance with NFPA 50, Standard for Bulk Oxygen Systems of Consumer Sites, 1996 edition. The facility is responsible for defining all potential hazards both graphically and verbally to all persons involved in the use of liquid oxygen and ensuring the liquid oxygen provider does also.

§125.82. Emergency Preparedness.

(a) Each SCF shall develop written plans for effective preparedness, mitigation, response, and recovery from disasters.

(b) The administration must have in effect and available to all personnel written copies of a plan for the protection of all persons in the event of fire and for their remaining in place,

for their evacuation to areas of refuge, and from the building when necessary. The plan must include special staff actions including fire protection procedure needed to ensure the safety of any resident and must be amended or revised when needed. All employees must be periodically instructed and kept informed with respect to their duties and responsibilities under the plan. A copy of the plan must be readily available at all times within the facility. This written plan must reflect the current evacuation capabilities of the resident or patient.

(c) The SCF must have written preparedness and response plan. Procedures to be followed in an internal or external disaster should be attached to the plan. The plan must address, at a minimum, the eight core functions of emergency management, which are: direction and control; warning (how the facility will be notified of emergencies and who they will notify); communication (with whom and by what mechanism); sheltering arrangements; evacuation (destinations, routes); transportation; health and medical needs; and resource management (supplies, staffing, emergency equipment, records). A copy of the plan must be provided to the local emergency management coordinator and should address those emergencies that could affect the facility. Information about the local emergency management coordinator may be obtained from the office of the local mayor or county judge.

§125.83. Fire Safety Requirements.

(a) Fire evacuation classification rating and National Fire Protection Association (NFPA) compliance. All documents published by NFPA as referenced in these rules may be obtained by writing or calling the NFPA, 1 Batterymarch Park, Quincy, MA 02169-7471 or (800)344-3555.

(1) An existing special care facility, which was licensed prior to the effective date of the rules, shall:

(A) comply, at a minimum, with the edition of the National Fire Protection Association 101, Code for Safety to Life from Fire in Buildings and Structures, 2000 edition (NFPA 101), under which it was initially licensed, or

(B) if classified as a health care occupancy, with NFPA 101, Chapter 19, 2000 edition; or

(C) if classified as an occupancy other than a health care occupancy, NFPA 101, Chapter 33; or

(D) if classified as an occupancy other than a health care occupancy, the applicable code as determined by the local fire authority.

(2) A new special care facility shall be classified as a Limited Care Facility (LCF) or a Residential Board and Care Facility (RBCF).

(A) A LCF, as the term is defined in §125.3(b)(1) of this title (relating to Occupancy Classification), shall be classified as a health care occupancy and shall comply with NFPA 101, Chapter 18.

(B) For an RBCF, as the term is defined in §125.3(b)(2) of this title, the fire evacuation classification rating shall be determined based on the evacuation capability of the residents. A RBCF shall be designated as having an evacuation capability of prompt or impractical.

(i) To be designated as prompt, all residents must be able to travel from their living unit to a central location, such as a lobby, living room or dining room area, on the level of the building where the fire exit to the outside of the facility is located, within a 13 minute period without continuous staff assistance. Elevators cannot be used as an evacuation route.

(ii) A RBCF that is not able to meet all criteria specified in clause (i) of this subparagraph will be designated as impractical.

(C) A RBCF with an evacuation capability of prompt shall be classified as a residential board and care occupancy, and must comply with NFPA 101, Chapter 32.

(D) A RBCF with an evacuation capability rating of impractical shall be classified as a health care occupancy and must comply with subparagraph (A) of this paragraph.

(b) Fire protection. Fire protection shall be provided in accordance with the requirements of NFPA 101, §12-7, and §125.91 of this title (relating to Construction Requirements). When required or installed, sprinkler systems for exterior fire exposures shall comply with NFPA 80A, Recommended Practice for Protection of Buildings from Exterior Fire Exposures, 1996 edition.

(c) Fire inspections.

(1) Annual inspection. Approval of the fire protection of a SCF by the local fire department shall be a prerequisite for licensure.

(2) Purpose of inspection. The purpose of these inspections shall be to ascertain and to cause to be corrected any conditions liable to cause fire or violations of any of the provisions or intent of these rules, or of any other applicable ordinances, which affect fire safety in any way.

(3) Hazardous or dangerous conditions or materials. Whenever any of the officers, members, or inspectors of the fire department or bureau of fire prevention find in any building or upon any premises dangerous or hazardous conditions or materials, removal or

remedy of dangerous conditions or materials shall be carried out in a manner specified by the head of the local fire department.

(4) Access for inspection. At all reasonable hours, the chief of the fire department, the chief of the bureau of fire prevention, or any of the fire inspectors may enter any building or premises for the purpose of making an inspection or investigation which may be deemed necessary under the provisions of these rules.

(d) Fire reporting. All occurrences of fire shall be reported to the local fire authority and shall be reported in writing to the director as soon as possible but not later than 10 calendar days following the occurrence. Any fire causing injury or death to a resident shall be reported within 24 hours of incident.

(e) Smoking rules. Each SCF shall adopt, implement and enforce a smoking policy. The policy shall include the minimal provisions of NFPA 101, §18.7.4, or §32.7.4.

(f) Fire extinguishing systems. Inspection, testing, and maintenance of fire-fighting equipment shall be conducted by each SCF.

(1) Water-based fire protection systems. All fire sprinkler systems, fire pumps, fire standpipe and hose systems, water storage tanks, and valves and fire department connections shall be inspected, tested and maintained in accordance with NFPA 25, Standard for the Inspection, Testing and Maintenance of Water-Based Fire Protection Systems, 1998 edition.

(2) Range hood extinguishers. Fire extinguishing systems for commercial cooking equipment, such as at range hoods, shall be inspected and maintained in accordance with NFPA 96, Standard for Ventilation Control and Fire Protection of Cooking Operations, 1998 edition.

(3) Portable fire extinguishers. Every portable fire extinguisher located in a SCF or upon SCF property shall be installed, tagged, and maintained in accordance with NFPA 10, Standard for Portable Fire Extinguishers, 1998 edition.

(A) Extinguishers in resident corridors must be spaced so that travel distance is not more than 75 feet. The minimum size of extinguishers must be either 2 1/2 gallon for water type or five pounds for ABC type. In large facilities, at least one portable Underwriters Laboratory or Factory Mutual-approved five-pound Class B:C dry chemical fire extinguisher, rechargeable type, is required in each laundry, kitchen and walk-in mechanical room.

(B) Extinguishers must be surface wall-mounted or recessed in an approved cabinet where they are not subject to physical damage or dislodgement.

(g) Fire protection and evacuation plan. A plan for the protection of patients in the event of fire and their evacuation from the building when necessary shall be formulated according to NFPA 101, §18.7, or §32.7. Copies of the plan shall be available to all staff.

(1) Posting requirements. An evacuation floor plan shall be prominently and conspicuously posted for display throughout the SCF in public areas that are readily visible to patients, residents, employees, and visitors.

(2) Annual training. Each SCF shall conduct an annual training program for instruction of all personnel in the location and use of fire-fighting equipment. All employees shall be instructed regarding their duties under the fire protection and evacuation plan.

(h) Fire drills. The SCF shall conduct fire drills on a regular basis.

(1) For existing facilities which were licensed prior to the effective date of these rules, fire drills shall be conducted at least quarterly.

(2) New facilities shall conduct fire drills as follows:

(A) A LCF shall conduct fire drills quarterly for each shift.

(B) A RBCF shall conduct fire drills quarterly with not less than two drills conducted during the night when residents are sleeping.

(i) The drills may be announced in advance to the residents.

(ii) The drills shall involve the residents, family, and staff in accordance with the emergency plan.

(iii) Residents shall be informed of evacuation procedures and locations of exits.

(3) All fire drills shall be documented on a form. There shall be an evaluation of each drill with respect to the fire plan.

(4) The fire drill for a new facility classified as a LCF or a RBCF shall include communication of alarms, and use of fire-fighting equipments. The LCF drill may include simulation of evacuation of patients.

(5) When drills are conducted between 9:00 p.m. and 6:00 a.m., a coded announcement may be used instead of audible alarms in a LCF.

(i) Fire alarm system.

(1) For existing facilities which were licensed prior to the effective date of these rules, a fire alarm system must be provided only if required by local code, or under the applicable NFPA 101 occupancy category under which the facility was initially licensed.

(2) For new facilities, all buildings used for resident care shall have an approved fire alarm system. Each fire alarm system shall be installed and tested in accordance with NFPA 101, §9.6, 1999 edition.

(j) System for communicating an alarm of fire. A reliable communication system shall be provided as a means of reporting a fire to the fire department. This is in addition to the automatic alarm transmission to the fire department, required by NFPA 101, §§18.3.4.3, 32.2.3.4, or 32.3.3.4.

(k) Fire department access. As an aid to fire department services, every SCF shall provide the following.

(1) Driveways. The SCF shall maintain driveways, free from all obstructions, to main buildings for fire department apparatus use.

(2) Submission of plans. Upon request, the SCF shall submit a copy of the floor plans of the building to the local fire department officials.

(3) Outside identification. The SCF shall place proper identification on the outside of the main building showing the locations of siamese connections and standpipes as required by the local fire department services.

(l) Fire department protection. When a SCF is located outside of the service area or range of the public fire protection, arrangements shall be made to have the nearest fire department respond in case of a fire.

Subchapter H. Physical Plant and Construction Requirements.

§125.91. Construction Requirements.

(a) General. When local regulations are in effect and enforced governing the construction of a SCF, the SCF shall be constructed in accordance with the local regulations. An existing SCF may voluntarily comply with any of the following requirements.

(b) Existing special care facilities. In the absence of local regulations, an existing SCF shall comply with the following sections.

(1) Compliance.

(A) A licensed SCF which is licensed prior to the effective date of these rules is considered to be an existing licensed SCF and shall continue, at a minimum, to meet the licensing requirements under which it was originally licensed.

(B) In lieu of meeting the requirements in subparagraph (A) of this paragraph, an existing licensed SCF may, instead, comply with National Fire Protection Association 101, Code for Safety to Life from Fire in Buildings and Structures, 2000 edition (NFPA 101), Chapter 33, Existing Residential Board and Care Facilities, or Chapter 19, Existing Health Care Occupancies. All documents published by NFPA as referenced in these rules may be obtained by writing or calling the NFPA, 1 Batterymarch Park, Quincy, MA 02169-7471, or (800) 344-3555.

