

Chapter DHS 134

FACILITIES SERVING PEOPLE WITH DEVELOPMENTAL DISABILITIES

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Note: Chapter H 34 as it existed on June 30, 1988 was repealed and a new chapter HFS 134 was created effective July 1, 1988; Chapter HSS 134 was renumbered chapter HFS 134 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, December, 1996, No. 492. Chapter HFS 134 was renumbered chapter DHS 134 under s. 13.92 (4) (b) 1., Stats., and corrections made under s. 13.92 (4) (b) 7., Stats., Register January 2009 No. 637.

Subchapter I — General

DHS 134.11 Authority and purpose. This chapter is promulgated under the authority of s. 50.02 (2) and (3), Stats., to provide conditions of licensure for facilities that primarily serve people with developmental disabilities who require active treatment. This chapter is intended to protect and promote the health, safety and well-being of residents of these facilities.

History: Cr. Register, June, 1988, No. 390, eff. 7-1-88; CR 03-033: am. Register December 2003 No. 576, eff. 1-1-04.

DHS 134.12 Scope. (1) **APPLICABILITY.** All facilities that provide care primarily for people with developmental disabilities who require active treatment, including facilities owned and operated by the state, a county, a municipality or another public body, are subject to this chapter.

(2) **CUMULATIVE RIGHTS.** The rights and safeguards provided by these rules are cumulative and may not be construed as restricting any right or safeguard provided for any resident by ch. 50, 51, 54, or 55, Stats., or any other applicable statute or rule.

History: Cr. Register, June, 1988, No. 390, eff. 7-1-88; CR 03-033: am. (1) Register December 2003 No. 576, eff. 1-1-04; CR 04-053: am. (1) Register October 2004 No. 586, eff. 11-1-04; correction in (2) made under s. 13.93 (2m) (b) 7., Stats., Register October 2007 No. 622.

DHS 134.13 Definitions. In this chapter:

(1) "Abuse" has the meaning specified under s. DHS 13.03 (1).

(2) "Active treatment" means an ongoing, aggressive and consistently applied program of training and treatment services to allow the client to function as independently as possible and maintain his or her maximum functional abilities.

(3) "ADL" or "activities of daily living" means personal skills essential for privacy and independence including toilet training, personal hygiene, self feeding, bathing, dressing, grooming and communication of basic needs.

(4) "Administrator" means a person who is licensed under ch. 456, Stats., and who is responsible for the total operation of the facility.

(4m) "Advanced practice nurse prescriber" means a person who has been granted a certificate to issue prescription orders under s. 441.16 (2), Stats.

(5) "Ambulatory" means able to walk independently or with limited assistance from a person or equipment, such as a walker or cane.

(6) "Behavior management" means a method used to establish, alter, maintain or eliminate specified behaviors by providing reinforcement that increases the strength of appropriate behaviors and decreases the strength of inappropriate behaviors.

(7) "Center for the developmentally disabled" means a department-operated residential institution for the care of people with developmental disabilities.

Note: There are 3 state centers for people with developmental disabilities in Wisconsin: Central Center, Northern Center and Southern Center.

(8) "Department" means the Wisconsin department of health services.

(9) "Developmental disability" means mental retardation or a related condition such as cerebral palsy, epilepsy or autism, but excluding mental illness and infirmities of aging, which is:

(a) Manifested before the individual reaches age 22;

(b) Likely to continue indefinitely; and

(c) Results in substantial functional limitations in 3 or more of the following areas of major life activity:

1. Self-care;
2. Understanding and use of language;
3. Learning;
4. Mobility;
5. Self-direction; and
6. Capacity for independent living.

(10) "Dietitian" means a person who is any of the following:

(a) Certified with the state of Wisconsin under s. 448.78, Stats.;

or

(b) Licensed or certified as a dietitian in another state.

(11) "Existing facility" means a facility that was licensed under ch. H 34 or 132 on July 1, 1988.

(12) "Facility" means a facility serving people with developmental disabilities.

(13) "FDD" or "facility serving people with developmental disabilities" means a residential facility with a capacity of 4 or more individuals who need and receive active treatment and health services as needed.

(14) "Full-time" means at least 37.5 hours each week devoted to facility business.

(15) "Habilitation" means treatment provided to promote and maintain the individual's highest level of physical, social and economic functioning and to prevent further loss of functioning, and includes treatment following rehabilitation which is necessary to maintain the achieved level of functioning and to prevent further loss of functioning.

