

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 7. STATE OFFICE OF ADMINISTRATIVE HEARINGS

CHAPTER 155. RULES OF PROCEDURE SUBCHAPTER F. DISCOVERY

1 TAC §155.255

The State Office of Administrative Hearings (SOAH) adopts amendments to §155.255 of Title 1, Part 7, Chapter 155, Subchapter F of the Texas Administrative Code, concerning written discovery procedures for general docket cases at SOAH. The amendments to §155.255 were originally proposed as part of a common preamble that included amendments to other SOAH rules concerning the electronic filing and service of documents in special education due process proceedings. Due to the distinctive issues concerning discovery procedures that were raised by public comments to the proposed rules, §155.255 is hereby adopted separately. The amendments to §155.255 are adopted with changes to the proposed text as published in the June 4, 2021, issue of the *Texas Register* (46 TexReg 3475). The rule will be republished.

Basis for Rule Adoption

The adopted amendments to §155.255 of SOAH's Rules of Procedure will clarify SOAH's written discovery rules in light of the January 1, 2021, amendments to Rules 194 and 195 of the Texas Rules of Civil Procedure (TRCP). The amendments are necessary to avoid confusion among the parties during the discovery phase of a contested case at SOAH, as some parties might otherwise remain uncertain as to whether the disclosures required by the TRCP apply to a general administrative hearing at SOAH. TRCP Rules 194 and 195 now require litigants to make certain initial disclosures without awaiting a discovery request for the information. The amendments to SOAH's written discovery rule specify that the "automatic" disclosures required by TRCP Rules do not apply to a contested administrative case proceeding at SOAH, except as may otherwise be ordered by the presiding administrative law judge. Instead, the adopted amendments provide a non-exclusive listing of categories of information that may be subject to a request for disclosure, thereby incorporating categories of information similar to those included in the TRCP Rules.

The adopted rule amendment implements Texas Government Code §2003.050, which provides that the Chief Administrative Law Judge shall adopt rules that govern procedures that relate to hearings conducted by SOAH.

Comments

SOAH received written comments on the proposed rules from SOAH staff and the Behavioral Health Executive Council (BHEC). Each of the comments addressed concerns or recommendations about the rule and are addressed as follows:

Comments on §155.255(a)(5) Expert Disclosures and Reports.

Comment: One commenter recommended that the proposed §155.255(a)(5) requiring the disclosure of information relating to expert witnesses and reports without awaiting a discovery request should not be required when the opposing party or respondent fails to enter an appearance in the case. The concern expressed was that the required disclosures would impose an unnecessary burden in time, effort, and costs on parties in cases where the opponent fails to answer, make an appearance, or the case is otherwise subject to default dismissal.

Another commenter expanded on this point by noting that even though TRCP Rule 194.2 only requires automatic disclosures after the filing of an answer, SOAH's procedural rules do not require an answer to be filed in contested case proceedings. Thus, a modification of the rule to require disclosures only after the filing of an answer could cause confusion regarding what is required of the parties, especially as to self-represented litigants who might be "tripped up" by the detailed disclosure requirements of the proposed rule.

Response: SOAH agrees that the requirement to make expert disclosures without awaiting a request could impose an unnecessary burden in the circumstances described and cause confusion for the parties. SOAH has modified the rule to state that the enumerated expert disclosures are required only upon request of the opposing party, or as otherwise allowed or required by the judge. The effect of this change is that the discovery rules of the TRCP requiring initial disclosures of expert witnesses and reports without awaiting a discovery request do not apply to a contested case under SOAH's jurisdiction, except as may be ordered or allowed by the judge.

Comment: Two commenters expressed concern that the proposed §155.255(a)(5) requiring the disclosure of information relating to expert witnesses and reports 30 days before the hearing date could make it impossible for parties to comply with the rule. The concern expressed was that cases are often referred to SOAH for hearing with less than 30 days between the time the case is docketed and the date of the hearing. This could create confusion and present difficulties for the parties, particularly for respondents in smaller cases who may have little or no control over the timing of when a referring agency docketed their case for hearing.

Response: SOAH agrees that the proposed requirement for expert disclosures 30 days prior to the hearing could cause confusion in the circumstances described. SOAH has modified the rule to remove the requirement for such disclosures to be made

30 days prior to the scheduled hearing. §155.255(a)(5) instead will require the "timely" disclosure of expert witnesses and reports in advance of the hearing, or as otherwise ordered or allowed by the judge. This will preserve the ability of the judge to determine the appropriate timeframes for disclosure and fit such requirements to the schedule of the case.

Comment: One commenter suggested that the requirements for expert disclosures can be more efficiently controlled by the administrative law judge through the issuance of orders when appropriate, rather than by rule. The commenter suggested that a rule requiring automatic expert disclosures could serve as a "trap" for self-represented parties. Moreover, it is unclear whether such a rule would apply in situations where a state agency offers testimony from one of its own employees or investigators because it is not always clear whether the employee is testifying as an expert witness.

Response: SOAH agrees that the requirement to make expert disclosures without awaiting a request could impose an unnecessary burden or cause confusion in the circumstances described. SOAH has modified the rule to state that the enumerated expert disclosures are required only upon request of the opposing party, or as otherwise allowed or required by the judge.

Comment: Two commenters recommended including expert disclosures among the items listed in proposed §155.255(a)(4)(B) as information that may be subject to a request for disclosure.

Response: SOAH interprets these comments as recommending against requirements for initial disclosures relating to expert witnesses and reports without awaiting a discovery request, rather than an expression of the commenters' preference for how the provisions of §155.255 are specifically enumerated in the rule. As stated herein, SOAH has modified §155.255(a)(5) of the rule to state that expert disclosures are required only upon request of the opposing party, or as otherwise allowed or required by the judge.

Statutory Authority

The rule changes are adopted under: Texas Government Code §2003.050, which provides that the Chief Administrative Law Judge shall adopt rules that govern procedures that relate to hearings conducted by SOAH.

Cross Reference to Statute

The proposed new rule affects Chapters 2001 and 2003 of the Texas Government Code.

§155.255. *Written Discovery.*

(a) Forms of written discovery. Unless otherwise provided by this section or ordered by the judge, parties may use the forms of written discovery provided by the TRCP, with the following modifications:

(1) Requests for production. Each party may serve no more than 25 written requests for production. Each discrete subpart of a request for production is considered a separate request for production.

(2) Interrogatories. Each party may serve no more than 25 written interrogatories, excluding interrogatories asking a party only to identify or authenticate specific documents. Each discrete subpart of an interrogatory is considered a separate interrogatory.

(3) Requests for admissions. Each party may serve no more than 25 requests for admissions. Requests for admissions may be used only to address jurisdictional facts or the genuineness of any documents served with the request.

(4) Requests for disclosure.

(A) The discovery rules of the TRCP requiring initial disclosures without awaiting a discovery request do not apply to a contested case under SOAH's jurisdiction, except as may be ordered or allowed by the judge.

(B) A party may request disclosure of documents or information that the opposing party has in its possession, custody, or control, including, but not limited to, the following:

(i) the correct names of the parties to the contested case; the name, address, and telephone number of any potential parties;

(ii) a general description of the legal theories and the factual bases of the responding party's claims or defenses, if not already set forth in a pleading or document filed in the record of the proceeding at SOAH;

(iii) the name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the case;

(iv) the statement of any person with knowledge of relevant facts (witness statement) regardless of when the statement was made; and

(v) a copy, or description by category and location, of all documents, electronic information, and tangible items that the disclosing party has in its possession, custody or control and may use to support its claims or defenses, unless the use would be solely for impeachment. A request for disclosure made pursuant to this subsection is not considered a request for production.

(5) Expert Disclosures and Reports. Upon request of the opposing party, or as otherwise ordered or allowed by the judge, a party must timely provide the following disclosures for any testifying expert in advance of a scheduled hearing on the merits:

(A) the expert's name, address, and telephone number;

(B) the subject matter on which the expert will testify;

(C) the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to the control of the responding party, documents reflecting such information;

(D) if the expert is retained by, employed by, or otherwise subject to the control of the responding party:

(i) all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony;

(ii) the expert's current resume and bibliography;

(iii) the expert's qualifications, including a list of all publications authored in the previous 10 years;

(iv) a list of all other cases in which, during the previous four years, the expert testified as an expert at trial or by deposition; and

(v) a statement of the compensation to be paid for the expert's study and testimony in the case.

(E) If the discoverable factual observations, tests, supporting data, calculations, photographs, or opinions of an expert have not been recorded and reduced to tangible form, the judge may order these matters reduced to tangible form and produced, in addition to the deposition of the expert.

(b) Written discovery requests shall be served at least 30 days before the end of the discovery period, unless otherwise specified by this section or ordered by the judge.

(c) Response. Unless otherwise ordered by the judge or agreed by the parties, responses to written discovery requests shall be made within 30 days after receipt.

(1) Responses and documents produced in discovery shall be served upon the requesting party, and notice of service shall be given to all parties.

(2) A party producing documents in response to a discovery request must retain the original documents or exact duplicates of the original documents.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 936-6624



PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 11. TEXAS HEALTHCARE TRANSFORMATION AND QUALITY IMPROVEMENT PROGRAM REIMBURSEMENT

1 TAC §355.8217

The Texas Health and Human Services Commission (HHSC) adopts new §355.8217, concerning Payments to Public Health Providers for Charity Care. New §355.8217 is adopted with changes to the proposed text as published in the May 28, 2021, issue of the *Texas Register* (46 TexReg 3340). The text of the rule will be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the new rule is to authorize HHSC to implement the Public Health Provider - Charity Care Program (PHP-CCP) payments to be available for eligible providers to help defray the uncompensated costs of charity care beginning October 1, 2022.

The PHP-CCP under the 1115 waiver reimburses certain costs for qualifying providers associated with providing care, including behavioral health, immunizations, chronic disease prevention, and other preventative services for the uninsured. This program was created as part of the 1115 waiver extension and will provide an opportunity for reimbursement of charity care costs (or Medicaid shortfall in the first year of the program).

In accordance with the Special Terms and Conditions of the 1115 waiver, to participate in the program, providers must be funded by a unit of government able to certify public expenditures. Publicly-owned and operated providers eligible to participate include:

(1) The following providers established under Texas Health and Safety Code Chapters 533 or 534 and primarily providing behavioral health services:

(a) Community Mental Health Clinics (CMHCs)

(b) Community Centers

(c) Local Behavioral Health Authorities (LBHAs)

(d) Local Mental Health Authorities (LMHAs)

(2) Local Health Departments (LHDs) and Public Health Districts (PHDs) established under the Texas Health and Safety Code Chapter 121.

COMMENTS

The 31-day comment period ended June 28, 2021.

During this period, HHSC received feedback regarding the proposed rule from three commenters: Texas Council of Community Centers, Dallas County MHMR (d.b.a. Metrocare Services), and Texas Association of City and County Health Officials (TAC-CHO).

A summary of comments relating to the rule and HHSC's response follows.

Comment: Multiple commenters expressed strong support for PHP-CCP and appreciate the effort to mitigate the loss of the Delivery System Reform Incentive Payment Program. PHP-CCP will help sustain access to services, with increased focus on quality programs.

Response: HHSC appreciates the support. No changes were made in response to this comment.

Comment: One commenter supports the definition of "charity care" as it accords with the Centers for Medicare and Medicaid Services' requirements.

Response: HHSC appreciates the support. No changes were made in response to this comment.

Comment: Multiple commenters recommended the term "Public Health Services" be included in the definition of preventative care services in the program and suggested additional services to be included as public health services.

Response: HHSC agrees with the comment to further specify what types of medically necessary public health services can be reimbursed. HHSC has updated §355.8217(b) to clarify that public health and other services are included in the program and to include definitions for "preventative services" and "public health services."

Comment: One commenter recommended HHSC offer opportunities for multiple individuals with each PHP-CCP provider to receive training.

Response: HHSC agrees with the commenter that multiple individuals should be able to receive the PHP-CCP financial training and amended the rule in response to this comment. HHSC has updated §355.8217(c)(2)(A) to specify that multiple individuals from a qualifying provider are able to attend and receive credit for training for each program period.

Comment: One commenter asked for clarification on which training a financial contact is required to attend.

Response: HHSC agrees with the commenter that additional clarity would be beneficial and amended the rule in response to this comment. HHSC has updated §355.8217(c)(2)(B) to clarify that a financial contact must attend the training directly prior to the program period.

Comment: One commenter recommended a PHP-CCP provider have the authority to enter into an agreement wherein another PHP-CCP's trained financial contact may apply on behalf of a PHP-CCP that is without a trained financial contact.

Response: HHSC agrees with the commenter that an outside contractor may prepare the cost report on behalf of the PHP-CCP provider but declines to revise the rule to allow for a PHP-CCP provider to not have a trained PHP-CCP financial contact employed. HHSC has updated §355.8217(c)(2)(C) accordingly.

HHSC updated §355.8217(a) to clarify that §355.8215 applies to PHP-CCP payments for before October 1, 2022.

STATUTORY AUTHORITY

The new rule is adopted under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code Chapter 32.

§355.8217. *Payments to Public Health Providers for Charity Care.*

(a) Introduction. Beginning October 1, 2022, Public Health Provider - Charity Care Program (PHP-CCP) payments are available under this section for eligible providers to help defray the uncompensated costs of charity care. PHP-CCP payments to eligible providers for uncompensated care before October 1, 2022, are described in §355.8215 of this division (relating to the Public Health Provider - Charity Care Program (PHP-CCP)).

(b) Definitions. The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise.

(1) Centers for Medicare and Medicaid Services (CMS)--The federal agency within the United States Department of Health and Human Services responsible for overseeing and directing Medicare and Medicaid, or its successor.

(2) Charity care--Healthcare services, including behavioral health services, vaccine services, public health services, and other preventative services, provided without expectation of reimbursement to uninsured patients who meet the provider's charity-care policy. The charity-care policy should adhere to the charity-care principles of the Healthcare Financial Management Association Principles and Practices Board Statement 15 (December 2019). Charity care includes full or partial discounts given to uninsured patients who meet the provider's financial assistance policy. Charity care does not include bad debt, courtesy allowances, or discounts given to patients who do not meet the provider's charity-care policy or financial assistance policy.

(3) Preventative services--For clients 21 years of age or older, services described in Section 9.2.56.3.2, Preventative Care Visits of the Texas Medicaid Provider Procedures Manual as of the effective

date of this section. For clients birth through 20 years of age, services covered under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) service.

(4) Program period--A period of time for which eligible and enrolled providers may receive the PHP-CCP amounts described in this section. Each PHP-CCP period is equal to a Federal Fiscal Year (FFY) beginning October 1 and ending September 30 of the following year.

(5) Public health services--Services designed to protect and promote the general population's health and to prevent higher cost interventions such as hospitalizations. These services include, but are not limited to, tuberculosis identification, diagnosis, and treatment; sexually transmitted diseases identification, diagnosis, and treatment; immunization (clinical services and administration); dental care; and chronic disease screening, monitoring, and self-management.

(6) Qualifying Providers--Publicly-owned and operated Community Mental Health Clinics (CMHCs), community centers, Local Behavioral Health Authorities (LBHAs), and Local Mental Health Authorities (LMHAs) that are established under the Texas Health & Safety Code Chapter 533 or 534 and are primarily providing behavioral health services, and publicly-owned and operated Local Health Departments (LHDs) and Public Health Districts (PHDs) that are established under the Texas Health and Safety Code Chapter 121.

(7) Total program value--The maximum amount available under PHP-CCP for a program period, as determined by the Texas Health and Human Services Commission (HHSC) and CMS.

(8) Uncompensated care payments--Payments intended to defray the charity care costs as defined in paragraph (3) of this subsection.

(9) Uncompensated care tool--A form prescribed by HHSC to identify charity care costs for Medicaid-enrolled providers and used to enroll in the program.

(10) Uninsured patient--An individual who has no health insurance or other source of third-party coverage for the services provided. The term includes an individual enrolled in Medicaid who received services that do not meet the definition of "medical assistance" in the Social Security Act §1905(a).

(11) Waiver--The Texas Healthcare Transformation and Quality Improvement Program Medicaid demonstration waiver under Social Security Act §1115.

(c) Participation requirements.

(1) Qualifying provider. A provider must indicate it is a qualifying provider as defined in subsection (b) of this section to be considered for reimbursement in the application process.

(2) PHP-CCP financial training. HHSC provides annual training to participating qualifying providers.

(A) A PHP-CCP financial contact must attend and receive credit for training for each program period in which the provider chooses to participate. Multiple individuals from a qualifying provider may attend and receive credit for training for each program period.

(B) Training is provided for each program period and is not retroactive. The qualifying provider must have at least one financial contact attend the annual training directly prior to the program period to participate.

(C) A provider that does not have a trained PHP-CCP financial contact who is an employee of the provider is prohibited from submitting a PHP-CCP application. Provider-contracted vendors that

have completed the PHP-CCP financial training are permitted to enter a provider's data into the cost report for any provider as a report preparer. The cost report must be certified by an employee of the provider.

(3) Cost reports. Qualifying providers must submit an annual uncompensated care tool for charity care costs. Uncompensated care tools must be completed for a full year based on the federal fiscal year.

(A) The uncompensated care tool format will be specified by HHSC. Qualifying providers certify through the cost report process their total actual federal and non-federal costs and expenditures for the program period. Costs must be reported in a manner that is consistent with the PHP-CCP protocol that is approved under the 1115 Waiver.

(B) The cost report is due on or before November 14 of the year of the program period ending date and must be certified in a manner specified by HHSC.

(i) If November 14 falls on a federal or state holiday or weekend, the due date is the first working day after November 14.

(ii) A provider whose cost report is not received by the due date is ineligible for PHP-CCP payment for the federal fiscal year.

(C) HHSC reserves the right to request a corrective action plan (CAP) from providers who submit incorrect cost reports or bill incorrectly. PHP-CCP payments will be withheld until the CAP is accepted by HHSC.

(D) Costs for care delivered to persons who are incarcerated at the time of the care must be excluded from the cost report.

(E) Costs for care delivered as part of an Institution of Mental Disease (IMD) must be excluded from the cost report. If a provider includes costs for Crisis Stabilization Units on their cost report, and the unit is later determined by CMS to be an IMD, associated PHP-CCP payments are subject to recoupment.

(4) Certification. The provider must certify, on a form prescribed by HHSC, that no part of any PHP-CCP payment will be used to pay a contingent fee and that the entity's agreement with a billing entity or cost report preparer does not use a reimbursement methodology that contains any type of incentive, directly or indirectly, for inappropriately inflating, in any way, claims billed to the Medicaid program, including the provider's PHP-CCP funds. The certification must be received by HHSC with the enrollment application described in paragraph (3) of this subsection.

(d) Source of funding. The non-federal share of funding for payments under this section is limited to certified public expenditures from governmental entities.

(e) Payment frequency. HHSC will distribute uncompensated care payments on a schedule to be determined by HHSC and posted on HHSC's website.

(f) Calculation of supplemental payment.

(1) Supplemental payment. A qualifying provider may be eligible to receive a supplemental payment equal to a percentage of its charity care costs for the cost reporting period.

(2) Funding limitations. Payments made under this section are limited by the amount of funds allocated to the total program value for the demonstration year. If payments for charity care for the provider

pool attributable to a demonstration year are expected to exceed the amount of funds allocated to that pool by HHSC for that demonstration year, HHSC will reduce payments to providers in the pool by the same percentage as required to remain within the pool allocation amount.

(g) Recoupment.

(1) Overpayment or disallowance. In the event of an overpayment identified by HHSC or a disallowance by CMS of federal financial participation related to a provider's receipt or use of payments under this section, HHSC may recoup an amount equivalent to the amount of the overpayment or disallowance.

(2) Adjustments. Payments under this section may be subject to adjustment for payments made in error, including, without limitation, adjustments under §371.1711 of this title (relating to Recoupment of Overpayments and Debts), 42 CFR Part 455, and Texas Government Code Chapter 403. HHSC may recoup an amount equivalent to any such adjustment.

(3) Recoupment method. HHSC may recoup from any current or future PHP-CCP payments as follows:

(A) HHSC will recoup from the provider against which any overpayment was made or disallowance was directed.

(B) If, within 30 days of the provider's receipt of HHSC's written notice of recoupment, the provider has not paid the full amount of the recoupment or entered into a written agreement with HHSC to do so, HHSC may withhold any or all future PHP-CCP payments from the provider until HHSC has recovered an amount equal to the amount overpaid or disallowed. Electronic notice and electronic agreement may be used as alternative options at HHSC's discretion.

(h) Changes in operation. If an enrolled provider closes voluntarily or ceases to provide Medicaid services, the provider must notify the HHSC Provider Finance Department by hand delivery, United States (U.S.) mail, or special mail delivery within 10 business days of closing or ceasing to provide Medicaid services. Notification is considered to have occurred when the HHSC Provider Finance Department receives the notice.

(i) General information. In addition to the requirements of this section, the cost reporting guidelines will be governed by §355.101 of this chapter (relating to Introduction); §355.102 of this chapter (relating to General Principles of Allowable and Unallowable Costs); §355.103 of this chapter (relating to Specifications for Allowable and Unallowable Costs); §355.104 of this chapter (relating to Revenues); §355.105 of this chapter (relating to General Reporting and Documentation Requirements, Methods, and Procedures); §355.106 of this chapter (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports); §355.107 of this chapter (relating to Notification of Exclusions and Adjustments); §355.108 of this chapter (relating to Determination of Inflation Indices); §355.109 of this chapter (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs); and §355.110 of this chapter (relating to Informal Reviews and Formal Appeals).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 33. LICENSING

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) adopts amended §§33.2, 33.3, 33.5, 33.10, 33.16, 33.23, 33.29, 33.43 - 33.45, and 33.90; and new §§33.24 - 33.26, without changes to the proposed text as published in the July 2, 2021, issue of the *Texas Register* (46 TexReg 3996). These rules will not be republished. Amended §33.23 is adopted with changes to Figure 16 TAC §33.23(b) as published in the same issue of the *Texas Register*. This rule will be republished.

In 2019, the Texas Legislature adopted amendments to Alcoholic Beverage Code §5.50 to require the commission to assess a fee by rule on all applicants for an original or renewal certificate, permit, or license issued by the commission. (H.B. 1545, 86th Tex. Leg. R.S. (2019)). The bill required TABC to adopt fees into rule by September 1, 2021. This rule package includes the replacement of the existing fee chart in rule §33.23 with a new one. H.B. 1545 also made significant changes to the overall number and types of licenses and permits the commission may issue, necessitating additional conforming changes to Chapter 33 of the commission's rules.

The new and amended rules become effective on September 1, 2021.

The amendments are adopted pursuant to Section 409 of H.B. 1545, requiring the commission to adopt rules setting a fee for each original or renewal certificate, permit, and license as authorized by Alcoholic Beverage Code §5.50, as amended, not later than September 1, 2021; by Alcoholic Beverage Code §5.50, which requires the commission to adopt fees in rule; and under the commission's general powers and duties under §5.31 of the Code.

Response to Comments

Comment 1:

The Texas Wine and Grape Growers Association (TWGGA) commented that the proposal put forth by the TABC staff calls for a significant increase in the cost of the Winery ("G") Permit and erroneously stated that the increase comes from combining the former statutory cost of the permit, the past surcharges, and the cost of each of the ancillary permits into a single fee. In addition, it noted the agency's desire that alcohol manufacturing permit and license fees be of similar amounts.

Justin Engle with Houston Cider Co. made similar comments, positing that the agency would collect \$653 more than would result in revenue neutrality for each G permit, which he calculated by adding up the original G permit fee along with all subordinates and ancillary permits available to G permit holders and subtract-

ing from the proposed G permit fee. He asks: "what is that \$653 difference being accounted for and used (for) by TABC."

Chris Hofbauer, founder of Soley Beverage Co., commented that the Nonresident Seller's Permit is set to increase by more than 210% from the current fee. He asked for information regarding the basis of calculation for the increase.

Response 1:

The new fees for the Winery Permit and Nonresident Seller's Permit were based on redistribution of the agency's biennial revenue requirement across all license and permit types in the new regime according to the relative expenditure of agency resources for that license or permit type, as well as its geographic scope and extent of privileges. The new fees were not based in any way upon the former statutory cost of the permits, the past surcharges, and the cost of each of the ancillary permits.

Many fees increased because the agency must recover its revenue requirement through approximately half the number of licenses and permits that previously existed. Some increases were also due to a historic inequity between the fees to license or permit similar types of businesses. To ensure fairness among license and permit holders, the commission aimed to adopt similar fees for all in-state alcohol manufacturing permits and licenses. For example, for many years, Winery Permit holders have enjoyed more privileges than the other producers for a disproportionately low fee. The fee increase brings them closer in-line with other similarly situated industry members. No changes to the proposed rules were made in response to this comment.

Comment 2:

TWGGA commented that the majority of Winery Permit holders never utilize several of the components of the new Winery Permit. The group stated that this additional cost represents an unnecessary and unused privilege on most wineries for which they never asked.

In a specific example, TWGGA asked the commission to consider a lower fee for a winery permit holder's "satellite" location(s) that do not include production facilities, such as tasting rooms. Specifically, TWGGA suggested removing some of the Winery Permit's "unneeded ancillary abilities" from a new satellite permit and lowering the associated cost.

Mr. Engle likewise commented that many of the eliminated subordinate permits are not used by the majority of the industry and that elimination of these permits will have little or no additional costs to TABC.

Response 2:

Until Sept. 1, 2021, the privileges under each of the following authorizations required a separate permit application and fee, in addition to the Winery Permit: Private Carrier's Permit, Private Storage Permit, Public Storage Permit, Winery Storage Permit, and Winery Festival Permit. Due to changes to the license and permit structure made by the Texas Legislature, as of September 1, 2021, the Winery Permit alone will authorize all of the functions of the other listed permits. The Texas Legislature determined that to streamline the number of licenses and permits administered by the agency, these separate authorizations should instead be included in the Winery Permit. The agency does not have the legal authority to reverse this decision of the Legislature through a rule. No changes to the proposed rules were made in response to this comment.

Comment 3:

TWGGA asked the commission to consider a graduated fee schedule for holders of Winery Permits based on annual sales records with smaller producers paying less than larger ones. It posited that proposed fees represent a substantial burden on small wineries, most of which sell fewer than 2,000 cases per year, and that the fee could be a prohibitive cost to these small wineries as a percent of their total yearly expenditures. TWGGA adds that larger wineries receive more benefit from their permits and are more likely to utilize the additional included privileges.

Hofbauer provided a comparison to fees in the State of Massachusetts, which has a two-tiered license fee based upon the volume of cases sold. He asked for the TABC to publish the percentage distribution of Nonresident Seller's Permits with various sales volumes.

Response 3:

The commission specifically considered whether to split license or permit types into separate tiers based on factors such as annual production amounts. However, with limited exceptions, the commission does not currently collect such information from license and permit holders. For this reason, TABC cannot provide the percentage distribution of Nonresident Seller's Permits with various sales volumes. Beginning to require and collect such data would be an additional regulatory burden on the regulated industry, which the commission strives to minimize. Also, administration of tiered fees would require additional staff resources to ensure timely collection of production reports, audit the information, and properly categorize each permittee both initially and for each renewal. This additional effort would likely result in permit issuance delays and increased administration costs substantially offsetting any potential savings from tiered fees.

No changes to the proposed rules were made in response to this comment. However, the commission voted to create an agency task force to study the feasibility of creating a tiered fee system for licenses and permits in the manufacturing sector of the industry.

Comment 4:

Mr. Engle commented that "TABC must draw a fine line when determining permit fees. Currently, the weighted average permit fee for in-state wineries is \$1370 for all permits, subordinates, and secondary location permits. The proposed fee increase will close many Texas producers and will also close secondary locations that generate sales tax income for the state through tourism dollars. The increase in fees for in-state producers will be extremely revenue depleting due to losses in sales tax revenue, losses in excise tax revenue, losses in permit renewal revenue, and decreases revenues associated with closing businesses."

Hofbauer commented that it would be to the detriment of the Texas consumer to price out the small players (out-of-state-producers of wine and distilled spirits) from accessing the Texas market. He further commented that this could also lead to a reduction of tax revenue for the TABC.

Response 4:

The commission's goals include supporting the success and growth of the alcoholic beverage industry in Texas and promoting consumer choice, and the new fees were determined with these goals in mind. We understand concerns about impacts of increased fees on members of the regulated industry; however, the agency has seen no evidence or data to support the claim that businesses will close or the state will lose sales or excise tax revenues due to the new fees. Commission staff will monitor

the market impacts of the new fees and if the commenters' concerns bear out, fees can be adjusted accordingly through additional rulemaking. No changes to the proposed rules were made in response to this comment.

Comment 5:

Hofbauer asked why out-of-state beer/ale manufacturing entities are "favored over" the out-of-state distilled spirits manufacturing entities, noting that the fee for a Nonresident Brewer's License is lower than the equivalent Nonresident Seller's License.

Response 5:

The two-year fee for the Nonresident Seller's Permit is \$1,800 and for a Nonresident Brewer's License is \$1,500. The slight difference is attributable to the scope of privileges: the nonresident seller can import two beverage alcohol types (wine and distilled spirits) whereas the nonresident brewer can only import malt beverages. No changes to the proposed rules were made in response to this comment.

Comment 6:

Hofbauer commented that it would be greatly appreciated if the suggested two-year licensing fee (for Nonresident Sellers' Permits) could be reviewed in certain instances.

Response 6:

The commission has committed to review the new fees and adjust them as necessary once sufficient data is available to evaluate their impacts. Additionally, commission staff will monitor the numbers of new and renewal applications and act if necessary and advisable to prevent disproportionate impacts on holders of any license or permit type. No changes to the proposed rules were made in response to this comment.

Comment 7:

Patrick Kwiatkowski of City Orchard Cidery in Houston commented that as a winery stakeholder, he is opposed to the proposed winery permit fee.

Response 7:

The commission appreciates Mr. Kwiatkowski's input. No changes were made in response to this comment.

Comment 8:

Mr. Engle commented "(t)he lack of transparency in this endeavor is well observed. Having less than sixty days to create, debate, and implement a new permit and license structure with newly associated fees without fully engaging the stakeholders is a difficult task. Knowing that TABC had over two years to work and engage with stakeholders truly shows the lack of transparency on this issue." He further commented that the TABC had ample time to implement the Sunset Advisory Commission's "decree to 'establish advisory committees to provide expertise for rulemaking and other issues' and has failed to do so for this matter."

Response 8:

The TABC followed the rulemaking procedures prescribed by the Administrative Procedure Act, Chapter 2001 of the Texas Government Code. In addition, the agency provided the draft rules to the public in May 2021 and held an informal stakeholder meeting on June 2 to receive feedback and make changes based upon feedback prior to publication. Mr. Engle has participated in the process by filing written comments, making comments at the

public hearing, and addressing the commissioners in the public comment portion of their August 3 open meeting. All of the others who addressed the commissioners on August 3, who represented a large swath of the regulated industry in Texas, complimented staff's level of engagement with stakeholders and transparency in the process.

The Sunset Advisory Commission's management directive that the commission establish advisory committees did not require creation of an advisory committee for this rulemaking. The commission determined that the numerous opportunities for stakeholder input were sufficient for this project.

No changes were made in response to this comment.

Comment 9:

Mr. Engle commented: "The proposed fee structure lacks comprehensive information and data on how the fee increases are being calculated. Ms. Horton publicly stated that "no data" was used to determine the fee structure in the July 13, 2021 TABC Public Hearing. Ms. Horton also falsely stated in several hearings that TABC's revenue is solely from fees generated by permits and licenses when in fact the Agency's revenue is also generated by manufacturers' excise taxes. When pressed for additional information, Ms. Horton has been unable to provide the exact breakdown of expenses by permit and license for each industry stakeholder as well as provide data needed for the increase in fees in relation to the eliminated permit and license structure. The only information presented to stakeholders on the calculation of the new fee structure is problematic because the new fee has no direct data correlated with it. TABC, via Ms. Horton, refused to submit their methodology of the fee increase in both public hearings and through open records requests."

Response 9:

Ms. Horton did not state that "no data" was used to determine the fee structure. Rather, the type of data Mr. Engle would prefer that the fees be based upon, "an exact breakdown of expenses by permit and license" and data related to "the increase in fees in relation to the eliminated permit and license structure" was not used in this process. A breakdown of expenses by permit and license cannot exist because the new permit and license structure does not go into effect until September 1, 2021. Moreover, the agency does not track its regulatory expenses in this manner and it is not clear that it categorizing expenses by license and permit types is feasible.

Data showing why the fee for a specific new permit type is not equal to the summed fees for the authorization now included in it is not available because, as stated in the response to comment 1, above, the agency did not use the prior fees for primary or ancillary permits as the basis for the new fees. The legislature specifically asked for a resetting of fees due to the lack of a logical, consistent foundation for the existing hodgepodge of fees. Using the existing fees as a basis for the new fees would have simply carried that problem over into the new fees.

The data used to determine relative amounts of regulatory effort, as required by the legislature, differed between the five agency divisions providing input. These data sets were described in a presentation made at the public hearing on the proposed rules.

The methodology used by agency staff has been presented numerous times, starting with the initial stakeholder meeting on June 2, 2021. It is outlined in Response 1, above.

No changes were made in response to this comment.

Comment 10:

Mr. Engle stated that "the proposed fee for the consolidated Winery Permit is revenue generating for the Texas General Fund and is in contrast to the revenue neutral policy within HB 1545 (2019)." He provided a proposed rate of \$1,370 based upon revenues previously received under the existing permit fee and ancillary permit fees to achieve the same revenue from Winery Permit holders from the new permit as from the prior permit system.

Response 10:

Mr. Engle's assertion is based upon an interpretation of revenue neutrality that is unsupported by House Bill 1545. The commission did not aim to be revenue neutral within each single permit type for several reasons: First, the legislative intent that the new fees not have a net negative impact to the General Revenue Fund does not require that each permit type generate the same revenue as it and its ancillary permits did under the prior system, only that the total contribution to GR from all TABC license and permit fees is not less than prior biennia. Second, because the legislature's intent was also that the commission reset the fees using a logical process, noting the lack of any discernable basis for the prior fees, it would be inappropriate for the agency to use the prior fees as a starting point for the new ones. Finally, the legislature's new list of licenses and permits includes some that did not previously exist and others that are not amenable to the type of analysis performed by Mr. Engle for the Winery Permit.

No changes were made in response to this comment.

SUBCHAPTER A. APPLICATIONS

16 TAC §§33.2, 33.3, 33.5, 33.10, 33.16

Statutory Authority

The amendments are adopted pursuant to the commission's authority under §5.50 of the Code, which requires the commission to adopt fees in rule; and §5.31 of the Code, which allows the commission to prescribe and publish rules necessary to carry out the provisions of the Code.

The adopted new and amended rules do not impact any other current rules or statutes.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. FEES AND PAYMENTS

16 TAC §§33.23 - 33.26, 33.29

Statutory Authority

The new rules and amendments are adopted pursuant to the commission's authority under §5.50 of the Code, which requires the commission to adopt fees in rule; and §5.31 of the Code,

which allows the commission to prescribe and publish rules necessary to carry out the provisions of the Code.

The adopted new and amended rules do not impact any other current rules or statutes.

§33.23. *License and Permit Fees.*

(a) This section relates to Alcoholic Beverage Code §5.50.

(b) Each applicant for a license, permit, or certificate issued by the commission shall submit with the application the fee for that license, permit, or certificate that is listed in Fig. 33.23(b). Figure: 16 TAC §33.23(b)

(c) An applicant for a Nonprofit Entity Temporary Event authorization shall pay a fee of \$50 per day with a two-day minimum, pursuant to §33.78 of this title. The authorization must be in effect for all days that alcoholic beverages will be present at the temporary event location, from delivery to removal.

(d) An organization that holds a private club exemption certificate permit under Alcoholic Beverage Code §32.11 is exempt from the requirement to pay a fee.

(e) The commission shall review all fees at least once every four years and shall adjust fees as necessary.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. BONDS

16 TAC §§33.43 - 33.45

Statutory Authority

The amendments are adopted pursuant to the commission's authority under §5.50 of the Code, which requires the commission to adopt fees in rule; and §5.31 of the Code, which allows the commission to prescribe and publish rules necessary to carry out the provisions of the Code.

The adopted new and amended rules do not impact any other current rules or statutes.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER F. LICENSE AND PERMIT ACTION

16 TAC §33.90

Statutory Authority

The amendments are adopted pursuant to the commission's authority under §5.50 of the Code, which requires the commission to adopt fees in rule; and §5.31 of the Code, which allows the commission to prescribe and publish rules necessary to carry out the provisions of the Code.

The adopted new and amended rules do not impact any other current rules or statutes.

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CHAPTER 33. LICENSING

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) adopts the repeal of 16 Texas Administrative Code §§33.9, 33.11, 33.12, 33.15, 33.25 - 33.28, 33.30 - 33.32, and 33.37 - 33.39 without changes as proposed in the July 2, 2021, issue of the *Texas Register* (46 TexReg 4005). These repeals are necessary due to reorganization and streamlining of Chapter 33. The repeals will not be republished.

No public comments were received.

SUBCHAPTER A. APPLICATIONS

16 TAC §§33.9, 33.11, 33.12, 33.15

The repeals are adopted pursuant Section 410 H.B. 1545, 86th Tex. Leg. R.S. (2019), which eliminated certain authorizations, and §5.31 of the Code, which authorizes the commission to prescribe and publish rules necessary to carry out the provisions of the Code.

The adopted repeals do not impact any other current rules or statutes.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. FEES AND PAYMENTS

16 TAC §§33.25 - 33.28, 33.30 - 33.32, 33.37 - 33.39

The repeals are adopted pursuant Section 410 H.B. 1545, 86th Tex. Leg. R.S. (2019), which eliminated certain authorizations, and §5.31 of the Code, which authorizes the commission to prescribe and publish rules necessary to carry out the provisions of the Code.

The adopted repeals do not impact any other current rules or statutes.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 45. MARKETING PRACTICES

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) adopts amendments to rules §§45.1, 45.2, 45.4, 45.5, 45.25 - 45.27, 45.30, 45.40 - 45.43, 45.50, 45.106, 45.113, 45.117, and 45.131; and new rules §§45.51, 45.121 - 45.127, and 45.130, without changes to the proposed text as published in the July 2, 2021, issue of the *Texas Register* (46 TexReg 4006). The text of §45.122(f) has been amended in response to comment and §45.130 is adopted with changes and will be republished. All other rules will not be republished.

These amendments to Chapter 45 of the agency's rules result from a comprehensive review of the chapter pursuant to the regular four-year review cycle prescribed by Government Code §2001.039, as well as efforts to conform agency rules to statutory changes made by House Bill 1545 (H.B. 1545, 86th Tex. Leg. R.S. (2019)), including the consolidation of beer and ale and changes to license and permit types. Because related statutory changes become effective on September 1, 2021, the commission adopts these rule changes effective on the same date, September 1, 2021, to reduce confusion.

Additionally, provisions related to advertising that were repealed effective December 31, 2020, are consolidated and readopted to ensure the agency's continuing ability to enforce them independently. Members of the regulated industry must comply with these requirements and restrictions under federal regulations; therefore, their re-adoption should not have any impact on regulated industry.

The amendments are proposed pursuant to the commission's general powers and duties under §5.31 of the Alcoholic Beverage Code (the "Code").

Response to Comment

Comment: Marcus Schwartz of BrackinSchwartz PLLC commented that §45.122(f), as proposed, could be interpreted to bar all use of the Texas and United States flags in advertisements and on alcoholic beverage container labels. He commented that his clients would benefit from a clear standard and process to navigate which uses of the flags are prohibited and which are authorized.

Response: The commission agrees with Mr. Schwartz that the first clause of the provision, which is almost identical to existing federal regulations (27 CFR §§4.39(g), 5.42(b)(7), and 7.29(d)) could be interpreted to categorically prohibit the use of flags and other government insignia in alcoholic beverage labels and advertisements. It states: "Labels shall not contain, in the brand name or otherwise, any statement, design, device, or pictorial representation which the administrator finds relates to, or is capable of being construed as relating to, the armed forces of the United States, or the American flag, or the Texas flag, or any emblem, seal, insignia, or decoration associated with such flag or armed forces." Although the clause following the semicolon does refer to a standard - "nor shall any label contain any statement, design, device, or pictorial representation of or concerning any flag, seal, coat of arms, crest or other insignia, likely to mislead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of the government, organization, family, or individual with whom such flag, seal, coat of arms, crest, or insignia is associated" - the rule's sentence structure and punctuation subject it to interpretation that the standard articulated in the second clause does not also attach to the first clause. Under such an interpretation, any label or advertisement that the executive director finds "relates to, or is capable of being construed as relating to" the armed forces or the Texas or U.S. flag or any associated representation is barred, regardless of harm to the consumer or the state.

Representations of the Texas flag are common in product advertisements and labels for all kinds of consumer products. However, the State of Texas has an interest in ensuring that use of the flag or other insignia on alcoholic beverage labels or advertisements do not create an impression that the state has manufactured or endorsed the products. The commission finds that the regulated industry would benefit from a clearer articulation that the standard that applies to use of the flag and other such official insignia whether it is likely to mislead or is capable of misleading the consumer to believe that the product has been endorsed, made, or used by, or produced for or under the supervision of, or in accordance with the specifications of the government, organization, family, or individual with whom such flag, seal, coat of arms, crest, or insignia is associated. The commission further finds that the regulated industry would benefit from the regulatory certainty afforded by a process for review and individual consideration of its labels and advertisements under that standard. As revised, the rule requires the executive director to authorize the label or advertisement if it is not misleading under the standard articulated in the rule. Section 45.122(f) has been revised accordingly and is republished below.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §§45.1, 45.2, 45.4, 45.5

The rules are adopted pursuant to the commission's authority under §5.31 of the Code to prescribe and publish rules necessary to carry out the provisions of the Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. ENFORCEMENT

16 TAC §§45.25 - 45.27

The rules are adopted pursuant to the commission's authority under §5.31 of the Code to prescribe and publish rules necessary to carry out the provisions of the Code.

The adopted amendments do not impact any other current rules or statutes.

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SUBCHAPTER C. SPECIFIC REQUIREMENTS FOR DISTILLED SPIRITS

16 TAC §45.30

The rules are adopted pursuant to the commission's authority under §5.31 of the Code to prescribe and publish rules necessary to carry out the provisions of the Code.

The adopted amendments do not impact any other current rules or statutes.

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SUBCHAPTER D. SPECIFIC REQUIREMENTS FOR MALT BEVERAGES

16 TAC §§45.40 - 45.43

The rules are adopted pursuant to the commission's authority under §5.31 of the Code to prescribe and publish rules necessary to carry out the provisions of the Code.

The adopted amendments do not impact any other current rules or statutes.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. SPECIFIC REQUIREMENTS FOR WINE

16 TAC §§45.50, §45.51

The rules and rule amendments are adopted pursuant to the commission's authority under §5.31 of the Code to prescribe and publish rules necessary to carry out the provisions of the Code.

The adopted amendments do not impact any other current rules or statutes.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER F. ADVERTISING AND PROMOTION

16 TAC §§45.106, 45.113, 45.117, 45.121 - 45.127

The rules are adopted pursuant to the commission's authority under §5.31 of the Code to prescribe and publish rules necessary to carry out the provisions of the Code.

The adopted amendments do not impact any other current rules or statutes.

§45.122. *Prohibited Statements.*

(a) An advertisement for an alcoholic beverage shall not contain:

(1) any statement that is false or untrue in any particular or that irrespective of falsity, directly or by ambiguity, omission, or inference, or by the addition of irrelevant, scientific, or technical matter, tends to create a misleading impression;

(2) any statement that is disparaging of a competitor's product;

(3) any statement, design, device, or representation that is obscene or indecent;

(4) any statement, design, device, or representation of or relating to analyses, standards or tests, irrespective of falsity, that the administrator finds likely to mislead the consumer;

(5) any statement of, or any statement likely to be interpreted as a statement regarding intoxicating qualities; nor

(6) any statement, design, device, or representation of or relating to any guarantee, irrespective of falsity, that the executive director finds to be likely to mislead the consumer. Enforceable money back guarantees are not prohibited.

(b) Statements inconsistent with labeling. The advertisement shall not contain any statement concerning a brand or lot of alcoholic beverage that is prohibited from appearing on the label or inconsistent with any statement on the label thereof.

(c) Curative and therapeutic effects. The advertisement shall not contain any statement, design, or device representing that the use of any alcoholic beverage has curative or therapeutic effect, if such statement is untrue in any particular, or tends to create a misleading impression.

(d) Place of origin. The advertisement shall not represent that the alcoholic beverage was manufactured in or imported from a place or country other than that of their actual origin, or was produced or processed by one who was not in fact the actual producer or processor.

(e) Confusion of brands. Two or more different brands or lots of alcoholic beverages shall not be advertised in one advertisement (or in two or more advertisements in one issue of a periodical or newspaper, or in one piece of other written, printed, or graphic matter) if the advertisement tends to create the impression that representations made as to one brand or lot apply to the other or others, and if as to such latter the representations contravene any provisions of this regulation or are in any respect untrue.

(f) Flags, seals, coats of arms, crests, and other insignia.

(1) An advertisement or product label shall not contain any statement, design, device, or pictorial representation that relates to or is capable of being construed as relating to the armed forces of the United States, or the American flag, or the Texas flag, or any emblem, seal, insignia, or decoration associated with such flag or armed forces; nor shall any advertisement contain any statement, design, device, or pictorial representation of or concerning any flag, seal, coat of arms, crest, or other insignia unless an exception to this rule is granted by the executive director under subsection (2) of this section.

(2) The executive director, in their sole discretion, may authorize an exception to subsection (1) of this section upon written request. The executive director shall authorize an exception if the advertisement or product label is not likely to mislead or capable of misleading the consumer to believe that the product has been endorsed, made, or used by, or produced for or under the supervision of, or in accordance with the specifications of the government, organization, family, or individual with whom such flag, seal, coat of arms, crest, or insignia is associated.