(2) Remodeling and additions. All remodeling, renovations, additions and alterations to or relocation of an existing SCF shall be done in accordance with the requirements for new construction in subsection (c) of this section. When existing conditions make such changes impractical, the department may grant a conditional approval of minor deviations from the requirements of subsection (c) of this section, if the intent of the requirements is met and if the care, safety and welfare of residents will not be jeopardized. The operation of the SCF, accessibility of individuals with disabilities, and safety of the residents shall not be compromised by a condition(s) that is not in compliance with this chapter.

(A) Building equipment alterations or installations. Any alteration or any installation of new building equipment, such as mechanical, electrical, plumbing, fire protection, or piped medical gas system shall comply with the requirements for new construction and may not be replaced, materially altered, or extended in an existing SCF until complete plans and specifications have been submitted to the department, and the department has reviewed and approved the plans and specifications in accordance with §125.94 of this title (relating to Preparation, Submittal, Review and Approval of Plans).

(B) Minor remodeling or alterations. Minor remodeling or alterations within an existing SCF which do not involve alterations to load bearing members and partitions, change functional operation, affect fire safety, add or subtract services, or involve any of the major changes listed in subparagraph of this paragraph are considered to be minor projects and require evaluation and approval by the department. An SCF shall submit a written request for evaluation, a brief description of the proposed changes, and sketches of the area being remodeled or altered. Based on such submittal, the department will evaluate and determine whether any additional submittals or inspections are required. The department will notify the SCF of its decision.

(C) Major remodeling or alterations. All remodeling or alterations which involve alterations to load bearing members or partitions, change functional operation, affect fire safety, or add or delete services, are considered major projects. A SCF shall comply with this subparagraph prior to beginning construction of major projects.

(i) Submittal of plans. Plans shall be submitted in accordance with §125.94 of this title for all major remodeling or alterations.

(ii) Phasing of construction in existing facilities. Projects involving alterations of or additions to existing buildings shall be programmed and phased so that on-site construction will minimize disruptions of existing functions.

(I) Access, exit access, fire protection and all necessary functions shall be maintained so that the safety of the occupants will not be jeopardized during construction.

(II) Construction, dust, objectionable fumes and vapor barriers shall be provided to separate areas undergoing demolition and construction from occupied areas.

(III) Temporary sound barriers shall be provided where intense, prolonged construction noises will disturb patients, residents or staff in the occupied portions of the building.

(3) Previously licensed SCF. A previously licensed SCF that has been vacated for 12 months or longer or used for other purposes shall comply with all the requirements for new construction contained in subsection (c) of this section in order to be licensed.

(c) Construction requirements for new SCFs.

(1) SCF location. A SCF may be a distinct separate part of an existing hospital. It may occupy an entire separate independent structure, or it may be located within another building such as an office building or commercial building.

(A) Accessibility to facility. The location of a proposed new SCF shall be easily accessible to service vehicles and fire protection apparatus.

(B) Means of egress. A SCF shall have at least two exits remotely located in accordance with NFPA 101, §§18.2.4.1, 32.2.2.1, and 32.3.2.4. When a required means of egress from the SCF is through another portion of the building, that means of egress shall comply with the requirements of NFPA 101 which are applicable to the occupancy of the other building. Such means of egress shall be open, available, unlocked, unrestricted, and lighted at all times during the SCF hours of operation.

(C) Hazardous locations.

(i) Underground and above ground hazards. A new SCF or an addition(s) to an existing SCF shall not be constructed within 125 feet of a hazardous location

or easement. Hazardous locations include underground liquid butane or propane, liquid petroleum or natural gas transmission lines, high-pressure lines, or under high voltage electrical lines.

(ii) Fire hazards. A new SCF shall not be built within 300 feet of above ground or underground storage tanks containing liquid petroleum or other flammable liquids used in connection with a bulk plant, marine terminal, aircraft refueling, bottling plant of a liquefied petroleum gas installation, or near other hazardous or hazard producing areas.

(iii) Health and safety hazards. A new SCF shall not be located in a building which, because of its location, physical condition, state of repair, or arrangement of facilities, would be determined hazardous to the health or safety of the resident.

(D) Undesirable locations.

(i) Nuisance producing sites. A new SCF shall not be located near nuisance producing sites such as industrial sites, feed lots, sanitary landfills, or manufacturing plants which produce excessive noise or air pollution.

(ii) Flood plains. Construction of a new SCF shall be avoided in designated flood plains. Where such is unavoidable, access and required SCF components shall be constructed at least one foot above the designated flood plain. This requirement also applies to new additions to an existing SCF or a portion of facility which has been licensed previously as a SCF, but which has been vacated or used for other purposes. This requirement does not apply to remodeling of an existing licensed SCF.

(iii) Cemeteries. A new SCF shall not be located near a cemetery in a manner that allows direct views of the cemetery from resident rooms, dining area, living areas or front entry of the facility.

(2) SCF site. The SCF site shall include paved roads, walkways, and parking in accordance with the requirements set out in this paragraph.

(A) Paved roads and walkways.

(i) Paved roads shall be provided within lot lines for access from public roads to the main entrance and to service entrances. Gravel-based roads are permitted in rural areas.

(ii) Finished surface walkways shall be provided for pedestrians. When public transportation or walkways serve the site, finished surface walkways or paved roads shall extend from the public conveyance to the building entrance.

(B) Parking.

(i) Off street parking shall be provided at the minimum ratio of one space for each four resident beds, one space for each daytime staff member, and one visitor space for every four resident beds, or per local code, whichever is more stringent.

(ii) Handicapped parking. Parking spaces for handicapped persons shall be provided in accordance with the Americans with Disabilities Act (ADA) of 1990, Public Law 101-336, 42 United States Code, Chapter 126, and Title 36 Code of Federal Regulations, Part 1191, Appendix A, Accessibility Guidelines for Buildings and Facilities.

(3) Building design and construction requirements. 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 governing building codes. Where there is no local governing building code, the International Building Code (IBC), 2000 edition, or the International Residential Code (IRC) shall govern: The IBC and IRC are published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041, telephone (703) 931-4533.

(A) General architectural requirements. All new construction, including conversion of an existing building to a SCF or establishing a separately licensed SCF within another existing building, shall comply with NFPA 101, Chapter 32, New Residential Board and Care Occupancies, or Chapter 18, New Health Care Occupancies, and this subchapter.

(i) Construction types for multiple building occupancy.

(I) Mixed occupancies. When a SCF is part of another occupancy, the SCF shall be separated from the other occupancy with a minimum of 2-hour fire rated construction, in accordance with NFPA 101, §18.1.2.3, and §32.1.2.

(II) Small facility. When a SCF is classified as a small facility for residential board and care occupancy, the SCF shall comply with NFPA 101, §32.2.1.3, Minimum Construction Requirements.

(III) Large facility. When a SCF is classified as a large facility for residential board and care occupancy, the SCF shall comply with NFPA 101, §32.3.1.3, Minimum Construction Requirements.

(IV) Multistory buildings. When a SCF is located in a multistory building of two or more stories, the entire building shall meet the construction requirements of NFPA 101, §32.3.1.3, or §18.1.6.2. A SCF shall not be located in a multistory building that does not comply with the minimum construction requirements of NFPA 101, §18.1.6.2. or §32.3.1.3.

(V) Single story buildings. When a SCF is part of a one-story building that does not comply with the construction requirements of NFPA 101,

§§18.1.6.1, 32.2.1.3, or 32.3.1.3. The SCF must be separated from the remainder of the building with a 2-hour fire rated construction. The designated SCF portion shall have the construction type upgraded to comply with NFPA 101, §§18.1.6.1, 32.2.1.3, or 32.3.3.1.3, as applicable.

(ii) Special design provisions. Special provisions shall be made in the design of a facility if located in a region where local experience shows loss of life or extensive damage to buildings resulting from hurricanes, tornadoes, or floods.

(iii) Foundations. Foundations shall rest on natural solid bearing if satisfactory bearing is available. Proper soil-bearing values shall be established in accordance with nationally recognized requirements. If solid bearing is not encountered at practical depths, the structure shall be supported on driven piles or drilled piers designed to support the intended load without detrimental settlement, except that one-story buildings may rest on a fill designed by a soils engineer. When engineered fill is used, site preparation and placement of fill shall be done under the direct full-time supervision of the soils engineer. The soils engineer shall issue a final report on the compacted fill operation and certification of compliance with the job specifications.

(iv) Physical environment. A physical environment that protects the health and safety of resident, personnel, and the public shall be provided in each facility. The physical premises of the facility and those areas of the facility's physical structure that are used by the residents (including all stairwells, corridors, and passageways) shall meet the local building and fire safety codes and the requirements of this chapter.

(v) Handicapped requirements. Special considerations that benefit handicapped residents, staff, and visitors shall be provided. Each SCF shall comply with the Americans with Disabilities Act (ADA) of 1990, Public Law 101-336, 42 United States Code, Chapter 126, and Title 36, Code of Federal Regulations, Chapter XI, Part 1191, Appendix A, Accessibility Guidelines for Buildings and Facilities.

(vi) Other regulations. Certain projects may be subject to other regulations, including those of federal, state, and local authorities. The more stringent standard or requirement shall apply when a difference in requirements exists.

(vii) Exceeding minimum requirements. Nothing in these sections shall be construed to prohibit a better type of building construction or otherwise safer conditions than the minimum requirements specified in these sections.

(viii) Equivalency. Nothing in these sections is intended to prevent the use of systems, methods, or devices of equivalent or superior quality, strength, fire resistance, effectiveness, durability, performance and safety to those prescribed by these sections, provided technical documentation which demonstrates equivalency is submitted to the department for approval.

(ix) Separate freestanding buildings (not for resident use). Separate freestanding buildings for non-patient use which are located at least 20 feet from the SCF building such as the heating plant, boiler plant, repair workshops, or general storage may be designed and constructed in accordance with other applicable occupancy classification requirements listed in NFPA 101.

(B) General detail requirements.

(i) Corridors. The minimum clear and unobstructed width of a public corridor shall be at least four feet in a RBCF. In a LCF, the minimum clear and unobstructed width of public corridor shall be at least eight feet.

(ii) Doors and windows.

(I) Door types. Doors at all openings between corridors and rooms or spaces subject to occupancy shall be swing type. Elevator doors are excluded from this requirement.