(16) "Health services supervisor" means a registered nurse or licensed practical nurse who is responsible for supervising health care provided to facility residents.

(17) "Interdisciplinary team" means the persons who possess the knowledge, skills and expertise necessary to accurately identify the comprehensive array of the client's needs and design a program that is responsive to those needs.

(18) "IPP" or "individual program plan" means a written statement of the services which are to be provided to a resident based on an interdisciplinary assessment of the individual's developmental needs, expressed in behavioral terms, the primary purpose of which is to provide a framework for the integration of all the programs, services and activities received by the resident and to serve as a comprehensive written record of the resident's developmental progress.

(18m) "Involuntary administration of psychotropic medication" means any of the following:

(a) Placing psychotropic medication in an individual's food or drink with knowledge that the individual protests receipt of the psychotropic medication.

(b) Forcibly restraining an individual to enable administration of psychotropic medication.

(c) Requiring an individual to take psychotropic medication as a condition of receiving privileges or benefits.

(19) "Licensed practical nurse" means a person licensed as a practical nurse under ch. 441, Stats.

(20) "Life safety code" means the National Fire Protection Association's standard 101.

(21) "Living unit" means the area of a facility that houses the residents' bedrooms and may include dining and activity areas.

(22) "Medical care plan" means a formal plan for providing physician services and related medical care services.

(23) "Mobile nonambulatory" means unable to walk without assistance, but able to move from place to place with the use of a device such as a walker, crutches, a wheel chair or a wheeled platform.

(23m) "Neglect" has the meaning specified under s. DHS 13.03 (14).

(24) "New construction" or "newly constructed" means construction for the first time of any building or addition to an existing building, for which the plans are approved by the department after July 1, 1988.

(25) "New facility" means a facility that was not licensed under ch. H 34 or 132 on July 1, 1988.

(26) "NFPA" means national fire protection association.

(27) "Nonambulatory" means unable to walk without assistance.

(28) "Nonmobile" means unable to move from place to place.

(29) "Nurse" means a registered nurse or a licensed practical nurse.

(30) "Nurse practitioner" means a registered professional nurse who meets the requirements of s. DHS 105.20.

(31) "Nursing assistant" means a person who is employed primarily to provide direct care services to residents but is not registered or licensed under ch. 441, Stats.

(32) "Pharmacist" means a person registered as a pharmacist under ch. 450, Stats.

(33) "Physical therapist" means a person licensed to practice physical therapy under ch. 448, Stats.

(34) "Physician" means a person licensed to practice medicine or osteopathy under ch. 448, Stats.

(35) "Physician extender" means a person who is a physician's assistant or a nurse practitioner acting under the general supervision and direction of a physician.

(36) "Physician assistant" means a person certified under ch. 448, Stats., to perform as a physician assistant.

(37) "Practitioner" means a physician, dentist, podiatrist or other person permitted under Wisconsin law to distribute, dispense and administer prescription drugs, including controlled substances, in the course of professional practice.

(38) "Primarily serves" means that at least 51% of an existing facility's residents, calculated on an annual basis, have a developmental disability, and 100% of a new facility's residents have a developmental disability.

(38g) "Protest" means make more than one discernible negative response, other than mere silence, to the offer of, recommendation for, or other proffering of voluntary receipt of psychotropic medication. "Protest" does not mean a discernible negative response to a proposed method of administration of the psychotropic medication.

(38r) "Psychotropic medication" means a prescription drug, as defined in s. 450.01 (20), Stats., that is used to treat or manage a psychiatric symptom or challenging behavior.

(39) "QMRP" or "qualified mental retardation professional" means a person who has specialized training in mental retardation or at least one year of experience in treating or working with people with mental retardation or other developmental disabilities, and is one of the following:

(a) A psychologist licensed under ch. 455, Stats.;

(b) A physician;

(c) A social worker with a graduate degree from a school of social work accredited or approved by the council on social work education or with a bachelor's degree in social work from a college or university accredited or approved by the council on social work education;

(d) A physical or occupational therapist who meets the requirements of s. DHS 105.27 or 105.28;

(e) A speech pathologist or audiologist who meets the requirements of s. DHS 105.30 or 105.31;

(f) A registered nurse;

(g) A therapeutic recreation specialist who is a graduate of an accredited program or who has a bachelor's degree in a specialty area such as art, dance, music, physical education or recreation therapy; or

(h) A human services professional who has a bachelor's degree in a human services field other than those listed in pars. (a) to (g), such as rehabilitation counseling, special education or sociology.