(g) An advertisement for an alcoholic beverage product shall not contain any statement that the product is distilled, blended, made, bottled, or sold under or in accordance with any municipal, state, federal, or foreign authorization, law or regulation, unless such statement appears in the manner authorized by this chapter. If a municipal, state or federal permit number is stated, such permit number shall not be accompanied by any additional statements relating thereto.

(h) No alcoholic beverage possessed for the purpose of sale in this state shall be advertised for sale as the result of fire, smoke, or water damage to the label, container or contents.

(i) Subsections (b) and (h) of this section do not apply to the institutional advertising of wines inside any building in an area where the sale of such wines is legal, provided that the advertising has been approved by the executive director.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER G. REGULATION OF CASH AND CREDIT TRANSACTIONS

16 TAC §§45.130, §45.131

The rules are adopted pursuant to the commission's authority under §5.31 of the Code to prescribe and publish rules necessary to carry out the provisions of the Code.

The adopted amendments do not impact any other current rules or statutes.

§45.130. *Credit Law and Delinquent List.*

(a) Purpose. This section implements §§102.32, 11.61(b)(2), 11.66, and 109.64 of the Texas Alcoholic Beverage Code (Code).

(b) Definitions. For purposes of this section, the following terms have the definitions given in this subsection.

(1) Alcoholic beverage--As used in this section includes only liquor, as that term is defined in §1.04 of the Code.

(2) Cash equivalent--A financial transaction or instrument that is not conditioned on the availability of funds upon presentment, including money order, cashier's check, certified check or completed electronic funds transfer.

(3) Delinquent payment--A financial transaction or instrument that fails to provide payment in full or is returned to the Seller as unpaid for any reason, on or before the fourth business day after the date that payment is due under §102.32(c) of the Code, or is returned to the Seller as unpaid for any reason after the fourth business day after the date payment is due under §102.32(c) of the Code. A delinquent payment also occurs in the event the Retailer fails to submit payment on or before the fourth business day after the date that payment is due under §102.32(c) of the Code.

(4) Event--A financial transaction or instrument that fails to provide payment to a Retailer and results in a Retailer making one or more delinquent payments to one or more Sellers.

(5) Incident--A single delinquent payment. Failure to submit payment also constitutes an incident.

(6) Retailer--A package store permittee, wine only package store permittee, private club permittee, private club exemption certificate permittee, mixed beverage permittee, or other Retailer, and their agents, servants and employees.

(7) Seller--As used in this section includes:

(A) the holder of a wholesaler's permit or a general class B wholesaler's permit

(B) the holder of a winery permit;

(C) the holder of a local distributor's permit when making a sale of an alcoholic beverage that is not the sale of a malt beverage to a mixed beverage permittee or a nonprofit entity temporary event permittee; and

(D) the agents, servants and employees of a permit or license holder identified in subparagraphs (A) - (C) of this paragraph.

(c) Invoices.

(1) A delivery of alcoholic beverages by a Seller to a Retailer must be accompanied by an invoice of sale showing the name and permit number of the Seller and the Retailer, a full description of the alcoholic beverages, the price and terms of sale, and the place and date of delivery.

(2) The Seller's copy of the invoice must be signed by the Retailer to verify receipt of alcoholic beverages and accuracy of invoice.

(3) The Seller and Retailer must retain invoices in compliance with the requirements of §206.01 of the Code.

(4) Invoices may be created, signed and retained in an electronic or web-based inventory system, and may be retained on or off the licensed premise, as long as the records can be accessed from the licensed premises and made available to the commission during normal business hours.

(d) Late Payment Violation.

(1) A payment is late if it is not received by the Seller on or before the date that payment is due under §102.32(c) of the Code. If the Seller receives payment by mail within four days of the date that payment is due under §102.32(c) of the Code, the payment is not late.

(2) A Retailer shall not make a late payment to a Seller for the delivery of alcoholic beverages. A payment is late and a violation accrues to the Retailer according to paragraph (1) of this subsection.

(3) A Retailer who violates this section must pay the amount due, and a Seller shall accept payment, only in cash or cash equivalent financial transaction or instrument.

(4) A Retailer who violates this section shall be placed on the Delinquent List unless the delinquent account is paid within four days of the date that payment is due under §102.32(c) of the Code.

(5) A Retailer whose permit or license expires or is cancelled for cause, voluntarily cancelled, suspended or placed in suspension while on the Delinquent List is disqualified from applying for or being issued an original or renewal permit or license until all delinquent accounts are paid in full. For purposes of this section, the Retailer includes all persons who were owners, officers, directors and shareholders of the Retailer at the time the delinquency occurred.

(e) Reporting Violation and Payment; Failure to Report.

(1) A report of a violation or payment must be submitted electronically to the commission on the commission's web-based reporting system at <https://www.tabc.texas.gov>.

(2) A Seller who cannot access the commission's web-based reporting system must either:

(A) submit a request for exception to submit reports by paper; or

(B) contract with another Seller or service provider to make electronic reports on behalf of the Seller

(3) All reports of violations or payment under this subsection must be made to the commission before the date the Delinquent List is published.

(4) A Seller who fails to report a violation or a payment as required by this subsection is in violation of this section.

(f) Prohibited Sales and Delivery.

(1) Sellers are prohibited from selling or delivering alcoholic beverages to any licensed location of a Retailer who appears on the commission's Delinquent List from the date the violation appears on the Delinquent List until the Release Date on the Delinquent List, or until the Retailer no longer appears on the Delinquent List.

(2) A sale or delivery of alcoholic beverages prohibited by this section is a violation of this section.

(g) Prohibited Purchase or Acceptance.

(1) A Retailer who violates subsection (d) of this section is prohibited from purchasing or accepting delivery of alcoholic beverages from any source at any of Retailer's licensed locations from the date any violation occurs until all delinquent accounts are paid in full.

(2) A prohibited purchase or acceptance of a delivery of alcoholic beverages is a violation of this section.

(h) Exception.

(1) A Retailer who wishes to dispute a violation of this section or inclusion on the commission's Delinquent List based on a good faith dispute between the Retailer and the Seller may submit a detailed electronic or paper written statement with the commission with an electronic or paper copy to the Seller explaining the basis of the dispute.

(2) The written statement must be submitted with documents and/or other records tending to support the Retailer's dispute, which may include:

(A) a copy of the front and back of the cancelled check of Retailer showing endorsement and deposit by Seller;

(B) bank statement or records of bank showing funds were available in the account of Retailer on the date the check was delivered to Seller; and

(C) bank statement or records showing:

(i) bank error or circumstances beyond the control of Retailer caused the check to be returned to Seller unpaid; or

(ii) the check cleared Retailer's account and funds were withdrawn from Retailer's account in the amount of the check.

(3) A disputed delinquent account will not be removed from the Delinquent List until documents and/or other records tending to support the Retailer's dispute are submitted to the commission.

(4) The Retailer must immediately submit an electronic notice of resolution of a dispute to the commission under this subsection.

(i) Penalty for Violation. An action to cancel or suspend a permit or license may be initiated under §11.61(b)(2) of the Code for one or more violations of this section. The commission may consider whether a violation is the result of an event or incident when initiating an action under this subsection.

(j) Delinquent List.

(1) The Delinquent List is published bi-monthly on the commission's public web site at <https://www.tabc.texas.gov>. An interested person may receive the Delinquent List by electronic mail each date the Delinquent List is published by registering for this service online.

(2) Except as otherwise specified in subsection (k) of this section, the Delinquent List will be published on the fifth business day after the 25th day of the month for purchases made from the 1st to the 15th day of that month and for which payment was not received by the fourth business day after the 25th day of that month. Except as otherwise specified in subsection (k) of this section, the Delinquent List will be published on the fifth business day after the 10th day of the next month for purchases made between the 16th and the last day of the preceding month and for which payment was not received by the fourth business day after the 10th day of the next month.

(3) The Delinquent List is effective at 12:01 A.M. on the date of publication.

(4) The Delinquent List is updated hourly to reflect reports of payments submitted.

(k) Calculation of Time. A due date under this section or §102.32(c) of the Code or the publication date of the Delinquent List that would otherwise fall on a Saturday, a Sunday, a state or federal holiday (unless the commission is required to be open for business), or a standard Federal Reserve bank holiday will be the next regular business day. For purposes of this section, a business day means a day which is not a Saturday, a Sunday, a state or federal holiday (unless the commission is required to be open for business), or a standard Federal Reserve bank holiday.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 5, 2021.

TRD-202103065

Shana Horton

Rules Attorney

Texas Alcoholic Beverage Commission

Effective date: September 1, 2021

Proposal publication date: July 2, 2021

For further information, please call: (512) 206-3451



SUBCHAPTER B. ENFORCEMENT

16 TAC §45.22

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) adopts the repeal of 16 Texas Administrative Code §45.22 and §45.121, without changes to the proposed text as published in the July 2, 2021, issue of the *Texas Register* (46 TexReg 4018). The repealed rules will not be republished.

No public comments were received.

The repeal is adopted pursuant to the commission's authority under §5.31 of the Code to prescribe and publish rules necessary to carry out the provisions of the Code.

The repeal does not impact any other current rules or statutes.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 5, 2021.

TRD-202103053

Shana Horton

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Effective date: September 1, 2021

Proposal publication date: July 2, 2021

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SUBCHAPTER G. REGULATION OF CREDIT TRANSACTIONS

DIVISION 1. DELINQUENT LIST

16 TAC §45.121

The repeal is adopted pursuant to the commission's authority under §5.31 of the Code to prescribe and publish rules necessary to carry out the provisions of the Code.

The repeal does not impact any other current rules or statutes.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 5, 2021.

TRD-202103054

Shana Horton

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Effective date: September 1, 2021

Proposal publication date: July 2, 2021

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 103. HEALTH AND SAFETY

SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING SAFE SCHOOLS

19 TAC §103.1201, §103.1203

The Texas Education Agency (TEA) adopts amendments to §103.1201 and §103.1203, concerning disciplinary alternative education programs (DAEPs). The amendments are adopted without changes to the proposed text as published in the May 28, 2021 issue of the *Texas Register* (46 TexReg 3355). The rules will not be republished. The adopted amendments align the rules with statute, provide clarification on procedures for administering pre- and post-assessments to students placed in DAEPs for a period of 90 school days or longer, and specify how to obtain an accommodated version of an assessment from TEA.

REASONED JUSTIFICATION: Section 103.1201 defines minimum requirements a school district must meet when implementing a DAEP as required by Texas Education Code (TEC), §37.008.

The adopted amendment to §103.1201(b)(1) updates the list of student groups that are required to have identified objectives included in a district's board-approved district improvement plan and the improvement plans for each campus required by TEC, §11.251 and §11.252.

Section 103.1201(f)(1) is updated to remove references to minimum, recommended, or distinguished achievement-advanced graduation plans. These plans are no longer offered. The amended language instead specifies that a student's high school personal graduation plan required by TEC, §28.02121, may not be altered when the student is assigned to a DAEP.

The adopted amendment to §103.1201(f)(2) revises the minimum length of operational time each day required by DAEPs in order to meet the requirements set forth in TEC, §25.081.

Section 103.1201(k) is updated to reflect the addition of TEC, §37.023, regarding transition procedures for a student exiting a DAEP and returning to the student's locally assigned campus.

Section 103.1203 defines rules for administering pre- and post-assessments to students placed in DAEPs for a period of 90 school days or longer as required by TEC, §37.0082.

The adopted amendment to §103.1203(a) directs school districts to contact TEA to obtain an accommodated assessment based on the particular needs of a student placed in a DAEP for a period of 90 school days or longer necessary to meet requirements set forth in TEC, §37.0082.

Section 103.1203(d) requires local school district policy and procedures for administering pre- and post-assessments to address providing appropriate accommodations as needed for a student placed in a DAEP for a period of 90 school days or longer.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began May 28, 2021, and ended June 28, 2021. Following is a summary of the public comments received and corresponding responses.

Comment: A Texas school administrator raised concerns about the fiscal impact of pre- and post-assessments of students placed in DAEPs for a period of 90 school days or longer.

Response: The agency provides the following clarification. Pre- and post-assessments of students placed in DAEPs for a period of 90 school days or longer are required by statute under TEC,

§37.0082. In addition, released state assessments are available at no cost to school districts.

Comment: A Texas school administrator commented in support of clarification on how to obtain an accommodated version of an assessment as well as a school district's responsibilities to administer pre- and post-assessments of students placed in DAEPs for a period of 90 school days or longer.

Response: The agency agrees that clarification will assist school districts and school administrators.

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §37.008(a-1), which requires the agency to adopt minimum standards for the operation of disciplinary alternative education programs (DAEPs); and TEC, §37.0082(c), which requires the agency to adopt rules necessary to implement the assessment of academic growth of students placed in DAEPs for a period of 90 school days or longer.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §37.008(a-1) and §37.0082(c).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 3, 2021.

TRD-202103020

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: August 23, 2021

Proposal publication date: May 28, 2021

For further information, please call: (512) 475-1497



TITLE 22. EXAMINING BOARDS

PART 11. TEXAS BOARD OF NURSING

CHAPTER 221. ADVANCED PRACTICE NURSES

22 TAC §221.14

Introduction. The Texas Board of Nursing (Board) adopts amendments to 22 Texas Administrative Code §221.14, relating to Nurse-Midwives Providing Controlled Substances, without changes to the proposed text as published in the June 11, 2021, issue of the *Texas Register* (46 TexReg 3601). The rule will not be republished.

Reasoned Justification. As required by Tex. Gov't. Code §2001.039, the Board filed its notice of intention to review and consider for re-adoption, re-adoption with amendments, or repeal, 22 Texas Administrative Code Chapter 221, pursuant to the 2019 rule review plan adopted by the Board at its July 2018 meeting. The notice was posted in the December 11, 2020, issue of the *Texas Register* (45 TexReg 8885). As a result of the rule review, the Board proposed substantive amendments to §221.14 for consistency with Tex. Occ. Code §157.059, which governs *Delegation of Certain Obstetrical Services*.

Tex. Occ. Code §157.059 was amended by Senate Bill (SB) 406, effective November 1, 2013. Pursuant to SB 406, a physician may delegate to a physician assistant or a nurse-midwife

the act of administering or providing controlled substances to the patients of the physician assistant or nurse-midwife during intrapartum and immediate postpartum care. This delegation is limited to seven nurse-midwives or physician assistants or their full-time equivalents and the designated facility at which the nurse-midwife or physician assistant provides care. Additionally, SB 406 authorized the use of a prescriptive authority agreement as an additional method for physician delegation under Tex. Occ. Code §157.059. It also updated the terminology throughout the bill to refer to advanced practice *registered* nurses. The Board's adopted amendments are necessary for consistency with these statutory changes.

How the Section Will Function. Adopted §221.14 controls the provision of controlled substances by nurse-midwives during intra-partum and immediate post-partum care, consistent with applicable statutes and subject to certain requirements. First, physician delegation of the authority to provide controlled substances must be made through a physician's order, medical order, standing delegation order, prescriptive authority agreement, or protocol that requires adequate and documented availability for access to medical care. Additionally, the delegation may not include the use of a prescription sticker or the use or issuance of an official prescription form or the authority to issue an electronic prescription under the Health & Safety Code §481.075. The adopted rule further requires that the physician's orders, medical orders, standing delegation orders, prescriptive authority agreements, or protocols require the reporting of or monitoring of each patient's progress, including complications of pregnancy and delivery and the administration and provision of controlled substances by the nurse-midwife to the patient. Additionally, delegation by a physician is limited to seven nurse-midwives or physician assistants or their full-time equivalents and the designated facility at which the nurse-midwife or physician assistant provides care.

Public Comment. The public comment period closed on July 12, 2021. The Board did not receive any timely submitted comments on the proposal.

Statutory Authority. The amendments are adopted under the authority of the Texas Occupations Code §301.151.

Section 301.151 addresses the Board's rulemaking authority. Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 4, 2021.

TRD-202103048

Jena Abel

Deputy General Counsel

Texas Board of Nursing

Effective date: August 24, 2021

Proposal publication date: June 11, 2021

For further information, please call: (512) 305-6822

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PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 271. EXAMINATIONS

22 TAC §271.2

At the July 30, 2021, meeting of the Texas Optometry Board, the Board moved unanimously to adopt amendments to Rule 271.2 (g) and (h) without change to the proposed text published in the May 28, 2021, issue of the *Texas Register* (46 TexReg 3359). This adopted amendment updates the deadline for the examination and clarifies the fee requirements. The rule will not be republished.

No public comments were received.

The amendment to Board Rule 271.2 is adopted under the Texas Optometry Act, Texas Occupations Code, §351.151. The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 3, 2021.

TRD-202103023

Kelly Parker

Executive Director

Texas Optometry Board

Effective date: August 23, 2021

Proposal publication date: May 28, 2021

For further information, please call: (512) 305-8502

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CHAPTER 275. CONTINUING EDUCATION

22 TAC §275.3

At the July 30, 2021, meeting of the Texas Optometry Board, the Board moved unanimously to adopt new §275.3 without changes to the proposed text as published in the May 28, 2021, issue of the *Texas Register* (46 TexReg 3360). The rule will not be republished. This new rule requires all licensees to submit proof of completion of continuing education hours to the Board's digital education tracking platform beginning in January 2022. This does not impact the type or number of continuing education hours required for each renewal.

No public comments were received.

The rule is adopted under the Texas Optometry Act, Texas Occupations Code, §351.151. The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 3, 2021.

TRD-202103025

Kelly Parker
Executive Director
Texas Optometry Board
Effective date: August 23, 2021
Proposal publication date: May 28, 2021
For further information, please call: (512) 305-8502



TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 553. LICENSING STANDARDS FOR ASSISTED LIVING FACILITIES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), adopts the repeals of §§553.61 - 553.64; and new §§553.100, 553.101, 553.103, 553.104, 553.107, 553.110 - 553.113, 553.115 - 553.123, 553.125 - 553.149, 553.210 - 553.213, 553.215 - 553.223, 553.225 - 553.249, in Title 26, Texas Administrative Code (TAC), Chapter 553, Licensing Standards for Assisted Living Facilities.

New §§553.100, 553.101, 553.103, 553.104, 553.107, 553.111 - 553.113, 553.115, 553.117 - 553.119, 553.121 - 553.123, 553.125, 553.127 - 553.129, 553.131 - 553.133, 553.135, 553.137 - 553.139, 553.141 - 553.143, 553.145, 553.147 - 553.149, 553.212, 553.213, 553.215 - 553.219, 553.222 - 553.223, 553.225, 553.227 - 553.229, 553.230, 553.232 - 553.233, 553.235, 553.237 - 553.239, 553.240, 553.242 - 553.243, 553.245, and 553.247 - 553.249 are adopted with changes to the proposed text as published in the April 9, 2021, issue of the *Texas Register* (46 TexReg 2336). These sections will be republished.

HHSC withdraws new §553.251 as published in the April 9, 2021, issue of the *Texas Register* (46 TexReg 2336).

New §§553.110, 553.116, 553.120, 553.126, 553.130, 553.134, 553.136, 553.140, 553.144, 553.146, 553.210, 553.211, 553.220, 553.221, 553.226, 553.231, 553.234, 553.236, 553.241, 553.244, and 553.246 are adopted without changes to the proposed text as published in the April 9, 2021, issue of the *Texas Register* (46 TexReg 2336). These sections will not be republished.

BACKGROUND AND JUSTIFICATION

The repeals and new rules are necessary to comply with Senate Bill 1049, 85th Legislature, Regular Session, 2017, by amending the Licensing Standards for Assisted Living Facilities in 26 TAC Chapter 553 to adopt the 2012 edition of National Fire Protection Association (NFPA) 101, *Life Safety Code* for assisted living facilities.

The new rules reorganize current Subchapter D into divisions by facility size and type to provide consistency across divisions. HHSC licenses two types of facilities: Type A and Type B. Type A facilities may care for residents who are physically and mentally able to evacuate unassisted during an emergency. Type B residents may be incapable of following directions in an emergency and may require assistance from staff to evacuate. Both types of facilities are classified as either small or large, depending on the number of residents. A small facility has 16 or fewer residents, and a large facility has 17 or more residents.

COMMENTS

The 31-day comment period ended on May 10, 2021. During this period, HHSC received comments regarding the proposed rules from nine commenters, including the Texas Assisted Living Association, the Office of the State Long-Term Care Ombudsman, and seven individuals. A summary of comments relating to the rules and HHSC's responses follows.

Comment: Two commenters expressed support for the new organization of Subchapter D and stated the reorganized subchapter will be easier for assisted living providers to use and understand.

Response: HHSC appreciates the commenters' support for the new rules.

Comment: One commenter requested HHSC adopt the 2021 edition of NFPA 101, rather than the 2012 edition.

Response: HHSC declines to make the requested change because HHSC already uses the 2012 edition of NFPA 101 for nursing facilities and intermediate care facilities for individuals with intellectual and development disabilities, and HHSC staff are already trained to use the 2012 edition of NFPA 101. Use of a later edition would delay implementation of these rules and incur an unnecessary fiscal burden on HHSC without any benefit to residents living in assisted living facilities.

Comment: One commenter requested the rules be revised to require new large Type B assisted living facilities to comply with the requirements in Chapter 32, New Residential Board and Care Occupancies, in NFPA 101, and for existing large Type B assisted living facilities to comply with Chapter 19, Existing Health Care Occupancies, or Chapter 33, Existing Residential Board and Care Occupancies, because of editorial changes in NFPA 101 between the 2000 edition and the 2012 edition.

Response: HHSC declines to make the requested change because §553.5(c) allows that a resident in a Type B assisted living facility can require assistance to evacuate the building, can require attendance during nighttime sleeping hours, can be incapable of following directions under emergency conditions, can require assistance in transferring to and from a wheelchair, and may have mobility impairments up to, but not including, the point of being permanently bedfast. Section 553.259(e) permits a resident of a Type B assisted living facility who no longer meets the criteria in §553.5 to request and receive a waiver permitting the resident to "age in place" and continue to live in the facility, rather than move to a nursing facility.

Comment: Two commenters requested the edition of NFPA 101 be specified in §553.100.

Response: HHSC declines to make the requested change because the term "NFPA 101" is referenced in other subchapters in Chapter 553. The 2012 edition is specified in the definition of NFPA 101 in §553.3 (relating to Definitions) and cannot be defined in two locations within the chapter. Section §553.3(49) was revised to state NFPA 101 means the publication *Life Safety Code*, 2012 edition.

Comment: One commenter requested the list of NFPA 101 chapters in §553.100(c) be either expanded to include all other chapters in NFPA 101 that could be applicable to an assisted living facility or eliminated altogether.

Response: HHSC declines to make the requested change because the list is informational and does not exclude the application of other chapters in NFPA 101 to an assisted living facility.

HHSC added paragraph numbering to §553.100(c) for clarity and ease of reading.

Comment: One commenter requested that §553.100(e)(2) and (3) address how buildings under construction at the time these rules are adopted are treated in rule.

Response: HHSC declines to make the requested change because the request describes a procedure for HHSC to follow, not a licensing standard. HHSC will issue guidance on the implementation of the revised Subchapter D. A facility that obtained a plan from the LTCR Architectural Unit dated on or after August 31, 2019, is a new facility and can comply with the requirements for an existing assisted living facility. A new facility undergoing construction on August 31, 2021, can comply with the requirements for an existing assisted living facility if the facility provides evidence the construction started before August 31, 2021. A facility undergoing building rehabilitation in §553.107 that obtained a plan review for the building rehabilitation dated on or after August 31, 2019, or that can provide evidence the building rehabilitation work started before August 31, 2021, can comply with the requirements for an existing assisted living facility for the building rehabilitation work.

Comment: One commenter requested changes to §553.100(f)(2) to remove the requirement that a facility planned in an unincorporated area propose a building code to use and obtain approval of that choice prior to construction start.

Response: HHSC agrees with the comment and has revised §553.100(f)(2) to state that an assisted living facility located where there is no authority having jurisdiction that adopts and enforces a building code must be designed and constructed to meet a nationally-recognized building code and its referenced codes.

Comment: One commenter noted that §553.100(f)(1) and (2) require compliance with codes, standards, and ordinances adopted by local jurisdictions that have enforcement authority independent of HHSC authority.

Response: HHSC disagrees with the commenter. Section 553.100(f)(1) is informational, but it has been revised to clarify that the adopting authority is responsible for the interpretation and enforcement of any codes and ordinances adopted by that authority. Section 553.100(f)(2) only applies where there is no enforcement authority for codes and standards governing building construction.

Comment: One commenter requested the deletion of §553.100(f)(4) because the required documentation is unnecessary to demonstrate compliance with HHSC requirements.

Response: HHSC agrees with the comment, in part, and has revised §553.100(f)(4) to state an assisted living facility must provide documentation from the local authority having jurisdiction that local requirements are satisfied.

Comment: One commenter noted that the requirement in §553.100(j) to obtain prior approval from HHSC before removing existing equipment or features from the building is unclear and the extra step is unnecessary and potentially burdensome, but the commenter offered no suggestion on how to revise the rule.

Response: HHSC declines to make a change because obtaining approval from HHSC is necessary to ensure required equipment or features are not removed. HHSC will issue guidance addressing the process for obtaining prior approval and the criteria for when a facility must obtain prior approval.

Comment: One commenter requested a definition of "attended 24 hours a day" in §553.101 and suggested the definition of "attended 24 hours a day" in Technical Memorandum TM 19-02, Section 2.3, be used as the definition.

Response: HHSC declines to make the requested change because the term can have different meanings within different contexts in Chapter 553. Technical Memorandum TM 19-02, *Fire Alarm Control Panel and Remote Annunciator Location*, will remain in effect after the revised rules are effective.

Comment: One commenter requested "Type A," "Type B," "small facility," and "large facility" be defined in §553.101.

Response: HHSC declines to make the requested change because the terms are referenced in other subchapters in Chapter 553 and cannot be defined in two locations. Section 553.3, *Types of Assisted Living Facilities*, defines assisted living licensure types based on the ability of the residents to evacuate the facility. "Small facility" is defined in §553.3(75) and "large facility" is defined in §553.3(39). Section 553.101 states that the definitions in §553.3 also apply to subchapter D.

Comment: One commenter requested the term "staff area" be defined in §553.101 for the purposes of when a fire alarm annunciator panel is required.

Response: HHSC declines to make the requested change because "staff area" has been defined for this purpose in TM 19-02, *Fire Alarm Control Panel and Remote Annunciator Location*. TM 19-02 will remain in effect after the revised rules are effective.

Comment: One commenter requested the definition of "auxiliary serving kitchen" in §553.101(3) clarify which type of cooking or food warming equipment is allowed.

Response: HHSC declines to make the requested change because cooking is not allowed in an auxiliary serving kitchen. The definition in §553.101 is consistent with previous rule. An auxiliary serving kitchen is not intended for cooking or food preparation. HHSC will consider issuing guidance in the future on food warming equipment allowed in an auxiliary serving kitchen.

Comment: One commenter requested the deletion of the definition for "direct telephone" in §553.101(8) or to expand the definition to permit wireless transmission to devices carried by staff.

Response: HHSC declines to make the requested change because a "direct telephone" is one of three options for a communication system required in a facility that consists of two or more floors or separate buildings in §§553.118(d)(1), 553.128(d)(1), 553.138(d)(1), 553.148(d)(1), 553.218(d)(1), 553.228(d)(1), 553.238(d)(1), and 553.248(d)(1). The definition is consistent with existing rule, and a facility has the choice of using a direct telephone, emergency call system, or intercom. The definition and the rules do not limit the use of wireless devices carried by staff when other requirements are met. HHSC did correct a minor grammatical error in these sections.

Comment: One commenter noted §553.101(15) - (27) define some NFPA codes and standards but not others and suggests the definitions should be eliminated from §553.101.

Response: HHSC declines to make the requested change. These definitions of NFPA codes and standards are defined for editorial reasons. Only the codes and standards referenced within the rules are included in the definitions. The presence of a definition does not limit or dictate the application of an NFPA code or standard.

Comment: One commenter requested the definition of NFPA 55 be deleted from §553.101(20) because the standard is not referenced in the rules.

Response: HHSC agrees with the comment and has deleted the definition of NFPA 55 from §553.101.

Comment: One commenter requested the term "independent cooking" be defined and noted that microwave ovens and toaster ovens should not be considered independent cooking.

Response: HHSC agrees with the comment and has defined "independent cooking equipment" in §553.101(12) as an electric or gas stove or range or range with one or more burners, with or without an oven.

Comment: One commenter requested the inclusion of more specific information about required ramp widths for a "new ramp" in §553.103(d)(3) to match the requirements for ramps in the Texas Accessibility Standards, which are administered by the Texas Department of Licensing and Regulation (TDLR).

Response: HHSC declines to make the requested change. The rule is informational. A facility must comply with the Texas Architectural Barriers Act (Texas Government Code, Chapter 469), and any rules promulgated by that act are administered by TDLR, independent of any HHSC requirements.

Comment: One commenter requested a description be added to §553.103(d)(3) that specifies a "new ramp" includes newly built ramps and ramps that have been significantly repaired.

Response: HHSC declines to make the requested change, in part. A new ramp is any ramp that does not exist or does not exist in its current configuration at the effective date of these rules; it does not include ramps that have been repaired. Section 553.107 describes when building rehabilitation must comply with the requirements for new facilities or new features. HHSC will consider issuing guidance on this requirement in the future. Upon further review, HHSC revised the rule to clarify what is considered a new ramp.

Comment: One commenter requested the term "abrupt," as used in §553.103(e), be defined in §553.101 and limited to areas accessible to resident.

Response: HHSC declines to make the requested change but will consider issuing guidance in the future.

Comment: One commenter requested changing "engineered" in §553.103(g) to "approved" because not every incidence of ponding or standing water requires an engineering study and design.

Response: HHSC agrees with the comment and has revised §553.103(g), replacing "engineered" with "approved."

Comment: One commenter recommended moving rules regarding evacuation plans, fire safety plans, fire drills, and report fires from §553.104(b) - (e) to §553.44, Emergency Preparedness and Response.

Response: HHSC declines to make the recommended change because §553.44 is not part of the scope of this rulemaking. HHSC will consider issuing future guidance on how fire safety response is part of emergency preparedness and response.

Comment: One commenter requested the requirement that a facility obtain an annual inspection by the local fire marshal in §553.104(a) be deleted, noting that in some locations the State Fire Marshal's Office is the local fire marshal and that the inspection duplicates the efforts of HHSC surveyors.

Response: HHSC declines to make the requested change but has revised §553.104(a) to clarify that the Texas State Fire Marshal's Office can inspect the facility when there is no local fire marshal; items cited by the fire marshal have to be corrected to the satisfaction of the fire marshal and the facility must maintain documentation only that an inspection occurred at least every 12 months. Compliance with HHSC requirements provides no safe harbor from compliance with local requirements. Local requirements are usually different than HHSC requirements.

Comment: One commenter requested a change to terminology in §553.104(c) to match NFPA 101 terminology or to clearly use terminology that does not conflict with NFPA 101. The referenced terms are "emergency evacuation plan," "fire safety plan," and "emergency evacuation floor plan."

Response: HHSC agrees with the comment and has revised §553.104(b) to "emergency evacuation floor plan" and clarified that neither a one-story small Type A assisted living facility or a one-story small Type B assisted living facility is required to post an emergency evacuation floor plan. Section 553.104(c) was revised to clarify that every use of the word "plan" means "fire safety plan" as used by NFPA 101.

Comment: One commenter requested §553.104(h) be revised to eliminate the requirement for fire sprinkler systems that comply with NFPA 13D, *Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes*, which can be used in small assisted living facilities, to be inspected, tested, and maintained according to NFPA 25, *Standard for the Inspection, Testing, and Maintenance of Water-based Fire Protection Systems*, because not all provisions in NFPA 25 are appropriate for fire sprinkler systems complying with NFPA 13D.

Response: HHSC declines to make the requested change because HHSC has always required all fire sprinkler systems to be inspected, tested, and maintained according to NFPA 25. No other standard applies to the inspection, testing, and maintenance of NFPA 13D-compliant fire sprinkler systems, and NFPA 13D expects the building owner or manager, rather than a qualified and licensed person, to understand the operation of the fire sprinkler system and conduct periodic testing and inspections of the fire sprinkler system.

Comment: One commenter requested §553.104(j)(7) be revised to permit an attic to be used for storage if the attic is protected by fire sprinklers.

Response: HHSC declines to make the requested change because HHSC does not permit an attic to be used for storage in any facility.

Comment: One commenter requested the requirement for close-fitting covers on waste containers in §553.104(k)(2) be clarified as only applying to the listed locations where potential source of fire or a high fuel load could be present.

Response: HHSC agrees with the comment and has revised §553.104(k)(2) to clarify that close-fitting covers are only required on garbage, waste, or trash containers used in kitchens, janitor closets, laundry rooms, mechanical or boiler rooms, general storage rooms, and similar places.

Comment: One commenter requested a change to §553.104(n)(1)(C) changing the phrase "mechanical shock, which is liable to damage" to "mechanical shock that is liable to damage" because not all mechanical shocks are liable to cause damage to oxygen cylinders, valves, or safety devices.

Response: HHSC declines to make the requested change because the language is consistent with accepted special precautions for handling oxygen cylinders in health care facilities.

Comment: Two commenters requested an exemption from requiring existing assisted living facilities to install a fire sprinkler system.

Response: HHSC declines to make the requested change because the new rules do not require installation of a fire sprinkler system in an existing assisted living facility where HHSC has not previously required a fire sprinkler system. Some small Type A assisted living facilities licensed prior to January 4, 2016, do not have fire sprinkler systems and were not required to have fire sprinkler systems at the time they were licensed. The proposed rules do not require an existing small Type A assisted living facility to install a fire sprinkler system if the facility does not have a fire sprinkler system, unless the facility undergoes building rehabilitation, as stated in §553.107, that requires the facility to comply with the requirements for a new facility.

Comment: One commenter requested clarification of how changes to special locking arrangements and certified Alzheimer's disease assisted living facilities or units are categorized in §553.107, Building Rehabilitation, because these rehabilitation activities are not covered by NFPA 101, Chapter 43, Building Rehabilitation.

Response: HHSC agrees with the comment and revised §553.107(c)(3) to state that changes in locking arrangements are classified as modification. Section 553.107(c)(5) was revised to state a change of a wing or area to or from a certified Alzheimer's disease assisted living facility or unit is classified as a change in use.

Comment: One commenter requested a change to §553.107(e) because the commenter believes the provision requires evacuation of an area under construction even though the relevant NFPA codes and standards allow alternatives to evacuation.

Response: HHSC agrees with the comment, in part, and has revised §553.107(e) to clarify basic safety features, including fire alarm systems and fire sprinkler systems, that comply with alternative methods defined in their relevant standards are considered maintained. The rule only requires evacuation of a construction area when basic features are not maintained or when exits are blocked and no temporary exits have been created.

Comment: One commenter requested a change to §§553.111(b)(1) and (2), 553.121(b)(1) and (2), 553.131(b)(1) and (2), and 553.141(b)(1) and (2) to eliminate a provision that allows existing assisted living facilities that are not separated from other uses by a fire barrier when creating the separation is "impractical."

Response: HHSC declines to make the requested change because the licensing standards for assisted living facilities have allowed for this "impractical" exception since the inception of the assisted living facility program. This provision is only available to existing facilities. New facilities and existing facilities undergoing certain types of building rehabilitation that must meet the requirements for a new facility cannot use this exception. HHSC revised the adoption date in §§553.111(b)(1), 553.121(b)(1), 553.131(b)(1), and 553.141(b)(1) from July 21, 2021, to August 31, 2021, to allow sufficient time to resolve comments received on the rule.

Comment: One commenter suggested that §553.111(b)(2)(A) and (B) should refer to "NFPA 101 requirements for an existing

residential board and care occupancy" rather than "NFPA 101 requirements for an existing small Type A assisted living facility"; §553.121(b)(2)(A) and (B) should refer to "NFPA 101 requirements for an existing residential board and care occupancy," rather than "NFPA 101 requirements for an existing small Type B assisted living facility"; §553.131(b)(2)(A) and (B) should refer to "NFPA 101 requirements for an existing residential board and care occupancy," rather than "NFPA 101 requirements for an existing large Type A assisted living facility"; and §553.141(b)(2)(A) and (B), should refer to "NFPA 101 requirements for an existing health care occupancy," rather than "NFPA 101 requirements for an existing large Type B assisted living facility."

Response: HHSC declines to make the requested change but will consider issuing guidance in the future. "NFPA 101 requirements for an existing small Type A assisted living facility" refers to §553.110, which requires a small Type A assisted living facility to comply with the requirements for a slow evacuation capability facility in 33.2, Small Facilities, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies, not to NFPA 101 directly. "NFPA 101 requirements for an existing small Type B assisted living facility" refers to §553.120, which requires an existing small Type B assisted living facility to comply with the requirements for an impractical evacuation capability facility in 33.2, Small Facilities, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies, not to NFPA 101 directly. "NFPA 101 requirements for an existing large Type A assisted living facility" refers to §553.130, which requires an existing large Type A assisted living facility to comply with the requirements for a slow evacuation capability facility in 33.3, Large Facilities, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies, not to NFPA 101 directly. "NFPA 101 requirements for an existing large Type B assisted living facility" refers to §553.140, which requires an existing large Type B assisted living facility to comply with the requirements for a limited care facility in NFPA 101, Chapter 19, Existing Health Care Occupancies, not to NFPA 101 directly.

Comment: One commenter requested a change to §§553.111(c)(1)(A) and (B), 553.121(c)(1)(A) and (B), and 553.131(c)(1)(A) and (B), to require compliance with NFPA 101, 33.2.1.3.2, in lieu of the 20-minute sheathing requirement in the rule, because the 20-minute sheathing requirement is less stringent than NFPA 101 in some cases and more stringent than NFPA 101 in other cases.

Response: HHSC declines to make the requested change. This language is consistent with historical requirements in rule for assisted living facilities. NFPA 101, 33.2.1.3.2, would only apply to existing small assisted living facilities, as addressed in §§553.111(c)(1) and in 553.121(c)(1), and would not apply to existing large Type A assisted living facilities, as addressed by §553.131(c)(1). The 20-minute requirement also aligns with the requirements of Chapter 7, Fire Safety Evaluation System for Board and Care Occupancies in NFPA 101A, *Guide on Alternative Approaches to Life Safety*, as historically interpreted by HHSC.

Comment: One commenter noted the requirements in §553.111(c)(2) and §553.121(c)(2) contradict the requirements of NFPA 101, 33.2.1.3.2.5, and stated there is no technical substantiation for deviating from compliance with NFPA 101 regarding the provision but offered no suggestion to change the rule.

Response: HHSC agrees the provisions of §553.111(c)(2) and §553.121(c)(2) do not align with NFPA 101 but declines

to change this provision. NFPA 101, 33.2.1.2.3.5, exempts a facility from a 15-minute sheathing requirement in NFPA 101. HHSC has required the 20-minute sheathing required in §§553.111(c)(1), 553.121(c)(1), and 553.131(c)(1), in all small assisted living facilities and in large Type A assisted living facilities since the inception of the assisted living program. The provisions of §553.111(c)(2) and §553.121(c)(2) only apply to existing small Type A and existing small Type B facilities, which already meet this requirement.

Comment: One commenter requested the term "grade level," as used in §§553.112(a)(1), 553.122(a)(1), 553.132(a)(1), 553.142(a)(1), 553.212(a)(1), 553.222(a)(1), 553.232(a)(1), and 553.242(a)(1), be defined in §553.101 and notes NFPA 101 and model building codes use the term grade plane.

Response: HHSC agrees with the comment and has defined "finished ground level" in §553.101(10) to mean the level of finished ground. The intent is for the floor level where a resident bedroom is located to not be below ground. Sections 553.112(a)(1), 553.122(a)(1), 553.132(a)(1), 553.142(a)(1), 553.212(a)(1), 553.222(a)(1), 553.232(a)(1), and 553.242(a)(1) are revised to use the term "finished ground level" in place of "grade level" to avoid conflicts with terms used in NFPA 101 and building codes.

Comment: One commenter requested a change to the requirement for an operable window in each resident bedroom in §§553.112(b), 553.122(b), 553.132(b), 553.142(b), 553.212(b), 553.222(b), 553.232(b), and 553.242(b), or, if the operable window requirement is maintained, to stipulate in §§553.112(b)(2), 553.122(b)(2), 553.132(b)(2), 553.142(b)(2), 553.212(b)(2), 553.222(b)(2), 553.232(b)(2), and 553.242(b)(2) that the operable window is for use by staff, not residents, so that residents can be prohibited from leaving windows open when doing so could promote unsafe conditions such as mold growth.

Response: HHSC declines to make the requested change because residents have the right to control over their environment. Nothing in rule prohibits a facility from monitoring operable windows to determine whether they are open. A facility may adopt and enforce policies about when residents can open windows.

Comment: One commenter suggested the provisions in §553.112(b)(5)(C)(i) and (ii), which establish the most extreme cases for bedroom window openings in existing small Type A assisted living facilities, are not helpful and could be confusing.

Response: HHSC agrees with the comment and has revised §553.112(b)(5)(C) to eliminate clauses (i) and (ii).

Comment: One commenter requested a change to §§553.112(h)(3), 553.122(h)(3), 553.212(h)(3), and 553.222(h)(3) to permit storage of beds and mattresses off-site.

Response: HHSC declines to make the requested change because §§553.112(h)(3), 553.122(h)(3), 553.212(h)(3), and 553.222(h)(3) do not require storage of beds and mattresses in the facility. If a facility stores beds and mattresses in the facility, the provisions require the facility has space to do so, so that the facility is not storing beds and mattresses in areas used by residents.

Comment: One commenter requested "enclosed closet space" be clarified to because "enclosed closet space" does not ensure individual privacy for a resident's possessions in §§553.112(c)(4), 553.122(c)(4), 553.132(c)(4), 553.142(c)(4), 553.212(c)(4), 553.222(c)(4), 553.232(c)(4), and 553.242(c)(4).

Response: HHSC agrees with the comment and has revised §§553.112(c)(4), 553.122(c)(4), 553.132(c)(4), 553.142(c)(4), 553.212(c)(4), 553.222(c)(4), 553.232(c)(4), and 553.242(c)(4), replacing "enclosed closet space" with "private clothes storage space, which must have closable doors."

Comment: One commenter requested a change in requirements for bedroom doors in existing small Type A and existing small Type B assisted living facilities in §§553.113(c)(1) and 553.123(c) to eliminate these requirements because the commenter believes the conditions are addressed in NFPA 101, 33.2.3.6.

Response: HHSC declines to make the requested change because the provisions align with the requirements of Chapter 7, Fire Safety Evaluation System for Board and Care Occupancies in NFPA 101A, *Guide on Alternative Approaches to Life Safety*, as historically interpreted by HHSC.

Comment: One commenter notes the term "at the site" in §§553.115(a)(1), 553.125(a)(1), and 553.135(a)(1), which apply to existing facilities, could be understood to require sounding an alarm in one location in the facility and not throughout the building, as required in §§553.115(a)(1), 553.125(a)(1), and 553.135(a)(1), which apply to new facilities, and requests clarification.

Response: HHSC agrees with the comment but no revisions are needed. The provisions in §§553.115(a)(1), 553.125(a)(1), and 553.135(a)(1) require any alarm initiating device to automatically activate an audible or a visual alarm at the site and do not require automatic activation of the manual fire alarm system evacuation alarm for the entire building. Some older small assisted living facilities have household warning systems and equipment, which were permitted by the 1988 edition of NFPA 101. The 1988 edition of NFPA 101 was the basis of the licensing standards for assisted living facilities from the inception of the program until January 3, 2016. Facilities with household warning systems and equipment may not be able to meet the standard to activate an alarm throughout the building.

Comment: One commenter requested a change to §§553.115(a)(2)(A), 553.125(a)(2)(A), 553.135(a)(2)(A), 553.215(a)(2)(A), and 553.225(a)(2)(A) allowing the use of smoke alarms in lieu of smoke detectors to the extent allowed by NFPA 101.

Response: HHSC declines to make the requested change because the system smoke detectors are required to receive the maximum allowable points for smoke detection and alarm according to Chapter 7, Fire Safety Evaluation System for Board and Care Occupancies in NFPA 101A, *Guide on Alternative Approaches to Life Safety*, as historically interpreted by HHSC.

Comment: One commenter requested a change to the required locations for system smoke detectors in §§553.115(a)(2)(A), 553.125(a)(2)(A), 553.135(a)(2)(A), 553.215(a)(2)(A), and 553.225(a)(2)(A) because the requirements are more stringent than NFPA 101.

Response: HHSC declines to make the requested change because the required smoke detectors' locations are required to receive the maximum allowable points for smoke detection and alarm according to Chapter 7, Fire Safety Evaluation System for Board and Care Occupancies in NFPA 101A, *Guide on Alternative Approaches to Life Safety*, as historically interpreted by HHSC.

Comment: Two commenters requested the timeframe for retroactively installing carbon monoxide detectors in §§553.115(a)(3), 553.125(a)(3), 553.135(a)(3), and 553.145(a)(3) be extended to three years after the effective date of these rules; one commenter noted NFPA 101, 2012 edition, does not require carbon monoxide detection in Residential Board and Care Occupancies and only requires carbon monoxide detection in Health Care Occupancies in rooms containing working fireplaces; and one commenter recommended the requirement to provide carbon monoxide detection "on every occupiable level" be changed to "at least one in approved location."

