Chapter 92, Licensing Standards for Assisted Living Facilities, Subchapter A, Introduction

§92.2. Definitions.

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

(1) Abuse--

(A) for a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes, the term has the meaning in Texas Family Code §261.401(1), which is an intentional, knowing, or reckless act or omission by an employee, volunteer, or other individual working under the auspices of a facility or program that causes or may cause emotional harm or physical injury to, or the death of, a child served by the facility or program as further described by rule or policy; and

(B) for a person other than one described in subparagraph (A) of this paragraph, the term has the meaning in Texas Health and Safety Code §260A.001(1), which is:

(i) the negligent or willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical or emotional harm or pain to a resident by the resident's caregiver, family member, or other individual who has an ongoing relationship with the resident; or

(ii) sexual abuse of a resident, including any involuntary or nonconsensual sexual conduct that would constitute an offense under Section 21.08, Penal Code (indecent exposure), or Chapter 22, Penal Code (assaultive offenses), committed by the resident's caregiver, family member, or other individual who has an ongoing relationship with the resident.

(2) Accreditation commission--Has the meaning given in Texas Health and Safety Code, §247.032.
(3) Advance directive--Has the meaning given in Texas Health and Safety Code, §166.002.

(4) Affiliate--With respect to:

(A) a partnership, each partner thereof;

(B) a corporation, each officer, director, principal stockholder, subsidiary, and each person with a disclosable interest, as the term is defined in this section; and

(C) a natural person:

(i) said person's spouse;

(ii) each partnership and each partner thereof of which said person or any affiliate of said person is a partner; and

(iii) each corporation in which said person is an officer, director, principal stockholder, or person with a disclosable interest.

(5) Alzheimer's facility--A type B assisted living facility that is certified to provide specialized services to residents with Alzheimer's or a related condition.

(6) Alzheimer's disease and related disorders--Cognitive disorders as described by the Centers for Disease Control and Prevention (CDC) or as found in the most current volume of the Diagnostic and Statistical Manual of Mental Disorders (DSM).

(7) Alzheimer's facility--A type B assisted living facility that is certified to provide specialized services to residents with Alzheimer's or a related condition.

(8) Applicant--A person applying for a license to operate an assisted living facility under Texas Health and Safety Code, Chapter 247.

(9) Attendant--A facility employee who provides direct care to residents. This employee may serve other functions, including cook, janitor, porter, maid, laundry worker, security personnel, bookkeeper, activity director, and manager.

(10) Authorized electronic monitoring (AEM)--The placement of an electronic monitoring device in a resident's room and using the device to make tapes or recordings after
making a request to the facility to allow electronic monitoring.

(11) [(9)] Behavioral emergency—Has the meaning given in §92.41(p)(2) of this chapter (relating to Standards for Type A and Type B Assisted Living Facilities).

(12) [(10)] Change of ownership— An event that occurs when there is a change in the federal tax identification number of a license holder. The substitution of a personal representative for a deceased license holder is not a change of ownership.

—— (A) a change of sole proprietorship that is licensed to operate a facility;

—— (B) a change of 50 percent or more in the ownership of the business organization that is licensed to operate the facility;

—— (C) a change in the federal taxpayer identification number; or

—— (D) relinquishment by the license holder of the operation of the facility.

(13) [(11)] Commingles--The laundering of apparel or linens of two or more individuals together.

(14) [(12)] Controlling person--A person with the ability, acting alone or with others, to directly or indirectly influence, direct, or cause the direction of the management, expenditure of money, or policies of an assisted living facility or other person. A controlling person includes:

(A) a management company, landlord, or other business entity that operates or contracts with others for the operation of an assisted living facility;

(B) any person who is a controlling person of a management company or other business entity that operates an assisted living facility or that contracts with another person for the operation of an assisted living facility;

(C) an officer or director of a publicly traded corporation that is, or that controls, a facility, management company, or other business entity described in subparagraph (A) of this paragraph
but does not include a shareholder or lender of the publicly traded corporation; and

(D) any other individual who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of an assisted living facility, is in a position of actual control or authority with respect to the facility, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility, except an employee, lender, secured creditor, landlord, or other person who does not exercise formal or actual influence or control over the operation of an assisted living facility.