(40) "Recuperative care" means care anticipated to be provided for a period of 90 days or less for a resident whose physician has certified that he or she is convalescing or recuperating from an illness or a medical treatment.

(41) "Registered nurse" means a person who holds a certificate of registration as a registered nurse under ch. 441, Stats.

(42) "Rehabilitation" means treatment provided to restore the individual to the fullest possible level of physical, social and economic functioning until the individual's level and patterns of

needs and abilities do not show significant change. "Rehabilitation" may include medical treatment, psychiatric treatment, physical therapy, occupational therapy, speech and hearing therapy, nursing care, vocational counseling, social services or recreational therapy.

(43) "Resident" means a person cared for or treated in any facility on a 24-hour basis.

(44) "Respite care" means care anticipated to be provided for a period of 28 days or less for the purpose of temporarily relieving a family member or other caregiver from his or her daily caregiving duties.

(45) "Short-term care" means recuperative care or respite care.

(46) "Small facility" means a facility licensed to serve 16 or fewer persons.

(47) "Specialized consultation" means the provision of professional or technical advice such as systems analysis, crisis resolution or inservice training, to assist the facility in maximizing service outcomes.

(48) "Supervision" means at least intermittent face-to-face contact between a supervisor and his or her assistant, with the supervisor instructing and overseeing the assistant, but does not require the continuous presence of the supervisor in the same building as the assistant.

(49) "Unit dose drug delivery system" means a system for the distribution of medications in which single doses of medications are individually packaged and sealed for distribution to residents.

History: Cr. Register, June, 1988, No. 390, eff. 7-1-88; corrections in (30), (39) (d) and (e) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532; CR 03-033: am. (7), (10) (a), (12), (13), (17) and (39) (intro.) Register December 2003 No. 576, eff. 1-1-04; CR 04-053: r. and rec. (1), (2) and (3), am. (4), (5), (10) and (13), cr. (4m) and (23m) Register October 2004 No. 586, eff. 11-1-04; CR 07-042: cr. (18m), (38g) and (38r) Register October 2007 No. 622, eff. 11-1-07; corrections in (1), (8), (23m), (30), (39) (d) and (e) made under s. 13.92 (4) (b) 6. and 7., Stats., Register January 2009 No. 637.

DHS 134.14 Licensure. (1) APPLICATION. Application for a license to operate an FDD shall be made on a form provided by the department.

Note: To obtain a copy of the application form for a license to operate an FDD, write: Division of Quality Assurance, P.O. Box 2969, Madison, Wisconsin 53701-2969.

(2) RESTRICTIONS. (a) A new FDD may not have more than 16 residents, except that:

1. A center serving people with developmental disabilities may have more than 16 residents; and

2. A home licensed under ch. DHS 132 on July 1, 1988 which under ch. DHS 122 has converted or converts all of a building or a physically identifiable distinct part of a building to be an FDD may have a capacity that is equal to the total number of beds approved under s. DHS 122.07 (2).

(b) A home licensed under ch. DHS 132 may not be issued a license to operate as an FDD after July 1, 1988 if it is not an FDD on July 1, 1988, except as provided in par. (a) 2.

(3) REQUIREMENTS FOR A LICENSE. (a) An applicant for a license shall submit the following information to the department:

1. The identities of all persons or business entities having the authority, directly or indirectly, to direct or influence the direction of the management or policies of the facility;

2. The identities of all persons or business entities having any ownership interest in the facility, whether direct, or indirect, and whether the interest is in the profits, land or building, including owners of any business entity which owns any part of the land or building;

3. The identities of all creditors holding a security interest in the premises, whether in the land or the building; and

4. In the case of a change of ownership, disclosure of any relationship or connection between the old licensee and the new licensee, or between any owner or operator of the old licensee and

the owner or operator of the new licensee, whether direct or indirect.

(b) The applicant shall provide any additional information requested by the department during its review of the license application.

(c) The applicant shall submit evidence to establish that he or she has sufficient resources to permit operation of the facility for a period of 6 months.

(d) No license may be issued until the applicant has supplied all information requested by the department.

(4) ACTION BY THE DEPARTMENT. (a) After receiving a complete application, the department shall investigate the applicant to determine the applicant's ability to comply with this chapter.

(b) Within 60 days after receiving a complete application for a license, including all information required under sub. (3) (a) to (c), the department shall either approve the application and issue a license or deny the application. If the application for a license is denied, the department shall give the applicant reasons, in writing, for the denial.