(II) Door swing. Doors, except doors to spaces such as small closets that are not subject to occupancy, shall not swing into corridors in a manner that might obstruct traffic flow or reduce the required corridor width. Large walk-in type closets are considered as occupied spaces.

(III) Labeled doors. Labeled fire doors shall be listed by an independent testing laboratory and shall meet the construction requirement for fire doors in NFPA 80, Standard for Fire Doors and Fire Windows, 1999 edition. Reference to a labeled door shall be construed to include labeled frame and hardware.

(IV) Glazing. Glass doors, sidelights, borrowed lights, and windows located within 12 inches of a door jamb or with a bottom-frame height of less than 18 inches above the finished floor shall be glazed with safety glass or plastic glazing material that will resist breaking and will not create dangerous cutting edges when broken. Similar materials shall be used for wall openings unless otherwise required for fire safety. Safety glass, tempered glass, or plastic glazing materials shall be used for shower doors, bath enclosures, interior windows, and doors (which have glazing).

(V) Operable windows. All operable windows shall be insect screened.

(iii) Ceiling heights. The minimum ceiling height shall be eight feet with the following exceptions. Ceilings in storage rooms, toilet rooms, and other minor rooms not meant for resident of public use shall be not less than seven feet six inches.

(iv) Toilet room accessories. Grab bars shall be provided at resident showers and tubs. The bars shall be one and one-half inches in diameter, shall have one and one-half inches clearance to walls, and shall have sufficient strength and anchorage to sustain a concentrated vertical or horizontal load of 250 pounds. Grab bars intended for use by the disabled shall also comply with ADA requirements.

(v) Hand drying. Provisions for hand drying shall be included at all hand washing facilities. Hot air dryers or individual paper units shall be provided and must be enclosed in such a way as to provide protection against dust or soil

(vi) Rooms with heat producing equipment. Rooms containing heat producing equipment such as mechanical and electrical equipment and laundry rooms shall be insulated and ventilated to prevent floors of any occupied room located above it from exceeding a temperature differential of 10 degrees Fahrenheit above the ambient room temperature.

(C) General finish requirements.

(i) Floor finishes.

(I) General. Floor materials shall be easily cleanable, wear resistant, and appropriate for the location involved. In areas subject to frequent wet cleaning methods, floor materials shall not be physically affected by germicidal and cleaning solutions. Floors that are subject to traffic while wet, such as shower areas, shall have non-slip surfaces.

(II) Threshold and expansion joint covers. Thresholds at doorways may not exceed 3/4 inch in height for exterior sliding doors or 1/2 inch for other type doors. Raised thresholds and floor level changes at accessible doorways shall be beveled with a slope no greater than 1:2. Expansion joint covers may not exceed 1/2 inch in height and shall have beveled edges with a slope no greater than 1:2.

(ii) Wall finishes. Wall finishes shall be smooth, washable, moisture resistant, and cleanable by standard housekeeping practices. Wall finishes shall be in compliance with the requirements of NFPA 101, §18.3.3, and §32.3.3.3, relating to flame spread.

(I) Finishes at plumbing fixtures. Wall finishes shall be water resistant in the immediate area of plumbing fixtures.

(II) Wet cleaning methods. Wall finishes in areas subject to frequent wet cleaning methods shall be impervious to water, tightly sealed; and without voids.

(iii) Ceiling finishes.

(I) General. All occupied rooms and spaces shall be provided with finished ceilings, unless otherwise noted. Ceilings that are a part of a rated roof and ceiling assembly or a floor-ceiling assembly shall be constructed of listed components (by a nationally recognized testing laboratory) and installed in accordance with the listing.

(II) Special requirements. Finished ceilings may be omitted in mechanical and equipment spaces, shops, and similar spaces unless required for fire-resistive purposes.

(iv) Floor, wall, and ceiling penetrations. Floor, wall, and ceiling penetrations by pipes, ducts, and conduits shall be tightly sealed to minimize entry of dirt particles, rodents, and insects. Joints of structural elements shall be similarly sealed.

(v) Cubicle curtains, draperies, and other hanging fabrics. Cubicle curtains, draperies, and other hanging fabrics shall be noncombustible or flame retardant and shall pass both the small scale and large scale test of NFPA 701, Standard Methods of Fire Tests for Flame-Resistant Textiles and Films, 1996 edition. Copies of laboratory test reports for installed materials shall be submitted to the department at the time of the final construction inspection.

(D) General mechanical requirements. This subparagraph contains requirements for mechanical systems; air-conditioning, heating and ventilating systems; steam and hot and cold water systems; plumbing fixtures; piping systems; and thermal and acoustical insulation.

(i) Cost. All mechanical systems shall be designed for overall efficiency and life cycle costing, including operational costs. Recognized engineering practices shall be followed to achieve the most economical and effective results except that in no case shall patient care or safety be sacrificed for conservation.

(ii) Equipment location. Mechanical equipment may be located indoors or outdoors (when in a weatherproof enclosure), or in a separate building(s).

(iii) Vibration isolation. Mechanical equipment shall be mounted on vibration isolators as required to prevent unacceptable structure-borne vibration. Ducts, pipes, etc., connected to mechanical equipment which is a source of vibration shall be isolated from the equipment with vibration isolators.

(iv) Performance and acceptance. Prior to completion and acceptance of the facility, all mechanical systems shall be tested, balanced, and operated to demonstrate to the design engineer or his representative that the installation and performance of these systems conform to the requirements of the plans and specifications.

(I) Material lists. Upon completion of the contract, the owner shall obtain from the construction contractor parts lists and procurement information with numbers and description for each piece of equipment.

(II) Instructions. Upon completion of the contract, the owner shall obtain from the construction contractor instructions in the operational use and maintenance of systems and equipment as required.

(v) Heating, ventilating, and air conditioning (HVAC) systems.

(I) Code requirements. All central HVAC systems shall comply with and shall be installed in accordance with the requirements of NFPA 90A, Standard for the Installation of Air Conditioning and Ventilating Systems, 1999 edition, or NFPA 90B, Standard for the Installation of Warm Air Heating and Air-Conditioning Systems, 1999 edition, as applicable and the requirements contained in this clause. Air handling units serving two or more rooms are considered to be central units.

(-a-) Temperature and humidity. The indoor design temperature shall be 75 degrees Fahrenheit with relative humidity of not less than 30 percent.

(-b-) Thermostat gauges. Thermostats shall be provided for all heating and cooling systems with an on and off switch.

(-c-) Air handling duct requirements. Fully ducted supply, return and exhaust air systems shall be provided for all resident care areas. Combination systems, utilizing both ducts and plenums for movement of air in these areas shall not be permitted.

(-1-) Protection of ducts penetrating fire and smoke partitions. Combination fire and smoke leakage limiting dampers (Class II) shall be installed in accordance with manufacturer's instructions for all ducts penetrating 1 and 2-hour rated fire and smoke partitions required by NFPA 101, §12-6.3.7, Subdivision of Building Space, (not required in SCFs meeting the provisions of NFPA 101, §12-6.3.7.3, Exception).

(-2-) Fail-safe installation. Combination smoke and fire dampers shall close on activation of the fire alarm system by smoke detectors installed and located as required by NFPA 72, Chapter 5, National Fire Alarm Code, 1996 edition; NFPA 90A, Chapter 4; and NFPA 101, §12-6.3.7; by activation of the fire sprinkler system; and upon loss of electrical power. Smoke dampers shall not close by fan shut-down alone. This requirement applies to all existing and new installations.

(-3-) Interconnection of air handling fans and smoke dampers. Air handling fans and smoke damper controls shall be interlocked so that closing of smoke dampers will not damage the ducts.

(-4-) Frangible devices. The use of frangible (non-resetting) devices for shutting smoke dampers shall not be permitted.

(-d-) Outside air intake locations. Outside air intakes shall be located at least 10 feet from exhaust outlets of ventilating systems, combustion equipment stacks, plumbing vents, or areas which may collect vehicular exhaust or other noxious fumes. (Prevailing winds and proximity to other structures may require other arrangements).

(-e-) Pressure relationship. Ventilation systems for a LCF shall be designed and balanced to provide pressure relationships contained in Table 1 of this title. For reductions and shut down of ventilation systems when a room is unoccupied, the provisions in Note 4 of Table 1 of this title shall be followed.

(-f-) Duct linings. Friable internal linings shall not be used in ducts, air terminal units, or other air system components. This requirement shall not apply to air terminal units and sound attenuators that have approved nonfriable coverings, e.g., foil facing, over such linings.

(II) Thermal and acoustical insulation for air handling systems. Asbestos containing insulation materials shall not be used.

(-a-) Thermal duct insulation. Air ducts and casings with outside surface temperature below the ambient dew point or temperature above 80 degrees Fahrenheit shall be provided with thermal insulation.

(-b-) Insulation in air plenums and ducts. When installed, linings in air ducts and equipment shall meet the Erosion Test Method described in Underwriters' Laboratories, Inc., Standard 181, Factory-Made Duct Materials and Air Duct Connectors. This document may be obtained from the Underwriters' Laboratories, Inc., 333 Pfingsten Road, Northbrook, IL 60062-2096.

(-c-) Insulation flame spread and smoke developed ratings. Interior and exterior insulation, including finishes and adhesives on the exterior surfaces of ducts and equipment, shall have a flame spread rating of 25 or less and a smoke developed rating of 50 or less as required by NFPA 90A, Chapters 2 and 3 and as determined by an independent testing laboratory in accordance with NFPA 255, A Standard Method of Test of Surface Burning Characteristics of Building Materials, 1999 edition.

(-d-) Friable insulation. Insulation of soft and spray-on types shall not be used where it is subject to air currents or mechanical erosion or where loose particles may create a maintenance problem or occupant discomfort.

(vi) Piping systems and plumbing fixture requirements. All piping systems and plumbing fixtures shall be designed and installed in accordance with the requirements of the International Plumbing Code (IPC), 2000 edition. The IPC is published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041, telephone (703) 931-4533.

(I) Water supply piping systems. Water supply piping systems shall be designed to supply water at sufficient pressure to operate all fixtures and equipment during maximum demand.

(-a-) Valves. Each water service main, branch main, riser, and branch to a group of fixtures shall be valved. Stop valves shall be provided at each fixture.