(15) Covert electronic monitoring--The placement and use of an electronic monitoring device that is not open and obvious, and the facility and DADS have not been informed about the device by the resident, by a person who placed the device in the room, or by a person who uses the device.

(16) DADS--The Department of Aging and Disability Services.

(17) DHS--Formerly, this term referred to the Texas Department of Human Services; it now refers to DADS.

(18) Dietitian--A person who currently holds a license or provisional license issued by the Texas State Board of Examiners of Dietitians.

(19) Direct ownership interest—Ownership of equity in the capital, stock, or profits of an applicant or license holder.

(20) Disclosable interest—Five percent or more direct or indirect ownership interest of an applicant or license holder.

(21) Disclosure statement--A DADS form for prospective residents or their legally authorized representatives that a facility must complete. The form contains information regarding
the preadmission, admission, and discharge process; resident assessment and service plans; staffing patterns; the physical environment of the facility; resident activities; and facility services.

(22) Electronic monitoring device--Video surveillance cameras and audio devices installed in a resident's room, designed to acquire communications or other sounds that occur in the room. An electronic, mechanical, or other device used specifically for the nonconsensual interception of wire or electronic communication is excluded from this definition.

(23) Exploitation--

(A) for a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes, the term has the meaning in Texas Family Code §261.401(2), which is the illegal or improper use of a child or of the resources of a child for monetary or personal benefit, profit, or gain by an employee, volunteer, or other individual working under the auspices of a facility or program as further described by rule or policy; and

(B) for a person other than one described in subparagraph (A) of this paragraph, the term has the meaning in Texas Health and Safety Code §260A.001(4), which is the illegal or improper act or process of a caregiver, family member, or other individual who has an ongoing relationship with the resident using the resources of a resident for monetary or personal benefit, profit, or gain without the informed consent of the resident.

(24) Facility--An entity required to be licensed under the Assisted Living Facility Licensing Act, Texas Health and Safety Code, Chapter 247.

(25) Fire suppression authority--The paid or volunteer fire-fighting organization or tactical unit that is responsible for fire suppression operations and related duties once a fire
incident occurs within its jurisdiction.

(26) Flame spread--The rate of fire travel along the surface of a material. This is different than other requirements for time-rated "burn through" resistance ratings, such as one-hour rated. Flame spread ratings are Class A (0-25), Class B (26-75), and Class C (76-200).

(27) Governmental unit--The state or any county, municipality, or other political subdivision, or any department, division, board, or other agency of any of the foregoing.

(28) Health care professional--An individual licensed, certified, or otherwise authorized to administer health care, for profit or otherwise, in the ordinary course of business or professional practice. The term includes a physician, registered nurse, licensed vocational nurse, licensed dietitian, physical therapist, and occupational therapist.

(29) Immediate threat--There is considered to be an immediate threat to the health or safety of a resident, or a situation is considered to put the health or safety of a resident in immediate jeopardy, if there is a situation in which an assisted living facility's noncompliance with one or more requirements of licensure has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident.

(30) Immediately available--The capacity of facility staff to immediately respond to an emergency after being notified through a communication or alarm system. The staff are to be no more than 600 feet from the farthest resident and in the facility while on duty.

(31) Indirect ownership interest—Any ownership interest in a person that has a direct ownership interest in an applicant or license holder.

(32) Large facility--A facility licensed for 17 or more residents.

(33) Legally authorized representative--A person authorized by law to act on behalf of a person with regard to a matter described in this chapter, and may include a parent, guardian, or
managing conservator of a minor, or the guardian of an adult.

(34) License holder--A person who holds a license to operate a facility.

(35) Listed--Equipment, materials, or services included in a list published by an organization concerned with evaluation of products or services, that maintains periodic inspection of production of listed equipment or materials or periodic evaluation of services, and whose listing states that either the equipment, material, or service meets appropriate designated standards or has been tested and found suitable for a specified purpose. The listing organization must be acceptable to the authority having jurisdiction, including DADS or any other state, federal or local authority.

(36) Local code--A model building code adopted by the local building authority where the assisted living facility is constructed or located.

(37) Management services--Services provided under contract between the owner of a facility and a person to provide for the operation of a facility, including administration, staffing, maintenance, or delivery of resident services. Management services do not include contracts solely for maintenance, laundry, transportation, or food services.

