§98.2. Definitions.

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

(1) Abuse--The negligent or willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical or emotional harm or pain to an elderly or disabled person by the person's caretaker, family member, or other individual who has an ongoing relationship with the person, or sexual abuse of an elderly or disabled person, including any involuntary or nonconsensual sexual conduct that would constitute an offense under Texas Penal Code, §21.08, (indecent exposure) or Texas Penal Code, Chapter 22, (assaultive offenses) committed by the person's caretaker, family member, or other individual who has an ongoing relationship with the person.

(2) Adult--A person 18 years of age or older, or an emancipated minor.

(3) Affiliate--With respect to a:

(A) partnership, each partner of the partnership;

(B) corporation, each officer, director, principal stockholder, and subsidiary; and each person with a disclosable interest;

(C) natural person, which includes each:

(i) person's spouse;

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

(iii) corporation in which the person is an officer, director, principal stockholder, or person with a disclosable interest.
(4) Ambulatory--Mobility not relying on walker, crutch, cane, other physical object, or use of wheelchair.

(5) Applicant--A person applying for a license under Texas Human Resources Code, Chapter 103.

(6) Authorization--A case manager's decision, before DAHS begins and before payment can be made, that DAHS may be provided to an individual.

(7) Case manager--A DADS employee who is responsible for DAHS case management activities. Activities include eligibility determination, individual enrollment, assessment and reassessment of an individual's need, service plan development, and intercession on the individual's behalf.

(8) Caseworker--Case manager.

(9) 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.

(10) Client--Individual.

(11) Construction, existing--See definition of existing building.


(13) Construction, permanent--A building or structure that meets a nationally recognized building code's details for foundations, floors, walls, columns, and roofs.

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

(15) DAHS--Day activity and health services. Health, social, and related support services.

(16) DAHS facility--A facility that provides services under a day activity and health
services program on a daily or regular basis, but not overnight, to four or more elderly persons or persons with disabilities who are not related by blood, marriage or adoption to the owner of the facility.

(17) DAHS program--A structured, comprehensive program offered by a DAHS facility that is designed to meet the needs of adults with functional impairments by providing DAHS in accordance with individual plans of care in a protective setting.

(18) Days--Calendar days, unless otherwise specified.

(19) Department--Department of Aging and Disability Services.

(20) Dietitian consultant--A registered dietitian; a person licensed by the Texas State Board of Examiners of Dietitians; or a person with a bachelor’s degree with major studies in food and nutrition, dietetics, or food service management.

(21) Direct service staff--An employee or contractor of a facility who directly provides services to individuals, including the director, a licensed nurse, the activities director, and an attendant. An attendant includes a driver, food service worker, aide, janitor, porter, maid, and laundry worker. A dietitian consultant is not a member of the direct service staff.

(21) Director--The person responsible for the overall operation of a facility.

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

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

(25) Elderly person--A person 65 years of age or older.

(26) Existing building-- A building or portion thereof that, at the time of initial inspection by DADS, is used as an adult day care occupancy, as defined by Life Safety Code,
NFPA 101, 2000 edition, Chapter 17 for existing adult day care occupancies; or has been converted from another occupancy or use to an adult day care occupancy, as defined by Chapter 16 for new adult day care occupancies.

(27) Exploitation--An illegal or improper act or process of a caretaker, family member, or other individual, who has an ongoing relationship with the elderly person or person with a disability, using the resources of an elderly person or person with a disability for monetary or personal benefit, profit, or gain without the informed consent of the elderly person or person with a disability.

(28) Facility--A DAHS facility.

(29) Fence--A barrier to prevent elopement of an individual [a client] or intrusion by an unauthorized person, consisting of posts, columns, or other support members, and vertical or horizontal members of wood, masonry, or metal.

(30) FM Global. A corporation whose approval of a product indicates a level of testing and certification that is acceptable to DADS.

(31) Fraud--A deliberate misrepresentation or intentional concealment of information to receive or to be reimbursed for service delivery to which an individual is not entitled.

(32) Functional impairment--A condition that requires assistance with one or more personal care services.

(33) Health assessment--An assessment of an individual by a facility used to develop a plan of care.

(34) Health services-- Services that include personal care, nursing, and therapy services.

(A) Personal care services include:
(i) bathing;

(ii) dressing;

(iii) preparing meals;

(iv) feeding;

(v) grooming;

(vi) taking self-administered medication;

(vii) toileting;

(viii) ambulation; and

(ix) assistance with other personal needs or maintenance.

(B) Nursing services may include:

(i) the administration of medications;

(ii) physician-ordered treatments, such as dressing changes; and

(iii) monitoring the health condition of the individual.