Response: HHSC agrees with the comments, in part. After further analysis, HHSC has revised fire alarm requirements to remove carbon monoxide detection requirements in §§553.115(a)(3), 553.125(a)(3), 553.135(a)(3), 553.145(a)(3), 553.215(a)(3), 553.225(a)(3), 553.235(a)(3), and 553.245(a)(3). HHSC declines to revise requirements for electrically supervised carbon monoxide detection connected to the fire alarm system in rooms containing a working fireplace in §§553.117(d)(2)(E)(iv), 553.127(d)(2)(E)(iv), 553.137(d)(2)(E)(iv), 553.147(e)(2)(E)(iv), 553.217(d)(2)(E)(iv), 553.227(d)(2)(E)(iv), and 553.237(e)(2)(E)(iv). New large Type B assisted living facilities must provide the same protection according to NFPA 101, 18.5.2.3(2) - (3). HHSC will issue a Technical Memorandum on smoke detection, heat detection, and carbon monoxide detection during the current fiscal year.

Comment: Three commenters requested an exemption from new requirements for an existing assisted living facility.

Response: HHSC declines to make the requested change because HHSC has intentionally minimized the impact of these rules on existing facilities. Existing small Type A assisted living facilities with fire sprinkler systems will have three years, until August 31, 2024, to comply with one of the new options for protecting attics in §553.115(c) and will only have to install a carbon monoxide detector, as required in §553.117(d)(2)(E)(iv), if a room contains a working fireplace. Upon further review, HHSC added §553.104(g)(5)(D) to specify a compliance date of August 31, 2022, which is one year after the effective date of these rules.

Comment: Two commenters requested the timeframe for retroactively installing attic protection in §553.115(c) and §553.125(c) be extended to three years after the effective date of the rule.

Response: HHSC agrees with the commenters and has revised §§553.115(c), 553.125(c), and 553.135(c) to specify a compliance date of August 31, 2024, which is three years after the effective date of these rules.

Comment: One commenter requested a change in terminology to clarify the location of portable fire extinguishers in §§553.115(d)(7), 553.125(d)(7), 553.135(d)(7), 553.145(d)(7), 553.215(d)(7), 553.225(d)(7), 553.235(d)(7), and 553.245(d)(7) because the term exit door is not accurate and confusing.

Response: HHSC agrees with the comment and has revised §§553.115(d)(7), 553.125(d)(7), 553.215(d)(7), and 553.225(d)(7), replacing "exit door opening" with "door leading from the room," and has revised §§553.135(d)(7), 553.145(c)(7), 553.235(c)(7) and 553.245(c)(7), replacing "exit door opening" with "exit access door leading from the room."

Comment: One commenter requested a change to §§553.116(c), 553.126(c), 553.136(c), 553.216(c), and

553.226(c) to clarify that kitchens in small Type A, small Type B, and existing large Type A assisted living facilities are not hazardous areas and are permitted to be open to corridors and common living areas.

Response: HHSC declines to make the requested change. Sections 553.116, 553.126, 553.136, 553.216, and 553.226 are titled Hazardous Area Requirements for consistency across requirements for all facilities. Nothing in the rules or NFPA 101 states a kitchen in these facilities is a hazardous area or that kitchens in these facilities cannot be open to corridors and common living areas.

Comment: One commenter expressed support for requirements for an assisted living facility to supply towels, soap, and toilet tissue for individual resident use in §§553.117(b)(4), 553.127(b)(4), 553.137(b)(4), 553.147(b)(4), 553.217(b)(4), 553.227(b)(4), 553.237(b)(4), and §553.247(b)(4).

Response: HHSC appreciates the commenter's support for the rules. These sections do not change requirements for assisted living facilities. These rule sections restate a requirement currently in §553.62(m)(2)(F).

Comment: One commenter noted §§553.117(d)(2)(D) and (E), 53.127(d)(2)(D) and (E), 553.137(e)(2)(D) and (E), and 553.147(e)(2)(D) and (E) contain grammatical errors that make the rules difficult to understand and apply. The commenter suggested revised language.

Response: HHSC agrees with the comment. Because of editorial errors, the intent of these sections was lost in the published version. The original intent was that working fireplaces were exempted from some requirements for fuel-fired heating devices like furnaces and water heaters. Sections 553.117(d)(2)(C) - (E), 553.127(d)(2)(C) - (E), 553.137(e)(2)(C) - (E), and 553.147(e)(2)(C) - (E) were revised to return the original meaning and clarify working fireplaces and central heating plants in existing large Type B assisted living facilities are not subject to requirements for fuel-fired heating devices. Section 553.247(e)(2)(C) - (F) was revised to clarify the difference between the requirements for fuel-fired heating devices and working fireplaces.

Comment: One commenter requested a change to §§553.118(b), 553.128(b), 553.138(b), 553.148(b), 553.218(b), 553.228(b), 553.238(b), and 553.248(b) stating the reference to The Lighting Handbook to "recommended minimum lighting levels" rather than "minimum lighting levels."

Response: HHSC agrees with the comment, in part, and has revised §§553.118(b), 553.128(b), 553.138(b), 553.148(b), 553.218(b), 553.228(b), 553.238(b), and 553.248(b) to eliminate references to The Lighting Handbook and state minimum lighting must not be lower than the levels required in the listed subsections. HHSC also revised the formatting for clarity.

Comment: One commenter requested that §§553.118(c), 553.128(c), 553.138(c), 553.148(c), 553.218(c), 553.228(c), 553.238(c), and 553.248(c) be changed to make a telephone available to staff and residents at all times, not just during an emergency.

Response: HHSC agrees and has revised §§553.118(c), 553.128(c), 553.138(c), 553.148(c), 553.218(c), 553.228(c), 553.238(c), and 553.248(c), removing the phrase "for use in case of an emergency."

Comment: One commenter requested a change to provisions stating when a facility must provide an elevator in §§553.119(2), 553.129(2), 553.139(2), 553.149(2), 553.219(a)(2), 553.229(a)(2), 553.239(a)(2), and 553.249(a)(2) to eliminate the condition that an elevator is only required if a facility "admits residents with mobility impairments." The commenter also noted the provisions in §§553.119(2), 553.129(2), 553.139(2), and 553.149(2) do not include a subsection (a).

Response: HHSC agrees with the comment, in part, and has revised §§553.119(2), 553.129(2), 553.139(2), 553.149(2), 553.219(a)(2), 553.229(a)(2), 553.239(a)(2), and 553.249(a)(2) to eliminate the phrase "and the facility admits residents with mobility impairments." Sections 553.119(2), 553.129(2), 553.139(2), and 553.149(2) consist of a single subsection. *Texas Register* rules on rule structure and terminology in 1 TAC Part 4 §91.33(a)(1)(B) state when there is only one subsection in a section, the "(a)" is omitted. This is referred to as an "implied (a)."

Comment: One commenter requested the deletion of §553.131(c)(1) and (2) because NFPA 101 permits other conditions.

Response: HHSC declines to make the requested change. This language is consistent with historical requirements in rule for existing large Type A assisted living facilities. HHSC has required the 20-minute sheathing in large Type A assisted living facilities, whether provided a fire sprinkler system or not since the inception of the assisted living program.

Comment: One commenter requested a change in §§553.132(k), 553.142(k), 553.232(k)(1), and 553.242(k)(1) to clarify that janitorial facilities are not odor-producing areas requiring exhaust to the exterior for odor control, as required by §§553.137(e)(4), 553.147(e)(4), 553.237(e)(4) and 553.247(e)(4).

Response: HHSC declines to make the requested change but has revised §§553.137(e)(4), 553.147(e)(4), 553.237(e)(4), and 553.247(e)(4) to state that janitorial facilities must be exhausted to the exterior.

Comment: One commenter requested a change to §553.132(o)(2) and §553.232(o)(2) because the commenter believes the provisions require kitchens in large Type A assisted living facilities to be treated as hazardous areas that cannot be open to corridors.

Response: HHSC declines to make the requested change. Sections 553.132(o)(2) and 553.232(o)(2) refer to §§553.136 and 553.236, which are titled Hazardous Area Requirements for consistency across requirements for all facilities, because those sections contain references to NFPA 96, *Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations*. Nothing in the rules or NFPA 101 state a kitchen in these facilities is a hazardous area or that kitchens in these facilities cannot be open to corridors and common living areas.

Comment: One commenter requested a change to expand the list of cooking equipment that is exempt from protection as commercial cooking equipment to include other types of appliances used only for reheating and not for meal preparation in §§553.132(o)(2), 553.142(o)(2), 553.232(o)(2), and 553.242(o)(2).

Response: HHSC declines to make the requested change because it is not possible to create an absolute list of all equipment that can be exempted for protection as commercial cooking

equipment. The provisions are consistent with NFPA guidance on cooking equipment that is considered "limited cooking," for reheating and not for meal preparation. HHSC will consider issuing guidance on such equipment in the future.

Comment: One commenter requested small assisted living facilities be required, or provide storage for, a four-day minimum supply of non-perishable food, as is required for large facilities in §§553.132(p)(1), 553.142(p)(1), 553.232(p)(1), and 553.242(p)(1).

Response: HHSC declines to make the recommended change because all assisted living facilities must maintain a four-day minimum supply of non-perishable food, according to §553.261(d)(5). The requirement in §§553.132(p)(1), 553.142(p)(1), 553.232(p)(1), and 553.242(p)(1) is a physical space requirement.

Comment: One commenter recommended a change to provisions in §§553.132(q)(1), 553.142(q)(1), 553.232(q)(1), and 553.242(q)(1) for laundries in large assisted living facilities that both co-mingle laundry and process laundry on-site in a single central location. The recommendation was to remove requirements applying to a facility that "co-mingles" laundry and requirements applying to a "central" laundry. The commenter suggests an alternative limited to laundries using commercial equipment or using more than three washers.

Response: HHSC declines to make the requested change but did add a definition for co-mingles at §553.101(6). The provisions of §§553.132(q)(1), 553.142(q)(1), 553.232(q)(1), and 553.242(q)(1) only apply to large assisted living facilities where the facility both co-mingles laundry and processes laundry on-site in a single central location. HHSC will issue a Technical Memorandum on the provisions in the listed sections during the current fiscal year.

Comment: One commenter requested a change to requirements in §§553.132(q)(1)(D)(vi), 553.142(q)(1)(D)(vi), 553.232(q)(1)(D)(vi), and 553.242(q)(1)(D)(vi) to permit make-up air for gas-fired clothes dryers, ironers, and similar equipment to be taken from locations permitted by NFPA 54, *National Fuel Gas Code*, including from the habitable work areas of the laundry.

Response: HHSC declines to make the requested change. The provision of §§553.132(q)(1)(D)(vi), 553.142(q)(1)(D)(vi), 553.232(q)(1)(D)(vi), and 553.242(q)(1)(D)(vi) only apply to large assisted living facilities where the facility both co-mingles laundry and processes laundry on-site in a single central location. HHSC will issue a Technical Memorandum on the provisions in §§553.132(q)(1), 553.142(q)(1), 553.232(q)(1), and 553.242(q)(1) during the current fiscal year.

Comment: One commenter requested clarification of the term "all staff" in §§553.135(a)(3)(B), 553.145(a)(3)(B), 553.235(a)(3)(B), 553.245(a)(3)(B), and 553.251(f)(4)(D)(i) and (ii) and recommends the term "all staff providing resident care."

Response: HHSC declines to make the requested change because "all staff" means all staff. Fire response is the responsibility of all staff in the facility, not just direct care staff. Sections 553.135(a)(3)(B), 553.145(a)(3)(B), 553.235(a)(3)(B), and 553.245(a)(3)(B) apply to staff response to fire alarms. Additionally, HHSC declines to make the recommended change because §553.251 is being withdrawn from this rulemaking.

Comment: One commenter requested a change to §553.140 to permit an existing large Type B assisted living facility to comply

with the requirements for an impractical evacuation capability facility in 33.3, Large Facilities, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies, in addition to Chapter 19, Existing Health Care Occupancies, as permitted by NFPA 101.

Response: HHSC declines to make the requested change because §553.5(c) allows that a resident in a Type B assisted living facility can require assistance to evacuate the building, can require attendance during nighttime sleeping hours, can be incapable of following directions under emergency conditions, can require assistance in transferring to and from a wheelchair, and may have mobility impairments up to, but not including, the point of being permanently bedfast. Additionally, §553.259(e) permits a resident of a Type B assisted living facility who no longer meets the criteria in §553.5 to request and receive a waiver permitting the resident to "age in place" and continue to live in the facility, rather than move to a nursing facility.

Comment: One commenter recommended a change to §§553.215(a)(2)(B), 553.225(a)(2)(B), and 553.235(a)(2)(B) to require heat detectors in kitchens, laundries, and attached garages used for car parking rather than making heat detectors option in these areas because of the potential for nuisance alarms.

Response: HHSC declines to make the requested change because no credit can be given for heat detectors in lieu of system smoke detectors to receive the maximum allowable points for smoke detection and alarm Chapter 7, Fire Safety Evaluation System for Board and Care Occupancies in NFPA 101A, *Guide on Alternative Approaches to Life Safety*, as historically interpreted by HHSC. Nothing in the rules prohibits a facility from using heat detectors instead of smoke detectors in this location.

Comment: One commenter noted §§553.217(d)(2)(D) and (E), 53.227(d)(2)(D) and (E), and 553.237(e)(2)(D) and (E) contain grammatical errors that make the rules difficult to understand and apply. The commenter suggested revised language.

Response: HHSC agrees with the comment. Because of editorial errors, the intent of these sections was lost in the published version. The original intent was that working fireplaces were exempted from some requirements for fuel-fired heating devices like furnaces and water heaters. Sections 553.217(d)(2)(C) - (E), 553.227(d)(2)(C) - (E), and 553.237(e)(2)(C) - (E), were revised to return the original meaning and clarify working fireplaces are not subject to requirements for fuel-fired heating devices.

Comment: One commenter requested a change to §553.217(d)(4) and §553.227(d)(4) requiring bathrooms, toilet rooms, and other odor-producing rooms or areas for soiled or unsanitary operations to be exhausted using powered exhaust to exterior and not permitting exhaust via operable windows.

Response: HHSC declines to make the requested change because §553.217(d)(4) and §553.227(d)(4) apply to new small assisted living facilities. Many small assisted living facilities are converted one- or two-family dwellings that can be of any age and may not have powered exhaust fans in these locations. Nothing in the rules prohibits a facility from using powered exhaust to the exterior.

Comment: One commenter recommended §553.230 and §553.240 be revised to clarify that assisted living facilities located in buildings with independent living must meet all the space planning requirements for an assisted living facility without relying on space in the independent living facility to ensure

assisted living facilities provide the minimum dining room space in the assisted living facility based on the licensed capacity of the assisted living facility.

Response: HHSC agrees with the comment. HHSC added §553.230(c) to clarify that all space planning and utilization requirements in §553.232 must be provided and located in the new residential board and care occupancy required by §553.230(a). HHSC added §553.240(b) to clarify that all space planning and utilization requirements in §553.242 must be provided and located in the new health care occupancy required by §553.240(a).

Comment: One commenter requested a change to eliminate the requirement for a fire-rated occupancy separation between new large assisted living facilities and other occupancies in §553.231(b) and §553.241(b)(1).

Response: HHSC declines to make the requested change. The fire-rated occupancy separation delineates the boundaries of the assisted living facility in a building containing other uses. Without this boundary, other parts of the building must be surveyed for compliance with assisted living facility requirements. All required spaces in an assisted living facility must be located in a residential board and care occupancy or a health care occupancy, as required by §553.230(c) and §553.240(b).

Comment: One commenter requested a change to §553.240, requiring a new large Type B assisted living facility to comply with the requirements of 32.3, Large Facilities, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies, rather than Chapter 18, New Health Care Occupancies.

Response: HHSC declines to make the requested change because §553.5(c) allows that a resident in a Type B assisted living facility can require assistance to evacuate the building, can require attendance during nighttime sleeping hours, can be incapable of following directions under emergency conditions, can require assistance in transferring to and from a wheelchair, and may have mobility impairments up to, but not including, the point of being permanently bedfast. Additionally, §553.259(e) permits a resident of a Type B assisted living facility who no longer meets the criteria in §553.5 to request and receive a waiver permitting the resident to "age in place" and continue to live in the facility, rather than move to a nursing facility.

Comment: One commenter recommended the phrase "extends beyond" in §553.251(f)(4)(D)(ii)(I) be changed to "is located beyond" or similar language.

Response: HHSC declines to make the requested change. HHSC included the proposed revisions to §553.251 in error. Section 553.251 is outside the scope of this project and is being withdrawn from this rulemaking. HHSC will consider making the requested change in future rulemaking.

Comment: One commenter requested a change to §553.251(g)(2)(C) and §553.251(h)(2)(C)(iii) to require a release button at a staff station both within and, where a licensed non-certified area is contiguous to the certified area, outside the certified area.

Response: HHSC declines to make the requested change. The proposed revisions to §553.251 are being withdrawn. Section 553.251 is outside the scope of this project.

Comment: One commenter requested a change to the requirement in §553.251(h)(2)(E) requiring a sign located to a manual fire alarm pull located within five feet of each exit door in a cer-

tified Alzheimer's disease assisted living facility or unit stating, "Pull to release door in an emergency," because many residents with Alzheimer's disease and related conditions are able to read and understand the sign and could elope from the facility. The commenter noted that it is logical to require the sign.

Response: HHSC declines to make the requested change. HHSC included the proposed revisions to §553.251 in error. Section 553.251 is outside the scope of this project and is being withdrawn from this rulemaking.

In §§553.100(e)(2) and (3), 553.111(b)(1), 553.121(b)(1), 553.131(b)(1), and 553.141(b)(1), HHSC revised the adoption date from July 21, 2021, to August 31, 2021, to allow sufficient time to resolve comments received on the rule.

In §553.100(g), HHSC made a minor change to clarify that an assisted living facility must comply with both HHSC licensure requirements and local laws, codes, and ordinances, not just whichever is most stringent.

In §553.100(i), HHSC made a minor change to include the term "means of escape," which is the proper term in residential board and care occupancies; this in addition to the existing term, "means of egress," which only applies to health care occupancies.

In §553.100(k), HHSC revised the rule to clarify that registering with TDLR and obtaining a plan review are only required if TDLR requires it. HHSC did not intend for the rule to imply that registration and a plan review was required if not otherwise required by TDLR.

HHSC updated the referenced definition section number in §553.101 and deleted the definitions at §§551.101(1), "ASTM E84," 551.101(10), "flame spread index," and 553.101(13), "listed" because these terms are not used in the rule. The section was renumbered accordingly.

HHSC added the definitions at §§553.101(6), "co-mingles", 553.101(10), "finished ground level," 553.101(11), "fuel-fired heating device," and 553.101(12), "independent cooking equipment" because the terms have meaning specific to the rules in this subchapter. The section was renumbered accordingly.

HHSC revised §553.104(j)(2)(A) to clarify that evidence of safe operation of the electrical, heating, and cooling systems consists of a report from a fire marshal, the city or county building official having jurisdiction over the location of the facility, a licensed electrician, or a registered professional engineer.

In §§553.113(c)(3), 553.123(c)(2), 553.133(c)(2), 553.135(a)(2)(D), 553.143(b)(2), 553.145(a)(2)(B), 553.213(c)(2), 553.223(c)(2), 553.233(c)(2), 553.235(a)(2)(D), 553.243(a)(2), and 553.245(a)(2)(B), HHSC made a minor change to clarify that "independent cooking" refers to the equipment and not the activity.

In §553.127(d)(1), HHSC made a minor change to indicate the rule applies to an existing small Type B assisted living facility, rather than an existing small Type A assisted living facility.

In §§553.142(q)(3)(B)(i), 553.232(q)(3)(B)(i), and 553.242(q)(3)(B)(i), HHSC made a minor change to indicate that an assisted living facility may protect certain resident-use laundry facilities either through a fire sprinkler system or a fire barrier, instead of requiring both forms of protection.

In §553.216, HHSC made a minor editorial change to add a missing period. In §553.245(b), HHSC made a minor change to a NFPA 101 requirement reference.

SUBCHAPTER D. FACILITY CONSTRUCTION

26 TAC §§553.61 - 553.64

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation of and provision of services by the health and human services agencies and is authorized to adopt rules governing the rights and duties of persons regulated by the health and human services system; and under Texas Health and Safety Code §§247.025 and 247.026, which respectively require the Executive Commissioner to adopt rules necessary to implement Texas Health and Safety Code, Chapter 247, relating to Assisted Living Facilities, and to prescribe by rule minimum standards to protect the health and safety of an assisted living facility resident.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Health and Human Services Commission

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For further information, please call: (512) 438-3161



SUBCHAPTER D. FACILITY CONSTRUCTION DIVISION 1. GENERAL PROVISIONS

26 TAC §§553.100, §553.101

STATUTORY AUTHORITY

The new rules are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation of and provision of services by the health and human services agencies and is authorized to adopt rules governing the rights and duties of persons regulated by the health and human services system; and under Texas Health and Safety Code §§247.025 and 247.026, which respectively require the Executive Commissioner to adopt rules necessary to implement Texas Health and Safety Code, Chapter 247, relating to Assisted Living Facilities, and to prescribe by rule minimum standards to protect the health and safety of an assisted living facility resident.

§553.100. *General Requirements.*

(a) A building or structure used as a licensed assisted living facility, whether new or existing, must comply with these standards.

(b) All assisted living facilities must comply with National Fire Protection Association Life Safety Code (NFPA 101) and any applicable Tentative Interim Amendment (TIA) issued by NFPA, except as otherwise stated in these standards.

(c) All assisted living facilities must comply with other chapters, sections, subsections, and paragraphs of NFPA 101, as they relate to: Chapter 18, New Health Care Occupancies; Chapter 19, Existing Health Care Occupancies; Chapter 32, New Residential Board and Care Occupancies; and Chapter 33, Existing Residential Board and Care Occupancies, including:

- (1) Chapter 1, Administration;
- (2) Chapter 2, Referenced Publications;
- (3) Chapter 3, Definitions;
- (4) Chapter 4, General;
- (5) Chapter 5, Performance-Based Option;
- (6) Chapter 6, Classification of Occupancy and Hazard of Contents;
- (7) Chapter 7, Means of Egress;
- (8) Chapter 8, Features of Fire Protection;
- (9) Chapter 9, Building Service and Fire Protection Equipment;
- (10) Chapter 10, Interior Finish, Contents, and Furnishings;
- (11) Chapter 11, Special Structures and High-Rise Buildings; and
- (12) Chapter 43, Building Rehabilitation.

(d) An assisted living facility that wishes to be reclassified from a small facility to a large facility, from a Type A facility to a Type B facility, or both, must meet the requirements for a new facility of the type and size specified in this subchapter to be reclassified.

(e) The requirements of this subchapter apply to an assisted living facility as follows:

(1) All assisted living facilities must comply with Division 1 of this subchapter (relating to General Provisions) and Division 2 of this subchapter (relating to Provisions Applicable to All Facilities).

(2) An assisted living facility initially licensed before August 31, 2021, and continually operated under an assisted living license without interruption since then, is considered an existing assisted living facility and must comply with the following, as applicable:

(A) An existing small Type A assisted living facility must comply with Division 4 of this subchapter (relating to Existing Small Type A Assisted Living Facilities).

(B) An existing small Type B assisted living facility must comply with Division 5 of this subchapter (relating to Existing Small Type B Assisted Living Facilities).

(C) An existing large Type A assisted living facility must comply with Division 6 of this subchapter (relating to Existing Large Type A Assisted Living Facilities).

(D) An existing large Type B assisted living facility must comply with Division 7 of this subchapter (relating to Existing Large Type B Assisted Living Facilities).

(3) An assisted living facility initially licensed on or after August 31, 2021, or any new building or building addition to a currently licensed assisted living facility constructed on or after August 31, 2021, is considered a new assisted living facility and must comply with the following:

(A) A new small Type A assisted living facility must comply with Division 8 of this subchapter (relating to New Small Type A Assisted Living Facilities).

(B) A new small Type B assisted living facility must comply with Division 9 of this subchapter (relating to New Small Type B Assisted Living Facilities).

(C) A new large Type A assisted living facility must comply with Division 10 of this subchapter (relating to New Large Type A Assisted Living Facilities).

(D) A new large Type B assisted living facility must comply with Division 11 of this subchapter (relating to New Large Type B Assisted Living Facilities).

(f) An assisted living facility must comply with local codes and ordinances as follows:

(1) An assisted living facility located within the jurisdiction of a local organization, office, or individual responsible for enforcing the requirements of a code or standard, or for approving equipment, materials, an installation, or a procedure that adopts codes or ordinances governing building construction or fire safety (Authority Having Jurisdiction or AHJ) must comply with applicable local codes and ordinances adopted by the AHJ, as interpreted and enforced by the AHJ. The description of the occupancy may vary with local codes.

(2) An assisted living facility located where there is no local AHJ must be designed and constructed to meet a nationally-recognized building code and its referenced codes.

(3) An existing building, either occupied as an assisted living facility at the time of initial inspection by HHSC or converted to occupancy as an assisted living facility prior to the initial inspection by HHSC, must meet all local requirements pertaining to that building for that occupancy as administered by the local AHJ for the adopted code or ordinance.

(4) An assisted living facility must submit documentation from the local AHJ that local requirements are satisfied.

(g) When local laws, codes, or ordinances are different from the standards for assisted living facilities set forth in this Subchapter D, an assisted living facility must comply with both local and HHSC requirements.

(h) An assisted living facility must ensure building rehabilitation on existing buildings is classified according to NFPA 101 and that any rehabilitation complies with NFPA 101 and §553.107 of this subchapter (relating to Building Rehabilitation).

(i) An assisted living facility must ensure buildings, or portions of buildings, are not occupied during construction, repair, alterations, or additions, except when required means of egress, required means of escape, and required fire protection features are in place and continuously maintained for the portion occupied. Alternative life safety measures may be put in place if prior approval is obtained from HHSC.

(j) An assisted living facility must ensure no existing life safety feature is removed or reduced when the feature is a requirement for a new facility. Life safety features, and equipment not required by NFPA 101, that have been installed in existing buildings must continue to be maintained or be completely removed, if prior approval is obtained from HHSC.

(k) An assisted living facility must comply with the plan review and inspection requirements of the Texas Accessibility Standards (TAS) adopted by the Texas Department of Licensing and Regulation (TDLR) rules in Texas Administrative Code, Title 16, Chapter 68, and

must provide documentation demonstrating it has registered the facility with TDLR and obtained a plan review from a Registered Accessibility Specialist, if TDLR requires the facility to be registered and reviewed.

(l) An assisted living facility must not segregate any area housing residents from other parts of the assisted living facility housing residents, except as permitted by §553.51 of this chapter (relating to Certification of a Facility or Unit for Persons with Alzheimer's Disease and Related Disorders).

§553.101. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise. The definitions in §553.3 of this chapter (relating to Definitions) also apply to this subchapter.

(1) Approved--Acceptable to the Texas Health and Human Services Commission.

(2) Authority having jurisdiction (AHJ)--An organization, office, or individual responsible for enforcing the requirements of a code or standard, or for approving equipment, materials, an installation, or a procedure.

(3) Auxiliary serving kitchen--An area that is not contiguous to a food preparation or serving area and that is for serving food but is not used for cooking or meal preparation.

(4) Bedroom usable floor space--The floor area of a resident bedroom that may be considered toward meeting minimum requirements for a resident bedroom floor area.

(5) Building rehabilitation--Any construction activity involving repair, modernization, reconfiguration, renovation, changes in occupancy or use, or installation of new fixed equipment, including:

(A) the replacement of finishes, such as new flooring or wall finishes or the painting of walls and ceilings;

(B) the construction, removal, or relocation of walls, partitions, floors, ceilings, doors, or windows;

(C) the replacement of doors, windows, or roofing;

(D) changes to the appearance of the exterior of a building, including new finish materials;

(E) the installation, repair, replacement, or extension of fire protection systems, including fire sprinkler systems, fire alarm system, and fire suppression systems, at cooking operations;

(F) the replacement of door hardware, plumbing fixtures, handrails in corridors, or grab rails in bathrooms and restrooms;

(G) the repair, replacement, or extension of required communication systems;

(H) the repair or replacement of emergency electrical system equipment and components, including generator sets, transfer switches, distribution panel boards, receptacles, switches, and light fixtures;

(I) the change of a wing or area to a Certified Alzheimer's Disease Assisted Living Facility or unit;

(J) the change of a Certified Alzheimer's Disease Assisted Living Facility or unit to ordinary resident-use;

(K) a change in the use of space, including the change of resident bedrooms to other uses, such as offices, storage, or living or dining spaces; and

(L) changes in locking arrangements, such as the installation of access control systems or the installation or removal of elec-

tronic locking devices, including electromagnetic locks, and other delayed-egress locking devices.

(6) Co-mingles--The laundering of apparel or linens of two or more individuals together.

(7) Conversion--Change of occupancy from an existing residential or health care occupancy to a residential board and care occupancy, including an assisted living facility located in a building that had been used as a residence or a health care facility such as a hospital or a nursing home.

(8) Direct telephone--A telephone that automatically dials and connects to a fixed location when the caller takes the handset off-hook without requiring the caller to input a receiving telephone number. A direct telephone must ring at a location staffed 24-hours a day and may not be answered by an answering machine or voicemail system. A direct telephone may also function as a regular telephone when a receiving telephone number is entered.

(9) Factory Mutual (FM)--An organization that certifies products and services for compliance with loss prevention standards. Also known as FM Approvals.

(10) Finished ground level--The level of the finished ground (earth or other surface on ground).

(11) Fuel-fired heating device--Any equipment, device, or apparatus, or any part thereof, which is installed for the purpose of combustion of fuel, including natural gas, liquid petroleum gas (propane), or solid fuel, to produce heat or energy used as a component of a heating system providing heat for any interior space or water source. Free-standing solid fuel- or pellet-fuel burning appliances such as freestanding wood-burning or pellet-burning stoves do not meet this definition.

(12) Independent cooking equipment--An electric or gas stove or range with one or more burners, with or without an oven.

(13) Living unit--A portion of a facility arranged as a separate unit providing one or more bedrooms, toilet and bathing facilities, and living or dining spaces, with or without facilities for cooking, exclusively for the use of the residents residing in the bedrooms.

(14) Neighborhood or household--A portion of a large facility arranged as a unit providing bedrooms, toilet and bathing facilities, resident living areas, and kitchen facilities serving up to 16 residents.

(15) NFPA--National Fire Protection Association.

(16) NFPA 10--Standard for Portable Fire Extinguishers, 2010 edition.

(17) NFPA 13--Standard for the Installation of Sprinkler Systems, 2010 edition.

(18) NFPA 13D--Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes, 2010 edition.

(19) NFPA 13R--Standard for the Installation of Sprinkler Systems in Residential Occupancies Up to and Including Four Stories in Height, 2010 edition.

(20) NFPA 25--Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems, 2011 edition.

(21) NFPA 54--National Fuel Gas Code, 2012 edition.

(22) NFPA 70--National Electrical Code, 2011 edition.

(23) NFPA 72--National Fire Alarm and Signaling Code, 2010 edition.

(24) NFPA 96--Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations, 2011 edition.

(25) NFPA 110--Standard for Emergency and Standby Power Systems, 2010 edition.

(26) NFPA 211--Standard for Chimneys, Fireplaces, Vents, and Solid Fuel-Burning Appliances, 2010 edition.

(27) NFPA 720--Standard for Installation of Carbon Monoxide (CO) Detection and Warning Equipment, 2012 edition.

(28) Special Waste from Health Care-Related Facilities--Special waste from health care-related facilities as defined in Texas Administrative Code, Title 25, Part 1, Chapter 1, Subchapter K (relating to Definition, Treatment, and Disposition of Special Waste from Health Care-Related Facilities).

(29) TCEQ--Texas Commission on Environmental Quality.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Health and Human Services Commission

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For further information, please call: (512) 438-3161



DIVISION 2. PROVISIONS APPLICABLE TO ALL FACILITIES

26 TAC §§553.103, §553.104

STATUTORY AUTHORITY

The new rules are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation of and provision of services by the health and human services agencies and is authorized to adopt rules governing the rights and duties of persons regulated by the health and human services system; and under Texas Health and Safety Code §§247.025 and 247.026, which respectively require the Executive Commissioner to adopt rules necessary to implement Texas Health and Safety Code, Chapter 247, relating to Assisted Living Facilities, and to prescribe by rule minimum standards to protect the health and safety of an assisted living facility resident.

§553.103. *Site and Location for all Assisted Living Facilities.*

(a) Firefighting unit. An assisted living facility must be served by a professional or volunteer firefighting unit and must have a water supply that meets the firefighting unit's requirements and approval.

(b) Correction of hazards. An assisted living facility must correct a site or building condition that HHSC staff identifies to be a fire, health, or physical hazard.

(c) Parking.

(1) An assisted living facility must provide or arrange for nearby parking spaces for the private vehicles of residents and visitors.

(2) An assisted living facility must provide a minimum of one parking space for every four residents in its licensed capacity, and for any fraction thereof, or per local requirements, whichever is more stringent.

(d) Ramps.

(1) An assisted living facility must ensure a ramp, walk, or step is of slip-resistant texture and is uniform, without irregularities.

(2) An assisted living facility must ensure a ramp does not exceed a slope of one foot in 12 feet.

(3) An assisted living facility must ensure any new ramp has a clear width of at least 36 inches. A new ramp is one that was installed or constructed on or after August 31, 2021.

(e) Site conditions. An assisted living facility must provide a guardrail, fence, or handrail where a grade makes an abrupt change in level.

(f) Outside grounds. An assisted living facility must ensure that each outside area, grounds, and any adjacent buildings are maintained in good condition and kept free of rubbish, garbage, and untended growth that may constitute a fire or health hazard.

(g) Drainage. An assisted living facility must ensure site grades provide for water drainage away from structures to prevent ponding or standing water at or near a building, unless the ponding or standing water is part of an approved drainage system intended to hold water for a period of time.

§553.104. *Safety Operations.*

(a) Local fire marshal inspection.

(1) An assisted living facility must obtain an inspection at least once every 12 months, by the local fire marshal, or the Texas State Fire Marshal's Office in locations where there is no local fire marshal, and must correct any items cited by the local fire marshal, or the Texas State Fire Marshal's Office, to the satisfaction of those authorities.

(2) An assisted living facility must maintain documentation at the facility reflecting the outcome of the most recent annual inspection.

(b) Emergency evacuation floor plan. An assisted living facility, other than a one-story small Type A or a one-story small Type B assisted living facility, must post an emergency evacuation floor plan in a location visible to residents.

(c) Fire safety plan. An assisted living facility must establish a fire safety plan for the protection of all persons in the facility in the event of fire.

(1) An assisted living facility must ensure the fire safety plan is in effect at all times.

(2) An assisted living facility must make written copies of the fire safety plan available to all supervisory personnel.

(3) An assisted living facility must ensure the fire safety plan addresses:

(A) evacuation to an area of refuge;

(B) evacuation from the building when necessary; and

(C) special staff actions, including fire protection procedures necessary to ensure the safety of any resident.

(4) If the facility is a large Type B assisted living facility:

(A) An existing large Type B assisted living facility must ensure the fire safety plan includes the provisions described in

19.7.2, Procedure in Case of Fire, in NFPA 101, Chapter 19, Existing Health Care Occupancies.

(B) A new large Type B assisted living facility must ensure the fire safety plan includes the provisions described in 18.7.2, Procedure in Case of Fire, in NFPA 101, Chapter 18, New Health Care Occupancies.

(5) An assisted living facility must ensure the fire safety plan is reviewed at least annually and revised, as needed, to address the changing needs of residents.

(6) An assisted living facility must instruct and inform all employees of their duties and responsibilities under the fire safety plan at least annually, and when the fire safety plan is revised.

(7) An assisted living facility must keep a copy of the fire safety plan readily available at all times within the facility.

(8) An assisted living facility must ensure the fire safety plan reflects the current evacuation capabilities of the residents.

(d) Fire drills. An assisted living facility must conduct at least one quarterly fire drill on each shift with at least one drill each month. Each drill must meet these requirements:

(1) An assisted living facility must ensure staff take part in fire drills according to the assisted living facility's fire safety plan.

(2) An assisted living facility must inform residents of evacuation procedures and locations of exits.

(3) An assisted living facility must document every fire drill using the most current version of the required Texas Health and Human Services (HHSC) form titled "Fire Drill Report" available on the HHSC website.

(4) A large Type B assisted living facility must activate the fire alarm signal during a fire drill conducted between 6:00 a.m. and 9:00 p.m.

(5) An assisted living facility may announce a fire drill to residents in advance.

(e) Reporting fires.

(1) An assisted living facility must immediately report a fire causing injury or death to a resident.

(2) An assisted living facility must report a fire causing damage to the facility or facility equipment to HHSC within 72 hours after the fire is extinguished.

(3) After making a report by telephone or email, an assisted living facility must file a written report using the most current version of the required HHSC form titled "Fire Report for Long Term Care Facilities" available on the HHSC website.

(f) Smoking policies. An assisted living facility must establish and enforce policies regarding smoking, even if the policy is that smoking will not be permitted. The policy must also address the use of e-cigarettes and vaping devices. If smoking will be permitted, the smoking policies must:

(1) designate smoking areas for residents and staff; and

(2) provide ashtrays of noncombustible material and safe design in smoking areas.

(g) Fire alarm system. An assisted living facility must establish a program to inspect, test, and maintain the fire alarm system according to the requirements of NFPA 72, and according to the requirements of NFPA 720 where carbon monoxide detection is provided, and must execute the program at least once every six months.

(1) An assisted living facility must contract with a company that holds an Alarm Certificate of Registration from the State Fire Marshal's Office to execute the program.

(2) An assisted living facility must ensure a company that performs a service under the contract required under paragraph (1) of this subsection completes, signs, and dates an inspection form like the inspection and testing form in NFPA 72 for a service provided under the contract.

(3) If a task required by NFPA 72 or NFPA 720 must occur at intervals other than during the contracted visits in this subsection, an assisted living facility must ensure the task is performed and documented by a knowledgeable individual.

(4) An assisted living facility must ensure:

(A) a fire alarm system component that requires visual inspection is visually inspected in accordance with NFPA 72;

(B) a fire alarm system component that requires testing is tested in accordance with NFPA 72; and

(C) a fire alarm system component that requires maintenance is maintained in accordance with NFPA 72.

(5) An assisted living facility that provides carbon monoxide detection must ensure:

(A) a carbon monoxide detection component that requires visual inspection is visually inspected in accordance with NFPA 720;

(B) a carbon monoxide detection component that requires testing is tested in accordance with NFPA 720;

(C) a carbon monoxide detection component that requires maintenance is maintained in accordance with NFPA 720; and

(D) a facility with a carbon monoxide detection component installed before August 31, 2021, must perform visual inspection, testing, and maintenance of that component beginning no later than August 31, 2022.

(6) A large assisted living facility containing smoke compartments must ensure each required smoke damper is inspected and tested in accordance with NFPA 101.

(7) An assisted living facility must ensure smoke detector sensitivity is checked within one year after installation and every two years thereafter in accordance with test methods in NFPA 72.

(8) An assisted living facility must maintain onsite documentation of compliance with this subsection and must maintain record copies of documents regarding the installation of a fire alarm system, including as-built installation drawings, operation and maintenance manuals, the installation certificate for the system, and written sequences for its operation.

(9) An assisted living facility must make documentation described in paragraph (8) of this subsection available to HHSC on request.

(h) Fire sprinkler system. An assisted living facility that is equipped with a fire sprinkler system, including a fire sprinkler system meeting NFPA 13D, must establish a program to inspect, test, and maintain the fire sprinkler system according to the requirements of NFPA 25, and must execute the program at least once every six months.

(1) An assisted living facility must contract with a company that holds an appropriate Sprinkler Certificate of Registration from the State Fire Marshal's Office to execute the program.

(2) An assisted living facility must ensure a company that performs a service under the contract required under paragraph (1) of this subsection completes, signs, and dates an inspection form like the inspection and testing form in NFPA 25 for a service provided under the contract.

(3) If a task required by NFPA 25 must occur at intervals other than during the contracted visits in this subsection, an assisted living facility must ensure the task is performed and documented by knowledgeable individuals.

(4) An assisted living facility must ensure that a sprinkler system component that requires visual inspection is visually inspected in accordance with NFPA 25.

(5) An assisted living facility must ensure that a sprinkler system component that requires testing is tested in accordance with NFPA 25.

(6) An assisted living facility must ensure that a sprinkler system component that requires maintenance is maintained in accordance with NFPA 25.

(7) An assisted living facility must ensure that an individual sprinkler head is inspected and maintained in accordance with NFPA 25.

(8) An assisted living facility must maintain onsite documentation of compliance with this subsection and must maintain record copies of documents regarding the installation of a fire sprinkler system, including as-built installation drawings, hydraulic calculations, proof of adequate fire sprinkler water supply, and installation certificates for the system.

(9) An assisted living facility must make documentation described in paragraph (8) of this subsection available to HHSC on request.

(i) Portable fire extinguishers.

(1) An assisted living facility must ensure staff are appropriately trained in the use of each type of extinguisher in the facility.

(2) An assisted living facility must inspect and maintain portable fire extinguishers and:

(A) ensure that its staff perform regular monthly inspections or "quick checks" to ensure extinguishers are located in the designated place, extinguisher locations are not obstructed to access or visibility, and the pressure gauge reading or indicator on the extinguisher is in the operable range or position;

(B) ensure annual maintenance and inspection or "thorough checks" are performed according to NFPA 10 by an individual employed by a company holding an appropriate Extinguisher Certificate of Registration from the State Fire Marshal's Office to perform inspection, testing, and maintenance of portable fire extinguishers;

(C) maintain onsite, a record of all fire extinguisher inspections and maintenance performed; and

(D) replace unserviceable fire extinguishers.

(j) General facility condition and safety features.

(1) An assisted living facility must ensure staff utilize procedures to avoid cross-contamination between clean and soiled processes, including the handling of linens and cooking utensils.

(2) An assisted living facility must keep all buildings in good repair.

(A) An assisted living facility must maintain electrical, heating, and cooling systems so these systems operate in a safe manner. As evidence that these systems operate in a safe manner, HHSC may require the facility to submit a report prepared by one of the following:

(i) the fire marshal;

(ii) the city or county building official having jurisdiction over the location of the facility;

(iii) a licensed electrician; or

(iv) a registered professional engineer.

(B) An assisted living facility must ensure electrical appliances, devices, and lamps do not overload circuits or use extension cords of excessive length.

(3) An assisted living facility must keep all buildings free of accumulations of dirt, rubbish, dust, and hazards.

(4) An assisted living facility must maintain floors in good condition and clean floors regularly.

(5) An assisted living facility must structurally maintain walls and ceilings and must repair, repaint, or clean walls and ceilings whenever needed.

(6) An assisted living facility must keep storage areas and cellars organized and free from obstructions.

(7) An assisted living facility must not store any items in attic spaces.

(8) An assisted living facility must ensure all equipment requiring periodic maintenance, testing, and servicing is accessible.

(A) An assisted living facility must ensure equipment that is necessary to conduct maintenance, testing, and services, including ladders, specific tools, and keys, is readily available to staff or maintenance personnel on site.

(B) An assisted living facility must provide access panels, at least 20 inches wide by 20 inches long, for building maintenance and must ensure access panels are located for reasonable access to equipment and fire or smoke barrier walls installed in the attic or other concealed spaces.

(k) Waste and storage containers.

(1) An assisted living facility must provide metal waste baskets of substantial gauge or any UL- or FM-approved container in each area where smoking is permitted, if applicable, in accordance with the facility's smoking policies required in subsection (f) of this section.

(2) An assisted living facility must provide one or more garbage, waste, or trash containers with close-fitting covers, made of metal or of any UL- or FM-approved material, for use in kitchens, janitor closets, laundry rooms, mechanical or boiler rooms, general storage rooms, and similar places. A facility may use disposable plastic liners in the containers for sanitation.

(3) An assisted living facility must ensure waste, including waste classified as Special Waste from Health Care-Related Facilities, trash, and garbage are disposed of from the premises at regular intervals according to state and local requirements. The facility may not permit or allow an accumulation of waste on the facility premises, either inside or outside of facility buildings.

(l) Pest control.

(1) An assisted living facility must have an ongoing and effective pest control program executed by facility staff or by contract with a licensed pest control company.

(2) An assisted living facility must ensure the chemicals used to control pests are the least toxic and least flammable chemicals that are effective.

(3) An assisted living facility must ensure each operable window is provided with an insect screen.

(m) Flammable or combustible liquids. An assisted living facility must not store flammable or combustible liquids, such as gasoline, oil-based paint, charcoal lighter fluid, or similar products in a building that houses residents.

(n) Storage of oxygen. An assisted living facility must ensure sanitary use and storage of oxygen for the safety of all residents.

(1) An assisted living facility must ensure oxygen cylinders in the possession and under the control of the facility are:

(A) identified by attached labels or stencils naming the contents;

(B) not stored with flammable or combustible materials;

(C) protected from abnormal mechanical shock, which is liable to damage the cylinder, valve, or safety device;

(D) protected from tamper by unauthorized individuals;

(E) if not supported in a proper cart or stand, properly chained or supported;

(F) stored so the cylinders can be used in the order received from the supplier;

(G) if empty and full cylinders are stored in the same enclosure or room, stored so that empty cylinders are separated from full cylinders; and

(H) if empty, marked to avoid confusion and delay if a full cylinder is needed in a rapid manner.

(2) An assisted living facility must adopt, implement, and enforce procedures for resident use, storage, and handling of oxygen cylinders and liquid oxygen containers in the possession and under the control of residents, to ensure the safety of all residents.

(o) Gas pressure test.

(1) An assisted living facility must obtain an initial pressure test of facility gas lines from the gas meter or propane storage tank to all gas-fired appliances and equipment.

(2) An assisted living facility must obtain an additional gas pressure test when the facility performs major renovations or additions to the gas piping or gas-fired equipment that interrupt gas service or replace gas-fired equipment.

(p) Annual gas heating check.