(38) Manager--The individual in charge of the day-to-day operation of the facility.

(39) Medication--

(A) Medication is any substance:

(i) recognized as a drug in the official United States Pharmacopoeia, Official Homeopathic Pharmacopoeia of the United States, Texas Drug Code Index or official National Formulary, or any supplement to any of these official documents;

(ii) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease;
(iii) other than food intended to affect the structure or any function of the body; and

(iv) intended for use as a component of any substance specified in this definition.

(B) Medication includes both prescription and over-the-counter medication, unless otherwise specified.

(C) Medication does not include devices or their components, parts, or accessories.

(40) [34] Medication administration--The direct application of a medication or drug to the body of a resident by an individual legally allowed to administer medication in the state of Texas.

(41) [35] Medication assistance or supervision--The assistance or supervision of the medication regimen by facility staff. Refer to §92.41(j) of this chapter.

(42) [36] Medication (self-administration)--The capability of a resident to administer the resident's own medication or treatments without assistance from the facility staff.

(43) [37] Neglect--

(A) for a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes, the term has the meaning in Texas Family Code, §261.401(3), which is a negligent act or omission by an employee, volunteer, or other individual working under the auspices of a facility or program, including failure to comply with an individual treatment plan, plan of care, or individualized service plan, that causes or may cause substantial emotional harm or physical injury to, or the death of, a child served by the facility or program as further described by rule or policy; and

(B) for a person other than one described in subparagraph (A) of this paragraph, the term has the meaning in Texas Health and Safety Code §260A.001(6), which is the failure to provide for one's self the goods or services, including medical services, which are necessary to avoid
physical or emotional harm or pain or the failure of a caregiver to provide such goods or services.

(44) [38] NFPA 101--The 2000 publication titled "NFPA 101 Life Safety Code" published by the National Fire Protection Association, Inc., 1 Batterymarch Park, Quincy, Massachusetts 02169.

(45) [39] Ombudsman--Has the meaning given in §85.2 of this title (relating to Definitions).

(46) [40] Person--Any individual, firm, partnership, corporation, association, or joint stock association, and the legal successor thereof.

(47) Person with a disclosable interest--Any person who owns 5.0 percent interest in any corporation, partnership, or other business entity that is required to be licensed under Texas Health and Safety Code, Chapter 247. A person with a disclosable interest does not include a bank, savings and loan, savings bank, trust company, building and loan association, credit union, individual loan and thrift company, investment banking firm, or insurance company unless such entity participates in the management of the facility.

(48) [41] Personal care services--Assistance with feeding, dressing, moving, bathing, or other personal needs or maintenance; or general supervision or oversight of the physical and mental well-being of a person who needs assistance to maintain a private and independent residence in the facility or who needs assistance to manage his or her personal life, regardless of whether a guardian has been appointed for the person.

(49) [42] Physician--A practitioner licensed by the Texas Medical Board.

(49) [43] Practitioner--An individual who is currently licensed in a state in which the individual practices as a physician, dentist, podiatrist, or a physician assistant; or a registered
nurse approved by the Texas Board of Nursing to practice as an advanced practice registered nurse.

(50) [(45)] Qualified medical personnel--An individual who is licensed, certified, or otherwise authorized to administer health care. The term includes a physician, registered nurse, and licensed vocational nurse.

(51) [(46)] Resident--An individual accepted for care in a facility.

(52) [(47)] Respite--The provision by a facility of room, board, and care at the level ordinarily provided for permanent residents of the facility to a person for not more than 60 days for each stay in the facility.

(53) [(48)] Restraint hold--

(A) A manual method, except for physical guidance or prompting of brief duration, used to restrict:

(i) free movement or normal functioning of all or a portion of a resident's body; or

(ii) normal access by a resident to a portion of the resident's body.

(B) Physical guidance or prompting of brief duration becomes a restraint if the resident resists the guidance or prompting.

(54) [(49)] Restraints--Chemical restraints are psychoactive drugs administered for the purposes of discipline or convenience and are not required to treat the resident's medical symptoms. Physical restraints are any manual method, or physical or mechanical device, material, or equipment attached or adjacent to the resident that restricts freedom of movement. Physical restraints include restraint holds.