(C) Therapy services may include:

(i) physical;

(ii) occupational; and

(iii) speech therapy.

(35) [(32)] Human services--Include the following services:

(A) personal social services, including:

(i) DAHS;

(ii) counseling;

(iii) in-home care; and

(iv) protective services;
(B) health services, including:
   (i) home health;
   (ii) family planning;
   (iii) preventive health programs;
   (iv) nursing facility; and
   (v) hospice;

(C) education services, meaning:
   (i) all levels of school;
   (ii) Head Start; and
   (iii) vocational programs;

(D) housing and urban environment services, including public housing;

(E) income transfer services, including;
   (i) Temporary Assistance for Needy Families; and
   (ii) Supplemental Nutrition Assistance Program; and

(F) justice and public safety services, including:
   (i) parole and probation; and
   (ii) rehabilitation.

(36) [33] Human service program--An intentional, organized, ongoing effort designed to provide good to others. The characteristics of a human service program are:

   (A) dependent on public resources and are planned and provided by the community;
   (B) directed toward meeting human needs arising from day-to-day socialization, health care, and developmental experiences; and
   (C) used to aid, rehabilitate, or treat people in difficulty or need.
(37) Indirect ownership interest—Any ownership interest in a person that has a direct ownership interest in an applicant or license holder.

(38) Individual--A person who applies for or is receiving services at a facility.

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

(40) Licensed vocational nurse (LVN)--A person licensed by the Texas Board of Nursing who works under the supervision of a registered nurse (RN) or a physician.


(A) addresses the construction, protection, and occupancy features necessary to minimize danger to life from fire, including smoke, fumes, or panic; and

(B) establishes minimum criteria for the design of egress features so as to permit prompt escape of occupants from buildings or, where desirable, into safe areas within the building.

(42) Long-term care facility--A facility that provides care and treatment or personal care services to four or more unrelated persons, including:

(A) a nursing facility licensed under Texas Health and Safety Code, Chapter 242;

(B) an assisted living facility licensed under Texas Health and Safety Code, Chapter 247;

and

(C) an intermediate care facility serving individuals with an intellectual disability or related conditions licensed under Texas Health and Safety Code, Chapter 252.

(43) Management services--Services provided under contract between the owner of a facility and a person to provide for the operation of a facility, including administration, staffing, maintenance, and delivery of services. Management services do not include contracts solely for maintenance, laundry, or food services.
Manager--A person having a contractual relationship to provide management services to a facility.

Medicaid-eligible--An individual who is eligible for Medicaid.

Medically related program--A human services program under the human services-health services category in the definition of human services in this section.

Neglect--The failure to provide for one’s self the goods or services, including medical services, that are necessary to avoid physical harm, mental anguish, or mental illness; or the failure of a caregiver to provide these goods or services.

NFPA--The National Fire Protection Association. NFPA is an organization that develops codes, standards, recommended practices, and guides through a consensus standards development process approved by the American National Standards Institute.

NFPA 10--Standard for Portable Fire Extinguishers. A standard developed by NFPA for the selection, installation, inspection, maintenance, and testing of portable fire extinguishing equipment.

NFPA 13--Standard for the Installation of Sprinkler Systems. A standard developed by NFPA for the minimum requirements for the design and installation of automatic fire sprinkler systems, including the character and adequacy of water supplies and the selection of sprinklers, fittings, pipes, valves, and all maintenance and accessories.

NFPA 70--National Electrical Code. A code developed by NFPA for the installation of electric conductors and equipment.

NFPA 72--National Fire Alarm Code. A code developed by NFPA for the application, installation, performance, and maintenance of fire alarm systems and their components.
(53) [(49)] NFPA 90A--Standard for the Installation of Air Conditioning and Ventilating Systems. A standard developed by NFPA for systems for the movement of environmental air in structures that serve spaces over 25,000 cubic feet or buildings of certain heights and construction types, or both.

(54) [(50)] NFPA 90B--Standard for the Installation of Warm Air Heating and Air-Conditioning Systems. A standard developed by the NFPA for systems for the movement of environmental air in one- or two-family dwellings and structures that serve spaces not exceeding 25,000 cubic feet.

(55) [(51)] NFPA 96--Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations. A standard developed by NFPA that provides the minimum fire safety requirements related to the design, installation, operation, inspection, and maintenance of all public and private cooking operations, except for single-family residential usage.

(56) [(52)] Nurse--A registered nurse (RN) or a licensed vocational nurse (LVN) licensed in the state of Texas.