(5) TYPES OF LICENSE. (a) *Probationary license.* If the applicant has not previously been licensed under this chapter or if the facility is not in operation at the time application is made, the department shall issue a probationary license. A probationary license shall be valid for 12 months from the date of issuance unless sooner suspended or revoked under s. 50.03 (5), Stats. If the applicant is found to be in compliance with this chapter, a regular license shall be issued.

(b) *Regular license.* If the applicant has been previously licensed, the department shall issue a regular license if the applicant is found to be in compliance with this chapter. A regular license is valid indefinitely unless suspended or revoked.

(5m) ANNUAL REPORT. Every 12 months, on a schedule determined by the department, an FDD licensee shall submit a report to the department in the form and containing the information that the department requires, including payment of the fee required under s. 50.135 (2) (a), Stats. If a complete report is not timely filed, the department shall issue a warning to the licensee. If the licensee of an FDD who has not filed a timely report fails to submit a complete report to the department within 60 days after the date established under the schedule determined by the department, the department may revoke the license.

(5r) REPORTING INVOLUNTARY ADMINISTRATION OF PSYCHOTROPIC MEDICATION. The licensee shall provide, in a format approved by the department, information required by the department to assess the facility's compliance with s. 55.14, Stats., relating to involuntary administration of psychotropic medication to a resident.

(6) SCOPE OF LICENSE. (a) A license is issued only for the premises and the persons named in the license application, and may not be transferred or assigned by the licensee.

(b) The license shall state any applicable restrictions, including maximum bed capacity and any other limitation that the department considers appropriate and necessary taking all facts and circumstances into account.

(c) The licensee shall fully comply with all requirements and restrictions of the license.

(7) CONDITION FOR MEDICAL ASSISTANCE PROVIDER CERTIFICATION. In order to claim reimbursement from the department's medical assistance program for the cost of care provided to medical assistance recipients, an FDD is required to be a certified provider under that program. The sole condition for certification, stated in s. DHS 105.12, is that the FDD be licensed under this chapter. For services covered by the MA program and for prior authorization requirements, see chs. DHS 101 to 108.

History: Cr. Register, June, 1988, No. 390, eff. 7-1-88; corrections in (2) (a) 2. and (7) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532; am. (5), cr. (5m), Register, August, 2000, No. 536, eff. 9-1-00; CR 03-033: am. (1), (2) (a) (intro.) and (5m) Register December 2003 No. 576, eff. 1-1-04; CR 04-053: am. (2) (a) 1. Register October 2004 No. 586, eff. 11-1-04; CR 07-042: cr. (5r) Register

October 2007 No. 622, eff. 11-1-07; corrections in (2) and (7) made under s. 13.92 (4) (b) 7., Stats., Register January 2009 No. 637.

DHS 134.15 Waivers and variances. (1) DEFINITIONS.

In this section:

(a) "Variance" means the approval of an alternate requirement in place of a requirement of this chapter.

(b) "Waiver" means the granting of an exemption from a requirement of this chapter.

(2) REQUIREMENTS FOR WAIVERS OR VARIANCES. The department may grant a waiver or variance if the department finds that the waiver or variance will not adversely affect the health, safety or welfare of residents, taking into account the size of the facility and the condition of the residents, and that:

(a) Strict enforcement of a requirement would result in unreasonable hardship on the facility or a resident; or

(b) An alternative to a rule which may involve introducing a new concept, method, procedure or technique, using new equipment, modifying personnel qualifications or providing for the conduct of pilot projects, is in the interests of better care or management.

(3) PROCEDURES. (a) *Applications.* 1. All applications for a waiver or variance shall be made in writing to the department, specifying the following:

- a. The rule from which the waiver or variance is requested;
- b. The time period for which the waiver or variance is requested;
- c. If the request is for a variance, the specific alternative action which the facility proposes;
- d. The reasons for the request; and
- e. Assurances that sub. (2) would be satisfied.

2. A request for a waiver or variance may be made at any time.

3. The department may require additional information from the facility before acting on the request.

Note: A request for a waiver or variance should be addressed to: Division of Quality Assurance, P.O. Box 2969, Madison, Wisconsin 53701-2969.

(b) *Grants and denials.* 1. The department shall grant or deny each request for waiver or variance in writing. Notice of denial shall contain the reasons for denial. If a notice of a denial is not issued within 60 days after the receipt of a complete request, the waiver or variance shall be automatically approved.