(55) [(50)] Safety--Protection from injury or loss of life due to such conditions as fire, electrical hazard, unsafe building or site conditions, and the hazardous presence of toxic fumes
and materials.

(56) [§54] Seclusion--The involuntary separation of a resident from other residents and the placement of the resident alone in an area from which the resident is prevented from leaving.

(57) [§52] Service plan--A written description of the medical care, supervision, or nonmedical care needed by a resident.

(58) [§53] Short-term acute episode--An illness of less than 30 days duration.

(59) [§54] Small facility--A facility licensed for 16 or fewer residents.

(60) [§55] Staff--Employees of an assisted living facility.

(61) [§56] Standards--The minimum conditions, requirements, and criteria established in this chapter with which a facility must comply to be licensed under this chapter.

(62) [§57] Terminal condition--A medical diagnosis, certified by a physician, of an illness that will result in death in six months or less.

(63) [§58] Universal precautions--An approach to infection control in which blood, any body fluids visibly contaminated with blood, and all body fluids in situations where it is difficult or impossible to differentiate between body fluids are treated as if known to be infectious for HIV, hepatitis B, and other blood-borne pathogens.

(64) [§59] Vaccine Preventable Diseases--The diseases included in the most current recommendations of the Advisory Committee on Immunization Practices of the CDC

(65) [§60] Working day--Any 24-hour period, Monday through Friday, excluding state and federal holidays.

Chapter 92, Licensing Standards for Assisted Living Facilities

Subchapter B, Application Procedures

(a) A facility may not transfer its license as part of a change of ownership as defined in §92.2 of this chapter (relating to Definitions).

(b) At least 30 days before the anticipated date of the change of ownership, the prospective owner must notify DADS of the change of ownership by submitting an application for an initial license based on a change of ownership under §92.14 of this subchapter (relating to Initial Application Procedures and Requirements) and the fee required in §92.4 of this chapter (relating to License Fees).

(c) To avoid a facility operating while unlicensed, an applicant must submit an application for an initial license based on a change of ownership at least 30 days before the anticipated date of the sale or other transfer to the new owner. The effective date of the change of ownership cannot precede the date the application is received by DADS’ Licensing and Credentialing Section, Regulatory Services Division.

(d) DADS may assess an administrative penalty in accordance with Subchapter H, Division 9 of this chapter (relating to Administrative Penalties) against a person who fails to notify DADS before the effective date of the change of ownership.

(e) Pending DADS' review of the application for an initial license based on a change of ownership, the current license holder must continue to meet all requirements for operation of the facility.

(f) [After reviewing the application for an initial license based on a change of ownership, DADS conducts an on-site health inspection to determine if the facility meets the standards for operation and resident care.] Except as provided in subsection (g) of this section, DADS conducts an on-site inspection to verify compliance with the licensure requirements after issuing a license as a result of a change of ownership. If the facility appears to be [is] out of compliance
with Life Safety Code licensure requirements in Subchapter D of this chapter (relating to Facility
Construction), DADS also conducts an on-site Life Safety Code inspection of the facility.

(g) DADS may conduct a desk review in lieu of an on-site health inspection if DADS
determines that the facility was required to obtain a new tax identification number and:

(A) less than 50 percent of the direct or indirect ownership interest of the facility was
transferred or sold; or

(B) no person with a disclosable interest was added to the facility.

(h) DADS issues the license within 30 days after DADS determines that the applicant
and the facility have met the licensure requirements of this section. The issuance of a license
constitutes DADS' official written notice to the facility of the approval of the application for a
change of ownership.

(i) DADS may deny an application for a change of ownership if the applicant,
controlling person, or any person required to submit background and qualification information
fails to meet the criteria for a license established in §92.11 of this subchapter (relating to Criteria
for Licensing).

(i) If DADS denies an application for an initial license based on a change of ownership,
DADS sends the applicant a written notice of the denial and informs the applicant of the
applicant's right to request an administrative hearing to appeal the denial. The administrative
hearing is held in accordance with Texas Health and Human Services Commission rules at 1
TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure
Act).

(j) If a license holder adds an owner who holds a disclosable interest, but does not undergo a
change of ownership, the license holder must notify DADS of the addition.