(-b-) Backflow preventers. Backflow preventers (vacuum breakers) shall be installed on hose bibs, laboratory sinks, janitor sinks, bedpan-flushing attachments, and on all other fixtures to which hoses or tubing can be attached. Connections to high hazard sources, e.g., x-ray film processors, shall be from a cold-water hose bibb through a reduced pressure principle type backflow preventer (RPBFP).

(-c-) Flushing valves. Flush valves installed on plumbing fixtures shall be of a quiet operating type, equipped with silencers.

(-d-) Water storage tanks. Water storage tanks shall be fabricated of corrosion-resistant metal or lined with noncorrosive material.

(II) Fire sprinkler systems. When provided, fire sprinkler systems shall comply with the requirements of NFPA 101, §7-7, Automatic Sprinklers and Other Extinguishing Equipment, and the requirements of this subclause. All fire sprinkler systems shall be designed, installed, and maintained in accordance with the requirements of NFPA 13, Standard for the Installation of Sprinkler Systems, 1999 edition, and shall be certified as required by §125.94 of this title (relating to Preparation, Submittal, Review and Approval of Plans).

(vii) Steam and hot water systems.

(I) Boilers. When provided, boilers shall have the capacity, based upon the net ratings published by the Hydronics Institute or another acceptable national standard, to supply the normal heating, hot water, and steam requirements of all systems and equipment.

(-a-) Valves. Supply and return mains and risers of cooling, heating, and process steam systems shall be valved to isolate the various sections of each system. Each piece of equipment shall be valved at the supply and return ends except that vacuum condensate returns need not be valved at each piece of equipment.

(-b-) Boiler certification. When required, the SCF shall ensure compliance with Texas Department of Licensing and Regulation, Boiler Section, Texas Boiler Law, 1995 (Health and Safety Code, Chapter 755, Boilers), which requires certification documentation for boilers to be posted on site at each boiler installation.

(II) Domestic hot water system. Hot water distribution system serving all resident care areas shall be under constant recirculation to provide continuous hot water at each hot water outlet.

(-a-) Capacity of water heating equipment. Water heating equipment shall have sufficient capacity to supply water for all residents' needs based on accepted engineering practices using actual number and type of fixtures and for heating, when applicable.

(-b-) Water temperature measurements. Water temperatures shall be measured at hot water point of use or at the inlet to processing equipment. Hot water temperature at point of use for residents, staff and visitors shall not exceed 110 degrees Fahrenheit.

(viii) Drainage systems. Building sewers shall discharge into a community sewage system. Where such a system is not available, a facility providing sewage treatment must conform to applicable local and state regulations.

(I) Above ground piping. Soil stacks and roof drains installed above ground within buildings shall be drain-waste-vent (DWV) weight or heavier and shall be: copper pipe, copper tube, cast iron pipe, or Schedule 40 polyvinyl chloride (PVC) pipe. In LCF schedule 40 polyvinylchloride (PVC) pipe is not permitted.

(II) Underground piping. All underground building drains shall be cast iron soil pipe, hard temper copper tube (DWV or heavier), acrylonitrile-butodiene-styrene (ABS) plastic pipe (DWV Schedule 40 or heavier), or PVC pipe (DWV Schedule 40 or heavier). Underground piping shall have at least 12 inches of earth cover or comply with local codes.

(ix) Thermal insulation for piping systems and equipment. Asbestos containing insulation materials shall not be used.

(I) Insulation. Insulation shall be provided for the following:

(-a-) boilers, smoke breeching, and stacks;

(-b-) steam supply and condensate return piping;

(-c-) hot water piping and all hot water heaters, generators, converters, and storage tanks;

(-d-) chilled water, refrigerant, other process piping, equipment operating with fluid temperatures below ambient dew point, and water supply and drainage piping on which condensation may occur. Insulation on cold surfaces shall include an exterior vapor barrier; and

(-e-) other piping, ducts, and equipment as necessary to maintain the efficiency of the system.

(II) Flame spread. Flame spread shall not exceed 25 and smoke development rating shall not exceed 50 for pipe insulation as determined by an independent testing laboratory in accordance with NFPA 255, Standard Method of Test of Surface Burning Characteristics of Building Materials, 1996 edition.

(x) Plumbing fixtures. Plumbing fixtures shall be made of nonabsorptive, acid resistant materials and shall comply with the requirements of the International Plumbing Code, 2000 edition, and this clause.

(I) Sink and lavatory controls. All lavatories used by residents and staff shall be trimmed with valves or electronic controls.

(II) Back flow or siphoning. All plumbing fixtures and equipment shall be designed and installed to prevent the back-flow or back-siphonage of any material into the water supply. The over-the-rim type water inlet shall be used wherever possible. Vacuum-breaking devices shall be properly installed when an over-the-rim type water inlet cannot be utilized.

(III) Floor drains or floor sinks. Where floor drains or floor sinks are installed, they shall be of a type that can be easily cleaned by removal of the cover. Removable stainless steel mesh shall be provided in addition to a grilled drain cover to prevent entry of large particles of waste which might cause stoppages.

(IV) Under counter piping. Under counter piping and above floor drains shall be arranged (raised) so as not to interfere with cleaning of the floor below the equipment.

(E) General electrical requirements. All electrical material and equipment, including conductors, controls, and signaling devices, shall be installed in compliance with applicable sections of the NFPA 70, National Electrical Code, 1999 edition, NFPA 99, 1999 edition, the requirements of this subparagraph; and as necessary to provide a complete electrical system. Electrical systems and components shall be listed by nationally recognized listing agencies as complying with available standards and shall be installed in accordance with the listings and manufacturer's instructions.

(i) All fixtures, switches, sockets, and other pieces of apparatus shall be maintained in a safe and working condition.

(ii) Extension cords and cables shall not be used for permanent wiring.

(iii) All electrical heating devices shall be equipped with a pilot light to indicate when the device is in service, unless equipped with a temperature limiting device integral with the heater.

(iv) All equipment, fixtures, and appliances shall be properly grounded in accordance with NFPA 70.

(v) Under-counter electrical installations shall be arranged (raised) to not interfere with cleaning of the floor below the equipment.

(vi) Installation testing and certification. The electrical installations, including grounding continuity, fire alarm, and communication systems, shall be tested to demonstrate that equipment installation and operation is appropriate and functional. A written record of performance tests on special electrical systems and equipment must show compliance with applicable codes and standards and shall be available to the department upon request.

(vii) Electrical safeguards. Shielded isolation transformers, voltage regulators, filters, surge suppressors, and other safeguards shall be provided as required where power line disturbances are likely to affect fire alarm components, data processing, equipment used for treatment, and automated laboratory diagnostic equipment.

(viii) Services and switchboards. Main switchboards shall be located in an area separate from plumbing and mechanical equipment and shall be accessible to authorized persons only. Switchboards shall be convenient for use, readily accessible for maintenance, away from traffic lanes, and located in dry, ventilated spaces free of corrosive or explosive fumes, gases, or any flammable material. Overload protective devices must operate properly in ambient temperatures.

(ix) Panelboard. Distribution panels containing circuit breakers that control lighting and power to essential and normal electrical circuits shall be located within the SCF.

(x) Wiring. When a SCF provides an essential electrical system all conductors for controls, equipment, lighting and power operating at 100 volts or higher shall be installed in metal or metallic raceways in accordance with the requirements of NFPA 70, Article 517. All surface mounted wiring operating at less than 100 volts shall be protected from mechanical injury with metal raceways to a height of seven feet above the floor. Conduits and cables shall be supported in accordance with NFPA 70, Article 300.

(xi) Lighting.

(I) In LCF lighting intensity for staff and patient needs shall comply with guidelines for health care facilities set forth in the Illuminating Engineering Society of North America (IES) Handbook published by the Illuminating Engineering Society of North America, 120 Wall Street, New York, NY 10025-4001.

(-a-) Consideration should be given to controlling light intensity and wavelength to prevent harm to the patient's eyes.

(-b-) Approaches to buildings and parking lots, and all spaces within buildings shall have fixtures that can be illuminated as necessary. All rooms including storerooms, electrical and mechanical equipment rooms, and all attics shall have sufficient artificial lighting so that all spaces shall be clearly visible.

(II) Means of egress and exit sign lighting intensity shall comply with NFPA 101, §§5-8, 5-9 and 5-10.

(III) Electric lamps which may be subject to breakage or which are installed in fixtures in confined locations when near woodwork, paper, clothing, or other combustible materials, shall be protected by wire guards, or plastic shields.

(xii) Receptacles.

(I) Appliances shall be grounded in accordance with NFPA 99, Chapter 9.

(II) A minimum of one duplex receptacle in each wall shall be installed in each work area or room other than storage or lockers. Each examination and work table shall have access to a minimum of two duplex receptacles.

(xiii) Grounding requirements. Fixed electrical equipment shall be grounded in accordance with the requirements of NFPA 99, §3-3.1.2, and NFPA 70, Article 517-13.

(xiv) Nurses calling systems.

(I) An audible voice two way communication nurse call system shall be provided in a SCF when it is classified as a LCF. The audible signal shall sound at a nurse station or similar control station.

(II) Distinct visible and audible signals shall be activated in the nurse's duty station, lounge, and workroom, soiled workroom and clean workroom.

(xv) Essential electrical system (EES). When SCF provides or requires an essential electrical system, the EES system shall comply with the requirements of NFPA 99, §3-5. A Type I EES shall be provided for LCF when patients require the use of life-support systems.

(xvi) Fire alarm system. A fire alarm system which complies with the requirements of NFPA 101, §§12-6.3.4, 32.2.3.4.1, 32.3.3.4.1, NFPA 70, Article 760; and NFPA 72, Chapter 3, shall be provided in each facility.

(I) Fire alarm system shall be installed by or under direct supervision of a fire alarm installer licensed by the State Fire Marshal.

(II) The SCF shall submit a copy of the Fire Alarm Installation Certificate (State Fire Marshal's form FML 009 040392) to the department for all new installations and for any material changes to the existing systems.

§125.92. Minimum Spatial Requirements for New Facilities.

(a) Administration and public suite.

(1) Entrance. Entrances shall be located at grade level, be accessible to individuals with disabilities, and protected against inclement weather. When an SCF is located on a floor above grade level, elevators shall be accessible and shall meet the requirements of §125.93 of this title (relating to Elevators).

(2) Waiting area. A waiting area or foyer shall be provided which includes having access to the following rooms and items:

(A) public toilet facilities; and

(B) telephone(s) for public use.