(1) An assisted living facility must ensure all gas heating systems are checked at least once per year, prior to the heating season for proper operation and safety by persons who are licensed or approved by the State of Texas to inspect the equipment.

(2) An assisted living facility must maintain records of the testing of the gas heating system.

(3) An assisted living facility must correct unsatisfactory conditions.

(q) Emergency generator. A large assisted living facility that uses an emergency generator to provide power to emergency lighting systems must ensure the generator is tested and maintained according to Chapter 8, Routine Maintenance and Operational Testing, in NFPA

110. Routine maintenance and operational testing required by NFPA 110 includes the following procedures:

(1) a readily available record of inspections, test, exercising, operation, and repairs;

(2) monthly testing of cranking batteries;

(3) weekly inspection of the generator set and other components that make up the emergency power system;

(4) monthly exercise of the generator under load;

(5) monthly test of transfer switches; and

(6) a continuous operational test for at least 1-1/2 hours every three years.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 438-3161



DIVISION 3. BUILDING REHABILITATION

26 TAC §553.107

STATUTORY AUTHORITY

The new rules are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation of and provision of services by the health and human services agencies and is authorized to adopt rules governing the rights and duties of persons regulated by the health and human services system; and under Texas Health and Safety Code §§247.025 and 247.026, which respectively require the Executive Commissioner to adopt rules necessary to implement Texas Health and Safety Code, Chapter 247, relating to Assisted Living Facilities, and to prescribe by rule minimum standards to protect the health and safety of an assisted living facility resident.

§553.107. *Building Rehabilitation.*

(a) Prior to the start of building rehabilitation, other than that classified as repair in subsection (b) of this section, a facility must notify the Texas Health and Human Services commission (HHSC) in Austin, Texas, in writing.

(b) Upon completion of building rehabilitation, other than that classified as repair or renovation in this section, a final construction inspection of the facility must be performed by HHSC prior to occupancy. The completed construction must have the written approval of the local authority having jurisdiction, including the fire marshal and building official. When construction or building rehabilitation does not alter the licensed capacity of a facility, based on submitted documentation and the scope of the performed building rehabilitation, HHSC may permit a facility to use the rehabilitated portion of a facility pending a final construction inspection or may determine a final construction inspection is not required.

(c) An assisted living facility undergoing any building rehabilitation must meet the requirements of this section.

(1) An assisted living facility must ensure the patching, restoration, or painting of materials, elements, equipment, or fixtures for maintaining such materials, elements, equipment, or fixtures in good or sound condition is classified as repair and must ensure the repair:

(A) meets the applicable requirements of §553.100(e) of this subchapter (relating to General Requirements);

(B) uses like materials, unless such materials are prohibited by NFPA 101, as modified by this subchapter; and

(C) does not make a building less conforming with NFPA 101, as modified by this subchapter, with the applicable sections of this subchapter, or with any alternative arrangements previously approved by HHSC, than it was before the repair was undertaken.

(2) An assisted living facility must ensure the replacement in kind, strengthening, or upgrading of building elements, materials, equipment, or fixtures that does not result in a reconfiguration of the building spaces within is classified as renovation and must ensure:

(A) any new work that is part of a renovation meets the applicable requirements of §553.100(e) of this subchapter;

(B) any new interior or exterior finishes meet the applicable requirements of §553.100(e)(3) of this subchapter; and

(C) does not make a building less conforming with NFPA 101, as modified by this subchapter, with the applicable sections of this subchapter, or with any alternative arrangements previously approved by HHSC, than it was before the renovation was undertaken.

(3) An assisted living facility must ensure the reconfiguration of any space; addition, relocation, or elimination of any door or window; addition or elimination of load-bearing elements; reconfiguration or extension of any system; installation of any additional equipment; or changes in locking arrangements as defined in §553.101(6)(L) of this subchapter (relating to Definitions), is classified as modification and must ensure:

(A) a newly constructed element, component, or system meets the applicable requirements of §553.100(e)(3) of this subchapter;

(B) all other work in a modification meets, at a minimum, the requirements for a renovation according to paragraph (2) of this subsection; and

(C) where the total rehabilitation work area classified as modification exceeds 50 percent of the total building area, the work is classified as reconstruction subject to paragraph (4) of this subsection.

(4) An assisted living facility must ensure the reconfiguration of a space that affects an exit or a corridor shared by more than one occupant space, or the reconfiguration of a space such that the rehabilitation work area is not permitted to be occupied because existing means of egress or fire protection systems are not in place or continuously maintained, is classified as reconstruction and must ensure:

(A) reconstruction of components of the means of egress meets the applicable requirements of §553.100(e) of this subchapter, except for the following components, which must meet the specific requirements of §553.100(e)(3) of this subchapter:

(i) illumination of means of egress;

(ii) emergency lighting of means of egress; and

(iii) marking of means of egress, including exit signs;

(B) if the total rehabilitation work area classified as reconstruction on any one floor exceeds 50 percent of the total area of the floor, all means of egress components identified in paragraph (4)(A)(i) - (iii) of this subsection and located on that floor meet the specific requirements of §553.100(e)(3) of this subchapter;

(C) if the total rehabilitation work area classified as reconstruction exceeds 50 percent of the total building area, all means of egress components identified in paragraph (4)(A)(i) - (iii) of this subsection and located in the building meet the specific requirements of §553.100(e)(3) of this subchapter; and

(D) all other work classified as reconstruction meets, at a minimum, the requirements for modification according to paragraph (3) of this subsection and renovation according to paragraph (2) of this subsection.

(5) An assisted living facility must ensure a change in the purpose or level of activity within a facility that involves a change in application of the requirements of this subchapter, including a change of a wing or area to a Certified Alzheimer's Disease Assisted Living Facility or unit, or a change of a Certified Alzheimer's Disease Assisted Living Facility or unit to ordinary resident-use, is classified as a change of use and meets the specific requirements of §553.100(e)(3) of this subchapter.

(6) An assisted living facility must ensure a change in the use of a structure or portion of a structure is classified as a change of occupancy and meets the specific requirements of §553.100(e)(3) of this subchapter.

(7) An assisted living facility must ensure an increase in the building area, aggregate floor area, building height, or number of stories of a structure is classified as an addition and meets the specific requirements of §553.100(e)(3) of this subchapter.

(d) An assisted living facility undergoing rehabilitation must comply with the requirements of NFPA 101, as modified by this subchapter in accordance with the requirements of NFPA 101, Chapter 43, Building Rehabilitation.

(e) An assisted living facility undergoing rehabilitation to an occupied building that involves means of escape, exit-ways, or exit doors must be accomplished without compromising the means of escape, means of egress, or exits or creating a dead-end situation at any time. HHSC may approve temporary exits or the facility must relocate residents until construction blocking the exit is completed. The facility must maintain other basic safety features, including fire alarm systems and fire sprinkler systems, in compliance with their relevant standards and must maintain required emergency power at all times during construction.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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DIVISION 4. EXISTING SMALL TYPE A ASSISTED LIVING FACILITIES

26 TAC §§553.110 - 553.113, 553.115 - 553.119

STATUTORY AUTHORITY

The new rules are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation of and provision of services by the health and human services agencies and is authorized to adopt rules governing the rights and duties of persons regulated by the health and human services system; and under Texas Health and Safety Code §§247.025 and 247.026, which respectively require the Executive Commissioner to adopt rules necessary to implement Texas Health and Safety Code, Chapter 247, relating to Assisted Living Facilities, and to prescribe by rule minimum standards to protect the health and safety of an assisted living facility resident.

§553.111. *Construction Requirements for an Existing Small Type A Assisted Living Facility.*

(a) Structurally sound. An existing small Type A assisted living facility must ensure any building is structurally sound regarding actual or expected dead, live, and wind loads in accordance with applicable building codes.

(b) Separation of occupancies. An existing small Type A assisted living facility must be separated from other occupancies by a fire barrier having at least a 2-hour fire resistance rating constructed according to the requirements of NFPA 101 and its referenced standards, unless otherwise permitted by paragraph (2) of this subsection.

(1) An existing small Type A assisted living facility must be separated from other assisted living facilities, hospitals, or nursing facilities. Beginning August 31, 2021, an existing small Type A assisted living facility must be separated from any new occupancy or new use subject to the Texas Health and Human Services commission (HHSC) licensing.

(2) An existing small Type A assisted living facility is not required to be separated from another occupancy not subject to HHSC licensing standards if the two occupancies are so intermingled that construction of a fire barrier having a 2-hour fire resistance rating is impractical and the following conditions are met.

(A) The means of escape, construction, protection, and other safeguards for the entire building must comply with the NFPA 101 requirements for an existing small Type A assisted living facility.

(B) HHSC must be given unrestricted and unannounced access at any reasonable time to inspect the other occupancy type for compliance with the NFPA 101 requirements for an existing small Type A assisted living facility.

(c) Sheathing.

(1) Except as provided in paragraph (3) of this subsection, an existing small Type A assisted living facility must ensure all buildings used by residents are sheathed with materials providing a fire resistance rating and ensure:

(A) interior wall and ceiling surfaces have finished surfaces, substrates, or sheathing with a fire resistance rating of not less than 20 minutes; and

(B) columns, beams, girders, or trusses that are not enclosed within walls or ceilings are encased in materials having a fire resistance rating of not less than 20 minutes.

(2) A sprinkler system does not substitute for the minimum sheathing requirements under paragraph (1) of this subsection.

(3) A building constructed to meet the minimum building construction type requirements of 19.1.6, Minimum Construction Requirements, in NFPA 101, Chapter 19, Existing Health Care Occupancies, is not also required to be sheathed.

(d) Interior finish. An existing small Type A assisted living facility must ensure interior wall and ceiling finish materials meet the requirements of 33.2.3.3.2, Interior Wall and Ceiling Finish, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies.

(e) Vertical openings. An existing small Type A assisted living facility must ensure vertical openings are protected according to the requirements of 33.2.3.1, Protection of Vertical Openings, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies.

§553.112. *Space Planning and Utilization Requirements for an Existing Small Type A Assisted Living Facility.*

(a) Resident bedrooms.

(1) An existing small Type A assisted living facility must ensure a resident bedroom or living unit is not located on a floor that is below finished ground level.

(2) An existing small Type A assisted living facility must ensure bedroom-usable floor space is not less than 80 square feet for a bedroom housing one resident and not less than 60 square feet per resident for a bedroom housing multiple residents, unless otherwise permitted by paragraphs (3) and (4) of this subsection. Portions of a bedroom that are less than eight feet in the smallest dimension cannot be included in the measurement of bedroom usable floor space, unless approved by HHSC.

(3) An existing small Type A assisted living facility containing individual living units that include living space for the residents in addition to their bedrooms may reduce the bedroom usable floor space for a bedroom housing multiple residents within a living unit by up to 10 percent of the required bedroom usable floor space, as long as the minimum dimensional criteria are maintained. An existing small Type A assisted living facility may not use this provision in conjunction with the provision permitting the reduction of common social-diversional areas or common dining areas found in subsection (g)(5) of this section.

(4) An existing small Type A assisted living facility may house no more than 50 percent of its licensed resident capacity in bedrooms housing three or more residents. A bedroom must not house more than four residents.

(b) Bedroom windows. An existing small Type A assisted living facility must ensure each bedroom has at least one operable window with outside exposure and meeting the following requirements.

(1) The window sill must be no higher than 44 inches above the floor.

(2) The window must be operable by all residents occupying the bedroom, from the inside, without the use of tools or special devices.

(3) The total area of all windows in a bedroom must not be less than eight percent of the minimum bedroom usable floor space required by subsection (a)(2) of this section.

(4) An existing bedroom window not meeting these requirements may be continued in service subject to approval by HHSC.

(5) An existing small Type A assisted living facility that is not equipped with a fire sprinkler system meeting the requirements of

§553.115 of this division (relating to Fire Protection Systems Requirements for an Existing Small Type A Assisted Living Facility) must provide at least one window in each bedroom in the facility that, in addition to meeting the requirements of paragraphs (1) - (4) of this subsection, meets the following requirements:

(A) The bedroom window must meet the requirements of §553.113 of this division (relating to Means of Escape Requirements for an Existing Small Type A Assisted Living Facility) for use as a secondary means of escape from a resident sleeping room.

(B) The bedroom window must not be blocked by bars, shrubs, or any obstacle that could impede evacuation.

(C) The bedroom window must provide an operable section with a clear opening of not less than 5.7 square feet with a minimum width of 20 inches and a minimum height of 24 inches.

(6) An existing small Type A assisted living facility that is protected by an automatic sprinkler system meeting the requirements of §553.115 of this division must provide an operable window in a bedroom. The window opening size may be smaller than the minimum size listed in paragraph (5) of this subsection but must be operable according to the requirements of paragraph (2) of this subsection.

(c) Bedroom furnishings. When a resident does not provide their own furnishings, an existing small Type A assisted living facility must provide the following furnishings for each resident, which must be maintained in good repair:

(1) a bed, including a mattress;

(2) a chair;

(3) a table or dresser; and

(4) private clothes storage space, which must have closable doors, and drawer space for clothing and personal belongings.

(d) Arrangement of resident living units or rooms.

(1) An existing small Type A assisted living facility must ensure all resident rooms open on an exit, corridor, living area, or public area.

(2) An existing small Type A assisted living facility must ensure all resident rooms are arranged for convenient resident access to dining and recreation areas.

(e) Staff area. An existing small Type A assisted living facility must provide a staff area on each floor of an existing small Type A assisted living facility and in each separate building containing resident sleeping rooms, except as permitted under paragraph (1) of this subsection.

(1) An existing small Type A assisted living facility that is not more than two-stories in height and is composed of separate buildings grouped together and connected by covered walks, is not required to provide a staff area on each floor or in each building, provided that a staff area is located not more than 200 feet walking distance from the farthest resident living unit.

(2) An existing small Type A assisted living facility must provide the following at each staff area:

(A) a desk or writing surface;

(B) a telephone; and

(C) a fire alarm control unit or a fire alarm annunciator panel meeting the requirements of §553.115 of this division (relating to Fire Protection Systems Requirements for an Existing Small Type A Assisted Living Facility).

(f) Resident toilet and bathing facilities. An existing small Type A assisted living facility must ensure each resident bedroom is served by a separate, private toilet room, a connecting toilet room, or a general toilet room.

(1) An existing small Type A assisted living facility that houses individuals of more than one gender must provide toilet rooms for each gender, or individual single-occupant toilet rooms for use by any gender.

(2) An existing small Type A assisted living facility must ensure a general toilet room or bathing room is accessible from a corridor or public space.

(3) An existing small Type A assisted living facility must ensure resident toilet and bathing facilities comply with the requirements for resident-use plumbing fixtures according to §553.117 of this division (relating to Mechanical Requirements for an Existing Small Type A Assisted Living Facility).

(g) Resident living areas.

(1) An existing small Type A assisted living facility must provide, in a common area of the facility, social-diversional spaces with appropriate furniture. Examples of social-diversional spaces include living rooms, day rooms, lounges, dens, game rooms, and sunrooms.

(A) An existing small Type A assisted living facility must provide a social-diversional space with a minimum area of 120 square feet in at least one space within a common area of the facility, regardless of the number of residents or other provisions of this section permitting a reduction in the total minimum social-diversional space.

(B) An existing small Type A assisted living facility must ensure a social-diversional space has one or more exterior windows providing a view of the outside.

(C) An existing small Type A assisted living facility must ensure the total space for social-diversional area provides an area of at least 15 square feet for each resident in the licensed capacity of the facility. No space smaller than 120 square feet in area can be counted toward meeting this requirement.

(2) An existing small Type A assisted living facility must provide a dining area with appropriate furniture.

(A) An existing small Type A assisted living facility must provide a dining space with a minimum area of 120 square feet in at least one space within a common area of the facility, regardless of the number of residents or other provisions of this section permitting a reduction in the total minimum dining space.

(B) An existing small Type A assisted living facility must ensure a dining space has one or more exterior windows providing a view of the outside.

(C) An existing small Type A assisted living facility must ensure a dining area is accessible from resident living units or bedrooms via a covered path.

(D) An existing small Type A assisted living facility must ensure the total space for dining areas provides an area of at least 15 square feet for each resident in the licensed capacity of the facility. No space smaller than 120 square feet in area can be counted toward meeting this requirement.

(3) An existing small Type A assisted living facility may provide a total living and dining area combined in a single or interconnecting space where the minimum area of the combined space is at least 240 square feet.

(4) An existing small Type A assisted living facility must ensure an escape route through a resident living or dining area is kept clear of obstructions.

(5) Subject to the limitations of paragraphs (1)(A) and (2)(A) of this subsection and subparagraphs (A) and (B) of this paragraph, an existing small Type A assisted living facility containing individual living units may reduce the minimum square footage required by paragraphs (1)(C) and (2)(D) of this subsection for total common social diversional or common dining areas, respectively, by including up to 10 percent of the individual living unit area in the calculation of the total social-diversional area or total dining area.

(A) The individual living unit area contributed toward total social-diversional space or total dining space must not be counted more than once per living unit but may be split between social-diversional and dining space calculations.

(B) An existing small Type A assisted living facility must not utilize both this paragraph and subsection (a)(3) of this section to reduce both the minimum square footage otherwise required for its common social-diversional or dining areas and the minimum square footage of usable floor space otherwise required in bedrooms housing multiple residents within a living unit.

(h) Storage areas. An existing small Type A assisted living facility must provide sufficient separate storage spaces or areas for at least:

- (1) administrative records, office supplies, and other storage needs related to administration;
- (2) medications and medical supplies;
- (3) equipment supplied by the facility for resident needs, including wheelchairs, walkers, beds, and mattresses;
- (4) cleaning supplies, including for janitorial needs;
- (5) food;
- (6) clean linens and towels, if the facility furnishes linen;
- (7) soiled linen, if the facility furnishes linen; and
- (8) lawn and maintenance equipment.

(i) Kitchen.

(1) An existing small Type A assisted living facility that prepares food off-site or in a separate building must ensure food is served at the proper temperature and transported in a sanitary manner.

(2) An existing small Type A assisted living facility that prepares food on-site must provide a kitchen or dietary area meeting the general food service needs of the residents and must ensure that the kitchen:

- (A) is equipped to store, refrigerate, prepare, and serve food;
- (B) is equipped to clean and sterilize;
- (C) provides for refuse storage and removal; and
- (D) meets the requirements of the local fire, building, and health codes.

(3) An existing small Type A assisted living facility must ensure a kitchen uses only residential cooking equipment or, if the kitchen uses commercial cooking equipment, that the facility protects the kitchen's cooking operations as required in §553.116 of this division (relating to Hazardous Area Requirements for an Existing Small Type A Assisted Living Facility).

§553.113. Means of Escape Requirements for an Existing Small Type A Assisted Living Facility.

(a) The provisions of NFPA 101, Chapter 7, Means of Egress, do not apply to an existing small Type A assisted living facility unless explicitly referenced by this section or by NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies.

(b) An existing small Type A assisted living facility must meet the requirements of 33.2.2, Means of Escape, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies, except as described in this section.

(c) An existing small Type A assisted living facility must ensure doors meet the requirements of 33.2.2.5, Doors, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies, and the additional requirements of this section.

(1) A resident room door in an existing small Type A assisted living facility not protected throughout by an approved automatic fire sprinkler system complying with the requirements of §553.115 of this division (relating to Fire Protection Systems Requirements for an Existing Small Type A Assisted Living Facility) must meet one of the following options. A resident room door is not otherwise required to meet the requirements for doors in 33.2.3.6, Construction of Corridor Walls, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies.

(A) The door must be a solid core wood door at least 1-3/4 inches thick or have a 20-minute opening protection rating and must latch in its frame to resist the passage of smoke; or

(B) The door must be self-closing or automatic-closing and must latch in its frame to resist the passage of smoke.

(2) A resident room door in an existing small Type A assisted living facility protected throughout by an approved automatic fire sprinkler system complying with the requirements of §553.115 of this division must latch in its frame to resist the passage of smoke.

(3) In an existing small Type A assisted living facility comprised of buildings that contain living units with independent cooking equipment within the living unit, a door between the living unit and a corridor or hallway must:

(A) be self-closing or automatic-closing; and

(B) latch in its frame to resist the passage of smoke.

(4) A resident room door or living unit door must not be arranged to prevent the occupant from closing the door.

(d) An existing small Type A assisted living facility providing a bedroom window used as a secondary means of escape must ensure the window meets the requirements for a bedroom window used as a secondary means of escape in §553.112 of this division (relating to Space Planning and Utilization Requirements for an Existing Small Type A Assisted Living Facility).

(e) An existing small Type A assisted living facility providing spaces for use by residents on floors other than the ground floor must provide at least two separate approved stairs.

(1) An existing stair may be continued in service, subject to approval by HHSC.

(2) A stair used as means of escape must meet the requirements of 33.2.2.6, Stairs, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies.

(3) Each stair must be arranged and located so that it is not necessary to go through another room, including a bedroom or bathroom, to reach the stair.

(4) Each stair must be provided with handrails.

(5) Each stair must be provided with normal lighting according to the requirements of §553.118 of this division (relating to Electrical Requirements for an Existing Small Type A Assisted Living Facility).

(6) A stair in an existing building that became an assisted living through conversion must meet the dimensional criteria for existing stairs in 7.2.2.2, Dimensional Criteria, in NFPA 101, Chapter 7, Means of Egress.

(7) An existing stair, previously approved by HHSC, may be rebuilt to the same dimensions but must meet all other requirements for stairs in NFPA 101.

§553.115. Fire Protection Systems Requirements for an Existing Small Type A Assisted Living Facility.

(a) Fire alarm and smoke detection system. An existing small Type A assisted living facility must provide a manual fire alarm system meeting the requirements of section 9.6, Fire Detection, Alarm, and Communication Systems, in NFPA 101, Chapter 9, Building Service and Fire Protection Equipment, as modified by this section.

(1) General. An existing small Type A assisted living facility must ensure the operation of any alarm initiating device automatically activates an audible or a visual alarm at the site.

(2) Smoke detectors.

(A) An existing small Type A assisted living facility must install smoke detectors in resident bedrooms, corridors, hallways, living rooms, dining rooms, offices, kitchens, laundries, attached garages used for car parking, and public or common areas, except as permitted in subparagraphs (B) and (C) of this paragraph.

(B) An existing small Type A assisted living facility may install heat detectors in lieu of smoke detectors in kitchens, laundries, and attached garages used for car parking.

(C) An existing small Type A assisted living facility located in a building constructed to meet the requirements of NFPA 101, Chapter 19, Existing Health Care Occupancies, may install a smoke detection system meeting the requirements of 19.3.4.5.1, Corridors, in NFPA 101, Chapter 19, Existing Health Care Occupancies, in lieu of the requirements in subparagraph (A) of this paragraph.

(3) Alarm control panel.

(A) An existing small Type A assisted living facility must provide a fire alarm control unit, or a fire alarm annunciator providing annunciation of all fire alarm, supervisory, and trouble signals by audible and visible indicators, in a location visible to staff at or near the staff area that is attended 24 hours a day.

(B) An existing small Type A assisted living facility is not required to ensure a fire alarm control unit or fire alarm annunciator is visible to staff if the fire alarm is monitored by devices carried by all staff.

(4) Fire alarm power source.

(A) An existing small Type A assisted living facility must ensure a fire alarm system is powered by a permanently-wired, dedicated branch circuit that is powered from a commercial power source in accordance with NFPA 70.

(B) An existing small Type A assisted living facility must provide a secondary, emergency power source meeting the requirements of NFPA 72.

(b) Fire sprinkler system.

(1) An existing small Type A assisted living facility may provide one of the following fire sprinkler systems according to the requirements of 33.2.3.5, Extinguishment Requirements, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies.

(A) A fire sprinkler system meeting the requirements of NFPA 13 in accordance with 33.2.3.5.3.3;

(B) A fire sprinkler system meeting the requirements of NFPA 13R in accordance with 33.2.3.5.3.4; or

(C) A fire sprinkler system meeting the requirements of NFPA 13D in accordance with 33.2.3.5.3.2.

(2) An existing small Type A assisted living facility must provide supervision of any fire sprinkler system where required by 33.2.3.5, Extinguishment Requirements, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies.

(c) Protection of attics. An existing small Type A assisted living facility equipped with a fire sprinkler system must ensure an attic is protected according to the requirements of 33.2.3.5.7, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies, not later than August 31, 2024.

(d) Portable fire extinguishers. An existing small Type A assisted living facility must provide and maintain portable fire extinguishers according to the requirements of NFPA 10.

(1) An existing small Type A assisted living facility must ensure all requirements of NFPA 10 are followed for all extinguisher types, including requirements for location, spacing, mounting heights, monthly inspections by staff, yearly inspections by a licensed agent, any necessary servicing, and hydrostatic testing as recommended by the manufacturer.

(2) An existing small Type A assisted living facility must ensure portable fire extinguishers are located so the travel distance from any point in the facility to an extinguisher is no more than 75 feet.

(3) An existing small Type A assisted living facility must ensure the actual size of any portable fire extinguisher meets the requirements of NFPA 10 for maximum floor area per unit covered, but an extinguisher must be no smaller than the following.

(A) A water-type portable fire extinguisher must have a rating of at least 1-A according to NFPA 10.

(B) All other portable fire extinguishers must have a rating of at least 2-A:5-B:C according to NFPA 10.

(4) An existing small Type A assisted living facility must ensure portable fire extinguishers are installed on hangers or brackets supplied with the extinguisher or mounted in an approved cabinet.

(5) An existing small Type A assisted living facility must ensure a portable fire extinguisher is protected from impact or dislodgement.

(6) An existing small Type A assisted living facility must ensure a portable fire extinguisher is installed at an appropriate height.

(A) A portable fire extinguisher having a gross weight of up to 40 pounds must be installed so the top of the extinguisher is not more than five feet above the floor.

(B) A portable fire extinguisher having a gross weight greater than 40 pounds must be installed so the top of the extinguisher is not more than three and a half feet above the floor.

(C) A portable fire extinguisher must be installed so the clearance between the bottom of the extinguisher and the floor is at least four inches.

(7) A portable extinguisher provided in a hazardous room must be located as close as possible to the door leading from the room and on the latch or knob side of the door.

§553.117. Mechanical Requirements for an Existing Small Type A Assisted Living Facility.

(a) Wastewater and water supply.

(1) Wastewater. An existing small Type A assisted living facility must ensure wastewater and sewage are discharged into a sewerage system or an onsite sewerage facility approved by the Water Quality Division of the Texas Commission on Environmental Quality (TCEQ), or to a system regulated by an entity responsible for water quality in that jurisdiction as approved by the Water Quality Division of TCEQ.

(2) Water supply. An existing small Type A assisted living facility must ensure the water supply is of safe, sanitary quality, suitable for use, adequate in quantity and pressure, and obtained from a public or private water supply system or a private well.

(b) Resident-use plumbing fixtures.

(1) Water closets and lavatories.

(A) An existing small Type A assisted living facility must provide at least one water closet and one lavatory for every six residents and for each additional resident fewer than six. Multiple toilets in a single space must comply with paragraph (2)(B) of this subsection.

(B) An existing small Type A assisted living facility must ensure a lavatory is readily accessible to each water closet.

(C) An existing small Type A assisted living facility must provide at least one water closet, lavatory, and bathing unit, that are accessible to residents, on each floor containing resident sleeping rooms.

(2) Bathing units.

(A) An existing small Type A assisted living facility must provide one tub or shower for every 10 residents, and for any fraction thereof.

(B) Where multiple water closets or bathing units are provided in a single space, an existing small Type A assisted living facility must provide partitions or curtains to separate plumbing fixtures for resident privacy.

(C) An existing small Type A assisted living facility must ensure tubs and showers have non-slip bottoms or floor surfaces, either built-in or applied to the surfaces.

(3) Hot water supply. An existing small Type A assisted living facility must provide a supply of hot water for resident-use. Hot water for lavatories and bathing units accessible to residents must be maintained between 100 and 120 degrees Fahrenheit.

(4) Supplies. An existing small Type A assisted living facility must supply towels, soap, and toilet tissue for individual resident use.

(c) Gas. An existing small Type A assisted living facility must ensure equipment using natural gas or propane and related gas piping meets the requirements of 9.1.1, Gas, in NFPA 101, Chapter 9, Building Service and Fire Protection Equipment.

(d) Heating, ventilation, and air-conditioning (HVAC) and exhaust systems.

(1) General requirements. An existing small Type A assisted living facility must ensure HVAC equipment meets the

requirements of 33.2.5.2, Heating, Ventilating, and Air-Conditioning, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies.

(2) Heating and cooling. An existing small Type A assisted living facility must provide heating and cooling for resident comfort.

(A) An existing small Type A assisted living facility must ensure air conditioning systems can maintain and do maintain the comfort range of 68 to 82 degrees Fahrenheit in resident-use areas.

(B) An existing small Type A assisted living facility constructed or licensed after August 1, 2004, must have a central air conditioning system, or a substantially similar air conditioning system, that can maintain and does maintain the temperature range required under subparagraph (A) of this paragraph within areas used by residents.

(C) An existing small Type A assisted living facility may not use an open flame heating device in the facility, except as permitted by subparagraphs (D) - (E) of this section.

(D) An existing small Type A assisted living facility must ensure a fuel-fired heating device, other than a working fireplace, meets the following requirements.

(i) A fuel-fired heating device must be connected to a chimney or vent.

(ii) A fuel-fired heating device must take air for combustion directly from outside.

(iii) A fuel-fired heating device must be designed and installed to provide for complete separation of the combustion system from the atmosphere of the occupied area.

(iv) A fuel-fired heating device must have safety features to immediately stop the flow of fuel and shut down the equipment in case of either excessive temperatures or ignition failure.

(v) A fuel-fired heating device not meeting the requirements of clauses (i) - (iv) of this subparagraph may be continued in service, subject to approval by HHSC.

(E) An existing small Type A assisted living facility must ensure a working fireplace meets the following requirements.

(i) A building containing a working fireplace must be protected by an approved, supervised automatic sprinkler system with listed quick response or listed residential sprinklers.

(ii) A new working fireplace must be installed, maintained and used according to NFPA 54 and NFPA 211.

(iii) A working fireplace may not be located in a resident sleeping room.

(iv) The room where a working fireplace is located must be provided with electrically supervised carbon monoxide detection connected to the fire alarm system according to NFPA 720.

(v) A direct-vent gas fireplace, as defined in NFPA 54, must meet the following requirements.

(I) A direct-vent gas fireplace must include a sealed glass front with a wire mesh panel or screen.

(II) The controls for a direct-vent gas fireplace must be locked or located in a restricted location.

(vi) A solid fuel-burning fireplace must be equipped with:

(I) a raised hearth at least four inches above the surrounding finished floor; and

(II) a fireplace enclosure that is guaranteed against breakage up to a temperature of 650 degrees Fahrenheit and constructed of heat-tempered glass or other approved material.

(vii) An existing working fireplace not meeting the requirements of clauses (i) - (vi) of this subparagraph may be continued in service, subject to approval by HHSC.

(3) Ventilation.

(A) An existing small Type A assisted living facility must be ventilated using windows, mechanical ventilation, or a combination of both.

(B) An existing small Type A assisted living facility with interior areas designated for smoking within the building must provide mechanical ventilation directed to the exterior to remove smoke at the rate of 10 air changes per hour.

(4) Exhaust.

(A) An existing small Type A assisted living facility must ensure bathrooms, toilet rooms, and other odor-producing rooms or areas for soiled or unsanitary operations are exhausted with operable windows or powered exhaust vented to the exterior for odor control, unless otherwise permitted under subparagraph (B) of this paragraph.

(B) An existing small Type A assisted living facility may provide exhaust into an attic where permitted by the local building code.

§553.118. *Electrical Requirements for an Existing Small Type A Assisted Living Facility.*

(a) Electrical system. An existing small Type A assisted living facility must ensure an electrical system meets the requirements of 9.1.2, Electrical Systems, in NFPA 101, Chapter 9, Building Service and Fire Protection Equipment.

(b) Lighting. An existing small Type A assisted living facility must provide illumination throughout the building. Minimum lighting levels must not be lower than:

(1) 10 footcandles in resident rooms during the day--illumination requirements for these areas apply to lighting throughout the space, as measured at 30 inches above the floor anywhere in the room;

(2) 20 footcandles in each corridor, staff station, dining room, lobby, toilet room, bathroom, bathing facility, laundry room, stairway, and elevator during the day--illumination requirements for these areas apply to lighting throughout the space as measured at 30 inches above the floor anywhere in the room; and

(3) 50 footcandles for each medication preparation or storage area, kitchen, and desk within a staff station. Illumination requirements apply when the area is in use for a task it supports, as measured where the task is being performed.

(c) Telephone. An existing small Type A assisted living facility must provide at least one telephone in the facility that is available to both staff and residents. Emergency telephone numbers must be posted conspicuously at or near the telephone, including fire, police, emergency medical services, and poison control center services.

(d) Communication system. An existing small Type A assisted living facility that consists of two or more floors or separate buildings must provide a communication system from each resident living unit to a central staff station.

(1) The communication system must:

(A) be a direct telephone, emergency call system, or intercom;

(B) if it is an existing communication system, be approved by HHSC to be continued in service; and

(C) include at least:

(i) one central notification station at a fixed location that receives all calls processed through the system; and

(ii) one permanently fixed call station or device in every resident living unit.

(2) An existing small Type A assisted living facility may provide:

(A) additional or portable notification stations or devices in addition to the central notification station; or

(B) additional call stations or devices in private or common resident areas.

(3) An existing small Type A assisted living facility may provide residents with portable, wireless call transmitters, such as pendants or wrist bands. However, a device may not be a substitute for a fixed call station in a resident living unit.

§553.119. *Miscellaneous Requirements for an Existing Small Type A Assisted Living Facility.*

An existing small Type A assisted living facility must provide an elevator if:

(1) the building in which the facility is located is three or more stories in height; or

(2) the facility provides services or social activities to residents in spaces located on a floor other than the floor where the entrance to the facility is located.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 438-3161



DIVISION 5. EXISTING SMALL TYPE B ASSISTED LIVING FACILITIES

26 TAC §§553.120 - 553.123, 553.125 - 553.129

STATUTORY AUTHORITY

The new rules are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation of and provision of services by the health and human services agencies and is authorized to adopt rules governing the rights and duties of persons regulated by the health and human services system; and under Texas Health and Safety Code §§247.025 and 247.026, which respectively require the Executive Commissioner to adopt rules necessary to implement Texas Health and Safety Code, Chapter 247, relating to Assisted Living Facilities, and to

prescribe by rule minimum standards to protect the health and safety of an assisted living facility resident.

§553.121. Construction Requirements for an Existing Small Type B Assisted Living Facility.

(a) Structurally sound. An existing small Type B assisted living facility must ensure any building is structurally sound regarding actual or expected dead, live, and wind loads in accordance with applicable building codes.

(b) Separation of occupancies. An existing small Type B assisted living facility must be separated from other occupancies by a fire barrier having at least a 2-hour fire resistance rating constructed according to the requirements of NFPA 101 and its referenced standards, unless otherwise permitted by paragraph (2) of this subsection.

(1) An existing small Type B assisted living facility must be separated from other assisted living facilities, hospitals, or nursing facilities. Beginning August 31, 2021, an existing small Type A assisted living facility must be separated from any new occupancy or new use subject to HHSC licensing.

(2) An existing small Type B assisted living facility is not required to be separated from another occupancy not subject to Texas Health and Human Services Commission (HHSC) licensing standards if the two occupancies are so intermingled that construction of a fire barrier having a 2-hour fire resistance rating is impractical and the following conditions are met.

(A) The means of escape, construction, protection, and other safeguards for the entire building must comply with the NFPA 101 requirements for an existing small Type B assisted living facility.

(B) HHSC must be given unrestricted and unannounced access at any reasonable time to inspect the other occupancy type for compliance with the NFPA 101 requirements for an existing small Type B assisted living facility.

(c) Sheathing.

(1) Except as provided in paragraph (3) of this subsection, an existing small Type B assisted living facility must ensure all buildings used by residents are sheathed with materials providing a fire resistance rating.

(A) Interior wall and ceiling surfaces must have finished surfaces, substrates, or sheathing with a fire resistance rating of not less than 20 minutes.

(B) Columns, beams, girders, or trusses that are not enclosed within walls or ceilings must be encased in materials having a fire resistance rating of not less than 20 minutes.

(2) A sprinkler system does not substitute for the minimum sheathing requirements under paragraph (1) of this subsection.

(3) A building constructed to meet the minimum building construction type requirements of 19.1.6, Minimum Construction Requirements, in NFPA 101, Chapter 19, Existing Health Care Occupancies, is not also required to be sheathed.

(d) Interior finish. An existing small Type B assisted living facility must ensure interior wall and ceiling finish materials meet the requirements of 33.2.3.3.2, Interior Wall and Ceiling Finish, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies.

(e) Vertical openings. An existing small Type B assisted living facility must ensure vertical openings are protected according to the requirements of 33.2.3.1, Protection of Vertical Openings, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies.

§553.122. Space Planning and Utilization Requirements for an Existing Small Type B Assisted Living Facility.

(a) Resident bedrooms.

(1) An existing small Type B assisted living facility must ensure a resident bedroom or living unit is not located on a floor that is below finished ground level.

(2) An existing small Type B assisted living facility must ensure bedroom-usable floor space is not less than 100 square feet for a bedroom housing one resident and not less than 80 square feet per resident for a bedroom housing multiple residents, unless otherwise permitted by paragraphs (3) and (4) of this subsection. Portions of a bedroom that are less than 10 feet in the smallest dimension cannot be included in the measurement of bedroom usable floor space, unless approved by the Texas Health and Human Services Commission (HHSC).

(3) An existing small Type B assisted living facility containing individual living units that include living space for the residents, in addition to their bedroom, may reduce the bedroom usable floor space for a bedroom housing multiple residents within a living unit by up to 10 percent of the required bedroom usable floor space, as long as the minimum dimensional criteria are maintained. An existing small Type B assisted living facility must not use this provision in conjunction with the provision permitting the reduction of common social-diversional areas or common dining areas found in subsection (g)(5) of this section.

(4) An existing small Type B assisted living facility must house no more than 50 percent of its licensed resident capacity in bedrooms housing three or more residents. A bedroom must not house more than four residents.

(b) Bedroom windows. An existing small Type B assisted living facility must ensure each bedroom has at least one operable window with outside exposure and meeting the following requirements.

(1) The window sill must be no higher than 44 inches above the floor.

(2) The window must be operable by all residents occupying the bedroom, from the inside, without the use of tools or special devices.

(3) The total area of all windows in a bedroom must not be less than eight percent of the minimum bedroom usable floor space required by subsection (a)(2) of this section.

(4) An existing bedroom window not meeting these requirements may be continued in service subject to approval by HHSC.

(c) Bedroom furnishings. When a resident does not provide their own furnishings, an existing small Type B assisted living facility must provide the following furnishings for each resident, which must be maintained in good repair:

(1) a bed, including a mattress;

(2) a chair;

(3) a table or dresser; and

(4) private clothes storage space, which must include closable door, and drawer space for clothing and personal belongings.

(d) Arrangement of resident living units or rooms.

(1) An existing small Type B assisted living facility must ensure all resident rooms open on an exit, corridor, living area, or public area.

(2) An existing small Type B assisted living facility must ensure all resident rooms are arranged for convenient resident access to dining and recreation areas.

(e) Staff area. An existing small Type B assisted living facility must provide a staff area on each floor of an existing small Type B assisted living facility and in each separate building containing resident sleeping rooms. An existing small Type B assisted living facility must provide the following at each staff area:

- (1) a desk or writing surface;
- (2) a telephone; and

(3) a fire alarm control unit or a fire alarm annunciator panel meeting the requirements of §553.125 of this division (relating to Fire Protection Systems Requirements for an Existing Small Type B Assisted Living Facility).

(f) Resident toilet and bathing facilities. An existing small Type B assisted living facility must ensure each resident bedroom is served by a separate, private toilet room, a connecting toilet room, or a general toilet room.

(1) An existing small Type B assisted living facility that houses individuals of more than one gender must provide toilet rooms for each gender, or individual single-occupant toilet rooms for use by any gender.

(2) An existing small Type B assisted living facility must ensure a general toilet room or bathing room is accessible from a corridor or public space.

(3) An existing small Type B assisted living facility must ensure resident toilet and bathing facilities comply with the requirements for resident-use plumbing fixtures according to §553.127 of this division (relating to Mechanical Requirements for an Existing Small Type B Assisted Living Facility).

(g) Resident living areas.

(1) An existing small Type B assisted living facility must provide, in a common area of the facility, social-diversional spaces with appropriate furniture. Examples of social-diversional spaces include living rooms, day rooms, lounges, dens, game rooms, and sunrooms.

(A) An existing small Type B assisted living facility must provide a social-diversional space with a minimum area of 120 square feet in at least one space within a common area of the facility, regardless of the number of residents or other provisions of this section permitting a reduction in the total minimum social-diversional space.

(B) An existing small Type B assisted living facility must ensure a social-diversional space has one or more exterior windows providing a view of the outside.

(C) An existing small Type B assisted living facility must ensure the total space for social-diversional area provides an area of at least 15 square feet for each resident in the licensed capacity of the facility. No space smaller than 120 square feet in area can be counted toward meeting this requirement.

(2) An existing small Type B assisted living facility must provide a dining area with appropriate furniture.

(A) An existing small Type B assisted living facility must provide a dining space with a minimum area of 120 square feet in at least one space within a common area of the facility, regardless of the number of residents or other provisions of this section permitting a reduction in the total minimum dining space.

(B) An existing small Type B assisted living facility must ensure a dining space has one or more exterior windows providing a view of the outside.

(C) An existing small Type B assisted living facility must ensure a dining area is accessible from resident living units or bedrooms via a covered path.

(D) An existing small Type B assisted living facility must ensure the total space for dining areas provides an area of at least 15 square feet for each resident in the licensed capacity of the facility. No space smaller than 120 square feet in area can be counted toward meeting this requirement.

(3) An existing small Type B assisted living facility may provide a total living and dining area combined in a single or interconnecting space where the minimum area of the combined space is at least 240 square feet.

(4) An existing small Type B assisted living facility must ensure an escape route through a resident living or dining area is kept clear of obstructions.

(5) Subject to the limitations of paragraphs (1)(A) and (2)(A) of this subsection and subparagraphs (A) and (B) of this paragraph, an existing small Type B assisted living facility containing individual living units may reduce the minimum square footage required by paragraphs (1)(C) and (2)(D) of this subsection for total common social diversional or common dining areas, respectively, by including up to 10 percent of the individual living unit area in the calculation of the total social-diversional area or total dining area.

(A) The individual living unit area contributed toward total social-diversional space or total dining space must not be counted more than once per living unit but may be split between social-diversional and dining space calculations.

(B) An existing small Type B assisted living facility must not utilize both this paragraph and subsection (a)(3) of this section to reduce both the minimum square footage otherwise required for its common social-diversional or dining areas and the minimum square footage of usable floor space otherwise required in bedrooms housing multiple residents within a living unit.

(h) Storage areas. An existing small Type B assisted living facility must provide sufficient separate storage spaces or areas for at least:

- (1) administrative records, office supplies, and other storage needs related to administration;
- (2) medications and medical supplies;
- (3) equipment supplied by the facility for resident needs, including wheelchairs, walkers, beds, and mattresses;
- (4) cleaning supplies, including for janitorial needs;
- (5) food;
- (6) clean linens and towels, if the facility furnishes linen;
- (7) soiled linen, if the facility furnishes linen; and
- (8) lawn and maintenance equipment.

(i) Kitchen.

(1) An existing small Type B assisted living facility that prepares food off-site or in a separate building must ensure food is served at the proper temperature and transported in a sanitary manner.

(2) An existing small Type B assisted living facility that prepares food on-site must provide a kitchen or dietary area meeting

the general food service needs of the residents and must ensure that the kitchen:

- (A) is equipped to store, refrigerate, prepare, and serve food;
- (B) is equipped to clean and sterilize;
- (C) provides for refuse storage and removal; and
- (D) meets the requirements of the local fire, building, and health codes.

(3) An existing small Type B assisted living facility must ensure a kitchen uses only residential cooking equipment or, if the kitchen uses commercial cooking equipment, that the facility protects the kitchen's cooking operations as required in §553.126 of this division (relating to Hazardous Area Requirements for an Existing Small Type B Assisted Living Facility).

§553.123. Means of Escape Requirements for an Existing Small Type B Assisted Living Facility.

(a) The provisions of NFPA 101, Chapter 7, Means of Egress, do not apply to an existing small Type B assisted living facility, unless explicitly referenced by this section or by NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies.

(b) An existing small Type B assisted living facility must meet the requirements of 33.2.2, Means of Escape, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies, except as described in this section.

(c) An existing small Type B assisted living facility must ensure doors meet the requirements of 33.2.2.5, Doors, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies, and the additional requirements of this section. A resident room door is not otherwise required to meet the requirements for doors in 33.2.3.6, Construction of Corridor Walls, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies.

(1) A resident room door in an existing small Type B assisted living facility must latch in its frame to resist the passage of smoke.

(2) In an existing small Type B assisted living facility comprised of buildings that contain living units with independent cooking equipment within the living unit, a door between the living unit and a corridor or hallway must:

- (A) be self-closing or automatic-closing; and
- (B) latch in its frame to resist the passage of smoke.

(3) A resident room door or living unit door must not be arranged to prevent the occupant from closing the door.

(d) An existing small Type B assisted living facility providing spaces for use by residents on floors other than the ground floor must provide at least two separate approved stairs.

(1) An existing stair may be continued in service, subject to approval by HHSC.

(2) A stair used as means of escape must meet the requirements of 33.2.2.6, Stairs, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies.

(3) Each stair must be arranged and located so that it is not necessary to go through another room, including a bedroom or bathroom, to reach the stair.

- (4) Each stair must be provided with handrails.