(57) [(53)] Nursing services--Services provided by a nurse, including:

   (A) observation;

   (B) promotion and maintenance of health;

   (C) prevention of illness and disability;

   (D) management of health care during acute and chronic phases of illness;

   (E) guidance and counseling of individuals and families; and

   (F) referral to physicians, other health care providers, and community resources when appropriate.

(58) [(54)] Person--An individual, corporation, or association.
—(55) Person with a disclosable interest—Any person who owns five percent interest in any corporation, partnership, or other business entity that is required to be licensed under Texas Human Resources Code, Chapter 103. 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.

(59) Person with a disability--A person whose functioning is sufficiently impaired to require frequent medical attention, counseling, physical therapy, therapeutic or corrective equipment, or another person's attendance and supervision.

(60) Physician's orders--An order that is signed and dated by a medical doctor (MD) or doctor of osteopathy (DO) who is licensed to practice medicine in the state of Texas. The DADS physician's order form used by a DAHS facility that contracts with DADS must include the MD’s or DO’s license number.

(61) Plan of care-- A written plan, based on a health assessment and developed jointly by a facility and an individual or the individual’s responsible party, that documents the functional impairment of the individual and the DAHS needed by the individual.

(62) Protective setting--A setting in which an individual's safety is ensured by the physical environment by staff.

(63) Registered nurse (RN)--A person licensed by the Texas Board of Nursing to practice professional nursing.

(64) Related support services--Services to an individual, family member, or caregivers that may improve the person’s ability to assist with an individual's independence and functioning. Services include:
(A) information and referral;
(B) transportation;
(C) teaching caregiver skills;
(D) respite;
(E) counseling;
(F) instruction and training; and
(G) support groups.

(65) Responsible party--A person designated by an individual as the individual’s representative.

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

(67) Sanitation--Protection from illness, the transmission of disease, or loss of life due to unclean surroundings, the presence of disease transmitting insects or rodents, unhealthful conditions or practices in the preparation of food and beverage, or the care of personal belongings.

(68) Semi-ambulatory--Mobility relying on a walker, crutch, cane, other physical object, or independent use of wheelchair.

(69) Serious injury--An injury requiring emergency medical intervention or treatment by medical personnel, either at a facility or at an emergency room or medical office.

(70) Social activities--Therapeutic, educational, cultural enrichment, recreational, and social activities in a facility or in the community provided as part of a planned program to meet the social needs and interests of an individual.

(71) UL--Underwriters Laboratories, Inc. A corporation whose approval of a product
(72) [(69)] Working with people--Responsible for the delivery of services to individuals either directly or indirectly. Experience as a manager would meet this definition; however, an administrative support position such as a bookkeeper does not. Experience does not have to be in a paid capacity.

Chapter 98, Day Activity and Health Services Requirements, Subchapter B, Application Procedure

§98.16. Change of Ownership and Notifying DADS of Changes.

(a) [During the license term, a] A license holder may not transfer its the license. [as a part of the sale of the facility. Before the sale of the facility, the license holder must notify DADS that a change of ownership will be occurring. A change of ownership is a change:

—— (1) of 50% or more in the ownership of the business organization or sole proprietorship that is licensed to operate the facility; or

—— (2) in the federal taxpayer identification number.]

(b) To avoid a gap in the license because of a change in ownership of the facility, the new prospective owner [purchaser] must submit to DADS a complete application for a license under §98.11 of this title (relating to Criteria for Licensing) at least 30 days before the anticipated date of sale. The applicant must meet all requirements for a license. If the applicant has filed a timely and sufficient application for a license and otherwise meets all requirements for a license, DADS will issue the applicant a license effective on the date of the change [transfer] of ownership. DADS considers an individual has filed a timely and sufficient application for a license if the individual:

(1) submits a complete application to DADS, and DADS receives that complete
application at least 30 days before the anticipated date of sale;

(2) submits an incomplete application to DADS with a letter explaining the circumstances that prevented the inclusion of the missing information, and DADS receives the incomplete application and letter at least 30 days before the anticipated date of sale; or

(3) submits an application to DADS, and DADS receives the application by the date of sale, and the individual proves to DADS' satisfaction that the health and safety of the facility clients required an emergency change of ownership.

(c) If the application is postmarked by the filing deadline, the application will be considered to be timely filed if received in DADS' Regulatory Services Licensing and Credentialing Section within 15 days after the postmark.

(d) Except as provided in subsection (e) 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.

(e) DADS may conduct a desk review in lieu of an on-site inspection if a license holder undergoes a change of ownership, and:

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

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

(f) 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.