(3) General or individual office(s). An office(s) shall be provided for business transactions, records, and administrative and professional staff.

(4) Resident records area. Resident record storage space shall be located within a secure designated area under direct visual supervision of administrative staff.

(b) Dietary suite. In addition to the requirements of §125.32(d) of this title (relating to Resident Care and Services), the facility shall provide the following.

(1) Dining area for ambulatory patients, staff, and visitors. A dining area for ambulatory patients, staff, and visitors with a minimum floor space of 15 square feet per person to be seated shall be provided. The footage requirement does not include serving area. The dining area and service areas shall be separate from the food preparation and distribution area.

(2) Food service for a 50-bed residence or more. The food service for a 50-bed residence or more shall be provided by an on-site food preparation system or an off-site food service system or a combination of the two. The following minimum functional elements shall be provided on-site regardless of the type of dietary services.

(A) Receiving area. A receiving area shall be provided and shall have direct access to the outside for incoming dietary supplies or off-site food preparation service and shall be separate from the general receiving area. The receiving area shall contain a control station and an area for breakout for loading, unloading, uncrating, and weighing supplies. The entrance area to the receiving area shall be covered from the weather.

(B) Storage spaces. Storage spaces shall be convenient to receiving area and food preparation area and shall be located to exclude traffic through the food preparation area. Regardless of the type of food services provided, the facility shall provide storage of food for emergency use for a minimum of four calendar days.

(i) Storage space(s) shall be provided for bulk, refrigerated, and frozen foods.

(ii) A cleaning supply storage room or closet shall be provided to store non-food items that might contaminate edibles. This storage area may be combined with the housekeeping room.

(C) Counter space. Counter space shall be provided for food prep work, equipment, and an area to assemble trays for distribution for patient meals.

(D) Hand washing fixtures. Hand washing fixtures with hands-free operable controls shall be conveniently located at all food preparation area and serving areas.

(E) Cart distribution system. When a cart distribution system is provided, space shall be provided for storage, loading, distribution, receiving, and sanitizing of the food service carts. The cart traffic shall be designed to eliminate any danger of cross-circulation between outgoing food carts and incoming soiled carts, and the cleaning and sanitizing process. Cart circulation shall not be through food processing areas.

(F) Ware washing room. A ware washing room equipped with commercial type dishwasher equipment shall be located separate from the food preparation and serving areas. Space shall be provided for receiving, scraping, sorting, and stacking soiled tableware and for transferring clean tableware to the using areas. Hand washing facilities with hands-free operable controls shall be located within the soiled dish wash area. A physical separation to prevent cross traffic between “dirty side and “clean side” of the dish wash areas shall be provided.

(G) Three-compartmented sink. A three-compartmented sink of adequate size for pot washing shall be provided convenient to the food preparation area. It shall have direct access to the SCF waste collection and disposal facilities.

(H) Food waste storage room. A food waste storage room shall be conveniently located to the food preparation and ware washing areas but not within the food preparation area. It shall have direct access to the SCF waste collection and disposal facilities.

(I) Storage areas and sanitizing facilities. Storage areas and sanitizing facilities for garbage or refuse cans, carts, and mobile tray conveyors shall be provided. All containers for trash storage shall have tight-fitting lids.

(J) Housekeeping room. A housekeeping room shall be provided for the exclusive use of the dietary department. Where hot water or steam is used for general cleaning, additional space within the room shall be provided for the storage of hoses and nozzles.

(K) Dietary office. An office shall be provided for the use of the food service manager or the dietary service manager. In smaller facilities, a designated alcove may be located in an area that is part of the food preparation area.

(L) Toilet room. A toilet room shall be provided for the exclusive use of the dietary staff. Toilets shall not open directly into the food preparation areas, but must be in a close proximity to them. For larger facilities, a locker room or space for lockers shall be provided for staff belongings.

(M) Additional service areas, rooms and facilities. When an on-site food preparation system is used, in addition to the items required in subparagraphs (A) – (L) of this paragraph, the following service areas, rooms, and facilities shall be provided.

(i) When food preparation systems are provided, there shall be space and equipment for preparing, cooking, and baking.

(ii) A patient tray assembly and distribution area shall be located within close proximity to the food preparation and distribution areas.

(iii) When food is prepared on-site, the storage room shall be adequate to accommodate food for a seven-calendar day menu cycle.

(iv) An additional room(s) shall be provided for the storage of clean cooking wares, extra trays, flatware, plastic and paper products, and portable equipment.

(v) Provisions shall be made for drying and storage of pots and pans from the pot washing room or area.

(N) Details.

(i) Food storage shelves shall not be less than four inches above the finished floor and the space below the bottom shelf shall be closed in and sealed tight for ease of cleaning.

(ii) Operable windows and doors not equipped with automatic closing devices shall be equipped with insect screens.

(iii) Food processing areas in the central dietary kitchen shall have ceilings height not less than nine feet. In a facility classified as a RBCF, ceiling height shall not be less than eight feet. Ceiling mounted equipment shall be supported from rigid structures located above the finished ceilings.

(iv) Mirrors shall not be installed at hand washing fixtures in the food preparation areas.

(O) Finishes.

(i) Floors in areas used for food preparations, food assembly, and soiled and clean ware cleaning shall be water-resistance and greaseproof. Floor surfaces, including tile joints, shall be resistant to food acids.

(ii) Wall bases in food preparation, food assembly, soiled and clean ware cleaning and other areas which are frequently subject to wet cleaning methods shall be made integral and coved with the floor, tightly sealed to the wall, constructed without voids that can harbor insects, retain dirt particles, and be impervious to water.

(iii) In the dietary and food preparation areas, the wall construction, finishes, and trims, including the joints between the wall and the floor, shall be free of voids, cracks, and crevices.

(iv) The ceiling in food preparation and food assembly areas shall be washable. Smooth moisture impervious materials such as painted lay-in gypsum wallboard or vinyl faced acoustic tile in a metal grid.

(v) The ceiling in the soiled and clean ware cleaning area shall be monolithic from wall to wall (painted solid gypsum wallboard), smooth and without fissures, open joints, or crevices and with a washable and moisture impervious finish.

(c) Laboratory suite. When a laboratory is located on-site the following minimum items shall be provided:

(1) a room with work counter, utility sink, and storage cabinets or closet(s); and

(2) specimen collection facilities. For dip stick urinalysis, urine collection rooms shall be equipped with water closet and lavatory. Blood collection facilities shall have space for a chair, work counter and hand washing facilities.

(d) Laundry and linen storage and processing suite. Clean linen shall be available in a quantity sufficient to meet the needs of the residents. Clean linens shall be stored in clean linen storage areas.

(1) The SCF shall provide an area or room with a washer and dryer for resident use.

(2) In a facility classified as a large RBCF or a LCF, soiled and clean processing operations shall be separated and arranged to provide a one-way traffic pattern from soiled to clean areas. The following rooms and items shall be provided:

(A) a soiled linen processing room which includes areas for receiving, holding, sorting, and washing;

(B) a clean linen processing room which includes areas for drying, sorting, folding, and holding prior to distribution;

(C) supply storage cabinets in the soiled and clean linen processing rooms;

(D) hand washing facilities within the soiled linen processing room; and

(e) Medication room. The medication room shall be in compliance with the spatial and

security requirements under §125.32(c)(7)(D) of this title.

(f) Resident bedroom suite.

(1) Bedrooms shall be arranged and equipped for adequate delivery of services and for comfort and privacy.

(2) Useable bedroom clear floor space shall be not less than 80 square feet for a one-bed room and not less than 60 square feet (40 square feet where bassinets or cribs are used) per bed for a multiple-bed room. Larger rooms are recommended for those residents needing nursing care. A bedroom shall be not less than eight feet in the smallest dimension.

(3) No more than four beds shall be in any bedroom.

(4) In the bedrooms and for each resident there shall be a bed, chair, table, dresser, and closet space or wardrobe providing security and privacy for clothing and personal belongings.

(5) Each resident bedroom shall have at least one operable outside window that can be readily opened from the inside without the use of tools. The height of the windowsill shall not exceed 36 inches from the floor. Operable window sections may be restricted for security or safety reasons, but the required one operable section shall not be restricted to less than six inches. Each window shall be provided with a flame-retardant shade, curtain, or blind.

(6) All resident rooms shall open upon an egress corridor leading to an exterior exit either by stairway or a door opening to the exterior.

(7) All resident rooms shall be arranged for convenient and sheltered resident access to living or public areas, restrooms, and dining facilities.

(g) Resident toilet and bathing facilities.

(1) If the SCF houses both male and female residents, all bedrooms shall have separate private, connecting, or general toilet rooms for each sex. The general toilet room or bathing room shall be accessible from a corridor or public space. A lavatory shall be readily accessible to each water closet. The facility shall provide at least one full bath on each resident sleeping floor.

(2) One water closet and one lavatory shall be provided for each four residents or fraction thereof. One tub or one shower shall be provided for each six residents or fraction thereof.

(3) Privacy partitions and shields shall be provided at water closets and bathing units in rooms for multi-resident use.

(4) A public or staff toilet, commode and lavatory, complying with accessibility standards, is required for every facility up to and including 50 beds. Facilities over 50 beds must have separate public toilets and staff toilets (this is in addition to the staff toilet(s) required for the dietary staff).

(5) All bathrooms, toilet rooms, and other odor-producing rooms shall be ventilated with operable windows or powered exhaust to the exterior for odor control.

(6) Soap and towel dispensers shall be provided at all hand washing facilities.

(h) Recreation, living, or day room.

(1) Recreation, living, or day room space and furniture shall be provided to allow seating of residents. Each facility shall have at least one space of not less than 144 square feet. A facility with a capacity of nine or more residents shall provide a space of 10 square feet more per resident in addition to the 144 square feet minimum.

(2) At least one of the recreation, living, or day room areas shall have exterior windows providing a view to the outside.

(i) Additional service areas.

(1) Janitor's closet. A sufficient number of janitor closets shall be provided throughout the facility to maintain a clean and sanitary environment. The closet shall contain a floor receptor or service sink and storage space for housekeeping supplies and equipment.

(2) Storage room. A resident storage room shall be a minimum of 50 square feet per six resident beds or fraction thereof.