(5) Each stair must be provided with normal lighting according to the requirements of §553.128 of this division (relating to Electrical Requirements for an Existing Small Type B Assisted Living Facility).

(6) A stair in an existing building that became an assisted living through conversion must meet the dimensional criteria for existing stairs in 7.2.2.2, Dimensional Criteria, in NFPA 101, Chapter 7, Means of Egress.

(7) An existing stair, previously approved by HHSC, may be rebuilt to the same dimensions but must meet all other requirements for stairs in NFPA 101.

§553.125. Fire Protection Systems Requirements for an Existing Small Type B Assisted Living Facility.

(a) Fire alarm and smoke detection system. An existing small Type B assisted living facility must provide a manual fire alarm system meeting the requirements of section 9.6, Fire Detection, Alarm, and Communication Systems, in NFPA 101, Chapter 9, Building Service and Fire Protection Equipment, as modified by this section.

(1) General. An existing small Type B assisted living facility must ensure the operation of any alarm initiating device automatically activates an audible or a visual alarm at the site.

- (2) Smoke detectors.

(A) An existing small Type B assisted living facility must install smoke detectors in resident bedrooms, corridors, hallways, living rooms, dining rooms, offices, kitchens, laundries, attached garages used for car parking, and public or common areas, except as permitted in subparagraphs (B) and (C) of this paragraph.

(B) An existing small Type B assisted living facility may install heat detectors in lieu of smoke detectors in kitchens, laundries, and attached garages used for car parking.

(C) An existing small Type B assisted living facility located in a building constructed to meet the requirements of NFPA 101, Chapter 19, Existing Health Care Occupancies, may install a smoke detection system meeting the requirements of 19.3.4.5.1, Corridors, in NFPA 101, Chapter 19, Existing Health Care Occupancies, in lieu of the requirements in subparagraph (A) of this paragraph.

- (3) Alarm control panel.

(A) An existing small Type B assisted living facility must provide a fire alarm control unit, or a fire alarm annunciator providing annunciation of all fire alarm, supervisory, and trouble signals by audible and visible indicators, in a location visible to staff at or near the staff area that is attended 24 hours a day.

(B) An existing small Type B assisted living facility is not required to ensure a fire alarm control unit or fire alarm annunciator is visible to staff if the fire alarm is monitored by devices carried by all staff.

- (4) Fire alarm power source.

(A) An existing small Type B assisted living facility must ensure a fire alarm system is powered by a permanently-wired, dedicated branch circuit that is powered from a commercial power source in accordance with NFPA 70.

(B) An existing small Type B assisted living facility must provide a secondary, emergency power source meeting the requirements of NFPA 72.

- (b) Fire sprinkler system.

(1) An existing small Type B assisted living facility must provide one of the following fire sprinkler systems according to the requirements of 33.2.3.5, Extinguishment Requirements, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies.

(A) A fire sprinkler system meeting the requirements of NFPA 13 in accordance with 33.2.3.5.3.3;

(B) A fire sprinkler system meeting the requirements of NFPA 13R in accordance with 33.2.3.5.3.4; or

(C) A fire sprinkler system meeting the requirements of NFPA 13D in accordance with 33.2.3.5.3.2.

(2) An existing small Type B assisted living facility must ensure a fire sprinkler system is supervised according to 9.7.2, Supervision, in NFPA 101, Chapter 9, Building Service and Fire Protection Equipment.

(c) Protection of attics. An existing small Type B assisted living facility equipped with a fire sprinkler system must ensure an attic is protected according to the requirements of 33.2.3.5.7, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies, not later than August 31, 2024.

(d) Portable fire extinguishers. An existing small Type B assisted living facility must provide and maintain portable fire extinguishers according to the requirements of NFPA 10.

(1) An existing small Type B assisted living facility must ensure all requirements of NFPA 10 are followed for all extinguisher types, including requirements for location, spacing, mounting heights, monthly inspections by staff, yearly inspections by a licensed agent, any necessary servicing, and hydrostatic testing as recommended by the manufacturer.

(2) An existing small Type B assisted living facility must ensure portable fire extinguishers are located so the travel distance from any point in the facility to an extinguisher is no more than 75 feet.

(3) An existing small Type B assisted living facility must ensure the actual size of any portable fire extinguisher meets the requirements of NFPA 10 for maximum floor area per unit covered, but an extinguisher must be no smaller than the following.

(A) A water-type portable fire extinguisher must have a rating of at least 1-A according to NFPA 10; or

(B) Other portable fire extinguishers must have a rating of at least 2-A:5-B:C according to NFPA 10.

(4) An existing small Type B assisted living facility must ensure portable fire extinguishers are installed on hangers or brackets supplied with the extinguisher or mounted in an approved cabinet.

(5) An existing small Type B assisted living facility must ensure a portable fire extinguisher is protected from impact or dislodgement.

(6) An existing small Type B assisted living facility must ensure a portable fire extinguisher is installed at an appropriate height.

(A) A portable fire extinguisher having a gross weight of up to 40 pounds must be installed so the top of the extinguisher is not more than five feet above the floor.

(B) A portable fire extinguisher having a gross weight greater than 40 pounds must be installed so the top of the extinguisher is not more than three and a half feet above the floor.

(C) A portable fire extinguisher must be installed so the clearance between the bottom of the extinguisher and the floor is at least four inches.

(7) A portable extinguisher provided in a hazardous room must be located as close as possible to the door leading from the room and on the latch or knob side of the door.

§553.127. *Mechanical Requirements for an Existing Small Type B Assisted Living Facility.*

(a) Wastewater and water supply.

(1) Wastewater. An existing small Type B assisted living facility must ensure wastewater and sewage are discharged into a sewerage system or an onsite sewerage facility approved by the Water Quality Division of the Texas Commission on Environmental Quality (TCEQ), or to a system regulated by an entity responsible for water quality in that jurisdiction as approved by the Water Quality Division of TCEQ.

(2) Water supply. An existing small Type B assisted living facility must ensure the water supply is of safe, sanitary quality, suitable for use, adequate in quantity and pressure, and obtained from a public or private water supply system or a private well.

(b) Resident-use plumbing fixtures.

(1) Water closets and lavatories.

(A) An existing small Type B assisted living facility must provide at least one water closet and one lavatory for each six residents and for each additional resident fewer than six. Multiple toilets in a single space must comply with paragraph (2)(B) of this subsection.

(B) An existing small Type B assisted living facility must ensure a lavatory is readily accessible to each water closet.

(C) An existing small Type B assisted living facility must provide at least one water closet, lavatory, and bathing unit, that are accessible to residents, on each floor containing resident sleeping rooms.

(2) Bathing units.

(A) An existing small Type B assisted living facility must provide one tub or shower for every 10 residents, or for any fraction thereof.

(B) Where multiple water closets or bathing units are provided in a single space, an existing small Type B assisted living facility must provide partitions or curtains to separate plumbing fixtures for resident privacy.

(C) An existing small Type B assisted living facility must ensure tubs and showers have non-slip bottoms or floor surfaces, either built-in or applied to the surfaces.

(3) Hot water supply. An existing small Type B assisted living facility must provide a supply of hot water for resident-use. Hot water for lavatories and bathing units accessible to residents must be maintained between 100 and 120 degrees Fahrenheit.

(4) Supplies. An existing small Type B assisted living facility must supply towels, soap, and toilet tissue for individual resident use.

(c) Gas. An existing small Type B assisted living facility must ensure equipment using natural gas or propane and related gas piping meets the requirements of 9.1.1, Gas, in NFPA 101, Chapter 9, Building Service and Fire Protection Equipment.

(d) Heating ventilation, and air-conditioning (HVAC) and exhaust systems.

(1) General requirements. An existing small Type B assisted living facility must ensure HVAC equipment meets the requirements of 33.2.5.2, Heating, Ventilating, and Air-Conditioning,

in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies.

(2) Heating and cooling. An existing small Type B assisted living facility must provide heating and cooling for resident comfort.

(A) An existing small Type B assisted living facility must ensure air conditioning systems can maintain and do maintain the comfort ranges of 68 to 82 degrees Fahrenheit in resident-use areas.

(B) An existing small Type B assisted living facility constructed or licensed after August 1, 2004, must have a central air conditioning system, or a substantially similar air conditioning system, that can maintain and does maintain a temperature range required under subparagraph (A) of this paragraph within areas used by residents.

(C) An existing small Type B assisted living facility may not use an open flame heating device in the facility, except as permitted by subparagraphs (D) - (E) of this section.

(D) An existing small Type B assisted living facility must ensure a fuel-fired heating device, other than a working fireplace, meets the following requirements.

(i) A fuel-fired heating device must be connected to a chimney or vent.

(ii) A fuel-fired heating device must take air for combustion directly from outside.

(iii) A fuel-fired heating device must be designed and installed to provide for complete separation of the combustion system from the atmosphere of the occupied area.

(iv) A fuel-fired heating device must have safety features to immediately stop the flow of fuel and shut down the equipment in case of either excessive temperatures or ignition failure.

(v) A fuel-fired heating device not meeting the requirements of clauses (i) - (iv) of this subparagraph may be continued in service, subject to approval by HHSC.

(E) An existing small Type B assisted living facility must ensure a working fireplace meets the following requirements.

(i) A building containing a working fireplace must be protected by an approved, supervised automatic sprinkler system with listed quick response or listed residential sprinklers.

(ii) A new working fireplace must be installed, maintained, and used according to NFPA 54 and NFPA 211.

(iii) A working fireplace may not be located in a resident sleeping room.

(iv) The room where a working fireplace is located must be provided with electrically supervised carbon monoxide detection connected to the fire alarm system according to NFPA 720.

(v) A direct-vent gas fireplace, as defined in NFPA 54, must meet the following requirements.

(I) A direct-vent gas fireplace must include a sealed glass front with a wire mesh panel or screen.,

(II) The controls for a direct-vent gas fireplace must be locked or located in a restricted location.

(vi) A solid-fuel burning fireplace must be equipped with:

(I) a raised hearth at least four inches above the surrounding finished floor; and

(II) a fireplace enclosure that is guaranteed against breakage up to a temperature of 650 degrees Fahrenheit and constructed of heat-tempered glass or other approved material.

(vii) An existing working fireplace not meeting the requirements of clauses (i) - (vi) of this subparagraph may be continued in service, subject to approval by HHSC.

(3) Ventilation.

(A) An existing small Type B assisted living facility must be ventilated using windows, mechanical ventilation, or a combination of both.

(B) An existing small Type B assisted living facility with interior areas designated for smoking within the building must provide mechanical ventilation directed to the exterior to remove smoke at the rate of 10 air changes per hour.

(4) Exhaust.

(A) An existing small Type B assisted living facility must ensure bathrooms, toilet rooms, and other odor-producing rooms or areas for soiled or unsanitary operations are exhausted with operable windows or powered exhaust vented to the exterior for odor control, unless otherwise permitted under subparagraph (B) of this paragraph.

(B) An existing small Type B assisted living facility may provide exhaust into an attic where permitted by the local building code.

§553.128. *Electrical Requirements for an Existing Small Type B Assisted Living Facility.*

(a) Electrical system. An existing small Type B assisted living facility must ensure an electrical system meets the requirements of 9.1.2, Electrical Systems, in NFPA 101, Chapter 9, Building Service and Fire Protection Equipment.

(b) Lighting. An existing small Type B assisted living facility must provide illumination throughout the building. Minimum lighting levels must not be lower than:

(1) 10 footcandles in resident rooms during the day--illumination requirements for these areas apply to lighting throughout the space, as measured at 30 inches above the floor anywhere in the room;

(2) 20 footcandles in each corridor, staff station, dining room, lobby, toilet room, bathroom, bathing facility, laundry room, stairway, and elevator during the day--illumination requirements for these areas apply to lighting throughout the space, as measured at 30 inches above the floor anywhere in the room; and

(3) 50 footcandles for each medication preparation or storage area, kitchen, and desk within a staff station. Illumination requirements apply when the area is in use for a task it supports, as measured where the task is being performed.

(c) Telephone. An existing small Type B assisted living facility must provide at least one telephone in the facility that is available to both staff and residents. Emergency telephone numbers must be posted conspicuously at or near the telephone, including fire, police, emergency medical services, and poison control center services.

(d) Communication system. An existing small Type B assisted living facility that consists of two or more floors or separate buildings must provide a communication system from each resident living unit to a central staff station.

(1) The communication system must:

(A) be a direct telephone, emergency call system or intercom;

(B) if it is an existing communication system, be approved by the Texas Health and Human Services Commission to be continued in service;

(C) include at least:

(i) one central notification station at a fixed location that receives all calls processed through the system; and

(ii) one permanently fixed call station or device in every resident living unit.

(2) An existing small Type B assisted living facility may provide:

(A) additional or portable notification stations or devices in addition to the central notification station; or

(B) additional call stations or devices in private or common resident areas.

(3) An existing small Type B assisted living facility may provide residents with portable, wireless call transmitters, such as pendants or wrist bands. However, a device may not be a substitute for a fixed call station in a resident living unit.

§553.129. Miscellaneous Requirements for an Existing Small Type B Assisted Living Facility.

An existing small Type B assisted living facility must provide an elevator if:

(1) the building in which the facility is located is three or more stories in height; or

(2) the facility provides services or social activities to residents in spaces located on a floor other than the floor where the entrance to the facility is located.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 438-3161



DIVISION 6. EXISTING LARGE TYPE A ASSISTED LIVING FACILITIES

26 TAC §§553.130 - 553.139

STATUTORY AUTHORITY

The new rules are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation of and provision of services by the health and human services agencies and is authorized to adopt rules governing the rights and duties of persons regulated by the health and human services system; and under Texas Health and Safety Code §§247.025 and 247.026, which respectively require the Executive Commissioner to adopt rules necessary to implement Texas Health and Safety Code, Chapter 247, relating to Assisted Living Facilities, and to

prescribe by rule minimum standards to protect the health and safety of an assisted living facility resident.

§553.131. Construction Requirements for an Existing Large Type A Assisted Living Facility.

(a) Structurally sound. An existing large Type A assisted living facility must ensure any building is structurally sound regarding actual or expected dead, live, and wind loads in accordance with applicable building codes.

(b) Separation of occupancies. An existing large Type A assisted living facility must be separated from other occupancies by a fire barrier having at least a 2-hour fire resistance rating constructed according to the requirements of NFPA 101 and its referenced standards, unless otherwise permitted by paragraphs (1) or (2) of this subsection.

(1) An existing large Type A assisted living facility must be separated from other assisted living facilities, hospitals or nursing facilities. Beginning August 31, 2021, an existing large Type A assisted living facility must be separated from any new occupancy or new use subject to HHSC licensing.

(2) An existing large Type A assisted living facility is not required to be separated from another occupancy not subject to HHSC licensing standards if the two occupancies are so intermingled that construction of a fire barrier having a 2-hour fire resistance rating is impractical and the following conditions are met.

(A) The means of egress, construction, protection, and other safeguards for the entire building must comply with the NFPA 101 requirements for an existing large Type A assisted living facility.

(B) HHSC must be given unrestricted and unannounced access at any reasonable time to inspect the other occupancy type for compliance with the NFPA 101 requirements for an existing large Type A assisted living facility.

(c) Sheathing.

(1) Except as provided in paragraph (3) of this subsection, an existing large Type A assisted living facility must ensure all buildings used by residents are sheathed with materials providing the following fire resistance ratings.

(A) Interior wall and ceiling surfaces must have finished surfaces, substrates, or sheathing with a fire resistance rating of not less than 20 minutes.

(B) Columns, beams, girders, or trusses that are not enclosed within walls or ceilings must be encased in materials having a fire resistance rating of not less than 20 minutes.

(2) A sprinkler system does not substitute for this minimum sheathing requirement under paragraph (1) of this subsection.

(3) A building constructed to meet the minimum building construction type requirements of 19.1.6, Minimum Construction Requirements, in NFPA 101, Chapter 19, Existing Health Care Occupancies, is not also required to be sheathed.

(d) Interior finish. An existing large Type A assisted living facility must ensure interior wall and ceiling finish materials meet the requirements of 33.3.3.3.2, Interior Wall and Ceiling Finish, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies.

(e) Vertical openings. An existing large Type A assisted living facility must ensure vertical openings are protected according to the requirements of 33.3.3.1, Protection of Vertical Openings, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies.

§553.132. Space Planning and Utilization Requirements for an Existing Large Type A Assisted Living Facility.

(a) Resident bedrooms.

(1) An existing large Type A assisted living facility must ensure a resident bedroom or living unit is not located on a floor that is below finished ground level.

(2) An existing large Type A assisted living facility must ensure bedroom usable floor space is not less than 80 square feet for a bedroom housing one resident and not less than 60 square feet per resident for a bedroom housing multiple residents, unless otherwise permitted by paragraphs (3) and (4) of this subsection. Portions of a bedroom that are less than eight feet in the smallest dimension cannot be included in the measurement of bedroom usable floor space, unless approved by the Texas Health and Human Services Commission (HHSC).

(3) An existing large Type A assisted living facility containing individual living units that include living space for the residents, in addition to their bedroom, may reduce the bedroom usable floor space for a bedroom housing multiple residents within a living unit by up to 10 percent of the required bedroom usable floor space, as long as the minimum dimensional criteria are maintained. An existing large Type A assisted living facility must not use this provision in conjunction with the provision permitting the reduction of common social-diversional areas or common dining areas found in subsection (g)(6) of this section.

(4) An existing large Type A assisted living facility must house no more than 50 percent of its licensed resident capacity in bedrooms housing three or more residents. A bedroom must not house more than four residents.

(b) Bedroom windows. An existing large Type A assisted living facility must ensure each bedroom has at least one operable window with outside exposure and meeting the following requirements.

(1) The window sill must be no higher than 44 inches above the floor.

(2) The window must be operable by a resident occupying the bedroom, from the inside, without the use of tools or special devices.

(3) The total area of all windows in a bedroom must not be less than eight percent of the minimum bedroom usable floor space according to the requirements of subsection (a)(2) of this section.

(4) An existing bedroom window not meeting these requirements may be continued in service, subject to approval by HHSC.

(c) Bedroom furnishings. When a resident does not provide their own furnishings, an existing large Type A assisted living facility must provide the following furnishings for each resident, which must be maintained in good repair:

(1) a bed, including a mattress;

(2) a chair;

(3) a table or dresser; and

(4) private clothes storage space, which must have closable doors, and drawer space for clothing and personal belongings.

(d) Arrangement of resident living units or rooms.

(1) An existing large Type A assisted living facility must ensure all resident rooms open on an exit, corridor, living area, or public area.

(2) An existing large Type A assisted living facility must ensure a resident room is arranged for convenient resident access to dining and recreation areas.

(e) Staff area. An existing large Type A assisted living facility must provide a staff area on each floor of an existing large Type A assisted living facility and in each separate building containing resident sleeping rooms, except as permitted under paragraph (1) of this subsection.

(1) An existing large Type A assisted living facility that is not more than two stories in height and is composed of separate buildings grouped together and connected by covered walks, is not required to provide a staff area on each floor or in each building, provided that a staff area is located not more than 200 feet walking distance from the farthest resident living unit.

(2) An existing large Type A assisted living facility must provide the following at each staff area:

(A) a desk or writing surface;

(B) a telephone; and

(C) a fire alarm control unit or a fire alarm annunciator panel meeting the requirements of §553.135 of this division (relating to Fire Protection Systems Requirements for an Existing Large Type A Assisted Living Facility).

(f) Resident toilet and bathing facilities. An existing large Type A assisted living facility must ensure each resident bedroom is served by a separate private toilet room, a connecting toilet room, or a general toilet room.

(1) An existing large Type A assisted living facility that houses individuals of more than one gender must provide toilet rooms for each gender, or individual single-occupant toilet rooms for use by any gender.

(2) An existing large Type A assisted living facility must ensure a general toilet room or bathing room is accessible from a corridor or public space.

(3) An existing large Type A assisted living facility must ensure resident toilet and bathing facilities comply with the requirements for resident-use plumbing fixtures according to §553.137 of this division (relating to Mechanical Requirements for an Existing Large Type A Assisted Living Facility).

(g) Resident living areas.

(1) An existing large Type A assisted living facility must provide, in a common area of the facility, social-diversional spaces with appropriate furniture. Examples of social-diversional spaces include living rooms, day rooms, lounges, dens, game rooms, and sunrooms.

(A) An existing large Type A assisted living facility must provide a social-diversional space with a minimum area of 120 square feet in at least one space within a common area of the facility, regardless of the number of residents or other provisions of this section permitting a reduction in the total minimum social-diversional space.

(B) An existing large Type A assisted living facility must ensure a social-diversional space has one or more exterior windows providing a view of the outside.

(C) An existing large Type A assisted living facility must ensure the total space for social-diversional areas is provided on a sliding scale according to the following table. No space smaller than 120 square feet in area can be counted toward meeting this requirement.

Figure: 26 TAC §553.132(g)(1)(C)

(2) An existing large Type A assisted living facility must provide a dining area with appropriate furniture.

(A) An existing large Type A assisted living facility must provide a dining space with a minimum area of 120 square feet in at least one space within a common area of the facility, regardless of the number of residents or other provisions of this section permitting a reduction in the total minimum dining space.

(B) An existing large Type A assisted living facility must ensure a dining space has one or more exterior windows providing a view of the outside.

(C) An existing large Type A assisted living facility must ensure a dining area is accessible from resident living units or bedrooms via a covered path.

(D) An existing large Type A assisted living facility must ensure the total space for dining areas is provided on a sliding scale according to the following table. No space smaller than 120 square feet in area can be counted toward meeting this requirement. Figure: 26 TAC §553.132(g)(2)(D)

(3) An existing large Type A assisted living facility may provide a total living and dining area combined in a single or interconnecting space where the minimum area of the combined space is at least 240 square feet.

(4) For calculation purposes, where a means of egress passes through a living or dining area, an existing large Type A assisted living facility must deduct a pathway, equal to the minimum corridor width, according to §553.133 of this division (relating to Means of Egress Requirements for an Existing Large Type A Assisted Living Facility), from the measured area of the space.

(5) An existing large Type A assisted living facility must ensure a means of egress through a resident living or dining area is kept clear of obstructions, except as permitted by NFPA 101.

(6) Subject to the limitations of paragraphs (1)(A) and (2)(A) of this subsection and subparagraphs (A) and (B) of this paragraph, an existing large Type A assisted living facility containing individual living units may reduce the minimum square footage required by paragraphs (1)(C) and (2)(D) of this subsection for total common social-diversional or common dining areas, respectively, by including up to 10 percent of the individual living unit area in the calculation of the total social-diversional area or total dining area.

(A) The individual living unit area contributed toward total social-diversional space or total dining space must not be counted more than once per living unit but may be split between social-diversional and dining space calculations.

(B) An existing large Type A assisted living facility must not utilize both this paragraph and subsection (a)(3) of this section to reduce both the minimum square footage otherwise required for its common social-diversional or dining areas and the minimum square footage of usable floor space otherwise required in bedrooms housing multiple residents within a living unit.

(h) Storage areas. An existing large Type A assisted living facility must provide sufficient separate storage spaces or areas for at least:

- (1) administrative records, office supplies, and other storage needs related to administration;
- (2) medications and medical supplies;
- (3) equipment supplied by the facility for resident needs, including wheelchairs, walkers, beds, and mattresses;
- (4) cleaning supplies, including for janitorial needs;
- (5) food;

- (6) clean linens and towels, if the facility furnishes linen;
- (7) soiled linen, if the facility furnishes linen; and
- (8) lawn and maintenance equipment.

(i) General kitchen.

(1) An existing large Type A assisted living facility that prepares food off-site or in a separate building must ensure food is served at the proper temperature and transported in a sanitary manner.

(2) An existing large Type A assisted living facility must ensure a kitchen meets the requirements of the local fire, building, and health codes.

(3) An existing large Type A assisted living facility that prepares food on-site must provide a kitchen or dietary area to meet the general food service needs of the residents and must include space for:

- (A) storage, refrigeration, preparation, and serving food;
- (B) dish and utensil cleaning, which includes:
 - (i) a three-compartment sink large enough to immerse pots and pans; and
 - (ii) a mechanical dishwasher for washing and sanitizing dishes;
- (C) a food preparation sink;
- (D) a handwashing station in every food preparation area with a supply of hot and cold water, soap, a towel dispenser and a waste receptacle;
- (E) a handwashing lavatory that is readily accessible to every dish room area;
- (F) refuse storage and removal;
- (G) floor drains in the kitchen and dishwashing areas, unless the facility was licensed before January 6, 2014, and the facility can keep the floor clean; and
- (H) a grease trap, if required by local authorities.

(4) An existing large Type A assisted living facility must ensure a kitchen is designed so that room temperature, at peak load or in the summer, does not exceed 85 degrees Fahrenheit measured throughout the room at five feet above the floor.

(5) An existing large Type A assisted living facility must ensure the volume of supply air provided takes into account the large quantities of air that may be exhausted at the range hood and dishwashing area.

(6) An existing large Type A assisted living facility must provide a supply of hot and cold water.

(A) Hot water for sanitizing purposes must be 180 degrees Fahrenheit.

(B) When chemical sanitizers are used, hot water must meet the manufacturer's suggested temperature.

(7) An existing large Type A assisted living facility must maintain a separation between soiled and clean dish areas.

(8) An existing large Type A assisted living facility must maintain a separation of air flow between soiled and clean dish areas.

(j) Kitchen restrooms.

(1) An existing large Type A assisted living facility must provide a restroom facility for kitchen staff, including a lavatory, except as described in paragraph (2) of this subsection.

(A) The restroom facility must be directly accessible to kitchen staff without traversing resident-use areas.

(B) The restroom must open into a service corridor or vestibule and not open directly into the kitchen.

(2) An existing large Type A assisted living facility licensed before January 6, 2014, may provide a staff restroom that may be located outside the kitchen area.

(k) Kitchen janitorial facility.

(1) An existing large Type A assisted living facility must provide janitorial facilities exclusively for the kitchen and located in the kitchen area, except as described in paragraph (2) of this subsection.

(2) An existing large Type A assisted living facility licensed before January 6, 2014, must provide a janitorial facility for the kitchen. The janitorial facility may be located outside the kitchen if sanitary procedures are used to reduce the possibility of cross-contamination.

(3) An existing large Type A assisted living facility must provide a garbage can or cart washing area with a floor drain and a supply of hot water. The garbage can or cart washing area may be in the interior or on the exterior of the facility.

(4) An existing large Type A assisted living facility must provide floor drains in the kitchen and dishwashing areas unless the facility was licensed before January 6, 2014, and the facility can keep the floors clean.

(5) If required by local authorities, an existing large Type A assisted living facility must provide a grease trap.

(l) Finishes.

(1) An existing large Type A assisted living facility must provide non-absorbent, smooth finishes or surfaces on all kitchen floors, walls and ceilings.

(2) An existing large Type A assisted living facility must provide non-absorbent, smooth, cleanable finishes on counter surfaces and all cabinet surfaces.

(3) An existing large Type A assisted living facility must ensure surfaces are capable of being routinely cleaned and sanitized to maintain a healthful environment.

(m) Vision panels in communicating doors.

(1) An existing large Type A assisted living facility must ensure a door between a kitchen and a dining area, serving area, or resident-use area, is provided with a vision panel with fixed safety glass. Where the door is a required fire door or is located in a fire barrier or other fire resistance-rated enclosure, the vision panel, including the glazing and the frame, must meet the requirements of NFPA 101.

(2) Existing doors between kitchens and adjacent spaces that are not provided with vision panels may be continued in service, subject to approval by HHSC.

(n) Auxiliary serving kitchens.

(1) An existing large Type A assisted living facility must ensure an auxiliary serving kitchen is equipped to maintain required food temperatures.

(2) An existing large Type A assisted living facility must ensure an auxiliary serving kitchen is equipped with a handwashing lavatory meeting the requirements of this section.

(3) An existing large Type A assisted living facility must ensure all surfaces in an auxiliary serving kitchen meet the requirements for finishes in this section.

(o) Protection of cooking operations.

(1) An existing large Type A assisted living facility must protect cooking facilities using commercial or residential cooking equipment for meal preparation as commercial cooking operations, according to the requirements for commercial cooking equipment in §553.136 of this division (relating to Hazardous Area Requirements for an Existing Large Type A Assisted Living Facility).

(2) The following commercial or residential cooking equipment used only for reheating, and not for meal preparation, is not required to comply with the requirements of §553.136 of this division:

(A) microwave ovens;

(B) hot plates; or

(C) toasters.

(p) Food storage areas.

(1) An existing large Type A assisted living facility must provide a food storage area large enough to consistently maintain a four-day minimum supply of non-perishable food. A food storage area may be located away from the food preparation area as long as there is space adjacent to the kitchen for necessary daily usage.

(2) An existing large Type A assisted living facility must provide dollies, racks, pallets, wheeled containers, or shelving, so that food is not stored on the floor.

(A) An existing large Type A assisted living facility must ensure shelves are adjustable wire type shelving.

(B) An existing large Type A assisted living facility licensed before January 6, 2014, may use wood shelves provided the shelves are sealed and clean.

(3) An existing large Type A assisted living facility must provide non-absorbent finishes or surfaces on all floors and walls in food storage areas.

(4) An existing large Type A assisted living facility must provide effective ventilation in dry food storage areas to ensure positive air circulation.

(5) An existing large Type A assisted living facility must ensure the maximum room temperature in a food storage area does not exceed 85 degrees Fahrenheit at any time, when measured at the highest food storage level, but not less than five feet above the floor.

(q) Laundry and linen services.

(1) An existing large Type A assisted living facility that co-mingles and processes laundry on-site in a central location, regardless of the type of laundry equipment used, must ensure a laundry area:

(A) is separated from the assisted living building by a fire barrier having a one-hour fire resistance rating, and this separation must extend from the floor to the floor or roof above;

(B) is protected throughout by a fire sprinkler system;

(C) has access doors that open to the exterior or to an interior non-resident use area, such as a vestibule or service corridor; and

(D) is provided with:

(i) a soiled linen receiving, holding, and sorting room with a floor drain and forced exhaust to the exterior that;

(I) must always operate when soiled linen is held in this area; and

(II) may be combined with the washer section;

(ii) a general laundry work area that is separated by partitioning a washer section and a dryer section;

(iii) a storage area for laundry supplies;

(iv) a folding area;

(v) an adequate air supply and ventilation for staff comfort without having to rely on opening a door that is part of the fire barrier separation required by subparagraph (1)(A) of this subsection; and

(vi) provisions to exhaust heat from dryers and to separate dryer make-up air from the habitable work areas of the laundry.

(2) If linen is processed off site, the facility must provide:

(A) a soiled linen holding room with adequate forced exhaust ducted to the exterior; and

(B) a clean linen receiving, holding, inspection, sorting or folding, and storage room.

(3) An existing large Type A assisted living facility must ensure a laundry area for resident-use meets the following requirements.

(A) An existing large Type A assisted living facility must ensure only residential type washers and dryers are provided in a laundry area for resident-use.

(B) When more than three washers and three dryers are provided in one laundry area for resident use, the area must be:

(i) protected throughout by a fire sprinkler system; or

(ii) separated from the facility by a fire barrier having a one-hour fire resistance rating.

§553.133. Means of Egress Requirements for an Existing Large Type A Assisted Living Facility.

(a) An existing large Type A assisted living facility must meet the requirements of 33.3.2, Means of Egress, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies, except as described in this section.

(b) The provisions of 33.3.2.11.2, Lockups, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies, are not permitted.

(c) An existing large Type A assisted living facility must ensure doors meet the requirements of 33.3.2.2.2, Doors, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies, and the additional requirements of this section.

(1) A resident room door in an existing large Type A assisted living facility must latch in its frame to resist the passage of smoke.

(2) In an existing large Type A assisted living facility comprised of buildings that contain living units with independent cooking equipment within the living unit, a door between the living unit and a corridor or hallway must:

(A) be self-closing or automatic-closing; and

(B) latch in its frame to resist the passage of smoke.

(3) A resident room door or living unit door must not be arranged to prevent the occupant from closing the door.

(d) An existing large Type A assisted living facility providing spaces for use by residents on floors other than the ground floor must provide at least two separate approved stairs and must ensure stairs used as a means of egress meet the requirements of 33.3.2.2.3, Stairs, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies.

(e) An existing large Type A assisted living facility must ensure means of egress are marked according to the requirements of 33.3.2.10, Marking of Means of Egress, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies.

(f) An existing large Type A assisted living facility containing more than 25 sleeping rooms must provide emergency lighting, according to the requirements of 33.3.2.9, Emergency Lighting, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies, unless each sleeping room has a direct exit to the outside at the finished ground level.

§553.135. Fire Protection Systems Requirements for an Existing Large Type A Assisted Living Facility.

(a) Fire alarm and smoke detection system. An existing large Type A assisted living facility must provide a manual fire alarm system meeting the requirements of 9.6, Fire Detection, Alarm, and Communication Systems, in NFPA 101, Chapter 9, Building Service and Fire Protection Equipment, as modified by this section.

(1) General. An existing large Type A assisted living facility must ensure the operation of any alarm initiating device automatically activates an audible or a visual alarm at the site.

(2) Smoke detectors.

(A) An existing large Type A assisted living facility must install smoke detectors in resident bedrooms, corridors, hallways, living rooms, dining rooms, offices, kitchens, laundries, attached garages used for car parking, and public or common areas, except as permitted in subparagraphs (B) - (D) of this paragraph.

(B) An existing large Type A assisted living facility may install heat detectors in lieu of smoke detectors in kitchens, laundries, and attached garages used for car parking.

(C) An existing large Type A assisted living facility located in a building constructed to meet the requirements of NFPA 101, Chapter 19, Existing Health Care Occupancies, may install a smoke detection system meeting the requirements of 19.3.4.5.1, Corridors, in NFPA 101, Chapter 19, Existing Health Care Occupancies, in lieu of the requirements found in subparagraphs (A) and (B) of this paragraph.

(D) An existing large Type A assisted living facility comprised of buildings containing living units with independent cooking equipment must additionally have:

(i) a smoke detector installed all in resident bedrooms, corridors, hallways, living rooms, dining rooms, offices, kitchens and laundries within the living unit, that sounds an alarm only within the living unit; and

(ii) a heat detector installed in the kitchen within the living unit that activates the general alarm.

(3) Alarm control panel.

(A) An existing large Type A assisted living facility must provide a fire alarm control unit, or a fire alarm annunciator providing annunciation of all fire alarm, supervisory, and trouble signals by audible and visible indicators, in a location visible to staff at or near the staff area that is attended 24 hours a day.

(B) An existing large Type A assisted living facility is not required to ensure a fire alarm control unit or fire alarm annunciator is visible to staff if the fire alarm is monitored by devices carried by all staff.

(C) An existing large Type A assisted living facility must ensure a fire alarm panel indicates each floor and smoke compartment, as applicable, as a separate zone. Each zone must provide an alarm and trouble indication. When all alarm initiating devices are addressable and the status of each device is identified on the fire alarm panel, zone indication is not required.

(4) Fire alarm power source.

(A) An existing large Type A assisted living facility must ensure a fire alarm system is powered by a permanently-wired, dedicated branch circuit that is powered from a commercial power source in accordance with NFPA 70.

(B) An existing large Type A assisted living facility must provide a secondary, emergency power source meeting the requirements of NFPA 72.

(5) Emergency forces notification. An existing large Type A assisted living facility not equipped with a fire alarm system that automatically notifies emergency forces must immediately notify the fire department by telephone or other means.

(b) Fire sprinkler system.

(1) An existing large Type A assisted living facility may provide a fire sprinkler system meeting the requirements of NFPA 13 in accordance with 33.3.3.5.1, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies.

(2) An existing large Type A assisted living facility located in a building that is four or fewer stories in height may provide a fire sprinkler system meeting the requirements of NFPA 13R in accordance with 33.3.3.5.1.1, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies.

(3) An existing large Type A assisted living facility located in a high-rise building must be protected throughout by an approved, supervised automatic fire sprinkler system meeting the requirements of NFPA 13 according to 33.3.3.5.3, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies.

(c) Protection of attics. An existing large Type A assisted living facility equipped with a fire sprinkler system must ensure an attic is protected according to the requirements of 33.3.3.5.4, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies, not later than August 31, 2024.

(d) Portable fire extinguishers. An existing large Type A assisted living facility must provide and maintain portable fire extinguishers according to the requirements of NFPA 10.

(1) An existing large Type A assisted living facility must ensure all requirements of NFPA 10 are followed for all extinguisher types, including requirements for location, spacing, mounting heights, monthly inspections by staff, yearly inspections by a licensed agent, any necessary servicing, and hydrostatic testing as recommended by the manufacturer.

(2) An existing large Type A assisted living facility must ensure portable fire extinguishers are located in resident corridors so the travel distance from any point in the facility to an extinguisher is no more than 75 feet.

(3) An existing large Type A assisted living facility must ensure the actual size of any portable fire extinguisher meets the requirements of NFPA 10 for maximum floor area per unit covered, but an extinguisher must be no smaller than the following.

(A) A water-type portable fire extinguisher must have a rating of at least 1-A according to NFPA 10.

(B) All other portable fire extinguishers must have a rating of at least 2-A:5-B:C according to NFPA 10.

(C) A facility must provide at least one approved 20-B:C portable fire extinguisher in each laundry, kitchen and walk-in mechanical room.

(4) An existing large Type A assisted living facility must ensure portable fire extinguishers are installed on hangers or brackets supplied with the extinguisher or mounted in an approved cabinet.

(5) An existing large Type A assisted living facility must ensure a portable fire extinguisher is protected from impact or dislodgement.

(6) An existing large Type A assisted living facility must ensure a portable fire extinguisher is installed at an appropriate height.

(A) A portable fire extinguisher having a gross weight of up to 40 pounds must be installed so the top of the extinguisher is not more than five feet above the floor.

(B) A portable fire extinguisher having a gross weight greater than 40 pounds must be installed so the top of the extinguisher is not more than three and a half feet above the floor.

(C) A portable fire extinguisher must be installed so the clearance between the bottom of the extinguisher and the floor is at least four inches.

(7) A portable extinguisher provided in a hazardous room must be located as close as possible to the exit access door leading from the room and on the latch or knob side of the door.

§553.137. Mechanical Requirements for an Existing Large Type A Assisted Living Facility.

(a) Wastewater and water supply.

(1) Wastewater. An existing large Type A assisted living facility must ensure wastewater and sewage are discharged into a sewerage system or an onsite sewerage facility approved by the Water Quality Division of the Texas Commission on Environmental Quality (TCEQ), or to a system regulated by an entity responsible for water quality in that jurisdiction as approved by the Water Quality Division of TCEQ.

(2) Water supply. An existing large Type A assisted living facility must ensure the water supply is of safe, sanitary quality, suitable for use, adequate in quantity and pressure, and obtained from a public or private water supply system or a private well.

(b) Resident-use plumbing fixtures.

(1) Water closets and lavatories.

(A) An existing large Type A assisted living facility must provide at least one water closet and one lavatory for every six residents and for each additional resident fewer than six. Multiple toilets in a single space must comply with paragraph (2)(B) of this subsection.

(B) An existing large Type A assisted living facility must ensure a lavatory is readily accessible to each water closet.

(C) An existing large Type A assisted living facility must provide at least one water closet, lavatory, and bathing unit, that are accessible to residents, on each floor containing resident sleeping rooms.

(2) Bathing units.

(A) An existing large Type A assisted living facility must provide one tub or shower for every 10 residents, and for any fraction thereof.

(B) Where multiple water closets or bathing units are provided in a single space, an existing large Type A assisted living facility must provide partitions or curtains to separate plumbing fixtures for resident privacy.

(C) An existing large Type A assisted living facility must ensure tubs and showers have non-slip bottoms or floor surfaces, either built-in or applied to the surfaces.

(3) Hot water supply. An existing large Type A assisted living facility must provide a supply of hot water for resident-use. Hot water for lavatories and bathing units accessible to residents must be maintained between 100 and 120 degrees Fahrenheit.

(4) Supplies. An existing large Type A assisted living facility must supply towels, soap, and toilet tissue for individual resident use.

(c) Public and staff-use plumbing fixtures. In addition to the staff toilets required for the dietary staff according to §553.132(j) of this division (relating to Space Planning and Utilization Requirements for an Existing Large Type A Assisted Living Facility), an existing large Type A assisted living facility must provide toilets, including water closets and lavatories, for use by the public and by facility staff as follows:

(1) if licensed for 60 or fewer residents, a toilet for use by the public and by facility staff; or

(2) if licensed for more than 60 residents, a toilet for use by the public and a separate toilet for use by facility staff.

(d) Gas. An existing large Type A assisted living facility must ensure equipment using natural gas or propane and related gas piping meets the requirements of 9.1.1, Gas, in NFPA 101, Chapter 9, Building Service and Fire Protection Equipment.

(e) Heating, ventilation, and air-conditioning (HVAC) and exhaust systems.

(1) General requirements. An existing large Type A assisted living facility must ensure HVAC equipment meets the requirements of 33.3.6.2, Heating, Ventilating, and Air-Conditioning, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies.

(2) Heating and cooling. An existing large Type A assisted living facility must provide heating and cooling for resident comfort.

(A) An existing large Type A assisted living facility must ensure air conditioning systems can maintain and do maintain the comfort range of 68 to 82 degrees Fahrenheit in resident-use areas.

(B) An existing large Type A assisted living facility constructed or licensed after August 1, 2004, must have a central air-conditioning system, or a substantially similar air conditioning system, that can maintain and does maintain a temperature range

required under subparagraph (A) of this paragraph within areas used by residents.

(C) An existing large Type A assisted living facility may not use an open flame heating device in the facility, except as permitted by subparagraphs (D) - (E) of this section.

(D) An existing large Type A assisted living facility must ensure a fuel-fired heating device, other than a working fireplace, meets the following requirements.

(i) A fuel-fired heating device must be connected to a chimney or vent.

(ii) A fuel-fired heating device must take air for combustion directly from outside.

(iii) A fuel-fired heating device must be designed and installed to provide for complete separation of the combustion system from the atmosphere of the occupied area.

(iv) A fuel-fired heating device must have safety features to immediately stop the flow of fuel and shut down the equipment in case of either excessive temperatures or ignition failure.

(v) A fuel-fired heating device not meeting the requirements of clauses (i) - (iv) of this subparagraph may be continued in service, subject to approval by HHSC.

(E) An existing large Type A assisted living facility must ensure a working fireplace meets the following requirements.

(i) A building containing a working fireplace must be protected by an approved, supervised automatic sprinkler system with listed quick response or listed residential sprinklers.

(ii) A new working fireplace must be installed, maintained and used according to NFPA 54 and NFPA 211.

(iii) A working fireplace may not be located in a resident sleeping room.

(iv) The room where a working fireplace is located must be provided with electrically supervised carbon monoxide detection connected to the fire alarm system according to NFPA 720.

(v) A direct-vent gas fireplace, as defined in NFPA 54, must meet the following requirements.

(I) A direct-vent gas fireplace must include a sealed glass front with a wire mesh panel or screen.

(II) The controls for a direct-vent gas fireplace must be locked or located in a restricted location.

(vi) A solid-fuel burning fireplace must be equipped with:

(I) a raised hearth at least four inches above the surrounding finished floor; and,

(II) a fireplace enclosure that is guaranteed against breakage up to a temperature of 650 degrees Fahrenheit and constructed of heat-tempered glass or other approved material;

(vii) An existing working fireplace not meeting the requirements of clauses (i) - (vi) of this subparagraph may be continued in service, subject to approval by HHSC.

(3) Ventilation.

(A) An existing large Type A assisted living facility must be ventilated using windows, mechanical ventilation, or a combination of both.

(B) An existing large Type A assisted living facility with interior areas designated for smoking within the building must provide mechanical ventilation directed to the exterior to remove smoke at the rate of 10 air changes per hour.

(4) Exhaust. An existing large Type A assisted living facility must ensure bathrooms, toilet rooms, janitorial facilities, and other odor-producing rooms or areas for soiled or unsanitary operations are exhausted with operable windows or powered exhaust vented to the exterior for odor control.

§553.138. Electrical Requirements for an Existing Large Type A Assisted Living Facility.

(a) Electrical system. An existing large Type A assisted living facility must ensure an electrical system meets the requirements of 9.1.2, Electrical Systems, in NFPA 101, Chapter 9, Building Service and Fire Protection Equipment.

(b) Lighting. An existing large Type A assisted living facility must provide illumination throughout the building. Minimum lighting levels must not be lower than:

(1) 10 footcandles in resident rooms during the day--illumination requirements for these areas apply to lighting throughout the space, as measured at 30 inches above the floor anywhere in the room;

(2) 20 footcandles in each corridor, staff station, dining room, lobby, toilet room, bathroom, bathing facility, laundry room, stairway, and elevator during the day--illumination requirements for these areas apply to lighting throughout the space, as measured at 30 inches above the floor anywhere in the room; and

(3) 50 footcandles for each medication preparation or storage area, kitchen, and desk within a staff station. Illumination requirements apply when the area is in use for a task it supports, as measured where the task is being performed.

(c) Telephone. An existing large Type A assisted living facility must provide at least one telephone in the facility that is available to both staff and residents. Emergency telephone numbers must be posted conspicuously at or near the telephone, including fire, police, emergency medical services, and poison control center services.

(d) Communication system. An existing large Type A assisted living facility that consists of two or more floors or separate buildings must provide a communication system from each resident living unit to a central staff station.

(1) The communication system must:

(A) be a direct telephone, emergency call system or intercom;

(B) if it is an existing communication system, be approved by HHSC to be continued in service;

(C) include at least:

(i) one central notification station at a fixed location that receives all calls processed through the system; and

(ii) one permanently fixed call station or device in every resident living unit.

(2) An existing large Type A assisted living facility may provide:

(A) additional or portable notification stations or devices in addition to the central notification station; or

(B) additional call stations or devices in private or common resident areas.