2. The department may impose whatever conditions on the granting of a waiver or variance that it deems necessary.

3. The department and a facility may agree to modify the terms of a requested variance.

4. The department may limit the duration of any waiver or variance.

(c) *Appeal.* 1. A facility may ask the administrator of the department's division of long term care to review the reasonableness of the denial of a request for a waiver or variance. The administrator shall make that review and notify the facility of his or her decision within 20 days following receipt of the appeal.

Note: To appeal the denial of a request for a waiver or variance, write: Administrator, Division of Long Term Care, P.O. Box 7851, Madison, Wisconsin 53707-7851.

2. a. A denial of a waiver or variance may be contested by requesting a hearing as provided by ch. 227, Stats.

b. The licensee shall sustain the burden of proving that the denial of a waiver or variance was unreasonable.

(d) *Revocation.* The department may revoke a waiver or variance if:

1. The department determines that the waiver or variance is adversely affecting the health, safety or welfare of the residents;

2. The department determines that the facility has failed to comply with a variance as granted;

3. The licensee notifies the department in writing that he or she wishes to relinquish the waiver or variance and be subject to the rule previously waived or varied; or

4. Revocation is necessary because of a change in the law.

History: Cr. Register, June, 1988, No. 390, eff. 7-1-88; correction in (3) (c) 1. made under s. 13.93 (2m) (b) 6., Stats., Register December 2003 No. 576; correction in (3) (c) 1. made under s. 13.92 (4) (b) 6., Stats., Register January 2009 No. 637.

Subchapter II — Residents' Rights and Protections

DHS 134.31 Rights of residents. (1) FACILITY OBLIGATIONS. All facilities shall comply with the requirements governing residents' rights enumerated in s. 50.09, Stats., and this chapter. Facilities shall have written policies and procedures to ensure that staff recognize that residents have these rights, and that staff respect and enforce these rights. The written policies and procedures shall encourage residents to exercise their rights on their own behalf whenever practicable.

(2) DELEGATION OF RIGHTS AND RESPONSIBILITIES. Each facility shall have written policies and procedures that provide that:

(a) If a resident is adjudicated incompetent under ch. 54, Stats., all rights and responsibilities of the resident which the resident is not competent to exercise pass to the resident's guardian pursuant to s. 50.09 (3), Stats., except as otherwise provided by law; and

(b) If there has been no adjudication of incompetency but the resident requires assistance in understanding or exercising his or her rights, that assistance is provided to the resident to the extent necessary for the resident to receive the benefits of this section, including involvement of the next of kin or sponsoring agency and notification of the appropriate county agency if there is need for guardianship.

(3) RESIDENTS' RIGHTS. Every resident, except as provided in sub. (4), has the right to:

(a) *Communications.* Have private and unrestricted communications, unless medically contraindicated as documented by the resident's physician in the resident's medical record, except that receipt of mail from any source and communication with public officials or with the resident's attorney may not be restricted in any event. The right to private and unrestricted communications includes the right to:

1. Receive, send and mail sealed, unopened correspondence. No resident's incoming or outgoing correspondence may be opened, delayed, held or censored, except that a resident or guardian may direct in writing that specified incoming correspondence be opened, delayed or held;

2. Use a telephone for private communications, unless medically contraindicated in which case the resident shall be informed in writing of the grounds for withdrawal of the right and shall have the opportunity for a review of the withdrawal of the right;

3. Have private visits, pursuant to a reasonable written visitation policy, unless medically contraindicated in which case the resident shall be informed in writing of the grounds for withdrawal of the right and shall have the opportunity for a review of the withdrawal of the right. The facility shall ensure that individuals allowed to visit under this paragraph do not infringe on the privacy and rights of the other residents;

4. Communicate with staff in regard to all aspects of the treatment program. To facilitate this communication, the facility shall:

a. Keep the resident's legal guardian or, if there is no guardian, family or next of kin, informed of resident activities and significant changes in the resident's condition;

b. Answer communications from resident's relatives or guardian promptly and appropriately;

c. Allow close relatives and guardians to visit at any reasonable hour, without prior notice, unless an interdisciplinary team determines that this would not be appropriate; and

d. Allow parents and guardians to visit any part of the facility that provides services to residents.

(b) *Grievances.* Present grievances on the resident's own behalf or through others to the facility's staff or administrator, to public officials or to any other person without justifiable fear of

reprisal and to join with other residents or individuals within or outside of the facility to work for improvements in resident care.