(3) Medical gas storage room. When provided or required by National Fire Protection Association 101, (NFPA 101), Code for Safety to Life from Fire in Buildings and Structures, 2000 edition, a medical gas storage room shall comply with the requirements of NFPA 99, Chapter 4-4, Gas and Vacuum Systems. All documents published by the ASME/ANSI as referenced in this section may be obtained by writing the ANSI, 25 West 43rd Street, New York, N.Y. 10036. All documents published by NFPA as referenced in these rules may be obtained by writing or calling the NFPA, 1 Batterymarch Park, Quincy, MA 02169-7471, or (800) 344-3555.

(4) Area for emergency crash cart, if provided. An area or alcove located out of traffic and conveniently located near medication room or similar staff control room shall be provided for an emergency crash cart.

(5) Medical waste processing. Space and facilities shall be provided for the safe storage and disposal of waste as appropriate for the material being handled and in compliance with all applicable rules and regulations.

§125.93. Elevators.

(a) General. All buildings that have resident services located on other than the main entrance floor shall have electric or electro hydraulic elevators. The elevators shall be installed in sufficient quantity, capacity, and speed to ensure that the average interval of dispatch time will not exceed one minute, and average peak loading can be accommodated.

(b) Requirements for new elevators. New elevators shall be installed in accordance with the requirements of Health and Safety Code (HSC), Chapter 754, Elevators, Escalators, and Related Equipment, and ASME/ANSI A17.1, Safety Code for Elevators and Escalators, 1996 edition, published by the American Society of Mechanical Engineers and the American National Standards Institute. All new elevators shall conform to the Fire Fighters' Service Requirements of ASME/ANSI A17.1, in accordance with National Fire Protection Association 101, (NFPA 101), Code for Safety to Life from Fire in Buildings and Structures, 2000 edition, §7-4.4. All documents published by the ASME/ANSI as referenced in this section may be obtained by writing the ANSI, 25 West 43rd Street, New York, N.Y. 10036. All documents published by NFPA as referenced in these rules may be obtained by writing or calling the NFPA, 1 Batterymarch Park, Quincy, MA 02169-7471, or (800) 344-3555.

(c) Requirements for existing elevators. Existing elevators shall comply with the ASME/ANSI A17.1, Part XII, Alterations, Repair, Replacements, and Maintenance, and ASME/ANSI A17.3, Safety Code for Existing Elevators and Escalators, current edition. All existing elevators having a travel distance of 25 feet or more above or below the level that best serves the needs of emergency personnel for fire fighting or rescue purposes shall conform to Fire Fighters' Service Requirements of ASME/ANSI A17.3, as required by NFPA 101, §7-4.5.

(d) Elevator machine rooms. Elevator machine rooms that contain solid-state equipment for elevators having a travel distance of more than 50 feet above the level of exit discharge or more than 30 feet below the level of exit discharge shall be provided with independent ventilation or air-conditioning systems with the capability to maintain an operating temperature during fire fighter service operations. The operating temperature shall be established by the elevator equipment manufacturer's specifications and shall be posted in each such elevator machine room. When standby power is connected to the elevator, the machine room ventilation or air conditioning shall also be connected to standby power. These requirements are not applicable to existing elevators.

(e) Elevator car size. Minimum elevator car size shall be five feet wide and five feet deep. A minimum LCF elevator car size shall be five feet wide and eight feet deep.

(f) Elevator and elevator shaft doors. When light beams are used for operating door-opening devices, the beams shall be used in combination with door edge devices and shall be

interconnected with a system of smoke detectors. The light control feature shall be disengaged when smoke is detected in any elevator lobby.

(1) The smallest elevator car door opening shall be at least three feet wide and seven feet high.

(2) The elevator car door opening for a LCF elevator shall be at least four feet wide and seven feet high.

(3) The elevator cars for LCF shall be at least five feet by eight inches wide by eight feet six inches deep.

(g) Type of controls and alarms. Elevator call buttons, controls, and door safety stops shall be of a type that will not be activated by heat or smoke.

(h) Leveling. All elevators shall be equipped with an automatic leveling device of the two-way automatic maintaining type with an accuracy of one-half inch.

(i) Operation. All elevators, except freight elevators, shall be equipped with a two-way key operated service switch permitting cars to bypass all landing button calls and be dispatched directly to any floor.

(j) Accessibility of controls and alarms. Elevator controls, alarm buttons, and telephones shall be accessible to wheelchair occupants in accordance with the Americans with Disabilities Act.

(k) Location. Elevators shall not open to an exit.

(l) Testing. An SCF shall have all elevators and escalators routinely and periodically inspected and tested in accordance with ASME/ANSI A17.1. All elevators equipped with fire fighter service shall be subject to a monthly operation with a written record of the findings made and kept on the premises as required by NFPA 101, §7-4.8, Elevator Testing.

(m) Certification. An SCF shall obtain a certificate of inspection evidencing that the elevators and related equipment were inspected in accordance with the requirements in HSC, Chapter 754, Subchapter B, and determined to be in compliance with the safety standards adopted under HSC, §754.014, administered by the Texas Department of Licensing and Regulation. The certificate of inspection shall be on record in each center.

§125.94. Preparation, Submittal, Review and Approval of Plans.

(a) Compliance.

(1) When local regulations are in effect and enforced governing the construction

of a new SCF or the renovation or modification of an existing SCF, the SCF shall be constructed in accordance with the local regulations and submission of construction documents to the department is not required. An SCF may voluntarily submit construction documents to the department.

(2) In the absence of local regulations, a new or existing SCF shall comply with the following subparagraphs (A) – (E) of this paragraph, and subsections (b) – (e) of this section.

(A) Facility owners or operators may not begin construction of a new building or additions to or renovations or conversions of existing buildings until final construction documents are reviewed and approved by the department.

(B) Plans and specifications describing the construction of new buildings and additions to or renovations and conversions of existing buildings shall be prepared by registered architects and/or licensed professional engineers.

(C) A program narrative shall be prepared in accordance with subsection (b) of this section and submitted to the department at the time of the submission of the Application for Plan Review.

(D) Preliminary plans shall be prepared and submitted in accordance with subsection (c) of this section.

(E) Final plans and specifications shall be prepared and submitted in accordance with subsection (d) of this section.

(b) Functional program narrative. The facility shall provide a functional program narrative presented on facility letterhead and signed by facility administration. The narrative shall include the functional description of each space and the following:

(1) departmental relationships, number of patient beds in each category, and other basic information relating to the fulfillment of the facility's objectives;

(2) a description of each function to be performed, approximate space needed for these functions, occupants of the various spaces, types of equipment required, interrelationship of various functions and spaces;

(3) energy conservation measures, included in building, mechanical and electrical designs; and

(4) the type of construction (existing or proposed) as stated in §18-1.6.2, or §32.1.1.3, National Fire Protection Association 101, Code for Safety to Life from Fire in Buildings and Structures, 2000 edition (NFPA 101), published by the National Fire Protection

Association. All documents published by the NFPA as referenced in this section may be obtained by writing or calling the NFPA at the following address and telephone number: Post Office Box 9101, 1 Batterymarch Park, Quincy, Massachusetts 02169-7471, (800) 344-3555.

(c) Preliminary documents. Preliminary documents shall consist of a functional program narrative, preliminary plans, and outline specifications. These documents shall contain sufficient information to establish the project scope, description of functions to be performed, project location, required fire safety and exiting requirements, building construction type, compartmentation showing fire and smoke barriers, bed count and services, and the usage of all spaces, areas, and rooms on every floor level.

(1) Preparation of preliminary plans. Preliminary plans shall be of a sufficiently large scale to clearly illustrate the proposed design but not less than one-eighth inch equals one foot. Preliminary plans shall provide the following information.

(A) Floor area and bed distribution. The total floor area on each level involved in construction, together with the proposed bed distribution, shall be shown on the drawings.

(B) Floor plan. Each floor plan shall indicate and identify all individual spaces, doors, windows and means of egress.

(C) Existing floor plan. An overall floor plan showing existing spaces, smoke partitions, smoke compartments, and exits and their relationship to the new construction shall be submitted on all renovations or additions to an existing facility. Plans for remodeling of spaces above or below the level of discharge shall include the level of discharge floor plan, showing all exits at that level. When there are two different levels of discharge, plans for both levels shall be submitted.

(D) Construction type and fire rating. Building sections shall be provided to illustrate construction type and fire protection rating. Section(s) shall be drawn at a scale sufficiently large to clearly present the proposed construction system.

(E) Area map. A map of the area within a two mile radius of the facility site shall be provided and any hazardous and undesirable location noted in §125.91(c) of this title (relating to Construction Requirements) shall be identified.

(F) Site plan. A site plan shall be submitted and shall indicate the location of the proposed building(s) in relation to property lines, existing buildings or structures, access and approach roads, and parking areas and drives. Any overhead or underground utilities or service lines shall also be indicated.

(G) Outline specifications. Outline specifications shall provide a general description of the construction, materials, and finishes that are not shown on the drawings.

(2) Submission of preliminary plans. One set of preliminary plans, outline specifications covering the construction of new buildings or alterations, additions, conversions, modernizations, or renovations to existing buildings, a functional program narrative, a completed and signed Application for Plan Review, and the applicable plan review fee in accordance with §125.15 of this title (relating to Fees) shall be submitted to the Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, for review and approval. For convenience, preliminary plans may be reduced for preliminary submittal. The cost of submitting plans and specifications shall be borne by the sender.

(3) Preliminary plan review. All deficiencies noted in the preliminary plan review shall be satisfactorily resolved.

(d) Construction documents. Construction documents or final plans and specifications shall be submitted to the department for review and approval prior to start of construction. All final plans and specifications shall be appropriately sealed and signed by a registered architect and a professional engineer licensed by the State of Texas.

(1) Preparation of construction documents. Construction documents shall be well prepared so that clear and distinct prints may be obtained, shall be accurately and adequately dimensioned, and shall include all necessary explanatory notes, schedules, and legends and shall be adequate for contract purposes. Compliance with model building codes and this chapter shall be indicated. The type of construction, as classified by National Fire Protection Association 220, Standard on Types of Building Construction, 1999 edition, shall be provided for existing and new facilities. Final plans shall be drawn to a sufficiently large scale to clearly illustrate the proposed design but not less than one-eighth inch equals one foot. All rooms shall be identified by usage on all plans (architectural, fire safety, mechanical, electrical, etc.) submitted. Separate drawings shall be prepared for each of the following branches of work.