(3) An existing large Type A assisted living facility may provide residents with portable, wireless call transmitters, such as pendants or wrist bands. However, a device may not be a substitute for a fixed call station in a resident living unit.

§553.139. Miscellaneous Requirements for an Existing Large Type A Assisted Living Facility

An existing large Type A assisted living facility must provide an elevator if:

(1) the building in which the facility is located is three or more stories in height; or

(2) the facility provides services or social activities to residents in spaces located on a floor other than the floor where the entrance to the facility is located.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 438-3161



DIVISION 7. EXISTING LARGE TYPE B ASSISTED LIVING FACILITIES

26 TAC §§553.140 - 553.149

STATUTORY AUTHORITY

The new rules are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation of and provision of services by the health and human services agencies and is authorized to adopt rules governing the rights and duties of persons regulated by the health and human services system; and under Texas Health and Safety Code §§247.025 and 247.026, which respectively require the Executive Commissioner to adopt rules necessary to implement Texas Health and Safety Code, Chapter 247, relating to Assisted Living Facilities, and to prescribe by rule minimum standards to protect the health and safety of an assisted living facility resident.

§553.141. Construction Requirements for an Existing Large Type B Assisted Living Facility.

(a) Structurally sound. An existing large Type B assisted living facility must ensure any building is structurally sound regarding actual or expected dead, live, and wind loads according to applicable building codes.

(b) Separation of occupancies. An existing large Type B assisted living facility must be separated from other occupancies by a fire barrier having at least a 2-hour fire resistance rating constructed according to the requirements of NFPA 101 and its referenced standards, unless otherwise permitted by paragraphs (1) or (2) of this subsection.

(1) An existing large Type B assisted living facility is not required to be separated from a hospital or nursing facility unless the

separation is required by NFPA 101 or the standards for licensing the hospital or nursing facility. Beginning August 31, 2021, an existing large Type B assisted living facility must be separated from any new occupancy or new use subject to the Texas Health and Human Services Commission (HHSC) licensing.

(2) An existing large Type B assisted living facility is not required to be separated from another occupancy not subject to HHSC licensing standards if the two occupancies are so intermingled that construction of a fire barrier having a 2-hour fire resistance rating is impractical and the following conditions are met.

(A) The means of egress, construction, protection, and other safeguards for the entire building must comply with the NFPA 101 requirements for an existing large Type B assisted living facility.

(B) HHSC must be given unrestricted and unannounced access at any reasonable time to inspect the other occupancy type for compliance with the NFPA 101 requirements for an existing large Type B assisted living facility.

(c) Construction type. An existing large Type B assisted living facility must ensure a building housing the facility meets the requirements of 19.1.6, Minimum Construction Requirements, in NFPA 101, Chapter 19, Existing Health Care Occupancies.

(d) Interior finish. An existing Large Type B assisted living facility must ensure interior wall, ceiling and floor finish materials meet the requirements of 19.3.3, Interior Finish, in NFPA 101, Chapter 19, Existing Health Care Occupancies.

(e) Vertical openings. An existing large Type B assisted living facility must ensure vertical openings are protected according to the requirements of 19.3.1, Protection of Vertical Openings, in NFPA 101, Chapter 19, Existing Health Care Occupancies.

§553.142. Space Planning and Utilization Requirements for an Existing Large Type B Assisted Living Facility.

(a) Resident bedrooms.

(1) An existing large Type B assisted living facility must ensure a resident bedroom or living unit is not located on a floor that is below finished ground level.

(2) An existing large Type B assisted living facility must ensure bedroom usable floor space is not less than 100 square feet for a bedroom housing one resident and not less than 80 square feet per resident for a bedroom housing multiple residents, unless otherwise permitted by paragraphs (3) and (4) of this subsection. Portions of a bedroom that are less than 10 feet in the smallest dimension cannot be included in the measurement of bedroom usable floor space, unless approved by the Texas Health and Human Services Commission (HHSC).

(3) An existing large Type B assisted living facility containing individual living units that include living space for the residents, in addition to their bedroom, may reduce the bedroom usable floor space for a bedroom housing multiple residents within a living unit by up to 10 percent of the required bedroom usable floor space, as long as the minimum dimensional criteria are maintained. An existing large Type B assisted living facility must not use this provision in conjunction with the provision permitting the reduction of common social-diversional areas or common dining areas found in subsection (g)(6) of this section.

(4) An existing large Type B assisted living facility must house no more than 50 percent of its licensed resident capacity in bedrooms housing three or more residents. A bedroom must not house more than four residents.

(b) Bedroom windows. An existing large Type B assisted living facility must ensure each bedroom has at least one operable window, with outside exposure, that meets the following requirements.

(1) The window sill must be no higher than 44 inches above the floor.

(2) The window must be operable by a resident occupying the bedroom, from the inside, without the use of tools or special devices.

(3) The total area of all windows in a bedroom must not be less than eight percent of the minimum bedroom usable floor space required by subsection (a)(2) of this section.

(4) An existing bedroom window that does not meet these requirements may be continued in service, subject to approval by HHSC.

(c) Bedroom furnishings. When a resident does not provide their own furnishings, an existing large Type B assisted living facility must provide the following furnishings for each resident, which must be maintained in good repair:

(1) a bed, including a mattress;

(2) a chair;

(3) a table or dresser; and

(4) private clothes storage space, which must have closable doors, and drawer space for clothing and personal belongings.

(d) Arrangement of resident living units or rooms.

(1) An existing large Type B assisted living facility must ensure all resident rooms open on an exit, corridor, living area, or public area.

(2) An existing large Type B assisted living facility must ensure all resident rooms are arranged for convenient resident access to dining and recreation areas.

(e) Staff area. An existing large Type B assisted living facility must provide a staff area on each floor of an existing large Type B assisted living facility and in each separate building containing resident sleeping rooms. An existing large Type B assisted living facility must provide the following at each staff area:

(1) a desk or writing surface;

(2) a telephone; and

(3) a fire alarm control unit or a fire alarm annunciator panel meeting the requirements of §553.145 of this division (relating to Fire Protection Systems Requirements for an Existing Large Type B Assisted Living Facility).

(f) Resident toilet and bathing facilities. An existing large Type B assisted living facility must ensure each resident bedroom is served by a separate private toilet room, a connecting toilet room, or a general toilet room.

(1) An existing large Type B assisted living facility that houses individuals of more than one gender must provide toilet rooms for each gender, or individual single-occupant toilet rooms for use by any gender.

(2) An existing large Type B assisted living facility must ensure a general toilet room or bathing room is accessible from a corridor or public space.

(3) An existing large Type B assisted living facility must ensure resident toilet and bathing facilities comply with the require-

ments for resident-use plumbing fixtures according to §553.147 of this division (relating to Mechanical Requirements for an Existing Large Type B Assisted Living Facility).

(g) Resident living areas.

(1) An existing large Type B assisted living facility must provide, in a common area of the facility, social-diversional spaces with appropriate furniture. Examples of social-diversional spaces include living rooms, day rooms, lounges, dens, game rooms, and sunrooms.

(A) An existing large Type B assisted living facility must provide a social-diversional space with a minimum area of 120 square feet in at least one space within a common area of the facility, regardless of number of residents or other provisions of this section permitting a reduction in the total minimum social-diversional space.

(B) An existing large Type B assisted living facility must ensure a social-diversional space has one or more exterior windows providing a view of the outside.

(C) An existing large Type B assisted living facility must ensure the total space for social-diversional areas is provided on a sliding scale according to the following table. No space smaller than 120 square feet in area can be counted toward meeting this requirement.

Figure: 26 TAC §553.142(g)(1)(C)

(2) An existing large Type B assisted living facility must provide a dining area with appropriate furniture.

(A) An existing large Type B assisted living facility must provide a dining space with a minimum area of 120 square feet in at least one space within a common area of the facility, regardless of the number of residents or other provisions of this section permitting a reduction in the total minimum dining space.

(B) An existing large Type B assisted living facility must ensure a dining space has one or more exterior windows providing a view of the outside.

(C) An existing large Type B assisted living facility must ensure a dining area is accessible from resident living units or bedrooms via a covered path.

(D) An existing large Type B assisted living facility must ensure the total space for dining areas is provided on a sliding scale according to the following table. No space smaller than 120 square feet in area can be counted toward meeting this requirement.

Figure: 26 TAC §553.142(g)(2)(D)

(3) An existing large Type B assisted living facility may provide a total living and dining area combined in a single or interconnecting space where the minimum area of the combined space is at least 240 square feet.

(4) For calculation purposes, where a means of egress passes through a living or dining area, an existing large Type B assisted living facility must deduct a pathway, equal to the minimum corridor width, according to §553.143 of this division (relating to Means of Egress Requirements for an Existing Large Type B Assisted Living Facility), from the measured area of the space.

(5) An existing large Type B assisted living facility must ensure a means of egress through a resident living or dining area is kept clear of obstructions, except as permitted by NFPA 101.

(6) Subject to the limitations of paragraphs (1)(A) and (2)(A) of this subsection and subparagraphs (A) and (B) of this paragraph, an existing large Type B assisted living facility containing individual living units may reduce the minimum square footage

required by paragraphs (1)(C) and (2)(D) of this subsection for total common social-diversional or common dining areas, respectively, by including up to 10 percent of the individual living unit area in the calculation of the total social-diversional area or total dining area.

(A) The individual living unit area contributed toward total social-diversional space or total dining space must not be counted more than once per living unit but may be split between social-diversional and dining space calculations.

(B) An existing large Type B assisted living facility must not utilize both this paragraph and subsection (a)(3) of this section to reduce both the minimum square footage otherwise required for its common social-diversional or dining areas and the minimum square footage of usable floor space otherwise required in bedrooms housing multiple residents within a living unit.

(h) Storage areas. An existing large Type B assisted living facility must provide sufficient separate storage spaces or areas for at least:

- (1) administrative records, office supplies, and other storage needs related to administration;
- (2) medications and medical supplies;
- (3) equipment supplied by the facility for resident needs, including wheelchairs, walkers, beds, and mattresses;
- (4) cleaning supplies, including for janitorial needs;
- (5) food;
- (6) clean linens and towels, if the facility furnishes linen;
- (7) soiled linen, if the facility furnishes linen; and
- (8) lawn and maintenance equipment.

(i) General kitchen.

(1) An existing large Type B assisted living facility that prepares food off-site or in a separate building must ensure food is served at the proper temperature and transported in a sanitary manner.

(2) An existing large Type B assisted living facility must ensure a kitchen meets the requirements of the local fire, building, and health codes.

(3) An existing large Type B assisted living facility that prepares food on-site must provide a kitchen or dietary area to meet the general food service needs of the residents and must include space for:

- (A) storage, refrigeration, preparation, and serving of food;
- (B) dish and utensil cleaning, which includes:
 - (i) a three compartment sink large enough to immerse pots and pans; and
 - (ii) a mechanical dishwasher for washing and sanitizing dishes;
- (C) a food preparation sink;
- (D) a handwashing station in every food preparation area with a supply of hot and cold water, soap, a towel dispenser, and a waste receptacle;
- (E) a handwashing lavatory that is readily accessible to every dish room area;
- (F) refuse storage and removal;

(G) floor drains in the kitchen and dishwashing areas, unless the facility was licensed before January 6, 2014, and the facility can keep the floor clean; and

(H) a grease trap, if required by local authorities.

(4) An existing large Type B assisted living facility must ensure a kitchen is designed so that room temperature, at peak load or in the summer, does not exceed 85 degrees Fahrenheit, measured throughout the room at five feet above the floor.

(5) An existing large Type B assisted living facility must ensure the volume of supply air provided takes into account the large quantities of air that may be exhausted at the range hood and dishwashing area.

(6) An existing large Type B assisted living facility must provide a supply of hot and cold water.

(A) Hot water for sanitizing purposes must be 180 degrees Fahrenheit.

(B) When chemical sanitizers are used, hot water must meet the manufacturer's suggested temperature.

(7) An existing large Type B assisted living facility must maintain a separation between soiled and clean dish areas.

(8) An existing large Type B assisted living facility must maintain a separation of air flow between soiled and clean dish areas.

(j) Kitchen restrooms.

(1) An existing large Type B assisted living facility must provide a restroom facility for kitchen staff, including a lavatory, except as described in paragraphs (2) and (3) of this subsection.

(A) The restroom facility must be directly accessible to kitchen staff without traversing resident-use areas.

(B) The restroom must open into a service corridor or vestibule and not open directly into the kitchen.

(2) An existing large Type B assisted living facility licensed before January 6, 2014, may provide a staff restroom located outside the kitchen area.

(3) An existing large Type B assisted living facility must ensure a kitchen serving a neighborhood or household provides a restroom accessible to kitchen staff that is in close proximity to the kitchen.

(k) Kitchen janitorial facility.

(1) An existing large Type B assisted living facility must provide janitorial facilities exclusively for the kitchen and located in the kitchen area, except as described in paragraphs (2) and (3) of this subsection.

(2) An existing large Type B assisted living facility licensed before January 6, 2014, must provide a janitorial facility for the kitchen. The janitorial facility may be located outside the kitchen if sanitary procedures are used to reduce the possibility of cross-contamination.

(3) An existing large Type B assisted living facility must ensure a kitchen serving a neighborhood or household provides a janitorial facility exclusively for the kitchen that is close to the kitchen.

(4) An existing large Type B assisted living facility must provide a garbage can or cart washing area with a floor drain and a supply of hot water. The garbage can or cart washing area may be in the interior or on the exterior of the facility.

(5) An existing large Type B assisted living facility must provide floor drains in the kitchen and dishwashing areas, unless the facility was licensed before January 6, 2014, and the facility can keep the floors clean.

(6) If required by local authorities, an existing large Type B assisted living facility must provide a grease trap.

(l) Finishes.

(1) An existing large Type B assisted living facility must provide non-absorbent, smooth finishes or surfaces on all kitchen floors, walls, and ceilings.

(2) An existing large Type B assisted living facility must provide non-absorbent, smooth, cleanable finishes on counter surfaces and all cabinet surfaces.

(3) An existing large Type B assisted living facility must ensure surfaces are capable of being routinely cleaned and sanitized to maintain a healthful environment.

(m) Vision panels in communicating doors.

(1) An existing large Type B assisted living facility must ensure a door between a kitchen and a dining, serving, or resident-use area is provided with a vision panel with fixed safety glass. Where the door is a required fire door or is in a fire barrier or other fire resistance-rated enclosure, the vision panel, including the glazing and the frame, must meet the requirements of NFPA 101.

(2) Existing doors between kitchens and adjacent spaces that are not provided with vision panels may be continued in service subject to approval by HHSC.

(n) Auxiliary serving kitchens.

(1) An existing large Type B assisted living facility must ensure an auxiliary serving kitchen is equipped to maintain required food temperatures.

(2) An existing large Type B assisted living facility must ensure an auxiliary serving kitchen is equipped with a handwashing lavatory meeting the requirements of this section.

(3) An existing large Type B assisted living facility must ensure all surfaces in an auxiliary serving kitchen meet the requirements for finishes in this section.

(o) Protection of cooking operations.

(1) An existing large Type B assisted living facility must protect cooking facilities according to the requirements in §553.146 of this division (relating to Hazardous Area Requirements for an Existing Large Type B Assisted Living Facility) except as provided for in paragraph (3) of this subsection.

(2) The following commercial or residential cooking equipment used only for reheating, and not for meal preparation, is not required to comply with the requirements of §553.146 of this division:

(A) microwave ovens;

(B) hot plates; or

(C) toasters.

(3) A facility providing a kitchen serving a neighborhood or household may continue to operate the kitchen without modification subject to approval by HHSC.

(p) Food storage areas.

(1) An existing large Type B assisted living facility must provide a food storage area large enough to consistently maintain a

four-day minimum supply of non-perishable food. A food storage area may be located away from the food preparation area as long as there is space adjacent to the kitchen for necessary daily usage.

(2) An existing large Type B assisted living facility must provide dollies, racks, pallets, wheeled containers, or shelving so that food is not stored on the floor.

(A) An existing large Type B assisted living facility must ensure shelves are adjustable wire type shelving.

(B) An existing large Type B assisted living facility licensed before January 6, 2014, may use wood shelves provided the shelves are sealed and clean.

(3) An existing large Type B assisted living facility must provide non-absorbent finishes or surfaces on all floors and walls in food storage areas.

(4) An existing large Type B assisted living facility must provide effective ventilation in dry food storage areas to ensure positive air circulation.

(5) An existing large Type B assisted living facility must ensure the maximum room temperature in a food storage area does not exceed 85 degrees Fahrenheit at any time when measured at the highest food storage level, but not less than five feet above the floor.

(q) Laundry and linen services.

(1) An existing large Type B assisted living facility that co-mingles and processes laundry on-site in a central location, regardless of the type of laundry equipment used, must ensure a laundry area:

(A) is separated from the assisted living building by a fire barrier having a one-hour fire resistance rating, which must extend from the floor to the floor or roof above:

(B) is protected throughout by a fire sprinkler system;

(C) has access doors that open to the exterior or to an interior non-resident use area, such as a vestibule or service corridor; and

(D) is provided with:

(i) a soiled linen receiving, holding, and sorting room with a floor drain and forced exhaust to the exterior which;

(I) must always operate when soiled linen is held in this area; and

(II) may be combined with the washer section;

(ii) a general laundry work area that is separated by partitioning a washer section and a dryer section with;

(iii) a storage area for laundry supplies;

(iv) a folding area;

(v) an adequate air supply and ventilation for staff comfort without having to rely on opening a door that is part of the fire barrier separation required by paragraph (1)(A) of this subsection; and

(vi) provisions to exhaust heat from dryers and to separate dryer make-up air from the habitable work areas of the laundry.

(2) If linen is processed off site, the facility must provide:

(A) a soiled linen holding room with adequate forced exhaust ducted to the exterior; and

(B) a clean linen receiving, holding, inspection, sorting or folding, and storage room.

(3) An existing large Type B assisted living facility must ensure a laundry area for resident-use meets the following requirements.

(A) An existing large Type B assisted living facility must ensure only residential type washers and dryers are provided in a laundry area for resident-use.

(B) When more than three washers and three dryers are provided in one laundry area for resident-use, the area must be:

(i) protected throughout by a fire sprinkler system; or

(ii) separated from the facility by a fire barrier having a one-hour fire resistance rating.

§553.143. *Means of Egress Requirements for an Existing Large Type B Assisted Living Facility.*

(a) An existing large Type B assisted living facility must meet the requirements of 19.2, Means of Egress, in NFPA 101, Chapter 19, Existing Health Care Occupancies, except as described in this section.

(b) An existing large Type B assisted living facility must ensure doors meet the requirements of 19.2.2.2, Doors, in NFPA 101, Chapter 19, Existing Health Care Occupancies, and the additional requirements of this section.

(1) A resident room door in an existing large Type B assisted living facility must latch in its frame to resist the passage of smoke.

(2) In an existing large Type B assisted living facility comprised of buildings containing living units, with independent cooking equipment within the living unit, a door between the living unit and a corridor or hallway must:

(A) be self-closing or automatic-closing; and

(B) latch in its frame to resist the passage of smoke.

(3) A resident room door or living unit door must not be arranged to prevent the occupant from closing the door.

(c) An existing large Type B assisted living facility providing spaces for use by residents on floors other than the ground floor must provide at least two separate approved stairs and must ensure stairs used as a means of egress meet the requirements of 19.2.2.3, Stairs, in NFPA 101, Chapter 19, Existing Health Care Occupancies.

(d) An existing large Type B assisted living facility must ensure means of egress are marked according to the requirements of 19.2.10, Marking of Means of Egress, in NFPA 101, Chapter 19, Existing Health Care Occupancies.

(e) An existing large Type B assisted living facility must provide emergency lighting according to the requirements of 19.2.9, Emergency Lighting, in NFPA 101, Chapter 19, Existing Health Care Occupancies.

§553.145. *Fire Protection Systems Requirements for an Existing Large Type B Assisted Living Facility.*

(a) Fire alarm and smoke detection system. An existing large Type B assisted living facility must provide a fire alarm system meeting the requirements of 19.3.4, Detection, Alarm, and Communications Systems, in NFPA 101, Chapter 19, Existing Health Care Occupancies, as modified by this section.

(1) General. An existing large Type B assisted living facility must ensure the operation of any alarm initiating device automatically activates an audible or a visual alarm at the site.

(2) Smoke detectors.

(A) An existing large Type B assisted living facility must install smoke detectors meeting the requirements of 19.3.4.5.1, Corridors, in NFPA 101, Chapter 19, Existing Health Care Occupancies.

(B) An existing large Type B assisted living facility comprised of buildings containing living units with independent cooking equipment must additionally have:

(i) a smoke detector installed in all resident bedrooms, corridors, hallways, living rooms, dining rooms, offices, kitchens, and laundries within the living unit that sounds an alarm only within the living unit; and

(ii) a heat detector installed in the kitchen within the living unit that activates the general alarm.

(3) Alarm control panel.

(A) An existing large Type B assisted living facility must provide a fire alarm control unit, or a fire alarm annunciator providing annunciation of all fire alarm, supervisory, and trouble signals by audible and visible indicators, in a location visible to staff at or near the staff area that is attended 24 hours a day.

(B) An existing large Type B assisted living facility is not required to ensure a fire alarm control unit or fire alarm annunciator is visible to staff if the fire alarm is monitored by devices carried by all staff.

(C) An existing large Type B assisted living facility must ensure a fire alarm panel indicates each floor and smoke compartment, as applicable, as a separate zone. Each zone must provide an alarm and trouble indication. When all alarm initiating devices are addressable and the status of each device is identified on the fire alarm panel, zone indication is not required.

(4) Fire alarm power source.

(A) An existing large Type B assisted living facility must ensure a fire alarm system is powered by a permanently-wired, dedicated branch circuit that is powered from a commercial power source in accordance with NFPA 70.

(B) An existing large Type B assisted living facility must provide a secondary, emergency power source meeting the requirements of NFPA 72.

(5) Emergency forces notification. An existing large Type B assisted living facility must ensure a fire alarm system automatically notifies emergency forces according to the requirements of 19.3.4.3.2, Emergency Forces Notification, in NFPA 101, Chapter 19, Existing Health Care Occupancies.

(b) Fire sprinkler system. An existing large Type B assisted living facility must provide a fire sprinkler system meeting the requirements of NFPA 13 in accordance with 19.3.5.3, in NFPA 101, Chapter 19, Existing Health Care Occupancies.

(c) Portable Fire Extinguishers. An existing large Type B assisted living facility must provide and maintain portable fire extinguishers according to the requirements of NFPA 10.

(1) An existing large Type B assisted living facility must ensure all requirements of NFPA 10 are followed for all extinguisher types, including requirements for location, spacing, mounting heights, monthly inspections by staff, yearly inspections by a licensed agent, any necessary servicing, and hydrostatic testing as recommended by the manufacturer.

(2) An existing large Type B assisted living facility must ensure portable fire extinguishers are located in resident corridors so

the travel distance from any point in the facility to an extinguisher is no more than 75 feet.

(3) An existing large Type B assisted living facility must ensure the actual size of any portable fire extinguisher meets the requirements of NFPA 10 for maximum floor area per unit covered, but an extinguisher must be no smaller than the following.

(A) A water-type portable fire extinguisher must have a rating of at least 1-A according to NFPA 10.

(B) All other portable fire extinguishers must have a rating of at least 2-A:5-B:C according to NFPA 10.

(C) A facility must provide at least one approved 20-B:C portable fire extinguisher in each laundry, kitchen, and walk-in mechanical room.

(4) An existing large Type B assisted living facility must ensure portable fire extinguishers are installed on hangers or brackets supplied with the extinguisher or mounted in an approved cabinet.

(5) An existing large Type B assisted living facility must ensure a portable fire extinguisher is protected from impact or dislodgement.

(6) An existing large Type B assisted living facility must ensure a portable fire extinguisher is installed at an appropriate height.

(A) A portable fire extinguisher having a gross weight of up to 40 pounds must be installed so the top of the extinguisher is not more than five feet above the floor.

(B) A portable fire extinguisher having a gross weight greater than 40 pounds must be installed so the top of the extinguisher is not more than three and a half feet above the floor.

(C) A portable fire extinguisher must be installed so the clearance between the bottom of the extinguisher and the floor is at least four inches.

(7) A portable extinguisher provided in a hazardous room must be located as close as possible to the exit access door leading from the room and on the latch or knob side of the door.

§553.147. Mechanical Requirements for an Existing Large Type B Assisted Living Facility.

(a) Wastewater and water supply.

(1) Wastewater. An existing large Type B assisted living facility must ensure wastewater and sewage are discharged into a sewerage system or an onsite sewerage facility approved by the Water Quality Division of the Texas Commission on Environmental Quality (TCEQ), or to a system regulated by an entity responsible for water quality in that jurisdiction as approved by the Water Quality Division of TCEQ.

(2) Water supply. An existing large Type B assisted living facility must ensure the water supply is of safe, sanitary quality, suitable for use, adequate in quantity and pressure, and obtained from a public or private water supply system or a private well.

(b) Resident-use plumbing fixtures.

(1) Water closets and lavatories.

(A) An existing large Type B assisted living facility must provide at least one water closet and one lavatory for each six residents and for each additional resident fewer than six. Multiple toilets in a single space must comply with paragraph (2)(B) of this subsection.

(B) An existing large Type B assisted living facility must ensure a lavatory is readily accessible to each water closet.

(C) An existing large Type B assisted living facility must provide at least one water closet, lavatory, and bathing unit, that are accessible to residents, on each floor containing resident sleeping rooms.

(2) Bathing units.

(A) An existing large Type B assisted living facility must provide one tub or shower for every 10 residents, and for any fraction thereof.

(B) Where multiple water closets or bathing units are provided in a single space, an existing large Type B assisted living facility must provide partitions or curtains to separate plumbing fixtures for resident privacy.

(C) An existing large Type B assisted living facility must ensure tubs and showers have non-slip bottoms or floor surfaces, either built-in or applied to the surfaces.

(3) Hot water supply. An existing large Type B assisted living facility must provide a supply of hot water for resident-use. Hot water for lavatories and bathing units accessible to residents must be maintained between 100 and 120 degrees Fahrenheit.

(4) Supplies. An existing large Type B assisted living facility must supply towels, soap, and toilet tissue for individual resident use.

(c) Public and staff-use plumbing fixtures. In addition to the staff toilets required for the dietary staff according to §553.142(j) of this division (relating to Space Planning and Utilization Requirements for an Existing Large Type B Assisted Living Facility), a new large Type B assisted living facility must provide toilets, including water closets and lavatories, for use by the public and by facility staff, as follows:

(1) if licensed for 60 or fewer residents, a toilet for use by the public and by facility staff; or

(2) if licensed for more than 60 residents, a toilet for use by the public and a separate toilet for use by facility staff.

(d) Gas. An existing large Type B assisted living facility must ensure equipment using natural gas or propane and related gas piping meets the requirements of 9.1.1, Gas, in NFPA 101, Chapter 9, Building Service and Fire Protection Equipment.

(e) Heating, ventilation, and air-conditioning (HVAC) and exhaust systems.

(1) General requirements. An existing large Type B assisted living facility must ensure HVAC equipment meets the requirements of 19.5.2, Heating, Ventilating and Air-Conditioning, in NFPA 101, Chapter 19, Existing Health Care Occupancies.

(2) Heating and cooling. An existing large Type B assisted living facility must provide heating and cooling for resident comfort.

(A) An existing large Type B assisted living facility must ensure air conditioning systems can maintain and do maintain the comfort range of 68 to 82 degrees Fahrenheit in resident-use areas.

(B) An existing large Type B assisted living facility constructed or licensed after August 1, 2004, must have a central air conditioning system, or a substantially similar air conditioning system, that can maintain and does maintain a temperature range required under subparagraph (A) of this paragraph within areas used by residents.

(C) An existing large Type B assisted living facility may not use an open flame heating device in the facility, except as permitted by subparagraphs (D) - (E) of this paragraph.

(D) An existing large Type B assisted living facility must ensure a fuel-fired heating device, other than a working fireplace, meets the following requirements.

(i) A fuel-fired heating device must be connected to a chimney or vent.

(ii) A fuel-fired heating device must take air for combustion directly from outside.

(iii) A fuel-fired heating device must be designed and installed to provide for complete separation of the combustion system from the atmosphere of the occupied area.

(iv) A fuel-fired heating device must have safety features to immediately stop the flow of fuel and shut down the equipment in case of either excessive temperatures or ignition failure.

(v) A fuel-fired heating device not meeting the requirements of clauses (i) - (iv) of this subparagraph may be continued in service, subject to approval by HHSC.

(E) An existing large Type B assisted living facility must ensure a working fireplace meets the following requirements.

(i) A building containing a working fireplace must be protected by an approved, supervised automatic sprinkler system with listed quick response or listed residential sprinklers.

(ii) A new working fireplace must be installed, maintained and used according to NFPA 54 and NFPA 211.

(iii) A working fireplace may not be located in a resident sleeping room.

(iv) The room where a working fireplace is located must be provided with electrically supervised carbon monoxide detection connected to the fire alarm system according to NFPA 720.

(v) A direct-vent gas fireplace, as defined in NFPA 54, must meet the following requirements.

(I) A direct-vent gas fireplace must include a sealed glass front with a wire mesh panel or screen.

(II) The controls for a direct-vent gas fireplace must be locked or located in a restricted location.

(vi) A solid-fuel burning must be equipped with:

(I) a raised hearth at least four inches above the surrounding finished floor; and

(II) a fireplace enclosure that is guaranteed against breakage up to a temperature of 650 degrees Fahrenheit and constructed of heat-tempered glass or other approved material.

(vii) An existing working fireplace not meeting the requirements of clauses (i) - (vi) of this subparagraph may be continued in service, subject to approval by HHSC.

(3) Ventilation.

(A) An existing large Type B assisted living facility must be ventilated using windows or mechanical ventilation, or a combination of both.

(B) An existing large Type B assisted living facility with interior areas designated for smoking within the building must provide mechanical ventilation directed to the exterior to remove smoke at the rate of 10 air changes per hour.

(4) Exhaust. An existing large Type B assisted living facility must ensure bathrooms, toilet rooms, janitorial facilities, and other odor-producing rooms or areas for soiled or unsanitary operations are exhausted with operable windows or powered exhaust vented to the exterior for odor control.

§553.148. Electrical Requirements for an Existing Large Type B Assisted Living Facility.

(a) Electrical system. An existing large Type B assisted living facility must ensure an electrical system meets the requirements of 9.1.2, Electrical Systems, in NFPA 101, Chapter 9, Building Service and Fire Protection Equipment.

(b) Lighting. An existing large Type B assisted living facility must provide illumination throughout the building. Minimum lighting levels must not be lower than:

(1) 10 footcandles in resident rooms during the day--illumination requirements for these areas apply to lighting throughout the space, as measured at 30 inches above the floor anywhere in the room;

(2) 20 footcandles in each corridor, staff station, dining room, lobby, toilet room, bathroom, bathing facility, laundry room, stairway, and elevator during the day--illumination requirements for these areas apply to lighting throughout the space, as measured at 30 inches above the floor anywhere in the room; and

(3) 50 footcandles for each medication preparation or storage area, kitchen, and desk within a staff station. Illumination requirements apply when the area is in use for a task it supports, as measured where the task is being performed.

(c) Telephone. An existing large Type B assisted living facility must provide at least one telephone in the facility that is available to both staff and residents. Emergency telephone numbers must be posted conspicuously at or near the telephone, including fire, police, emergency medical services, and poison control center services.

(d) Communication system. An existing large Type B assisted living facility that consists of two or more floors or separate buildings must provide a communication system from each resident living unit to a central staff station.

(1) The communication system must:

(A) be a direct telephone, emergency call system, or intercom;

(B) if it is an existing communication system, be approved by the Texas Health and Human Services Commission to be continued in service; and

(C) include at least:

(i) one central notification station at a fixed location that receives all calls processed through the system; and

(ii) one permanently fixed call station or device in every resident living unit.

(2) An existing large Type B assisted living facility may provide:

(A) additional or portable notification stations or devices in addition to the central notification station; or

(B) additional call stations or devices in private or common resident areas.

(3) An existing large Type B assisted living facility may provide residents with portable, wireless call transmitters, such as pendants or wrist bands. However, a device may not be a substitute for a fixed call station in a resident living unit.

§553.149. Miscellaneous Requirements for an Existing Large Type B Assisted Living Facility.

An existing large Type B assisted living facility must provide an elevator if:

(1) the building in which the facility is located is three or more stories in height; or

(2) the facility provides services or social activities to residents in spaces located on a floor other than the floor where the entrance to the facility is located.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 438-3161

DIVISION 8. NEW SMALL TYPE A ASSISTED LIVING FACILITIES

26 TAC §§553.210 - 553.213, 553.215 - 553.219

STATUTORY AUTHORITY

The new rules are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation of and provision of services by the health and human services agencies and is authorized to adopt rules governing the rights and duties of persons regulated by the health and human services system; and under Texas Health and Safety Code §§247.025 and 247.026, which respectively require the Executive Commissioner to adopt rules necessary to implement Texas Health and Safety Code, Chapter 247, relating to Assisted Living Facilities, and to prescribe by rule minimum standards to protect the health and safety of an assisted living facility resident.

§553.212. Space Planning and Utilization Requirements for a New Small Type A Assisted Living Facility.

(a) Resident bedrooms.

(1) A new small Type A assisted living facility must ensure a resident bedroom or living unit is not located on a floor that is below finished ground level.

(2) A new small Type A assisted living facility must ensure bedroom usable floor space is not less than 80 square feet for a bedroom housing one resident and not less than 60 square feet per resident for a bedroom housing multiple residents, unless otherwise permitted by paragraphs (3) and (4) of this subsection. Portions of a bedroom that are less than eight feet in the smallest dimension cannot be included in the measurement of bedroom usable floor space, unless approved by the Texas Health and Human Services Commission.

(3) A new small Type A assisted living facility containing individual living units that include living space for the residents in addition to their bedrooms may reduce the bedroom usable floor space for a bedroom housing multiple residents within a living unit by up to

10 percent of the required bedroom usable floor space, as long as the minimum dimensional criteria are maintained. A new small Type A assisted living facility may not use this provision in conjunction with the provision permitting the reduction of common social-diversional areas or common dining areas found in subsection (g)(5) of this section.

(4) A new small Type A assisted living facility must house no more than 50 percent of its licensed resident capacity in bedrooms housing three or more residents. A bedroom must not house more than four residents.

(b) Bedroom windows. A new small Type A assisted living facility must ensure each bedroom has at least one operable window with outside exposure and meeting the following requirements.

(1) The window sill must be no higher than 44 inches above the floor.

(2) The window must be operable by all residents occupying the bedroom, from the inside, without the use of tools or special devices.

(3) The total area of all windows in a bedroom must not be less than eight percent of the minimum bedroom usable floor space in subsection (a)(3) of this section.

(c) Bedroom furnishings. When a resident does not provide their own furnishings, a new small Type A assisted living facility must provide the following furnishings for each resident, which must be maintained in good repair:

(1) a bed, including a mattress;

(2) a chair;

(3) a table or dresser; and

(4) private clothes storage space, which must include closable doors, and drawer space for clothing and personal belongings.

(d) Arrangement of resident living units or rooms.

(1) A new small Type A assisted living facility must ensure all resident rooms open on an exit, corridor, living area, or public area.

(2) A new small Type A assisted living facility must ensure all resident rooms are arranged for convenient resident access to dining and recreation areas.

(e) Staff area. A new small Type A assisted living facility must provide a staff area on each floor of a new small Type A assisted living facility and in each separate building containing resident sleeping rooms, except as permitted under paragraph (1) of this subsection.

(1) A new small Type A assisted living facility that is not more than two stories in height and is composed of separate buildings grouped together and connected by covered walks, is not required to provide a staff area on each floor or in each building, provided that a staff area is located not more than 200 feet walking distance from the farthest resident living unit.

(2) A new small Type A assisted living facility must provide the following at each staff area:

(A) a desk or writing surface;

(B) a telephone; and

(C) a fire alarm control unit or a fire alarm annunciator panel meeting the requirements of §553.215 of this division (relating to Fire Protection Systems Requirements for a New Small Type A Assisted Living Facility).

(f) Resident toilet and bathing facilities. A new small Type A assisted living facility must ensure each resident bedroom is served by a separate private toilet room, a connecting toilet room, or a general toilet room.

(1) A new small Type A assisted living facility that houses individuals of more than one gender must provide toilet rooms for each gender, or individual single-occupant toilet rooms for use by any gender.

(2) A new small Type A assisted living facility must ensure a general toilet room or bathing room is accessible from a corridor or public space.

(3) A new small Type A assisted living facility must ensure resident toilet and bathing facilities comply with the requirements for resident-use plumbing fixtures according to §553.217 of this division (relating to Mechanical Requirements for a New Small Type A Assisted Living Facility).

(g) Resident living areas.

(1) A new small Type A assisted living facility must provide, in a common area of the facility, social-diversional spaces with appropriate furniture. Examples of social-diversional spaces include living rooms, day rooms, lounges, dens, game rooms, and sunrooms.

(A) A new small Type A assisted living facility must provide a social-diversional space with a minimum area of 120 square feet in at least one space within a common area of the facility, regardless of the number of residents or other provisions of this section permitting a reduction in the total minimum social-diversional space.

(B) A new small Type A assisted living facility must ensure a social-diversional space has one or more exterior windows providing a view of the outside.

(C) A new small Type A assisted living facility must ensure the total space for social-diversional area provides an area of at least 15 square feet for each resident in the licensed capacity of the facility. No space smaller than 120 square feet in area can be counted toward meeting this requirement.

(2) A new small Type A assisted living facility must provide a dining area with appropriate furniture.

(A) A new small Type A assisted living facility must provide a dining space with a minimum area of 120 square feet in at least one space within a common area of the facility, regardless of the number of residents or other provisions of this section permitting a reduction in the total minimum dining space.

(B) A new small Type A assisted living facility must ensure a dining space has one or more exterior windows providing a view of the outside.

(C) A new small Type A assisted living facility must ensure a dining area is accessible from resident living units or bedrooms via a covered path.

(D) A new small Type A assisted living facility must ensure the total space for dining areas provides an area of at least 15 square feet for each resident in the licensed capacity of the facility. No space smaller than 120 square feet in area can be counted toward meeting this requirement.

(3) A new small Type A assisted living facility may provide a total living and dining area combined in a single or interconnecting space where the minimum area of the combined space is at least 240 square feet.

(4) A new small Type A assisted living facility must ensure an escape route through a resident living or dining area is kept clear of obstructions.

(5) Subject to the limitations of paragraphs (1)(A) and (2)(A) of this subsection and subparagraphs (A) and (B) of this paragraph, a new small Type A assisted living facility containing individual living units may reduce the minimum square footage required by paragraphs (1)(C) and (2)(D) of this subsection for total common social diversional or common dining areas, respectively, by including up to 10 percent of the individual living unit area in the calculation of the total social-diversional area or total dining area.

(A) The individual living unit area contributed toward total social-diversional space or total dining space must not be counted more than once per living unit but may be split between social-diversional and dining space calculations.

(B) A new small Type A assisted living facility must not utilize both this paragraph and subsection (a)(3) of this section to reduce both the minimum square footage otherwise required for its common social-diversional or dining areas and the minimum square footage of usable floor space otherwise required in bedrooms housing multiple residents within a living unit.

(h) Storage areas. A new small Type A assisted living facility must provide sufficient separate storage spaces or areas for at least:

- (1) administrative records, office supplies, and other storage needs related to administration;
- (2) medications and medical supplies;
- (3) equipment supplied by the facility for resident needs, including wheelchairs, walkers, beds, and mattresses;
- (4) cleaning supplies, including for janitorial needs;
- (5) food;
- (6) clean linens and towels, if the facility furnishes linen;
- (7) soiled linen, if the facility furnishes linen; and
- (8) lawn and maintenance equipment.

(i) Kitchen.

(1) A new small Type A assisted living facility that prepares food off-site or in a separate building must ensure food is served at the proper temperature and transported in a sanitary manner.

(2) A new small Type A assisted living facility that prepares food on-site must provide a kitchen or dietary area meeting the general food service needs of the residents and must ensure that the kitchen:

- (A) is equipped to store, refrigerate, prepare and serve food;
- (B) is equipped to clean and sterilize;
- (C) provides for refuse storage and removal; and
- (D) meets the requirements of the local fire, building, and health codes.

(3) A new small Type A assisted living facility must ensure a kitchen uses only residential cooking equipment or, if the kitchen uses commercial cooking equipment, that the facility protects the kitchen's cooking operations as required in §553.216 of this division (relating to Hazardous Area Requirements for a New Small Type A Assisted Living Facility).

§553.213. Means of Escape Requirements for a New Small Type A Assisted Living Facility.

(a) The provisions of NFPA 101, Chapter 7, Means of Egress, do not apply to a new small Type A assisted living facility, unless explicitly referenced by this section or by NFPA 101, Chapter 32, New Residential Board and Care Occupancies.

(b) A new small Type A assisted living facility must meet the requirements of 32.2.2, Means of Escape, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies, except as described in this section.

(c) A new small Type A assisted living facility must ensure doors meet the requirements of 32.2.2.5, Doors, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies, and the additional requirements of this section. A resident room door is not otherwise required to meet the requirements for doors in 32.2.3.6, Construction of Corridor Walls, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies.

(1) A resident room door in a new small Type A assisted living facility must latch in its frame to resist the passage of smoke.

(2) In a new small Type A assisted living facility comprised of buildings that contain living units with independent cooking equipment within the living unit, a door between the living unit and a corridor or hallway must:

- (A) be self-closing or automatic-closing; and
- (B) latch in its frame to resist the passage of smoke.

(3) A resident room door or living unit door must not be arranged to prevent the occupant from closing the door.

(d) A new small Type A assisted living facility providing spaces for use by residents on floors other than the ground floor must provide at least two separate approved stairs.

(1) A stair used as means of escape must meet the requirements of 32.2.2.6, Stairs, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies.

(2) Each stair must be arranged and located so that it is not necessary to go through another room, including a bedroom or bathroom, to reach the stair.

(3) Each stair must be provided with handrails.

(4) Each stair must be provided with normal lighting according to the requirements of §553.218 of this division (relating to Electrical Requirements for a New Small Type A Assisted Living Facility).

§553.215. Fire Protection Systems Requirements for a New Small Type A Assisted Living Facility.

(a) Fire alarm and smoke detection system. A new small Type A assisted living facility must provide a manual fire alarm system meeting the requirements of 9.6, Fire Detection, Alarm, and Communication Systems, in NFPA 101, Chapter 9, Building Service and Fire Protection Equipment, as modified by this section.

(1) General. A new small Type A assisted living facility must ensure the operation of any alarm initiating device automatically activates the manual fire alarm system evacuation alarm for the entire building.

(2) Smoke detectors.

(A) A new small Type A assisted living facility must install smoke detectors in resident bedrooms, corridors, hallways, living rooms, dining rooms, offices, kitchens, laundries, attached garages

used for car parking, and public or common areas, except as permitted in subparagraphs (B) and (C) of this paragraph.

(B) A new small Type A assisted living facility may install heat detectors in lieu of smoke detectors in kitchens, laundries, and attached garages used for car parking.

(C) A new small Type A assisted living facility located in a building constructed to meet the requirements of NFPA 101, Chapter 18, New Health Care Occupancies, may install a smoke detection system meeting the requirements of 18.3.4.5.3, Nursing Homes, in NFPA 101, Chapter 18, New Health Care Occupancies, in lieu of the requirements found in subparagraph (A) of this paragraph.

(3) Alarm control panel.

(A) A new small Type A assisted living facility must provide a fire alarm control unit, or a fire alarm annunciator providing annunciation of all fire alarm, supervisory, and trouble signals by audible and visible indicators, in a location visible to staff at or near the staff area that is attended 24 hours a day.

(B) A new small Type A assisted living facility is not required to ensure a fire alarm control unit or fire alarm annunciator is visible to staff if the fire alarm is monitored by devices carried by all staff.

(4) Fire alarm power source.

(A) A new small Type A assisted living facility must ensure a fire alarm system is powered by a permanently-wired, dedicated branch circuit that is powered from a commercial power source in accordance with NFPA 70.

(B) A new small Type A assisted living facility must provide a secondary, emergency power source meeting the requirements of NFPA 72.

(b) Fire sprinkler system.

(1) A new small Type A assisted living facility must provide one of the following fire sprinkler systems according to the requirements of 32.2.3.5, Extinguishment Requirements, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies.

(A) A fire sprinkler system meeting the requirements of NFPA 13 in accordance with 32.2.3.5.3;

(B) A fire sprinkler system meeting the requirements of NFPA 13R in accordance with 32.2.3.5.3.1; or

(C) A fire sprinkler system meeting the requirements of NFPA 13D in accordance with 32.2.3.5.3.2.

(2) A new small Type A assisted living facility must provide electrical supervision of any fire sprinkler system according to the requirements of 32.2.3.5.4, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies.

(c) Protection of attics. A new small Type A assisted living facility must ensure an attic is protected according to the requirements of 32.2.3.5.7, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies.

(d) Portable fire extinguishers. A new small Type A assisted living facility must provide and maintain portable fire extinguishers according to the requirements of NFPA 10.

(1) A new small Type A assisted living facility must ensure all requirements of NFPA 10 are followed for all extinguisher types, including requirements for location, spacing, mounting heights, monthly inspections by staff, yearly inspections by a licensed agent, any neces-

sary servicing, and hydrostatic testing as recommended by the manufacturer.

(2) A new small Type A assisted living facility must ensure portable fire extinguishers are located so the travel distance from any point in the facility to an extinguisher is no more than 75 feet.

(3) A new small Type A assisted living facility must ensure the actual size of any portable fire extinguisher meets the requirements of NFPA 10 for maximum floor area per unit covered, but an extinguisher must be no smaller than the following.