(A) Architectural plans. Architectural drawings shall include the following:

(i) site plan showing all new topography, newly established levels and grades, existing structures on the site (if any), new buildings and structures, roadways, walks, and the extent of the areas to be landscaped. All structures which are to be removed under the construction contract and improvements shall be shown. A general description of the immediate area surrounding the site shall be provided;

(ii) plan of each floor and roof to include fire and smoke separation, means of egress, and identification of all spaces;

(iii) schedules of doors, windows, and finishes;

- (iv) elevations of each facade;
- (v) sections through building; and
- (vi) scaled details as necessary.

(B) Fire safety plans. These drawings shall be provided for all newly constructed buildings, conversions of existing buildings for facilities, additions to existing licensed facilities, and remodeled portions of existing buildings containing licensed facilities. Fire safety plans shall be of a sufficiently large scale to clearly illustrate the proposed design but not less than one-sixteenth inch equals one foot and shall include the following information:

(i) separate fire safety plans (preferably one floor plan per sheet) shall indicate location of fire protection rated walls and partitions, location and fire resistance rating of each fire damper, and the required means of egress (corridors, stairs, exits, exit passageways):

(I) when a new building is to contain a proposed facility, when an existing building is converted to a facility, or when an addition is made to an existing facility building, plans of each floor and roof shall be provided;

(II) when a portion of a building is remodeled or when a new service is added, only the plan of the floor where the remodeling will take place or new service will be introduced and the plan of the floor of discharge shall be provided;

(ii) designated smoke compartments with floor areas of each compartment, location and fire resistance rating (one or two hour) of each smoke partition, location, type and fire resistance rating of each smoke damper;

(iii) location of all required fire alarm devices, including all fire alarm control panels, manual pull stations, audible and visual fire alarm signaling devices, smoke detectors (ceiling and duct mounted), fire alarm annunciators, fire alarm transmission devices, fire sprinkler flow switches and control valve supervisory switches on each of the floor plans; and

(iv) areas protected with fire sprinkler systems (pendant, sidewall or upright, normal or quick response, and temperature rating shall be indicated), stand pipe system risers and sizes with valves and inside and outside fire department connections, fire sprinkler risers and sizes, location and type of portable fire extinguishers.

(C) Equipment drawings. Equipment drawings shall include the following:

(i) all equipment necessary for the operation of the facility as planned. The design shall indicate provisions for the installation of large and special items of equipment and for service accessibility;

(ii) fixed equipment (equipment which is permanently affixed to the building or which must be permanently connected to a service distribution system designed and installed during construction for the specific use of the equipment). The term "fixed equipment" includes items such as laundry extractors, walk-in refrigerators, communication systems, and built-in casework (cabinets);

(iii) movable equipment (equipment not described in clause (ii) of this subparagraph as fixed). The term "moveable equipment" includes wheeled equipment, plug-in type monitoring equipment, and relocatable items; and

(iv) equipment which is not included in the construction contract but which requires mechanical or electrical service connections or construction modifications. The equipment described in this clause shall be identified on the drawings to ensure its coordination with the architectural, mechanical, and electrical phases of construction.

(D) Structural drawings. Structural drawings shall include:

(i) plans for foundations, floors, roofs, and all intermediate levels;

(ii) a complete design with sizes, sections, and the relative location of the various members;

(iii) a schedule of beams, girders, and columns;

(iv) dimensioned floor levels, column centers, and offsets;

(v) details of all special connections, assemblies, and expansion joints; and

(vi) special openings and pipe sleeves dimensioned or otherwise noted for easy reference.

(E) Mechanical drawings. Documentation for selection of the type of heating and cooling system based on requirements contained in §125.91(c)(3)(D) of this title shall be included with the mechanical plans. Mechanical drawings shall include:

(i) complete ventilation systems (supply, return, exhaust), all fire and smoke partitions, locations of all dampers, registers, and grilles, air volume flow at each device, and identification of all spaces (e.g. corridor, patient room, operating room);

(ii) boilers, chillers, heating and cooling piping systems (steam piping, hot water, chilled water), and associated pumps;

(iii) cold and warm water supply systems, water heaters, storage tanks, circulating pumps, plumbing fixtures, emergency water storage tank(s) (if provided), and special piping systems such as for deionized water;

(iv) drain piping systems (waste and soiled piping systems, roof drain systems);

(v) fire protection piping systems (sprinkler piping systems, fire standpipe systems, water or chemical extinguisher piping system for cooking equipment); and

(vi) piping riser diagrams, equipment schedules, control diagrams or narrative description of controls, filters, and location of all duct mounted smoke detectors.

(F) Electrical drawings. Electrical drawings shall include:

(i) electrical service entrance with service switches, service feeders to the public service feeders, and characteristics of the light and power current including transformers and their connections;

(ii) location of all normal electrical system and essential electrical system conduits, wiring, receptacles, light fixtures, switches and equipment which require permanent electrical connections, on plans of each building level;

(iii) telephone and communication, fixed computers, terminals, connections, outlets, and equipment;

(iv) nurses calling system showing all stations, signals, and annunciators on the plans;

(v) in addition to electrical plans, single line diagrams prepared for:

(I) complete electrical system consisting of the normal electrical system transformers, conduit, wire sizes, main switchboard, power panels, light panels, and equipment for additions to existing buildings, proposed new facilities, and remodeled portions of existing facilities. Feeder and conduit sizes shall be shown with schedule of feeder breakers or switches;

(II) a single line diagram of the complete fire alarm system showing all control panels, signaling and detection devices and the room number where each device is located; and

(vi) schedules of all panels indicating connected load at each panel.

(2) Final plan review. All deficiencies noted in the final plan review shall be satisfactorily resolved before approval of project for construction will be granted.

(3) Construction approval. Construction shall not begin until written approval by the department is received by the owner of the facility.

(4) Construction document changes. Any changes to construction documents which affect or change the function, design, or designated use of an area shall be submitted to the department for approval prior to authorization of the modifications.

(e) Special submittals.

(1) Designer certified construction documents. In an effort to shorten the plan review and approval process, design professionals may submit, at the discretion of the department, a set of final construction documents, the department's completed checklist of licensing requirements and a certification letter which states that the plans and specifications, based on the department's checklist comply with the requirements of this chapter. Project certification forms shall be signed by the licensee or applicant and the architect(s) and engineer(s) of record.

(2) Fast-track projects. Submittal of fast-track projects shall be at the discretion of the department and shall be submitted in not more than three separate packages.

(A) First package. The first package shall include:

(i) a map showing the location of the proposed facility site and adjacent surrounding area at least two miles in radius identifying any hazardous and undesirable location noted in §125.91(c) of this title;

(ii) preliminary architectural plans and a detailed building site plan showing all adjacent streets, site work, underslab mechanical, electrical, and plumbing work, and related specifications; and

(iii) foundation and structural plans.

(B) Second package. The second package shall include complete architectural plans and details with specifications and fire safety plans as described in subsection (c) of this section.

(C) Third package. The third package shall include complete mechanical, electrical, equipment and furnishings, and plumbing plans and specifications, as described in subsection (c) of this section.

(3) Fire sprinkler systems. Fire sprinkler systems shall comply with the requirements of National Fire Protection Association 13, Standard for the Installation of Sprinkler systems, 1999 edition. Fire sprinkler systems shall be designed or reviewed by an engineer who is registered by the Texas State Board of Registration for Professional Engineers in fire protection specialty or is experienced in hydraulic design and fire sprinkler system installation. A short resume shall be submitted if registration is not in fire protection specialty.

(A) Fire sprinkler working plans, complete hydraulic calculations and water supply information shall be prepared in accordance with NFPA 13, §§8-1, 8-2 and 8-3, for new fire sprinkler systems, alterations of and additions to existing ones.

(B) Certification of changes in an existing system is not required when relocation of not more than twenty sprinkler heads is involved.

(C) One set of fire sprinkler working plans (sealed by the engineer), calculations and water supply information shall be forwarded to the department together with the engineer's certification letter stating that the sprinkler system design complies with the requirements of NFPA 13. Certification of the fire sprinkler system shall be submitted prior to system installation.

(D) Upon completion of the fire sprinkler system installation and any required corrections, written certification by the engineer, stating that the fire sprinkler system is installed in accordance with NFPA 13 requirements, shall be submitted prior to or with the written request for the final construction inspection of the project.

(f) Resubmittal of construction documents. When construction is delayed for longer than one year from the plan approval date, construction documents shall be resubmitted to the department for review and approval. The plans shall be accompanied by a new Application for Plan Review and a plan review fee.

(g) Project delay or cancellation. The licensee or owner shall provide written notification to the department when a project has been placed on hold, canceled or abandoned.

(h) On-hold projects. The department may close a project file after one year of its receipt of an Application for Plan Review for projects that have been placed on hold.

§125.95. Construction, Inspections, and Approval of Projects for New or Existing Facilities in the Absence of Local Codes and Regulations.

(a) Construction.

(1) Major construction. Construction, of other than minor alterations, shall not commence until the final plan review deficiencies have been satisfactorily resolved, the appropriate plan review fee, according to the plan review schedule in §125.15 of this title (relating to Fees), has been paid, and the department has issued a letter granting approval to begin construction. Such authorization does not constitute release from the requirements contained in this chapter. If the construction takes place in or near occupied areas, adequate provision shall be made for the safety and comfort of occupants.

(2) Construction commencement notification. The architect of record or the licensee or applicant shall provide written notification to the department when construction will commence. The department shall be notified in writing of any change in the completion schedules.

(3) Completion. Construction shall be completed in compliance with the construction documents including all addenda or modifications approved for the project.

(b) Construction inspections. All facilities including those which maintain certification under Title XVIII of the Social Security Act (42 United States Code, §1395 et seq.), are subject to construction inspections.

(1) Number of construction inspections. A minimum of two construction inspections of the project is generally required for the purpose of verifying compliance with subchapters G and H of this chapter and the approved plans and specifications. The final plan approval letter will inform the architect of record and the owner as to the minimum number of inspections required for the project.

(2) Requesting an inspection. The architect of record or the licensee shall request a inspection by submitting an Application for Inspection and the construction inspection fee in accordance with §125.15(d) of this title for each intermediate inspection, final inspection, and reinspection requested. Inspection requests by contractors will not be honored.