(A) A water-type portable fire extinguisher must have a rating of at least 1-A according to NFPA 10.

(B) All other portable fire extinguishers must have a rating of at least 2-A:10-B:C according to NFPA 10.

(4) A new small Type A assisted living facility must ensure portable fire extinguishers are installed on hangers or brackets supplied with the extinguisher or mounted in an approved cabinet.

(5) A new small Type A assisted living facility must ensure a portable fire extinguisher is protected from impact or dislodgement.

(6) A new small Type A assisted living facility must ensure a portable fire extinguisher is installed at an appropriate height.

(A) A portable fire extinguisher having a gross weight of up to 40 pounds must be installed so the top of the extinguisher is not more than five feet above the floor.

(B) A portable fire extinguisher having a gross weight greater than 40 pounds must be installed so the top of the extinguisher is not more than three and a half feet above the floor.

(C) A portable fire extinguisher must be installed so the clearance between the bottom of the extinguisher and the floor is at least four inches.

(7) A portable extinguisher provided in a hazardous room must be located as close as possible to the door leading from the room and on the latch or knob side of the door.

§553.216. Hazardous Area Requirements for a New Small Type A Assisted Living Facility.

(a) A new small Type A assisted living facility must ensure any space where storage or an activity produces a greater potential for a fully involved fire than that found in a one- or two-family dwelling is protected according to the requirements of 32.2.3.2, Hazardous Areas, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies.

(b) A new small Type A assisted living facility must ensure flammable or combustible liquids, including gasoline, oil-based paint, charcoal lighter fluid, or similar products are not stored in a building housing residents.

(c) A new small Type A assisted living facility using commercial cooking equipment must protect the cooking operation according to the requirements of NFPA 96.

§553.217. Mechanical Requirements for a New Small Type A Assisted Living Facility.

(a) Wastewater and water supply.

(1) Wastewater. A new small Type A assisted living facility must ensure wastewater and sewage are discharged into a sewerage system or an onsite sewerage facility approved by the Water Quality Division of the Texas Commission on Environmental Quality (TCEQ), or to a system regulated by an entity responsible for water quality in that jurisdiction as approved by the Water Quality Division of TCEQ.

(2) Water supply. A new small Type A assisted living facility must ensure the water supply is of safe, sanitary quality, suitable for use, adequate in quantity and pressure, and obtained from a public or private water supply system or a private well.

(b) Resident-use plumbing fixtures.

(1) Water closets and lavatories.

(A) A new small Type A assisted living facility must provide at least one water closet and one lavatory for every six residents and for each additional resident fewer than six. Multiple toilets in a single space must comply with paragraph (2)(B) of this subsection.

(B) A new small Type A assisted living facility must ensure a lavatory is readily accessible to each water closet.

(C) A new small Type A assisted living facility must provide at least one water closet, lavatory, and bathing unit, that are accessible to residents, on each floor containing resident sleeping rooms.

(2) Bathing units.

(A) A new small Type A assisted living facility must provide one tub or shower for every 10 residents, and for any fraction thereof.

(B) Where multiple water closets or bathing units are provided in a single space, a new small Type A assisted living facility must provide partitions or curtains to separate plumbing fixtures for resident privacy.

(C) A new small Type A assisted living facility must ensure tubs and showers have non-slip bottoms or floor surfaces, either built-in or applied to the surfaces.

(3) Hot water supply. A new small Type A assisted living facility must provide a supply of hot water for resident-use. Hot water for lavatories and bathing units accessible to residents must be maintained between 100 and 120 degrees Fahrenheit.

(4) Supplies. A new small Type A assisted living facility must supply towels, soap, and toilet tissue for individual resident use.

(c) Gas. A new small Type A assisted living facility must ensure equipment using natural gas or propane and related gas piping meets the requirements of 9.1.1, Gas, in NFPA 101, Chapter 9, Building Service and Fire Protection Equipment.

(d) Heating, ventilation, and air-conditioning (HVAC) and exhaust systems.

(1) General requirements. A new small Type A assisted living facility must ensure HVAC equipment meets the requirements of 32.2.5.2, Heating, Ventilating, and Air-Conditioning, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies.

(2) Heating and cooling. A new small Type A assisted living facility must provide heating and cooling for resident comfort.

(A) A new small Type A assisted living facility must ensure air conditioning systems can maintain and do maintain the comfort range of 68 to 82 degrees Fahrenheit in resident-use areas.

(B) A new small Type A assisted living facility must have a central air conditioning system, or a substantially similar air conditioning system, that can maintain and does maintain the temperature range required under subparagraph (A) of this paragraph within areas used by residents.

(C) A new small Type A assisted living facility may not use an open flame heating device in the facility, except as permitted by subparagraphs (D) - (E) of this section.

(D) A new small Type A assisted living facility must ensure a fuel-fired heating device, other than a working fireplace, meets the following requirements.

(i) A fuel-fired heating device must be connected to a chimney or vent.

(ii) A fuel-fired heating device must take air for combustion directly from outside.

(iii) A fuel-fired heating device must be designed and installed to provide for complete separation of the combustion system from the atmosphere of the occupied area.

(iv) A fuel-fired heating device must have safety features to immediately stop the flow of fuel and shut down the equipment in case of either excessive temperatures or ignition failure.

(E) A new small Type A assisted living facility must ensure a working fireplace meets the following requirements.

(i) A building containing a working fireplace must be protected by an approved, supervised automatic sprinkler system with listed quick response or listed residential sprinklers.

(ii) A working fireplace must be installed, maintained, and used according to NFPA 54 and NFPA 211.

(iii) A working fireplace may not be located in a resident sleeping room.

(iv) The room where a working fireplace is located must be provided with electrically supervised carbon monoxide detection connected to the fire alarm system according to NFPA 720.

(v) A direct-vent gas fireplace, as defined in NFPA 54, must meet the following requirements.

(I) A direct-vent gas fireplace must include a sealed glass front with a wire mesh panel or screen.

(II) The controls for a direct-vent gas fireplace must be locked or located in a restricted location.

(vi) A solid-fuel burning fireplace must be equipped with:

(I) a raised hearth at least four inches above the surrounding finished floor; and

(II) a fireplace enclosure that is guaranteed against breakage up to a temperature of 650 degrees Fahrenheit and constructed of heat-tempered glass or other approved material.

(3) Ventilation.

(A) A new small Type A assisted living facility must be ventilated using windows, mechanical ventilation, or a combination of both.

(B) A new small Type A assisted living facility with interior areas designated for smoking within the building must provide mechanical ventilation directed to the exterior to remove smoke at the rate of 10 air changes per hour.

(4) Exhaust. A new small Type A assisted living facility must ensure bathrooms, toilet rooms, and other odor-producing rooms or areas for soiled or unsanitary operations are exhausted with operable windows or powered exhaust vented to the exterior for odor control.

§553.218. *Electrical Requirements for a New Small Type A Assisted Living Facility.*

(a) Electrical system. A new small Type A assisted living facility must ensure an electrical system meets the requirements of 9.1.2,

Electrical Systems, in NFPA 101, Chapter 9, Building Service and Fire Protection Equipment.

(b) **Lighting.** A new small Type A assisted living facility must provide illumination throughout the building. Minimum lighting levels must not be lower than:

(1) 10 footcandles in resident rooms during the day--illumination requirements for these areas apply to lighting throughout the space, as measured at 30 inches above the floor anywhere in the room;

(2) 20 footcandles in each corridor, staff station, dining room, lobby, toilet room, bathroom, bathing facility, laundry room, stairway, and elevator during the day--illumination requirements for these areas apply to lighting throughout the space, as measured at 30 inches above the floor anywhere in the room; and

(3) 50 footcandles for each medication preparation or storage area, kitchen, and desk within a staff station. Illumination requirements apply when the area is in use for a task it supports, as measured where the task is being performed.

(c) **Telephone.** A new small Type A assisted living facility must provide at least one telephone in the facility that is available to both staff and residents. Emergency telephone numbers must be posted conspicuously at or near the telephone, including fire, police, emergency medical services, and poison control center services.

(d) **Communication system.** A new small Type A assisted living facility that consists of two or more floors or separate buildings must provide a communication system from each resident living unit to a central staff station.

(1) The communication system must:

(A) be a direct telephone, emergency call system or intercom;

(B) include at least:

(i) one central notification station at a fixed location that receives all calls processed through the system; and

(ii) one permanently fixed call station or device in every resident living unit.

(2) A new small Type A assisted living facility may provide:

(A) additional or portable notification stations or devices in addition to the central notification station; or

(B) additional call stations or devices in private or common resident areas.

(3) A new small Type A assisted living facility may provide residents with portable, wireless call transmitters, such as pendants or wrist bands. However, a device may not be a substitute for a fixed call station in a resident living unit.

§553.219. Miscellaneous Requirements for a New Small Type A Assisted Living Facility.

(a) A new small Type A assisted living facility must provide an elevator if:

(1) the building in which the facility is located is three or more stories in height; or

(2) the facility provides services or social activities to residents in spaces located on a floor other than the floor where the entrance to the facility is located.

(b) A new small Type A assisted living facility must ensure any new elevator, escalator, or conveyor meets the requirements of

32.2.5.3, Elevators, Escalators, and Conveyors, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 438-3161



DIVISION 9. NEW SMALL TYPE B ASSISTED LIVING FACILITIES

26 TAC §§553.220 - 553.223, 553.225 - 553.229

STATUTORY AUTHORITY

The new rules are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation of and provision of services by the health and human services agencies and is authorized to adopt rules governing the rights and duties of persons regulated by the health and human services system; and under Texas Health and Safety Code §§247.025 and 247.026, which respectively require the Executive Commissioner to adopt rules necessary to implement Texas Health and Safety Code, Chapter 247, relating to Assisted Living Facilities, and to prescribe by rule minimum standards to protect the health and safety of an assisted living facility resident.

§553.222. Space Planning and Utilization Requirements for a New Small Type B Assisted Living Facility.

(a) Resident bedrooms.

(1) A new small Type B assisted living facility must ensure a resident bedroom or living unit is not located on a floor that is below finished ground level.

(2) A new small Type B assisted living facility must ensure bedroom usable floor space is not less than 100 square feet for a bedroom housing one resident and not less than 80 square feet per resident for a bedroom housing multiple residents, unless otherwise permitted by paragraphs (3) and (4) of this subsection. Portions of a bedroom that are less than 10 feet in the smallest dimension cannot be included in the measurement of bedroom usable floor space, unless approved by the Texas Health and Human Services Commission.

(3) A new small Type B assisted living facility containing individual living units that include living space for the residents, in addition to their bedroom, may reduce the bedroom usable floor space for a bedroom housing multiple residents within a living unit by up to 10 percent of the required bedroom usable floor space, as long as the minimum dimensional criteria are maintained. A new small Type B assisted living facility must not use this provision in conjunction with the provision permitting the reduction of common social-diversional areas or common dining areas found in subsection (g)(5) of this section.

(4) A new small Type B assisted living facility must house no more than 50 percent of its licensed resident capacity in bedrooms

housing three or more residents. A bedroom must not house more than four residents.

(b) Bedroom windows. A new small Type B assisted living facility must ensure each bedroom has at least one operable window with outside exposure and meeting the following requirements.

(1) The window sill must be no higher than 44 inches above the floor.

(2) The window must be operable by a resident occupying the bedroom, from the inside, without the use of tools or special devices.

(3) The total area of all windows in a bedroom must not be less than eight percent of the minimum bedroom usable floor space required by subsection (a)(3) of this section.

(c) Bedroom furnishings. When a resident does not provide their own furnishings, a new small Type B assisted living facility must provide the following furnishings for each resident, which must be maintained in good repair:

(1) a bed, including a mattress;

(2) a chair;

(3) a table or dresser; and

(4) private clothes storage space, which must have closable doors, and drawer space for clothing and personal belongings.

(d) Arrangement of resident living units or rooms.

(1) A new small Type B assisted living facility must ensure all resident rooms open on an exit, corridor, living area, or public area.

(2) A new small Type B assisted living facility must ensure all resident rooms are arranged for convenient resident access to dining and recreation areas.

(e) Staff area. A new small Type B assisted living facility must provide a staff area on each floor of a new small Type B assisted living facility and in each separate building containing resident sleeping rooms. A new small Type B assisted living facility must provide the following at each staff area:

(1) a desk or writing surface;

(2) a telephone; and

(3) a fire alarm control unit or a fire alarm annunciator panel meeting the requirements of §553.225 of this division (relating to Fire Protection Systems Requirements for a New Small Type B Assisted Living Facility).

(f) Resident toilet and bathing facilities. A new small Type B assisted living facility must ensure each resident bedroom is served by a separate private toilet room, a connecting toilet room, or a general toilet room.

(1) A new small Type B assisted living facility that houses individuals of more than one gender must provide toilet rooms for each gender, or individual single-occupant toilet rooms for use by any gender.

(2) A new small Type B assisted living facility must ensure a general toilet room or bathing room is accessible from a corridor or public space.

(3) A new small Type B assisted living facility must ensure resident toilet and bathing facilities comply with the requirements for resident-use plumbing fixtures according to §553.227 of this division

(relating to Mechanical Requirements for a New Small Type B Assisted Living Facility).

(g) Resident living areas.

(1) A new small Type B assisted living facility must provide, in a common area of the facility, social-diversional spaces with appropriate furniture. Examples of social-diversional spaces include living rooms, day rooms, lounges, dens, game rooms, and sunrooms.

(A) A new small Type B assisted living facility must provide a social-diversional space with a minimum area of 120 square feet in at least one space within a common area of the facility, regardless of the number of residents or other provisions of this section permitting a reduction in the total minimum social-diversional space.

(B) A new small Type B assisted living facility must ensure a social-diversional space has one or more exterior windows providing a view of the outside.

(C) A new small Type B assisted living facility must ensure the total space for social-diversional area provides an area of at least 15 square feet for each resident in the licensed capacity of the facility. No space smaller than 120 square feet in area can be counted toward meeting this requirement.

(2) A new small Type B assisted living facility must provide a dining area with appropriate furniture.

(A) A new small Type B assisted living facility must provide a dining space with a minimum area of 120 square feet in at least one space within a common area of the facility, regardless of the number of residents or other provisions of this section permitting a reduction in the total minimum dining space.

(B) A new small Type B assisted living facility must ensure a dining space has one or more exterior windows providing a view of the outside.

(C) A new small Type B assisted living facility must ensure a dining area is accessible from resident living units or bedrooms via a covered path.

(D) A new small Type B assisted living facility must ensure the total space for dining areas provides an area of at least 15 square feet for each resident in the licensed capacity of the facility. No space smaller than 120 square feet in area can be counted toward meeting this requirement.

(3) A new small Type B assisted living facility may provide a total living and dining area combined in a single or interconnecting space where the minimum area of the combined space is at least 240 square feet.

(4) A new small Type B assisted living facility must ensure an escape route through a resident living or dining area is kept clear of obstructions.

(5) Subject to the limitations of paragraphs (1)(A) and (2)(A) of this subsection and subparagraphs (A) and (B) of this paragraph, a new small Type B assisted living facility containing individual living units may reduce the minimum square footage required by paragraphs (1)(C) and (2)(D) of this subsection for total common social-diversional or common dining areas, respectively, by including up to 10 percent of the individual living unit area in the calculation of the total social-diversional area or total dining area.

(A) The individual living unit area contributed toward total social-diversional space or total dining space must not be counted more than once per living unit but may be split between social-diversional and dining space calculations.

(B) A new small Type B assisted living facility must not utilize both this paragraph and subsection (a)(3) of this section to reduce both the minimum square footage otherwise required for its common social-diversional or dining areas and the minimum square footage of usable floor space otherwise required in bedrooms housing multiple residents within a living unit.

(h) Storage areas. A new small Type B assisted living facility must provide sufficient separate storage spaces or areas for at least:

- (1) administrative records, office supplies, and other storage needs related to administration;
- (2) medications and medical supplies;
- (3) equipment supplied by the facility for resident needs, including wheelchairs, walkers, beds, and mattresses;
- (4) cleaning supplies, including for janitorial needs;
- (5) food;
- (6) clean linens and towels, if the facility furnishes linen;
- (7) soiled linen, if the facility furnishes linen; and
- (8) lawn and maintenance equipment.

(i) Kitchen.

(1) A new small Type B assisted living facility that prepares food off-site or in a separate building must ensure food is served at the proper temperature and transported in a sanitary manner.

(2) A new small Type B assisted living facility that prepares food on-site must provide a kitchen or dietary area meeting the general food service needs of the residents and must ensure that the kitchen:

- (A) is equipped to store, refrigerate, prepare, and serve food;
- (B) is equipped to clean and sterilize;
- (C) provides for refuse storage and removal; and
- (D) meets the requirements of the local fire, building, and health codes.

(3) A new small Type B assisted living facility must ensure a kitchen uses only residential cooking equipment or, if the kitchen uses commercial cooking equipment, that the facility protects the kitchen's cooking operations, as required in §553.226 of this division (relating to Hazardous Area Requirements for a New Small Type B Assisted Living Facility).

§553.223. Means of Escape Requirements for a New Small Type B Assisted Living Facility.

(a) The provisions of NFPA 101, Chapter 7, Means of Egress, do not apply to a new small Type B assisted living facility unless explicitly referenced by this section or by NFPA 101, Chapter 32, New Residential Board and Care Occupancies.

(b) A new small Type B assisted living facility must meet the requirements of 32.2.2, Means of Escape, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies, except as described in this section.

(c) A new small Type B assisted living facility must ensure doors meet the requirements of 32.2.2.5, Doors, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies, and the additional requirements of this section. A resident room door is not otherwise required to meet the requirements for doors in 32.2.3.6, Construction

of Corridor Walls, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies.

(1) A resident room door in a new small Type B assisted living facility must latch in its frame to resist the passage of smoke.

(2) In a new small Type B assisted living facility comprised of buildings that contain living units with independent cooking equipment within the living unit, a door between the living unit and a corridor or hallway must:

(A) be self-closing or automatic-closing; and

(B) latch in its frame to resist the passage of smoke.

(3) A resident room door or living unit door must not be arranged to prevent the occupant from closing the door.

(d) A new small Type B assisted living facility providing spaces for use by residents on floors other than the ground floor must provide at least two separate approved stairs.

(1) A stair used as means of escape must meet the requirements of 32.2.2.6, Stairs, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies.

(2) Each stair must be arranged and located so that it is not necessary to go through another room, including a bedroom or bathroom, to reach the stair.

(3) Each stair must be provided with handrails.

(4) Each stair must be provided with normal lighting according to the requirements of §553.228 of this division (relating to Electrical Requirements for a New Small Type B Assisted Living Facility).

§553.225. Fire Protection Systems Requirements for a New Small Type B Assisted Living Facility.

(a) Fire alarm and smoke detection system. A new small Type B assisted living facility must provide a manual fire alarm system meeting the requirements of 9.6, Fire Detection, Alarm, and Communication Systems, in NFPA 101, Chapter 9, Building Service and Fire Protection Equipment, as modified by this section.

(1) General. A new small Type B assisted living facility must ensure the operation of any alarm initiating device automatically activates the manual fire alarm system evacuation alarm for the entire building.

(2) Smoke detectors.

(A) A new small Type B assisted living facility must install smoke detectors in resident bedrooms, corridors, hallways, living rooms, dining rooms, offices, kitchens, laundries, attached garages used for car parking, and public or common areas, except as permitted in subparagraphs (B) and (C) of this paragraph.

(B) A new small Type B assisted living facility may install heat detectors in lieu of smoke detectors in kitchens, laundries, and attached garages used for car parking.

(C) A new small Type B assisted living facility located in a building constructed to meet the requirements of NFPA 101, Chapter 18, New Health Care Occupancies, may install a smoke detection system meeting the requirements of 18.3.4.5.3, Nursing Homes, in NFPA 101, Chapter 18, New Health Care Occupancies, in lieu of the requirements found in subparagraph (A) of this paragraph.

(3) Alarm control panel.

(A) A new small Type B assisted living facility must provide a fire alarm control unit, or a fire alarm annunciator providing

annunciation of all fire alarm, supervisory, and trouble signals by audible and visible indicators, in a location visible to staff at or near the staff area that is attended 24 hours a day.

(B) A new small Type B assisted living facility is not required to ensure a fire alarm control unit or fire alarm annunciator is visible to staff if the fire alarm is monitored by devices carried by all staff.

(4) Fire alarm power source.

(A) A new small Type B assisted living facility must ensure a fire alarm system is powered by a permanently-wired, dedicated branch circuit that is powered from a commercial power source in accordance with NFPA 70.

(B) A new small Type B assisted living facility must provide a secondary, emergency power source meeting the requirements of NFPA 72.

(b) Fire sprinkler system.

(1) A new small Type B assisted living facility must provide one of the following fire sprinkler systems according to the requirements of 32.2.3.5, Extinguishment Requirements, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies.

(A) A fire sprinkler system meeting the requirements of NFPA 13 in accordance with 32.2.3.5.3;

(B) A fire sprinkler system meeting the requirements of NFPA 13R in accordance with 32.2.3.5.3.1; or

(C) A fire sprinkler system meeting the requirements of NFPA 13D in accordance with 32.2.3.5.3.2.

(2) A new small Type B assisted living facility must provide electrical supervision of any fire sprinkler system according to the requirements of 32.2.3.5.4, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies.

(c) Protection of attics. A new small Type B assisted living facility must ensure an attic is protected according to the requirements of 32.2.3.5.7, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies.

(d) Portable fire extinguishers. A new small Type B assisted living facility must provide and maintain portable fire extinguishers according to the requirements of NFPA 10.

(1) A new small Type B assisted living facility must ensure all requirements of NFPA 10 are followed for all extinguisher types, including requirements for location, spacing, mounting heights, monthly inspections by staff, yearly inspections by a licensed agent, any necessary servicing, and hydrostatic testing as recommended by the manufacturer.

(2) A new small Type B assisted living facility must ensure portable fire extinguishers are located so the travel distance from any point in the facility to an extinguisher is no more than 75 feet.

(3) A new small Type B assisted living facility must ensure the actual size of any portable fire extinguisher meets the requirements of NFPA 10 for maximum floor area per unit covered, but an extinguisher must be no smaller than the following.

(A) A water-type portable fire extinguisher must have a rating of at least 1-A according to NFPA 10.

(B) All other portable fire extinguishers must have a rating of at least 2-A:10-B:C according to NFPA 10.

(4) A new small Type B assisted living facility must ensure portable fire extinguishers are installed on hangers or brackets supplied with the extinguisher or mounted in an approved cabinet.

(5) A new small Type B assisted living facility must ensure a portable fire extinguisher is protected from impact or dislodgement.

(6) A new small Type B assisted living facility must ensure a portable fire extinguisher is installed at an appropriate height.

(A) A portable fire extinguisher having a gross weight of up to 40 pounds must be installed so the top of the extinguisher is not more than five feet above the floor.

(B) A portable fire extinguisher having a gross weight greater than 40 pounds must be installed so the top of the extinguisher is not more than three and a half feet above the floor.

(C) A portable fire extinguisher must be installed so the clearance between the bottom of the extinguisher and the floor is at least four inches.

(7) A portable extinguisher provided in a hazardous room must be located as close as possible to the door leading from the room and on the latch or knob side of the door.

§553.227. *Mechanical Requirements for a New Small Type B Assisted Living Facility.*

(a) Wastewater and water supply.

(1) Wastewater. A new small Type B assisted living facility must ensure wastewater and sewage are discharged into a sewerage system or an onsite sewerage facility approved by the Water Quality Division of the Texas Commission on Environmental Quality (TCEQ), or to a system regulated by an entity responsible for water quality in that jurisdiction as approved by the Water Quality Division of TCEQ.

(2) Water supply. A new small Type B assisted living facility must ensure the water supply is of safe, sanitary quality, suitable for use, adequate in quantity and pressure, and obtained from a public or private water supply system or a private well.

(b) Resident-use plumbing fixtures.

(1) Water closets and lavatories.

(A) A new small Type B assisted living facility must provide at least one water closet and one lavatory for each six residents and for each additional resident fewer than six. Multiple toilets in a single space must comply with paragraph (2)(B) of this subsection.

(B) A new small Type B assisted living facility must ensure a lavatory is readily accessible to each water closet.

(C) A new small Type B assisted living facility must provide at least one water closet, lavatory, and bathing unit, that are accessible to residents, on each floor containing resident sleeping rooms.

(2) Bathing units.

(A) A new small Type B assisted living facility must provide one tub or shower for every 10 residents, and for any fraction thereof.

(B) Where multiple water closets or bathing units are provided in a single space, a new small Type B assisted living facility must provide partitions or curtains to separate plumbing fixtures for resident privacy.

(C) A new small Type B assisted living facility must ensure tubs and showers have non-slip bottoms or floor surfaces, either built-in or applied to the surfaces.

(3) Hot water supply. A new small Type B assisted living facility must provide a supply of hot water for resident-use. Hot water for lavatories and bathing units accessible to residents must be maintained between 100 and 120 degrees Fahrenheit.

(4) Supplies. A new small Type B assisted living facility must supply towels, soap, and toilet tissue for individual resident use.

(c) Gas. A new small Type B assisted living facility must ensure equipment using natural gas or propane and related gas piping meets the requirements of 9.1.1, Gas, in NFPA 101, Chapter 9, Building Service and Fire Protection Equipment.

(d) Heating, ventilation, and air conditioning (HVAC) and exhaust systems.

(1) General requirements. A new small Type B assisted living facility must ensure HVAC equipment meets the requirements of 32.2.5.2, Heating, Ventilating, and Air-Conditioning, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies.

(2) Heating and cooling. A new small Type B assisted living facility must provide heating and cooling for resident comfort.

(A) A new small Type B assisted living facility must ensure air conditioning systems can maintain and do maintain the comfort range of 68 to 82 degrees Fahrenheit in resident-use areas.

(B) A new small Type B assisted living facility must have a central air conditioning system, or a substantially similar air conditioning system, that can maintain and does maintain the temperature range required under subparagraph (A) of this paragraph within areas used by residents.

(C) A new small Type B assisted living facility may not use an open flame heating device in the facility, except as permitted by subparagraphs (D) - (E) of this section.

(D) A new small Type B assisted living facility must ensure a fuel-fired heating device, other than a working fireplace, meets the following requirements.

(i) A fuel-fired heating device must be connected to a chimney or vent.

(ii) A fuel-fired heating device must take air for combustion directly from outside.

(iii) A fuel-fired heating device must be designed and installed to provide for complete separation of the combustion system from the atmosphere of the occupied area.

(iv) A fuel-fired heating device must have safety features to immediately stop the flow of fuel and shut down the equipment in case of either excessive temperatures or ignition failure.

(E) A new small Type B assisted living facility must ensure a working fireplace meets the following requirements.

(i) A building containing a working fireplace must be protected by an approved, supervised automatic sprinkler system with listed quick response or listed residential sprinklers.

(ii) A working fireplace must be installed, maintained and used according to NFPA 54 and NFPA 211.

(iii) A working fireplace may not be located in a resident sleeping room.

(iv) The room where a working fireplace is located must be provided with electrically supervised carbon monoxide detection connected to the fire alarm system according to NFPA 720.

(v) A direct-vent gas fireplace, as defined in NFPA 54, must meet the following requirements.

(I) A direct-vent gas fireplace must include a sealed glass front with a wire mesh panel or screen.

(II) The controls for a direct-vent gas fireplace must be locked or located in a restricted location.

(vi) A solid-fuel burning fireplace must be equipped with:

(I) a raised hearth at least four inches above the surrounding finished floor; and

(II) a fireplace enclosure that is guaranteed against breakage up to a temperature of 650 degrees Fahrenheit and constructed of heat-tempered glass or other approved material.

(3) Ventilation.

(A) A new small Type B assisted living facility must be ventilated using windows, mechanical ventilation, or a combination of both.

(B) A new small Type B assisted living facility with interior areas designated for smoking within the building must provide mechanical ventilation directed to the exterior to remove smoke at the rate of 10 air changes per hour.

(4) Exhaust. A new small Type B assisted living facility must ensure bathrooms, toilet rooms, and other odor-producing rooms or areas for soiled or unsanitary operations are exhausted with operable windows or powered exhaust vented to the exterior for odor control.

§553.228. *Electrical Requirements for a New Small Type B Assisted Living Facility.*

(a) Electrical system. A new small Type B assisted living facility must ensure an electrical system meets the requirements of 9.1.2, Electrical Systems, in NFPA 101, Chapter 9, Building Service and Fire Protection Equipment.

(b) Lighting. A new small Type B assisted living facility must provide illumination throughout the building. Minimum lighting levels must not be lower than:

(1) 10 footcandles in resident rooms during the day--illumination requirements for these areas apply to lighting throughout the space, as measured at 30 inches above the floor anywhere in the room.

(2) 20 footcandles in each corridor, staff station, dining room, lobby, toilet room, bathroom, bathing facility, laundry room, stairway, and elevator during the day--illumination requirements for these areas apply to lighting throughout the space, as measured at 30 inches above the floor anywhere in the room.

(3) 50 footcandles for each medication preparation or storage area, kitchen, and desk within a staff station. Illumination requirements apply when the area is in use for a task it supports, as measured where the task is being performed.

(c) Telephone. A new small Type B assisted living facility must provide at least one telephone in the facility that is available to both staff and residents. Emergency telephone numbers must be posted conspicuously at or near the telephone, including fire, police, emergency medical services, and poison control center services.

(d) Communication system. A new small Type B assisted living facility that consists of two or more floors or separate buildings must provide a communication system from each resident living unit to a central staff station.

(1) The communication system must:

(A) be a direct telephone, emergency call system, or intercom;

(B) include at least:

(i) one central notification station at a fixed location that receives all calls processed through the system; and

(ii) one permanently fixed call station or device in every resident living unit.

(2) A new small Type B assisted living facility may provide:

(A) additional or portable notification stations or devices in addition to the central notification station; or

(B) additional call stations or devices in private or common resident areas.

(3) A new small Type B assisted living facility may provide residents with portable, wireless call transmitters, such as pendants or wrist bands. However, a device may not be a substitute for a fixed call station in a resident living unit.

§553.229. Miscellaneous Requirements for a New Small Type B Assisted Living Facility.

(a) A new small Type B assisted living facility must provide an elevator if:

(1) the building in which the facility is located is three or more stories in height; or

(2) the facility provides services or social activities to residents in spaces located on a floor other than the floor where the entrance to the facility is located.

(b) A new small Type B assisted living facility must ensure any new elevator, escalator, or conveyor meets the requirements of 32.2.5.3, Elevators, Escalators, and Conveyors, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 438-3161



DIVISION 10. NEW LARGE TYPE A ASSISTED LIVING FACILITIES

26 TAC §§553.230 - 553.239

STATUTORY AUTHORITY

The new rules are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation of and provision of services by the health and human services agencies and is authorized to adopt rules governing the rights and duties of persons regulated by the health and human services system; and

under Texas Health and Safety Code §§247.025 and 247.026, which respectively require the Executive Commissioner to adopt rules necessary to implement Texas Health and Safety Code, Chapter 247, relating to Assisted Living Facilities, and to prescribe by rule minimum standards to protect the health and safety of an assisted living facility resident.

§553.230. General Requirements for a New Large Type A Assisted Living Facility.

(a) A new large Type A assisted living facility must comply with the requirements of 32.3, Large Facilities, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies, as modified by this division, except as permitted by subsection (b) of this section.

(b) A new large Type A assisted living facility campus comprised of multiple buildings providing sleeping rooms for no more than 16 residents in any one building may comply with other provision in NFPA 101, as follows.

(1) Each individual building providing sleeping rooms on the campus may comply with the requirements in 32.2, Small Facilities, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies.

(2) Other buildings on the campus that are part of the new large Type A assisted living facility may be permitted to comply with the requirements for other occupancies in NFPA 101, subject to approval by HHSC.

(3) The provisions of this subsection do not apply where any building provides sleeping rooms for more than 16 residents.

(c) All space planning and utilization requirements required by §553.232 of this division (relating to Space Planning and Utilization Requirements for a New Large Type A Assisted Living Facility) must be provided and located in the new residential board and care occupancy required by subsection (a) of this section.

§553.232. Space Planning and Utilization Requirements for a New Large Type A Assisted Living Facility.

(a) Resident bedrooms.

(1) A new large Type A assisted living facility must ensure a resident bedroom or living unit is not located on a floor that is below finished ground level.

(2) A new large Type A assisted living facility must ensure bedroom usable floor space is not less than 80 square feet for a bedroom housing one resident and not less than 60 square feet per resident for a bedroom housing multiple residents, unless otherwise permitted in paragraphs (3) and (4) of this subsection. Portions of a bedroom that are less than eight feet in the smallest dimension cannot be included in the measurement of bedroom usable floor space, unless approved by HHSC.

(3) A new large Type A assisted living facility containing individual living units that include living space for the residents, in addition to their bedroom, may reduce the bedroom usable floor space for a bedroom housing multiple residents within a living unit by up to 10 percent of the required bedroom usable floor space, as long as the minimum dimensional criteria are maintained. A new large Type A assisted living facility must not use this provision in conjunction with the provision permitting the reduction of common social-diversional areas or common dining areas found in subsection (g)(6) of this section.

(4) A new large Type A assisted living facility must house no more than 50 percent of its licensed resident capacity in bedrooms housing three or more residents. A bedroom must not house more than four residents.

(b) Bedroom windows. A new large Type A assisted living facility must ensure each bedroom has at least one operable window with outside exposure and meeting the following requirements.

(1) The window sill must be no higher than 44 inches above the floor.

(2) The window must be operable by a resident occupying the bedroom, from the inside, without the use of tools or special devices.

(3) The total area of all windows in a bedroom must not be less than eight percent of the minimum bedroom usable floor space according to the requirements of subsection (a)(3) of this section.

(c) Bedroom furnishings. When a resident does not provide their own furnishings, a new large Type A assisted living facility must provide the following furnishings for each resident, which must be maintained in good repair:

(1) a bed, including a mattress;

(2) a chair;

(3) a table or dresser; and

(4) private clothes storage space, which must have closable doors, and drawer space for clothing and personal belongings.

(d) Arrangement of resident living units or rooms.

(1) A new large Type A assisted living facility must ensure all resident rooms open on an exit, corridor, living area, or public area.

(2) A new large Type A assisted living facility must ensure a resident room is arranged for convenient resident access to dining and recreation areas.

(e) Staff area. A new large Type A assisted living facility must provide a staff area on each floor of a new large Type A assisted living facility and in each separate building containing resident sleeping rooms, except as permitted under paragraph (1) of this subsection.

(1) A new large Type A assisted living facility that is not more than two stories in height and is composed of separate buildings grouped together and connected by covered walks, is not required to provide a staff area on each floor or in each building, provided that a staff area is located not more than 200 feet walking distance from the farthest resident living unit.

(2) A new large Type A assisted living facility must provide the following at each staff area:

(A) a desk or writing surface;

(B) a telephone; and

(C) a fire alarm control unit or a fire alarm annunciator panel meeting the requirements of §553.235 of this division (relating to Fire Protection Systems Requirements for a New Large Type A Assisted Living Facility).

(f) Resident toilet and bathing facilities. A new large Type A assisted living facility must ensure each resident bedroom is served by a separate private toilet room, a connecting toilet room, or a general toilet room.

(1) A new large Type A assisted living facility that houses individuals of more than one gender must provide toilet rooms for each gender, or individual single-occupant toilet rooms for use by any gender.

(2) A new large Type A assisted living facility must ensure a general toilet room or bathing room is accessible from a corridor or public space.

(3) A new large Type A assisted living facility must ensure resident toilet and bathing facilities comply with the requirements for resident-use plumbing fixtures according to §553.237 of this division (relating to Mechanical Requirements for a New Large Type A Assisted Living Facility).

(g) Resident living areas.

(1) A new large Type A assisted living facility must provide, in a common area of the facility, social-diversional spaces with appropriate furniture. Examples of social-diversional spaces include living rooms, day rooms, lounges, dens, game rooms, and sunrooms.

(A) A new large Type A assisted living facility must provide a social-diversional space with a minimum area of 120 square feet in at least one space within a common area of the facility, regardless of the number of residents or other provisions of this section permitting a reduction in the total minimum social-diversional space.

(B) A new large Type A assisted living facility must ensure a social-diversional space has one or more exterior windows providing a view of the outside.

(C) A new large Type A assisted living facility must ensure the total space for social-diversional areas is provided on a sliding scale according to the following table. No space smaller than 120 square feet in area can be counted toward meeting this requirement.

Figure: 26 TAC §553.232(g)(1)(C)

(2) A new large Type A assisted living facility must provide a dining area with appropriate furniture.

(A) A new large Type A assisted living facility must provide a dining space with a minimum area of 120 square feet in at least one space within a common area of the facility, regardless of the number of residents or other provisions of this section permitting a reduction in the total minimum dining space.

(B) A new large Type A assisted living facility must ensure a dining space has one or more exterior windows providing a view of the outside.

(C) A new large Type A assisted living facility must ensure a dining area is accessible from resident living units or bedrooms via a covered path.

(D) A new large Type A assisted living facility must ensure the total space for dining areas is provided on a sliding scale according to the following table. No space smaller than 120 square feet in area can be counted toward meeting this requirement.

Figure: 26 TAC §553.232(g)(2)(D)

(3) A new large Type A assisted living facility may provide a total living and dining area combined in a single or interconnecting space where the minimum area of the combined space is at least 240 square feet.

(4) For calculation purposes, where a means of egress passes through a living or dining area, a new large Type A assisted living facility must deduct a pathway, equal to the minimum corridor width according to §553.233 of this division (relating to Means of Egress Requirements for a New Large Type A Assisted Living Facility), from the measured area of the space.

(5) A new large Type A assisted living facility must ensure a means of egress through a resident living or dining area is kept clear of obstructions, except as permitted by NFPA 101.

(6) Subject to the limitations of paragraphs (1)(A) and (2)(A) of this subsection and subparagraphs (A) and (B) of this paragraph, a new large Type A assisted living facility containing individual living units may reduce the minimum square footage required by paragraphs (1)(C) and (2)(D) of this subsection for total common social-diversional or common dining areas, respectively, by including up to 10 percent of the individual living unit area in the calculation of the total social-diversional area or total dining area.

(A) The individual living unit area contributed toward total social-diversional space or total dining space must not be counted more than once per living unit but may be split between social-diversional and dining space calculations.

(B) A new large Type A assisted living facility must not utilize both this paragraph and subsection (a)(3) of this section to reduce both the minimum square footage otherwise required for its common social-diversional or dining areas and the minimum square footage of usable floor space otherwise required in bedrooms housing multiple residents within a living unit.

(h) Storage areas. A new large Type A assisted living facility must provide sufficient separate storage spaces or areas for at least:

- (1) administrative records, office supplies, and other storage needs related to administration;
- (2) medications and medical supplies;
- (3) equipment supplied by the facility for resident needs, including wheelchairs, walkers, beds, and mattresses;
- (4) cleaning supplies including for janitorial needs;
- (5) food;
- (6) clean linens and towels, if the facility furnishes linen;
- (7) soiled linen, if the facility furnishes linen; and
- (8) lawn and maintenance equipment.

(i) General kitchen.

(1) A new large Type A assisted living facility that prepares food off-site or in a separate building must ensure food is served at the proper temperature and transported in a sanitary manner.

(2) A new large Type A assisted living facility must ensure a kitchen meets the requirements of the local fire, building, and health codes.

(3) A new large Type A assisted living facility that prepares food on-site must provide a kitchen or dietary area to meet the general food service needs of the residents and must include space for the following:

- (A) storage, refrigeration, preparation, and serving food;
- (B) dish and utensil cleaning which includes:
- (i) a three-compartment sink large enough to immerse pots and pans; and
 - (ii) a mechanical dishwasher for washing and sanitizing dishes;
- (C) a food preparation sink;
- (D) a handwashing station in every food preparation area with a supply of hot and cold water, soap, a towel dispenser and a waste receptacle;

(E) a handwashing lavatory that is readily accessible to every dish room area; and

(F) refuse storage and removal;

(G) floor drains in the kitchen and dishwashing areas, unless the facility was created through conversion and the facility can keep the floor clean; and

(H) a grease trap, if required by local authorities.

(4) A new large Type A assisted living facility must ensure a kitchen is designed so that room temperature, at peak load or in the summer, does not exceed 85 degrees Fahrenheit measured throughout the room at five feet above the floor.

(5) A new large Type A assisted living facility must ensure the volume of supply air provided takes into account the large quantities of air that may be exhausted at the range hood and dishwashing area.

(6) A new large Type A assisted living facility must provide a supply of hot and cold water.

(A) Hot water for sanitizing purposes must be 180 degrees Fahrenheit.

(B) When chemical sanitizers are used, hot water must meet the manufacturer's suggested temperature.

(7) A new large Type A assisted living facility must maintain a separation between soiled and clean dish areas.

(8) A new large Type A assisted living facility must maintain a separation of air flow between soiled and clean dish areas.

(j) Kitchen restrooms.

(1) A new large Type A assisted living facility must provide a restroom facility for kitchen staff, including a lavatory, except as described in paragraph (2) of this subsection.

(A) The restroom facility must be directly accessible to kitchen staff without traversing resident use areas.

(B) The restroom must open into a service corridor or vestibule and not open directly into the kitchen.

(2) A new large Type A assisted living facility created through conversion may provide a staff restroom that may be located outside the kitchen area.

(k) Kitchen janitorial facility.

(1) A new large Type A assisted living facility must provide janitorial facilities exclusively for the kitchen and located in the kitchen area except as described in paragraph (2) of this subsection.

(2) A new large Type A assisted living facility created through conversion must provide a janitorial facility for the kitchen. The janitorial facility may be located outside the kitchen if sanitary procedures are used to reduce the possibility of cross-contamination.

(3) A new large Type A assisted living facility must provide a garbage can or cart washing area with a floor drain and a supply of hot water. The garbage can or cart washing area may be in the interior or on the exterior of the facility.

(l) Finishes.

(1) A new large Type A assisted living facility must provide non-absorbent, smooth finishes or surfaces on all kitchen floors, walls and ceilings.

(2) A new large Type A assisted living facility must provide non-absorbent, smooth, cleanable finishes on counter surfaces and all cabinet surfaces.

(3) A new large Type A assisted living facility must ensure surfaces are capable of being routinely cleaned and sanitized to maintain a healthful environment.

(m) Vision panels in communicating doors. A new large Type A assisted living facility must ensure a door between a kitchen and a dining area, serving area, or resident-use area, is provided with a vision panel with fixed safety glass. Where the door is a required fire door or is located in a fire barrier or other fire resistance-rated enclosure, the vision panel, including the glazing and the frame, must meet the requirements of NFPA 101.

(n) Auxiliary serving kitchens.

(1) A new large Type A assisted living facility must ensure an auxiliary serving kitchen is equipped to maintain required food temperatures.

(2) A new large Type A assisted living facility must ensure an auxiliary serving kitchen is equipped with a handwashing lavatory meeting the requirements of this section.

(3) A new large Type A assisted living facility must ensure all surfaces in an auxiliary serving kitchen meet the requirements for finishes in this section.

(o) Protection of cooking operations.

(1) A new large Type A assisted living facility must protect cooking facilities according to the requirements in §553.236 of this division (relating to Hazardous Area Requirements for a New Large Type A Assisted Living Facility).

(2) The following commercial or residential cooking equipment used only for reheating, and not for meal preparation, is not required to comply with the requirements of §553.236 of this division:

- (A) microwave ovens;
- (B) hot plates; or
- (C) toasters.

(p) Food storage areas.

(1) A new large Type A assisted living facility must provide a food storage area large enough to consistently maintain a four-day minimum supply of non-perishable food. A food storage area may be located away from the food preparation area as long as there is space adjacent to the kitchen for necessary daily usage.

(2) A new large Type A assisted living facility must provide dollies, racks, pallets, wheeled containers, or shelving, so that food is not stored on the floor, and must ensure shelves are adjustable wire type shelving.

(3) A new large Type A assisted living facility must provide non-absorbent finishes or surfaces on all floors and walls in food storage areas.

(4) A new large Type A assisted living facility must provide effective ventilation in dry food storage areas to ensure positive air circulation.

(5) A new large Type A assisted living facility must ensure the maximum room temperature in a food storage area does not exceed 85 degrees Fahrenheit at any time, when measured at the highest food storage level, but not less than five feet above the floor.

(q) Laundry and linen services.

(1) A new large Type A assisted living facility that co-min-gles and processes laundry on-site in a central location, regardless of the type of laundry equipment used, must ensure a laundry area:

(A) is separated from the assisted living building by a fire barrier having a one-hour fire resistance rating. This separation must extend from the floor to the floor or roof above;

(B) is protected throughout by a fire sprinkler system; and

(C) has access doors that open to the exterior or to an interior non-resident use area, such as a vestibule or service corridor; and

(D) is provided with:

(i) a soiled linen receiving, holding, and sorting room with a floor drain and forced exhaust to the exterior;

(I) the exhaust must always operate when soiled linen is held in this area; and

(II) the area may be combined with the washer section;

(ii) a general laundry work area that is separated by partitioning a washer section and a dryer section;

(iii) a storage area for laundry supplies;

(iv) a folding area;

(v) an adequate air supply and ventilation for staff comfort without having to rely on opening a door that is part of the fire barrier separation required by subparagraph (A) of this paragraph; and

(vi) provisions to exhaust heat from dryers and to separate dryer make-up air from the habitable work areas of the laundry.

(2) If linen is processed off site, the facility must provide:

(A) a soiled linen holding room with adequate forced exhaust ducted to the exterior; and

(B) a clean linen receiving, holding, inspection, sorting or folding, and storage room.

(3) A new large Type A assisted living facility must ensure a laundry area for resident-use meets the following requirements.

(A) A new large Type A assisted living facility must ensure only residential type washers and dryers are provided in a laundry area for resident-use.