(A) The architect of record or the licensee shall request an intermediate construction inspection to occur at approximately 80% completion. All major work above the ceiling shall be completed at the time of the intermediate inspection, however ceilings should not be installed.

(B) The architect of record or the licensee shall request a final construction inspection at 100% completion. One-hundred percent completion means that the project is completed to the extent that all equipment is operating in accordance with

specifications, all necessary furnishings are in place, and patients could be admitted and treated in all areas of the project.

(3) Reinspection. Depending upon the number and nature of the deficiencies cited during the final inspection, the surveyor may require that an inspection be conducted to confirm correction of all deficiencies cited. The request for re-inspection shall be submitted in accordance with paragraph (2) of this subsection.

(c) Approval of project. Patients shall not occupy a new structure or remodeled or renovated space until approval has been received from the local building and fire authorities and the department.

(1) Documentation requirements. The licensee shall submit the following documents to the department before the project will be approved:

(A) written approval of the project by the fire authority;

(B) a certificate of occupancy for the project issued by the local building authority;

(C) written certification by the engineer, stating that the fire sprinkler system is installed in accordance with the requirements of NFPA 13, Standard for the Installation of Sprinkler Systems, 1999 edition, if applicable;

(D) fire alarm system certification (form FML-009 040392 of the Office of the State Fire Marshal), if applicable;

(E) a written plan of correction signed by the licensee for any deficiencies noted during the final inspection;

(F) a copy of documentation indicating the flame spread rating and the smoke development rating of any wall covering installed in this project. Provide a signed letter or statement corroborating the installation of the product in the project;

(G) a copy of documentation indicating that draperies, curtains, and other similar loosely hanging furnishings and decorations are flame resistant as demonstrated by passing both the small and large-scale tests of National Fire Protection Association (NFPA) 701, Standard Methods of Fire Tests for Flame-Resistant Textiles and Films, 1999 edition, as required by NFPA 101, Code for Safety to Life from Fire in Buildings and Structures, §18-7.5, and provide a signed letter or statement corroborating the installation of the product in the project. All documents published by NFPA as referenced in these rules may be obtained by writing or calling the NFPA, 1 Batterymarch Park, Quincy, MA 02169-7471, or (800) 344-3555.

(H) a Final Construction Approval form signed by the licensee; and

(I) any other documentation or information required due to the type of the project.

(2) Verbal occupancy approval.

(A) If, during the final inspection, the surveyor finds only a few minor deficiencies that do not jeopardize resident health, safety and welfare, the surveyor may grant verbal approval for occupancy contingent upon the documents listed in paragraph (1)(A)-(E) of this subsection being provided to and approved by the surveyor at the time of the final inspection.

(B) Verbal occupancy approval allows the licensee to occupy the project. However, the licensee must submit the documents required in paragraph (1)(F) -(I) of this subsection before the project receives final approval.

(3) Final approval. Upon its receipt and acceptance of the documents required in paragraph (1) of this subsection, the department will issue final approval of the project.

§125.96. Tables.

Table 1. Ventilation Requirements for LCF Facilities.

Figure: 25 TAC§125.96

VENTILATION REQUIREMENTS FOR LCF FACILITIES¹

Area designation	Air movement relationship to adjacent areas ²	Minimum air changes of outdoor air per hour ³	Minimum total air changes per hour ⁴	All air exhausted directly to outdoors ⁵	Recirculated by means of room units ⁶	Relative humidity (%) ⁷	Design temperature (degrees F) ⁸
NURSING							
Patient room	---	2	2	---	---	---	70-75
Patient toilet room	In	---	10	Yes	---	---	---
Patient corridor	---	---	2	---	---	---	---
Laboratory							
General ⁹	---	2	6	---	---	---	75
Sterilizing	In	---	10	Yes	No	---	75
Pharmacy	Out	---	4	---	---	---	75
DIAGNOSTIC AND TREATMENT							
Examination room	---	---	6	---	---	---	75
Medication room	---	---	4	---	---	---	75
Treatment room	---	---	6	---	---	---	75
Soiled workroom or holding	In	---	10	Yes	No	---	---
Clean workroom or holding	Out	---	4	---	---	---	---
SERVICE							
Food preparation center ¹⁰	--	10	---	---	No	---	---
-	-	-	-	-	-	-	-
Warewashing	In	---	10	Yes	No	---	---
Dietary day storage	In	---	2	---	---	---	---
Laundry, general	--	---	10	Yes	---	---	---
Soiled linen (sorting and storage)	In	---	10	Yes	No	---	---
Clean Linen storage	--	---	2	---	---	---	---
Soiled linen and trash chute room	In	---	10	Yes	No	---	---
Bathroom/Toilet room	--	---	10	Yes	---	---	75
Janitor's closet	In	---	10	Yes	No	---	---
ADMINISTRATIVE AND SUPPORT SERVICE							
	--	--	2	---	---	30(min)	68-73

VENTILATION REQUIREMENTS FOR LCF FACILITIES¹

¹The ventilation rates in this table cover ventilation for comfort, as well as for asepsis and odor control in areas of facilities that directly affect patient care and are determined based on healthcare entities being predominantly "No Smoking" entities. Where smoking may be allowed, ventilation rates will need adjustment. Areas where specific ventilation rates are not given in the table shall be ventilated in accordance with American Society of Heating Refrigeration and Air-conditioning Engineers Standard 62-1989, Ventilation for Acceptable Indoor Air Quality, and American Society of Heating Refrigeration and Air-conditioning Engineers, Handbook of Applications, 1991 edition. Specialized patient care areas, including organ transplant units, burn units, specialty procedure rooms, etc., shall have additional ventilation provisions for air quality control as may be appropriate. Occupational Safety and Health Administration (OSHA) standards and/or National Institute for Occupational Safety and Health (NIOSH) criteria require special ventilation requirements or employee health and safety within health care facilities.

²Design of the ventilation system shall provide air movement which is generally from clean to less clean areas. If any form of variable air volume or load shedding system is used for energy conservation, it must not compromise the corridor-to-room pressure balancing relationships or the minimum air changes required by the table. Except where specifically permitted by exit corridor plenum provisions of NFPA 90A, the volume of infiltration and exfiltration shall not exceed 15% of the minimum total air changes per hour, or 50 cfm, whichever is larger, as defined by the table.

³To satisfy exhaust needs, replacement air from the outside is necessary. Table 3 does not attempt to describe specific amounts of outside air to be supplied to individual spaces except for certain areas such as those listed. Distribution of the outside air, added to the system to balance required exhaust, shall be as required by good engineering practice. Minimum outside air quantities shall remain constant while the system is in operation.

⁴Number of air changes may be reduced when the room is unoccupied if provisions are made to ensure that the number of air changes indicated is reestablished any time the space is being utilized. Adjustments shall include provisions so that the direction of air movement shall remain the same when the number of air changes is reduced. Areas not indicated as having continuous directional control may have ventilation systems shut down when space is unoccupied and ventilation is not otherwise needed, if the maximum infiltration or exfiltration permitted in Note 2 is not exceeded and if adjacent pressure balancing relationships are not compromised.

⁵Air from areas with contamination and/or odor problems shall be exhausted to the outside and not recirculated to other areas. Note that individual circumstances may require special consideration for air exhaust to the outside.

VENTILATION REQUIREMENTS FOR LCF FACILITIES⁴

⁶Recirculating room Heating, Ventilating, and Air Conditioning (HVAC) units refers to those local units that are used primarily for heating and cooling of air, and not disinfection of air. Because of cleaning difficulty and potential for buildup of contamination, recirculating room units shall not be used in areas marked "No." However, for airborne infection control, air may be recirculated within individual isolation rooms if 99.97% efficiency filters are used. Isolation and intensive care unit rooms may be ventilated by reheat induction units in which only the primary air supplied from a central system passes through the reheat unit. Gravity-type heating or cooling units such as radiators or convectors shall not be used in operating rooms and other special care areas. Recirculating devices with 99.97% efficiency filters may have potential uses in existing facilities as interim, supplemental environmental controls to meet requirements for the control of airborne infectious agents. Limitations in design must be recognized. The design of either portable or fixed systems should prevent stagnation and short circuiting of airflow. The supply and exhaust locations should direct clean air to areas where health care workers are likely to work, across the infectious source, and then to the exhaust, so the health care worker is not in a position between the infectious source and the exhaust location. The design of such systems should also allow for easy access for scheduled preventive maintenance and cleaning.

⁷The ranges listed are the minimum and maximum limits where control is specifically needed.

⁸Where temperature ranges are indicated, the systems shall be capable of maintaining the rooms at any point within the range. A single figure indicates a heating or cooling capacity of at least the indicated temperature. This is usually applicable when patients may be undressed and require a warmer environment. Additional heating may be required in these areas. Nothing in these rules shall be construed as precluding the use of temperatures lower than those noted when the patients' comfort and medical conditions make lower temperatures desirable. Unoccupied areas such as storage rooms shall have temperatures appropriate for the function intended.

The infectious disease isolation room described here is to be used for isolating the airborne spread of infectious diseases, such as measles, varicella, or tuberculosis. The design of airborne infection isolation (AII) rooms should include the provision for normal patient care during periods not requiring isolation precautions. Supplemental recirculating devices may be used in the patient room, to increase the equivalent room air exchanges; however, such recirculating devices do not provide the outside air requirements. Air may be recirculated within individual isolation rooms if HEPA filters are used. Exhaust systems for infectious isolation rooms shall exhaust no other areas or rooms. Rooms with reversible airflow provisions for the purpose of switching between protective environment and AII functions are not acceptable.

VENTILATION REQUIREMENTS FOR LCF FACILITIES¹

⁹When required, appropriate hoods and exhaust devices for the removal of noxious gases or chemical vapors shall be provided. Laboratory hoods shall meet the following general standards:

1. Have an average face velocity of at least 75 feet per minute.
2. Be connected to an exhaust system to the outside which is separate from the building exhaust system.
3. Have an exhaust fan located at the discharge end of the system.
4. Have an exhaust duct system of noncombustible corrosion-resistant material as needed to meet the planned usage of the hood.

¹⁰Food preparation centers shall have ventilation systems whose air supply mechanisms are interfaced appropriately with exhaust hood controls or relief vents so that exfiltration or infiltration to or from exit corridors does not compromise the exit corridor restrictions of NFPA 90A, the pressure requirements of NFPA 96, or the maximum defined in the table. The number of air changes may be reduced or varied to any extent required for odor control when the space is not in use.