(B) When more than three washers and three dryers are provided in one laundry area for resident-use, the area must be:

(i) protected throughout by a fire sprinkler system; or

(ii) separated from the facility by a fire barrier having a one-hour fire resistance rating.

§553.233. Means of Egress Requirements for a New Large Type A Assisted Living Facility.

(a) A new large Type A assisted living facility must meet the requirements of 32.3.2, Means of Egress, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies, except as described in this section.

(b) The provisions of 32.3.2.11.2, Lockups, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies, are not permitted.

(c) A new large Type A assisted living facility must ensure doors meet the requirements of 32.3.2.2.2, Doors, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies, and the additional requirements of this section.

(1) A resident room door in a new large Type A assisted living facility must latch in its frame to resist the passage of smoke.

(2) In a new large Type A assisted living facility comprised of buildings that contain living units with independent cooking equipment within the living unit, a door between the living unit and a corridor or hallway must:

(A) be self-closing or automatic-closing; and

(B) latch in its frame to resist the passage of smoke.

(3) A resident room door or living unit door must not be arranged to prevent the occupant from closing the door.

(d) A new large Type A assisted living facility providing spaces for use by residents on floors other than the ground floor must provide at least two separate approved stairs and must ensure stairs used as a means of egress meet the requirements of 32.3.2.2.3, Stairs, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies.

(e) A new large Type A assisted living facility must ensure means of egress are marked according to the requirements of 32.3.2.10, Marking of Means of Egress, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies.

(f) A new large Type A assisted living facility must provide emergency lighting according to the requirements of 32.3.2.9, Emergency Lighting, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies, unless each sleeping room has a direct exit to the outside at the finished ground level.

§553.235. *Fire Protection Systems Requirements for a New Large Type A Assisted Living Facility.*

(a) Fire alarm and smoke detection system. A new large Type A assisted living facility must provide a manual fire alarm system meeting the requirements of 9.6, Fire Detection, Alarm, and Communication Systems, in NFPA 101, Chapter 9, Building Service and Fire Protection Equipment, as modified by this section.

(1) General. A new large Type A assisted living facility must ensure the operation of any alarm initiating device automatically activates the manual fire alarm system evacuation alarm for the entire building.

(2) Smoke detectors.

(A) A new large Type A assisted living facility must install smoke detectors in resident bedrooms, corridors, hallways, living rooms, dining rooms, offices, kitchens, laundries, attached garages used for car parking, and public or common areas, except as permitted in subparagraphs (B) - (D) of this paragraph.

(B) A new large Type A assisted living facility may install heat detectors in lieu of smoke detectors in kitchens, laundries, and attached garages used for car parking.

(C) A new large Type A assisted living facility located in a building constructed to meet the requirements of NFPA 101, Chapter 18, New Health Care Occupancies, may install a smoke detection system meeting the requirements of 19.3.4.5.1, Corridors, in NFPA 101, Chapter 18, New Health Care Occupancies, in lieu of the requirements found in subparagraphs (A) and (B) of this paragraph.

(D) A new large Type A assisted living facility comprised of buildings containing living units with independent cooking equipment must additionally have:

(i) a smoke detector installed all in resident bedrooms, corridors, hallways, living rooms, dining rooms, offices, kitchens and laundries within the living unit, that sounds an alarm only within the living unit; and

(ii) a heat detector installed in the kitchen within the living unit that activates the general alarm.

(E) A new large Type A assisted living facility is not required to install smoke alarms, as required by 32.3.4.7, Smoke Alarms, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies, in addition to the smoke detectors required by subparagraphs (A) - (D) of this paragraph.

(3) Alarm control panel.

(A) A new large Type A assisted living facility must provide a fire alarm control unit, or a fire alarm annunciator providing annunciation of all fire alarm, supervisory, and trouble signals by audible and visible indicators, in a location visible to staff at or near the staff area that is attended 24 hours a day.

(B) A new large Type A assisted living facility is not required to ensure a fire alarm control unit or fire alarm annunciator is visible to staff if the fire alarm is monitored by devices carried by all staff.

(C) A new large Type A assisted living facility must ensure a fire alarm panel indicates each floor and smoke compartment, as applicable, as a separate zone. Each zone must provide an alarm and trouble indication. When all alarm initiating devices are addressable and the status of each device is identified on the fire alarm panel, zone indication is not required.

(4) Fire alarm power source.

(A) A new large Type A assisted living facility must ensure a fire alarm system is powered by a permanently-wired, dedicated branch circuit that is powered from a commercial power source in accordance with NFPA 70.

(B) A new large Type A assisted living facility must provide a secondary, emergency power source meeting the requirements of NFPA 72.

(5) Emergency forces notification. A new large Type A assisted living must ensure a fire alarm system provides emergency forces notification according to the requirements of 32.3.3.4.6, Emergency Forces Notification, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies.

(b) Fire sprinkler system. A new large Type A assisted living facility must provide a fire sprinkler system meeting the requirements of NFPA 13 in accordance with 32.3.3.5, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies.

(c) Portable Fire Extinguishers. A new large Type A assisted living facility must provide and maintain portable fire extinguishers according to the requirements of 32.3.3.5.7, Portable Fire Extinguishers, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies, and the additional requirements of this subsection.

(1) A new large Type A assisted living facility must ensure all requirements of NFPA 10 are followed for all extinguisher types, including requirements for location, spacing, mounting heights, monthly inspections by staff, yearly inspections by a licensed agent, any neces-

sary servicing, and hydrostatic testing as recommended by the manufacturer.

(2) A new large Type A assisted living facility must ensure portable fire extinguishers are located in resident corridors so the travel distance from any point in the facility to an extinguisher is no more than 75 feet.

(3) A new large Type A assisted living facility must ensure the actual size of any portable fire extinguisher meets the requirements of NFPA 10 for maximum floor area per unit covered, but an extinguisher must be no smaller than the following.

(A) A water-type portable fire extinguisher must have a rating of at least 1-A according to NFPA 10.

(B) All other portable fire extinguishers must have a rating of at least 2-A:10-B:C according to NFPA 10.

(C) A facility must provide at least one approved 20-B:C portable fire extinguisher in each laundry, kitchen and walk-in mechanical room.

(4) A new large Type A assisted living facility must ensure portable fire extinguishers are installed on hangers or brackets supplied with the extinguisher or is mounted in an approved cabinet.

(5) A new large Type A assisted living facility must ensure a portable fire extinguisher is protected from impact or dislodgement.

(6) A new large Type A assisted living facility must ensure a portable fire extinguisher is installed at an appropriate height.

(A) A portable fire extinguisher having a gross weight of up to 40 pounds must be installed so the top of the extinguisher is not more than five feet above the floor.

(B) A portable fire extinguisher having a gross weight greater than 40 pounds must be installed so the top of the extinguisher is not more than three and a half feet above the floor.

(C) A portable fire extinguisher must be installed so the clearance between the bottom of the extinguisher and the floor is at least four inches.

(7) A portable extinguisher provided in a hazardous room must be located as close as possible to the exit access door leading from the room and on the latch or knob side of the door.

§553.237. Mechanical Requirements for a New Large Type A Assisted Living Facility.

(a) Wastewater and water supply.

(1) Wastewater. A new large Type A assisted living facility must ensure wastewater and sewage are discharged into a sewerage system or an onsite sewerage facility approved by the Water Quality Division of TCEQ, or to a system regulated by an entity responsible for water quality in that jurisdiction as approved by the Water Quality Division of TCEQ.

(2) Water supply. A new large Type A assisted living facility must ensure the water supply is of safe, sanitary quality, suitable for use, adequate in quantity and pressure, and obtained from a public or private water supply system or a private well.

(b) Resident-use plumbing fixtures.

(1) Water closets and lavatories.

(A) A new large Type A assisted living facility must provide at least one water closet and one lavatory for every six residents and for each additional resident fewer than six. Multiple toilets in a single space must comply with paragraph (2)(B) of this subsection.

(B) A new large Type A assisted living facility must ensure a lavatory is readily accessible to each water closet.

(C) A new large Type A assisted living facility must provide at least one water closet, lavatory, and bathing unit, that are accessible to residents, on each floor containing resident sleeping rooms.

(2) Bathing units.

(A) A new large Type A assisted living facility must provide one tub or shower for every 10 residents, and for any fraction thereof.

(B) Where multiple water closets or bathing units are provided in a single space, a new large Type A assisted living facility must provide partitions or curtains to separate plumbing fixtures for resident privacy.

(C) A new large Type A assisted living facility must ensure tubs and showers have non-slip bottoms or floor surfaces, either built-in or applied to the surfaces.

(3) Hot water supply. A new large Type A assisted living facility must provide a supply of hot water for resident-use. Hot water for lavatories and bathing units accessible to residents must be maintained between 100 and 120 degrees Fahrenheit.

(4) Supplies. A new large Type A assisted living facility must supply towels, soap, and toilet tissue for individual resident use.

(c) Public- and staff-use plumbing fixtures. In addition to the staff toilets required for the dietary staff according to §553.232(j) of this division (relating to Space Planning and Utilization Requirements for a New Large Type A Assisted Living Facility), an existing large Type A assisted living facility must provide toilets, including water closets and lavatories, for use by the public and by facility staff as follows:

(1) if licensed for 60 or fewer residents, a new large Type A assisted living facility must provide a toilet for use by the public and by facility staff; or

(2) if licensed for more than 60 residents, a new large Type A assisted living facility must provide a toilet for use by the public and a separate toilet for use by facility staff.

(d) Gas. A new large Type A assisted living facility must ensure equipment using natural gas or propane and related gas piping meets the requirements of 9.1.1, Gas, in NFPA 101, Chapter 9, Building Service and Fire Protection Equipment.

(e) Heating, ventilation, and air-conditioning (HVAC) and exhaust systems.

(1) General requirements. A new large Type A assisted living facility must ensure HVAC equipment meets the requirements of 32.3.6.2, Heating, Ventilating, and Air-Conditioning, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies.

(2) Heating and cooling. A new large Type A assisted living facility must provide heating and cooling for resident comfort.

(A) A new large Type A assisted living facility must ensure air conditioning systems can maintain and does maintain the comfort range of 68 to 82 degrees Fahrenheit in resident-use areas.

(B) A new large Type A assisted living facility must have a central air conditioning system, or a substantially similar air conditioning system, that can maintain and does maintain a temperature range required under subparagraph (A) of this paragraph within areas used by residents.

(C) A new large Type A assisted living facility may not use an open flame heating device in the facility, except as permitted by subparagraphs (D) - (E) of this paragraph.

(D) A new large Type A assisted living facility must ensure a fuel-fired heating device, other than a working fireplace, meets the following requirements.

(i) A fuel-fired heating device must be connected to a chimney or vent.

(ii) A fuel-fired heating device must take air for combustion directly from outside.

(iii) A fuel-fired heating device must be designed and installed to provide for complete separation of the combustion system from the atmosphere of the occupied area.

(iv) A fuel-fired heating device must have safety features to immediately stop the flow of fuel and shut down the equipment in case of either excessive temperatures or ignition failure.

(E) A new large Type A assisted living facility must ensure a working fireplace meets the following requirements.

(i) A building containing a working fireplace must be protected by an approved, supervised automatic sprinkler system with listed quick response or listed residential sprinklers.

(ii) A working fireplace must be installed, maintained and used according to NFPA 54 and NFPA 211.

(iii) A work fireplace may not be located in a resident sleeping room.

(iv) The room where a working fireplace is located must be provided with electrically supervised carbon monoxide detection connected to the fire alarm system according to NFPA 720.

(v) A direct-vent gas fireplace, as defined in NFPA 54, must meet the following requirements.

(I) A direct-vent gas fireplace must include a sealed glass front with a wire mesh panel or screen.

(II) The controls for a direct-vent gas fireplace must be locked or located in a restricted location.

(vi) A solid-fuel burning fireplace must be equipped with:

(I) a raised hearth at least four inches above the surrounding finished floor; and

(II) a fireplace enclosure that is guaranteed against breakage up to a temperature of 650 degrees Fahrenheit and constructed of heat-tempered glass or other approved material.

(3) Ventilation.

(A) A new large Type A assisted living facility must be ventilated using windows, mechanical ventilation, or a combination of both.

(B) A new large Type A assisted living facility with interior areas designated for smoking within the building must provide mechanical ventilation directed to the exterior to remove smoke at the rate of 10 air changes per hour.

(4) Exhaust. A new large Type A assisted living facility must ensure bathrooms, toilet rooms, janitorial facilities, and other odor-producing rooms or areas for soiled or unsanitary operations are exhausted with powered exhaust vented to the exterior for odor control.

§553.238. *Electrical Requirements for a New Large Type A Assisted Living Facility.*

(a) Electrical system. A new large Type A assisted living facility must ensure an electrical system meets the requirements of 9.1.2, Electrical Systems, in NFPA 101, Chapter 9, Building Service and Fire Protection Equipment.

(b) Lighting. A new large Type A assisted living facility must provide illumination throughout the building. Minimum lighting levels must not be lower than:

(1) 10 footcandles in resident rooms during the day--illumination requirements for these areas apply to lighting throughout the space, as measured at 30 inches above the floor anywhere in the room;

(2) 20 footcandles in each corridor, staff station, dining room, lobby, toilet room, bathroom, bathing facility, laundry room, stairway, and elevator during the day--illumination requirements for these areas apply to lighting throughout the space, as measured at 30 inches above the floor anywhere in the room; and

(3) 50 footcandles for each medication preparation or storage area, kitchen, and desk within a staff station. Illumination requirements apply when the area is in use for a task it supports, as measured where the task is being performed.

(c) Telephone. A new large Type A assisted living facility must provide at least one telephone in the facility that is available to both staff and residents. Emergency telephone numbers must be posted conspicuously at or near the telephone, including fire, police, emergency medical services, and poison control center services.

(d) Communication system. A new large Type A assisted living facility that consists of two or more floors or separate buildings must provide a communication system from each resident living unit to a central staff station.

(1) The communication system must:

(A) be a direct telephone, emergency call system or intercom;

(B) include at least:

(i) one central notification station at a fixed location that receives all calls processed through the system; and

(ii) one permanently fixed call station or device in every resident living unit.

(2) A new large Type A assisted living facility may provide:

(A) additional or portable notification stations or devices in addition to the central notification station; or

(B) additional call stations or devices in private or common resident areas.

(3) A new large Type A assisted living facility may provide residents with portable, wireless call transmitters, such as pendants or wrist bands. However, a device may not be a substitute for a fixed call station in a resident living unit.

(e) Generator.

(1) A new large Type A assisted living facility that provides a system to supply, distribute, and control electricity for emergency lighting and illumination of exit signs required by NFPA 101, such as a system that uses a generator set as an alternate source of power, must comply with the requirements of Article 700, Emergency Systems, in NFPA 70, Chapter 7, Special Conditions.

(A) The emergency system may not include any systems or equipment except:

- (i) emergency lighting, as required by NFPA 101;
- (ii) secondary power to ensure illumination of exit signs, as required by NFPA 101; and
- (iii) secondary power for detection, alarm, and communications systems, as required by NFPA 72.

(B) A new large Type A assisted living facility must ensure wiring from an emergency source to emergency loads is kept entirely independent of all other wiring and equipment except as permitted by Article 700.10, Wiring, Emergency System, in NFPA 70. Two or more emergency circuits supplied from the same source may be routed in the same raceway, cable, box, or cabinet.

(C) A new large Type A assisted living facility must ensure that transfer equipment for an emergency system does not serve another facility, including a hospital, a nursing facility, or an independent living facility.

(2) A new large Type A assisted living facility that provides a system to supply, distribute, and control electricity for systems and equipment not identified in paragraph (1) of this subsection must comply with the requirements of Article 702, Optional Standby Systems, in NFPA 70.

(3) The alternate power source for the emergency system may supply other emergency loads, legally required standby loads, and optional standby system loads where the source has adequate capacity to ensure adequate power to the different circuits in the following priority:

- (A) emergency circuits for the assisted living facility;
- (B) legally required standby circuits, if any; and
- (C) optional standby circuits, if any.

§553.239. *Miscellaneous Requirements for a New Large Type A Assisted Living Facility.*

(a) A new large Type A assisted living facility must provide an elevator if:

- (1) the building in which the facility is located is three or more stories in height; or
- (2) the facility provides services or social activities to residents in spaces located on a floor other than the floor where the entrance to the facility is located.

(b) A new large Type A assisted living facility must ensure an elevator, dumbwaiter, or vertical conveyor meets the requirements of 32.3.6.3, Elevators, Dumbwaiters, and Vertical Conveyors, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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DIVISION 11. NEW LARGE TYPE B ASSISTED LIVING FACILITIES

26 TAC §§553.240 - 553.249

STATUTORY AUTHORITY

The new rules are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation of and provision of services by the health and human services agencies and is authorized to adopt rules governing the rights and duties of persons regulated by the health and human services system; and under Texas Health and Safety Code §§247.025 and 247.026, which respectively require the Executive Commissioner to adopt rules necessary to implement Texas Health and Safety Code, Chapter 247, relating to Assisted Living Facilities, and to prescribe by rule minimum standards to protect the health and safety of an assisted living facility resident.

§553.240. *General Requirements for a New Large Type B Assisted Living Facility.*

(a) A new large Type B assisted living facility must comply with the requirements for a limited care facility in NFPA 101, Chapter 18, New Health Care Occupancies, as modified by this division.

(b) All space planning and utilization requirements required by §553.242 of this division (relating to Space Planning and Utilization Requirements for a New Large Type B Assisted Living Facility) must be provided and located in the new healthcare occupancy required by subsection (a) of this section.

§553.242. *Space Planning and Utilization Requirements for a New Large Type B Assisted Living Facility.*

(a) Resident bedrooms.

(1) A new large Type B assisted living facility must ensure a resident bedroom or living unit is not located on a floor that is below finished ground level.

(2) A new large Type B assisted living facility must ensure bedroom usable floor space is not less than 100 square feet for a bedroom housing one resident and not less than 80 square feet per resident for a bedroom housing multiple residents, unless otherwise permitted by paragraphs (3) and (4) of this subsection. Portions of a bedroom that are less than 10 feet in the smallest dimension cannot be included in the measurement of bedroom usable floor space, unless approved by HHSC.

(3) A new large Type B assisted living facility containing individual living units that include living space for the residents, in addition to their bedroom, may reduce the bedroom usable floor space for a bedroom housing multiple residents within a living unit by up to 10 percent of the required bedroom usable floor space, as long as the minimum dimensional criteria are maintained. A new large Type B assisted living facility must not use this provision in conjunction with the provision permitting the reduction of common social-diversional areas or common dining areas found in subsection (g)(6) of this section.

(4) A new large Type B assisted living facility must house no more than 50 percent of its licensed resident capacity in bedrooms housing three or more residents. A bedroom must not house more than four residents.

(b) Bedroom windows. A new large Type B assisted living facility must ensure each bedroom has at least one operable window with outside exposure and meeting the following requirements.

(1) The window sill must be no higher than 44 inches above the floor.

(2) The window must be operable by a resident occupying the bedroom, from the inside, without the use of tools or special devices.

(3) The total area of all windows in a bedroom must not be less than eight percent of the minimum bedroom usable floor space required by subsection (a)(3) of this section.

(c) Bedroom furnishings. When a resident does not provide their own furnishings, a new large Type B assisted living facility must provide the following furnishings for each resident, which must be maintained in good repair:

(1) a bed including a mattress;

(2) a chair;

(3) a table or dresser; and

(4) private clothes storage space, which must have closable doors, and drawer space for clothing and personal belongings.

(d) Arrangement of resident living units or rooms.

(1) A new large Type B assisted living facility must ensure all resident rooms open on an exit, corridor, living area, or public area.

(2) A new large Type B assisted living facility must ensure a resident room is arranged for convenient resident access to dining and recreation areas.

(e) Staff area. A new large Type B assisted living facility must provide a staff area on each floor of a new large Type B assisted living facility and in each separate building containing resident sleeping rooms. A new large Type B assisted living facility must provide the following at each staff area:

(1) a desk or writing surface;

(2) a telephone; and

(3) a fire alarm control unit or a fire alarm annunciator panel meeting the requirements of §553.245 of this division (relating to Fire Protection Systems Requirements for a New Large Type B Assisted Living Facility).

(f) Resident toilet and bathing facilities. A new large Type B assisted living facility must ensure each resident bedroom is served by a separate private toilet room, a connecting toilet room, or a general toilet room.

(1) A new large Type B assisted living facility that houses individuals of more than one gender must provide toilet rooms for each gender, or individual single-occupant toilet rooms for use by any gender.

(2) A new large Type B assisted living facility must ensure a general toilet room or bathing room is accessible from a corridor or public space.

(3) A new large Type B assisted living facility must ensure resident toilet and bathing facilities comply with the requirements for resident-use plumbing fixtures according to §553.247 of this division (relating to Mechanical Requirements for a New Large Type B Assisted Living Facility).

(g) Resident living areas.

(1) A new large Type B assisted living facility must provide, in a common area of the facility, social-diversional spaces with

appropriate furniture. Examples of social-diversional spaces include living rooms, day rooms, lounges, dens, game rooms, and sunrooms.

(A) A new large Type B assisted living facility must provide a social-diversional space with a minimum area of 120 square feet in at least one space within a common area of the facility, regardless of number of residents or other provisions of this section permitting a reduction in the total minimum social-diversional space.

(B) A new large Type B assisted living facility must ensure a social-diversional space has one or more exterior windows providing a view of the outside.

(C) A new large Type B assisted living facility must ensure the total space for social-diversional areas is provided on a sliding scale according to the following table. No space smaller than 120 square feet in area can be counted toward meeting this requirement. Figure: 26 TAC §553.242(g)(1)(C)

(2) A new large Type B assisted living facility must provide a dining area with appropriate furniture.

(A) A new large Type B assisted living facility must provide a dining space with a minimum area of 120 square feet in at least one space within a common area of the facility, regardless of number of residents or other provisions of this section permitting a reduction in the total minimum dining space.

(B) A new large Type B assisted living facility must ensure a dining space has one or more exterior windows providing a view of the outside.

(C) A new large Type B assisted living facility must ensure a dining area is accessible from resident living units or bedrooms via a covered path.

(D) A new large Type B assisted living facility must ensure the total space for dining areas is provided on a sliding scale according to the following table. No space smaller than 120 square feet in area can be counted toward meeting this requirement. Figure: 26 TAC §553.242(g)(2)(D)

(3) A new large Type B assisted living facility may provide a total living and dining area combined in a single or interconnecting space where the minimum area of the combined space is at least 240 square feet.

(4) For calculation purposes, where a means of egress passes through a living or dining area, a new large Type B assisted living facility must deduct a pathway, equal to the minimum corridor width according to §553.243 of this division (relating to Means of Egress Requirements for a New Large Type B Assisted Living Facility), from the measured area of the space.

(5) A new large Type B assisted living facility must ensure a means of egress through a resident living or dining area is kept clear of obstructions, except as permitted by NFPA 101.

(6) Subject to the limitations of paragraphs (1)(A) and (2)(A) of this subsection and subparagraphs (A) and (B) of this paragraph, a new large Type B assisted living facility containing individual living units may reduce the minimum square footage required by paragraphs (1)(C) and (2)(D) of this subsection for total common social-diversional or common dining areas, respectively, by including up to 10 percent of the individual living unit area in the calculation of the total social-diversional area or total dining area.

(A) The individual living unit area contributed toward total social-diversional space or total dining space must not be counted more than once per living unit but may be split between social-diversional and dining space calculations.

(B) A new large Type B assisted living facility must not utilize both this paragraph and subsection (a)(3) of this section to reduce both the minimum square footage otherwise required for its common social-diversional or dining areas and the minimum square footage of usable floor space otherwise required in bedrooms housing multiple residents within a living unit.

(h) Storage areas. A new large Type B assisted living facility must provide sufficient separate storage spaces or areas for at least:

- (1) administrative records, office supplies, and other storage needs related to administration;
- (2) medications and medical supplies;
- (3) equipment supplied by the facility for resident needs, including wheelchairs, walkers, beds, and mattresses;
- (4) cleaning supplies, including for janitorial needs;
- (5) food;
- (6) clean linens and towels, if the facility furnishes linen;
- (7) soiled linen, if the facility furnishes linen; and
- (8) lawn and maintenance equipment.

(i) General kitchen.

(1) A new large Type B assisted living facility that prepares food off-site or in a separate building must ensure food is served at the proper temperature and transported in a sanitary manner.

(2) A new large Type B assisted living facility must ensure a kitchen meets the requirements of the local fire, building, and health codes.

(3) A new large Type B assisted living facility that prepares food on-site must provide a kitchen or dietary area to meet the general food service needs of the residents and must include space for the following:

(A) storage, refrigeration, preparation, and serving food;

(B) dish and utensil cleaning which includes:

(i) a three-compartment sink large enough to immerse pots and pans; and

(ii) a mechanical dishwasher for washing and sanitizing dishes;

(C) a food preparation sink;

(D) a handwashing station in every food preparation area with a supply of hot and cold water, soap, a towel dispenser, and a waste receptacle;

(E) a handwashing lavatory that is readily accessible to every dish room area;

(F) refuse storage and removal;

(G) floor drains in the kitchen and dishwashing areas; and

(H) a grease trap, if required by local authorities.

(4) A new large Type B assisted living facility must ensure a kitchen is designed so that room temperature, at peak load or in the summer, does not exceed 85 degrees Fahrenheit measured throughout the room at five feet above the floor.

(5) A new large Type B assisted living facility must ensure the volume of supply air provided takes into account the large quantities of air that may be exhausted at the range hood and dishwashing area.

(6) A new large Type B assisted living facility must provide a supply of hot and cold water.

(A) Hot water for sanitizing purposes must be 180 degrees Fahrenheit.

(B) When chemical sanitizers are used, hot water must meet the manufacturer's suggested temperature.

(7) A new large Type B assisted living facility must maintain a separation between soiled and clean dish areas.

(8) A new large Type B assisted living facility must maintain a separation of air flow between soiled and clean dish areas.

(j) Kitchen restrooms.

(1) A new large Type B assisted living facility must provide a restroom facility for kitchen staff, including a lavatory, except as described in paragraph (2) of this subsection.

(A) The restroom facility must be directly accessible to kitchen staff without traversing resident use areas.

(B) The restroom must open into a service corridor or vestibule and not open directly into the kitchen.

(2) A new large Type B facility must ensure a kitchen serving a neighborhood or household provides a restroom accessible to kitchen staff located in close proximity to the kitchen.

(k) Kitchen janitorial facility.

(1) A new large Type B assisted living facility must provide janitorial facilities exclusively for the kitchen and located in the kitchen area except as described in paragraph (2) of this subsection.

(2) A new large Type B facility must ensure a kitchen serving a neighborhood or household provides a janitorial facility exclusively for the kitchen that is located in close proximity to the kitchen.

(3) A new large Type B assisted living facility must provide a garbage can or cart washing area with a floor drain and a supply of hot water. The garbage can or cart washing area may be in the interior or on the exterior of the facility.

(l) Finishes.

(1) A new large Type B assisted living facility must provide non-absorbent, smooth finishes or surfaces on all kitchen floors, walls, and ceilings.

(2) A new large Type B assisted living facility must provide non-absorbent, smooth, cleanable finishes on counter surfaces and all cabinet surfaces.

(3) A new large Type B assisted living facility must ensure surfaces are capable of being routinely cleaned and sanitized to maintain a healthful environment.

(m) Vision panels in communicating doors. A new large Type B assisted living facility must ensure a door between a kitchen and a dining area, serving area, or resident-use area, is provided with a vision panel with fixed safety glass. Where the door is a required fire door or is located in a fire barrier or other fire resistance-rated enclosure, the vision panel, including the glazing and the frame, must meet the requirements of NFPA 101.

(n) Auxiliary serving kitchens.

(1) A new large Type B assisted living facility must ensure an auxiliary serving kitchen is equipped to maintain required food temperatures.

(2) A new large Type B assisted living facility must ensure an auxiliary serving kitchen is equipped with a handwashing lavatory meeting the requirements of this subsection.

(3) A new large Type B assisted living facility must ensure all surfaces in an auxiliary serving kitchen meet the requirements for finishes in this section.

(o) Protection of cooking operations.

(1) A new large Type B assisted living facility must protect cooking facilities according to the requirements in §553.246 of this division (relating to Hazardous Area Requirements for a new Large Type B Assisted Living Facility).

(2) The following commercial or residential cooking equipment used only for reheating, and not for meal preparation, is not required to comply with the requirements of §553.246 of this division:

- (A) microwave ovens;
- (B) hot plates; or
- (C) toasters.

(p) Food storage areas.

(1) A new large Type B assisted living facility must provide a food storage area large enough to consistently maintain a four-day minimum supply of non-perishable food. A food storage area may be located away from the food preparation area as long as there is space adjacent to the kitchen for necessary daily usage.

(2) A new large Type B assisted living facility must provide dollies, racks, pallets, wheeled containers, or shelving so that food is not stored on the floor and must ensure shelves are adjustable wire type shelving.

(3) A new large Type B assisted living facility must provide non-absorbent finishes or surfaces on all floors and walls in food storage areas.

(4) A new large Type B assisted living facility must provide effective ventilation in dry food storage areas to ensure positive air circulation.

(5) A new large Type B assisted living facility must ensure the maximum room temperature in a food storage area does not exceed 85 degrees Fahrenheit at any time when measured at the highest food storage level, but not less than five feet above the floor.

(q) Laundry and linen services.

(1) A new large Type B assisted living facility that co-mingles and processes laundry on-site in a central location, regardless of the type of laundry equipment used, must ensure a laundry area:

(A) is separated from the assisted living building by a fire barrier having a one-hour fire resistance rating. This separation must extend from the floor to the floor or roof above;

(B) is protected throughout by a fire sprinkler system;

(C) has access doors that open to the exterior or to an interior non-resident use area, such as a vestibule or service corridor; and

(D) is provided with:

(i) a soiled linen receiving, holding, and sorting room with a floor drain and forced exhaust to the exterior;

(I) The exhaust must always operate when soiled linen is held in this area; and

(II) The area may be combined with the washer section;

(ii) a general laundry work area that is separated by partitioning a washer section and a dryer section;

(iii) a storage area for laundry supplies;

(iv) a folding area;

(v) an adequate air supply and ventilation for staff comfort without having to rely on opening a door that is part of the fire barrier separation required by subparagraph (A) of this paragraph; and

(vi) provisions to exhaust heat from dryers and to separate dryer make-up air from the habitable work areas of the laundry.

(2) If linen is processed off site, the facility must provide:

(A) a soiled linen holding room with adequate forced exhaust ducted to the exterior; and

(B) a clean linen receiving, holding, inspection, sorting or folding, and storage room.

(3) A new large Type B assisted living facility must ensure a laundry area for resident-use meets the following requirements.

(A) A new large Type B assisted living facility must ensure only residential type washers and dryers are provided in a laundry area for resident-use.

(B) When more than three washers and three dryers are provided in one laundry area for resident-use, the area must be:

(i) protected throughout by a fire sprinkler system; or

(ii) separated from the facility by a fire barrier having a one-hour fire resistance rating.

§553.243. Means of Egress Requirements for a New Large Type B Assisted Living Facility.

(a) A new large Type B assisted living facility must meet the requirements of 18.2, Means of Egress, in NFPA 101, Chapter 18, New Health Care Occupancies, except as described in this section.

(b) A new large Type B assisted living facility must ensure doors meet the requirements of 18.2.2.2, Doors, in NFPA 101, Chapter 18, New Health Care Occupancies, and the additional requirements of this section.

(1) A resident room door in a new large Type B assisted living facility must latch in its frame to resist the passage of smoke.

(2) In a new large Type B assisted living facility comprised of buildings containing living units with independent cooking equipment within the living unit, a door between the living unit and a corridor or hallway must:

(A) be self-closing or automatic-closing; and

(B) latch in its frame to resist the passage of smoke.

(3) A resident room door or living unit door must not be arranged to prevent the occupant from closing the door.

(c) A new large Type B assisted living facility providing spaces for use by residents on floors other than the ground floor must provide at least two separate approved stairs and must ensure stairs used as a means of egress meet the requirements of 18.2.2.3, Stairs, in NFPA 101, Chapter 18, New Health Care Occupancies.

(d) A new large Type A assisted living facility must ensure means of egress are marked according to the requirements of 18.2.10, Marking of Means of Egress, in NFPA 101, Chapter 18, New Health Care Occupancies.

(e) A new large Type B assisted living facility must provide emergency lighting according to the requirements of 18.2.9, Emergency Lighting, in NFPA 101, Chapter 18, New Health Care Occupancies.

§553.245. Fire Protection Systems Requirements for a New Large Type B Assisted Living Facility.

(a) Fire alarm and smoke detection system. A new large Type B assisted living facility must provide a fire alarm system meeting the requirements of 18.3.4, Detection, Alarm, and Communications Systems, in NFPA 101, Chapter 18, New Health Care Occupancies, as modified by this section.

(1) General. A new large Type B assisted living facility must ensure the operation of any alarm initiating device automatically activates the manual fire alarm system evacuation alarm for the entire building.

(2) Smoke detectors.

(A) A new large Type B assisted living facility must install smoke detectors meeting the requirements of 18.3.4.5.1, Corridors, in NFPA 101, Chapter 18, New Health Care Occupancies.

(B) A new large Type B assisted living facility comprised of buildings containing living units with independent cooking equipment within the living unit, must additionally have:

(i) a smoke detector installed in all resident bedrooms, corridors, hallways, living rooms, dining rooms, offices, kitchens and laundries within the living unit, that sounds an alarm only within the living unit; and

(ii) a heat detector installed in the kitchen within the living unit that activates the general alarm.

(3) Alarm control panel.

(A) A new large Type B assisted living facility must provide a fire alarm control unit, or a fire alarm annunciator providing annunciation of all fire alarm, supervisory, and trouble signals by audible and visible indicators, in a location visible to staff at or near the staff area that is attended 24 hours a day.

(B) A new large Type B assisted living facility is not required to ensure a fire alarm control unit or fire alarm annunciator is visible to staff if the fire alarm is monitored by devices carried by all staff.

(C) A new large Type B assisted living facility must ensure a fire alarm panel indicates each floor and smoke compartment, as applicable, as a separate zone. Each zone must provide an alarm and trouble indication. When all alarm initiating devices are addressable and the status of each device is identified on the fire alarm panel, zone indication is not required.

(4) Fire alarm power source.

(A) A new large Type B assisted living facility must ensure a fire alarm system is powered by a permanently-wired, dedicated branch circuit that is powered from a commercial power source in accordance with NFPA 70.

(B) A new large Type B assisted living facility must provide a secondary, emergency power source meeting the requirements of NFPA 72.

(5) Emergency forces notification. A new large Type B assisted living facility must ensure a fire alarm system automatically notifies emergency forces according to the requirements of 18.3.4.3.2, Emergency Forces Notification, in NFPA 101, Chapter 18, New Health Care Occupancies

(b) Fire sprinkler system. A new large Type B assisted living facility must provide a fire sprinkler system meeting the requirements of NFPA 13 in accordance with 18.3.5, in NFPA 101, Chapter 18, New Health Care Occupancies.

(c) Portable Fire Extinguishers. A new large Type B assisted living facility must provide and maintain portable fire extinguishers according to the requirements of NFPA 10.

(1) A new large Type B assisted living facility must ensure all requirements of NFPA 10 are followed for all extinguisher types, including requirements for location, spacing, mounting heights, monthly inspections by staff, yearly inspections by a licensed agent, any necessary servicing, and hydrostatic testing as recommended by the manufacturer.

(2) A new large Type B assisted living facility must ensure portable fire extinguishers are located in resident corridors so the travel distance from any point in the facility to an extinguisher is no more than 75 feet.

(3) A new large Type B assisted living facility must ensure the actual size of any portable fire extinguisher meets the requirements of NFPA 10 for maximum floor area per unit covered, but an extinguisher must be no smaller than the following.

(A) A water-type portable fire extinguisher must have a rating of at least 1-A according to NFPA 10.

(B) All other portable fire extinguishers must have a rating of at least 2-A:10-B:C according to NFPA 10.

(C) A facility must provide at least one approved 20-B:C portable fire extinguisher in each laundry, kitchen, and walk-in mechanical room.

(4) A new large Type B assisted living facility must ensure portable fire extinguishers are installed on hangers or brackets supplied with the extinguisher or mounted in an approved cabinet.

(5) A new large Type B assisted living facility must ensure a portable fire extinguisher is protected from impact or dislodgement.

(6) A new large Type B assisted living facility must ensure a portable fire extinguisher is installed at an appropriate height.

(A) A portable fire extinguisher having a gross weight of up to 40 pounds must be installed so the top of the extinguisher is not more than five feet above the floor.

(B) A portable fire extinguisher having a gross weight greater than 40 pounds must be installed so the top of the extinguisher is not more than three and a half feet above the floor.

(C) A portable fire extinguisher must be installed so the clearance between the bottom of the extinguisher and the floor is at least four inches.

(7) A portable extinguisher provided in a hazardous room must be located as close as possible to the exit access door leading from the room and on the latch or knob side of the door.

§553.247. Mechanical Requirements for a New Large Type B Assisted Living Facility.

(a) Wastewater and water supply.

(1) Wastewater. A new large Type B assisted living facility must ensure wastewater and sewage are discharged into a sewerage system or an onsite sewerage facility approved by the Water Quality Division of TCEQ, or to a system regulated by an entity responsible for water quality in that jurisdiction as approved by the Water Quality Division of TCEQ.

(2) Water supply. A new large Type B assisted living facility must ensure the water supply is of safe, sanitary quality, suitable for use, adequate in quantity and pressure, and obtained from a public or private water supply system or a private well.

(b) Resident-use plumbing fixtures.

(1) Water closets and lavatories.

(A) A new large Type B assisted living facility must provide at least one water closet and one lavatory for each six residents and for each additional resident fewer than six. Multiple toilets in a single space must comply with paragraph (2)(B) of this subsection.

(B) A new large Type B assisted living facility must ensure a lavatory is readily accessible to each water closet.

(C) A new large Type B assisted living facility must provide at least one water closet, lavatory, and bathing unit, that are accessible to residents, on each floor containing resident sleeping rooms.

(2) Bathing units.

(A) A new large Type B assisted living facility must provide one tub or shower for every 10 residents and for any fraction thereof.

(B) Where multiple water closets or bathing units are provided in a single space, a new large Type B assisted living facility must provide partitions or curtains to separate plumbing fixtures for resident privacy.

(C) A new large Type B assisted living facility must ensure tubs and showers have non-slip bottoms or floor surfaces, either built-in or applied to the surfaces.

(3) Hot water supply. A new large Type B assisted living facility must provide a supply of hot water for resident-use. Hot water for lavatories and bathing units accessible to residents must be maintained between 100 and 120 degrees Fahrenheit.

(4) Supplies. A new large Type B assisted living facility must supply towels, soap, and toilet tissue for individual resident-use.

(c) Public- and staff-use plumbing fixtures. In addition to the staff toilets required for the dietary staff according to §553.242(j) of this division (relating to Space Planning and Utilization Requirements for a New Large Type B Assisted Living Facility), a new large Type B assisted living facility must provide toilets, including water closets and lavatories, for use by the public and by facility staff as follows:

(1) if licensed for 60 or fewer residents, a new large Type B assisted living facility must provide a toilet for use by the public and by facility staff; or

(2) if licensed for more than 60 residents, a new large Type B assisted living facility must provide a toilet for use by the public and a separate toilet for use by facility staff.

(d) Gas. A new large Type B assisted living facility must ensure equipment using natural gas or propane and related gas piping meets the requirements of 9.1.1, Gas, in NFPA, Chapter 9, Building Service and Fire Protection Equipment.

(e) Heating, ventilation, and air-conditioning (HVAC) and exhaust systems.

(1) General requirements. A new large Type B assisted living facility must ensure HVAC equipment meets the requirements of 18.5.2, Heating, Ventilating and Air-Conditioning, in NFPA 101, Chapter 18, New Health Care Occupancies.

(2) Heating and cooling. A new large Type B assisted living facility must provide heating and cooling for resident comfort.

(A) A new large Type B assisted living facility must ensure air conditioning systems can maintain and does maintain the comfort range of 68 to 82 degrees Fahrenheit in resident-use areas.

(B) A new large Type B assisted living facility must have a central air conditioning system, or a substantially similar air conditioning system, that can maintain and does maintain a temperature range required under subparagraph (A) of this paragraph within areas used by residents.

(C) A new large Type B assisted living facility may not use an open flame heating device in the facility, except as permitted by subparagraphs (D) - (F) of this paragraph.

(D) A new large Type B assisted living facility must ensure any heating device, other than a central heating plant, suspended unit heater, or working fireplace, meets the requirements of 18.5.2.2, in NFPA 101, Chapter 18, New Health Care Occupancies.

(E) A new large Type B assisted living facility must ensure a suspended unit heater meets the requirements of 18.5.2.3(1), in NFPA 101, Chapter 18, New Health Care Occupancies.

(F) A new large Type B assisted living facility must ensure a working fireplace meets the following requirements.

(i) A direct-vent gas fireplace must meet the requirements of 18.5.2.3(2), in NFPA 101, Chapter 18, New Health Care Occupancies.

(ii) A solid fuel-burning fireplace must meet the requirements of 18.5.2.3(3), in NFPA 101, Chapter 18, New Health Care Occupancies.

(3) Ventilation.

(A) A new large Type B assisted living facility must be ventilated using mechanical ventilation.

(B) A new large Type B assisted living facility with interior areas designated for smoking within the building must provide mechanical ventilation directed to the exterior to remove smoke at the rate of 10 air changes per hour.

(4) Exhaust. A new large Type B assisted living facility must ensure bathrooms, toilet rooms, janitorial facilities, and other odor-producing rooms or areas for soiled or unsanitary operations are exhausted with powered exhaust vented to the exterior for odor control.

§553.248. *Electrical Requirements for a New Large Type B Assisted Living Facility.*

(a) Electrical system. A new large Type B assisted living facility must ensure an electrical system meets the requirements of 9.1.2, Electrical Systems, in NFPA 101, Chapter 9, Building Service and Fire Protection Equipment.

(b) Lighting. A new large Type B assisted living facility must provide illumination throughout the building. Minimum lighting levels must not be lower than:

(1) 10 footcandles in resident rooms during the day--illumination requirements for these areas apply to lighting throughout the space, as measured at 30 inches above the floor anywhere in the room.

(2) 20 footcandles in each corridor, staff station, dining room, lobby, toilet room, bathroom, bathing facility, laundry room, stairway, and elevator during the day--illumination requirements for these areas apply to lighting throughout the space, as measured at 30 inches above the floor anywhere in the room.

(3) 50 footcandles for each medication preparation or storage area, kitchen, and desk within a staff station. Illumination requirements apply when the area is in use for a task it supports, as measured where the task is being performed.

(c) Telephone. A new large Type B assisted living facility must provide at least one telephone in the facility that is available to both staff and residents. Emergency telephone numbers must be posted conspicuously at or near the telephone, including fire, police, emergency medical services, and poison control center services.

(d) Communication system. A new large Type B assisted living facility that consists of two or more floors or separate buildings must provide a communication system from each resident living unit to a central staff station.

(1) The communication system must:

(A) be a direct telephone, emergency call system, or intercom;

(B) include at least:

(i) one central notification station at a fixed location that receives all calls processed through the system; and

(ii) one permanently fixed call station or device in every resident living unit.

(2) A new large Type B assisted living facility may provide:

(A) additional or portable notification stations or devices in addition to the central notification; or

(B) additional call stations or devices in private or common resident areas.

(3) A new large Type B assisted living facility may provide residents with portable, wireless call transmitters, such as pendants or wrist bands. However, a device may not be a substitute for a fixed call station in a resident living unit.

(e) Generator.

(1) A new large Type B assisted living facility that provides a system to supply, distribute, and control electricity for emergency lighting and illumination of exit signs required by NFPA 101, such as a system that uses a generator set as an alternate source of power, must comply with the requirements of Article 700, Emergency Systems, in NFPA 70, Chapter 7, Special Conditions.

(A) The emergency system may not include any systems or equipment except:

(i) emergency lighting, as required by NFPA 101;

(ii) secondary power to ensure illumination of exit signs, as required by NFPA 101; and

(iii) secondary power for detection, alarm, and communications systems, as required by NFPA 72.

(B) A new large Type B assisted living facility must ensure wiring from an emergency source to emergency loads is kept en-

tirely independent of all other wiring and equipment except as permitted by Article 700.10, Wiring, Emergency System, in NFPA 70. Two or more emergency circuits supplied from the same source may be routed in the same raceway, cable, box, or cabinet.

(C) A new large Type B assisted living facility must ensure that transfer equipment for an emergency system does not serve another facility, including a hospital, a nursing facility or an independent living facility.

(2) A new large Type B assisted living facility that provides a system to supply, distribute, and control electricity for systems and equipment not identified in paragraph (1) of this subsection must comply with the requirements of Article 702, Optional Standby Systems, in NFPA 70.

(3) The alternate power source for the emergency system may supply other emergency loads, legally required standby loads, and optional standby system loads where the source has adequate capacity to ensure adequate power to the different circuits in the following priority:

(A) emergency circuits for the assisted living facility

(B) legally required standby circuits, if any; and

(C) optional standby circuits, if any.

(4) A new large Type B assisted living facility is not required to comply with the requirements of Article 517, Health Care Facilities, in NFPA 70.

§553. 249. *Miscellaneous Requirements for a New Large Type B Assisted Living Facility.*

(a) A new large Type B assisted living facility must provide an elevator if:

(1) the building in which the facility is located is three or more stories in height; or

(2) the facility provides services or social activities to residents in spaces located on a floor other than the floor where the entrance to the facility is located.

(b) A new large Type B assisted living facility must ensure an elevator meets the requirements of 18.5.3, Elevators, Escalators, and Conveyors, in NFPA 101, Chapter 18, New Health Care Occupancies.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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