(c) *Finances.* Manage one's own financial affairs, including any personal allowances under federal or state programs. No resident funds may be held or spent except in accordance with the following requirements:

1. A facility may not hold or spend a resident's funds unless the resident or another person legally responsible for the resident's funds authorizes this action in writing. The facility shall obtain separate authorizations for holding a resident's funds and for spending a resident's funds. The authorization for spending a resident's funds may include a spending limit. Expenditures that exceed a designated spending limit require a separate authorization for each individual occurrence;

2. Any resident funds held or controlled by the facility and any earnings from them shall be credited to the resident and may not be commingled with other funds or property except that of other residents;

3. The facility shall furnish a resident, the resident's guardian or a representative designated by the resident with at least an annual statement of all funds and properties held by the facility for the resident and all expenditures made from the resident's account, and a similar statement at the time of the resident's permanent discharge. If the resident has authorized discretionary expenditures by the facility and the facility has accepted responsibility for these expenditures, upon written request of the resident, the resident's guardian or a designated representative of the resident, the facility shall issue this statement monthly;

4. The facility shall maintain a record of all expenditures, disbursements and deposits made on behalf of the resident; and

5. The facility shall provide training and counseling to residents in the management and use of money as necessary to meet each resident's needs.

(d) *Admission information.* Be fully informed in writing, prior to or at the time of admission, of all services and the charges for these services, and be informed in writing, during the resident's stay, of any changes in the services available or in charges for services, as follows:

1. No person may be admitted to a facility unless that person or that person's guardian or designated representative has signed an acknowledgement of having received a statement of information before or on the day of admission which includes at least the following information or, in the case of a person to be admitted for short-term care, the information required under s. DHS 134.70 (3):

a. An accurate description of the basic services provided by the facility, the rates charged for those services and the method of payment for them;

b. Information about all additional services regularly offered but not included in the basic services. The facility shall provide information on where a statement of the fees charged for each of these services can be obtained. These additional services include pharmacy, x-ray, beautician and all other additional services regularly offered to residents or arranged for residents by the facility;

c. The method for notifying residents of a change in rates or fees;

d. Terms for refunding advance payments in the event of a resident's transfer, death or voluntary or involuntary discharge;

e. Terms for holding and charging for a bed during a resident's temporary absence;

f. Conditions for involuntary discharge or transfer, including transfer within the facility;

g. Information about the availability of storage space for personal effects; and

h. A summary of residents' rights recognized and protected by this section and all facility policies and regulations governing resident conduct and responsibilities.

2. No statement of admission information may be in conflict with any part of this chapter.

(e) *Courteous treatment.* Be treated with courtesy, respect and full recognition of one's dignity and individuality by all employees of the facility and by all licensed, certified and registered providers of health care and pharmacists with whom the resident comes in contact.

(f) *Privacy.* Have privacy in treatment, living arrangements and caring for personal needs, including:

1. If both spouses are residents of the same facility, they shall be permitted to share a room unless medically contraindicated as documented by either resident's physician in the resident's medical record;

2. Case discussion, consultation, examination and treatment shall be conducted discreetly. Persons not directly involved in the resident's care shall require the resident's permission to be present; and

3. Confidentiality of health and personal records, and the right to refuse their release to any individual outside the facility except in the case of the resident's transfer to another facility or as required by ss. 146.81 to 146.83, Stats., s. 51.30, Stats., and ch. DHS 92 or other statutes or rules or third party payment contracts.

(g) *Work.* Not be required to perform work for the facility unless the work is included for therapeutic purposes in the resident's plan of care.

Note: Requirements governing wages for patient labor are found in s. 51.61 (1) (b) and ch. 104, Stats., and ch. DWD 272.

(h) *Outside activities.* Meet with and participate in activities of social, religious and community groups at the resident's discretion and with the permission of the resident's parents, if the resident is under 18 years of age, or guardian, if any, unless contraindicated as documented by the QMRP in the resident's record.

(i) *Leaves.* Take frequent and informal leaves from the facility for visits, trips or vacations. The facility shall encourage residents to take these leaves and shall assist the resident in making arrangements for the leaves.

(j) *Personal possessions.* Retain and use clothing and personal belongings and retain, as space permits, other personal possessions in a reasonably secure manner.

(k) *Transfer or discharge.* Be transferred or discharged, and be given reasonable advance notice of any planned transfer or discharge and an explanation of the need for and alternatives to the transfer or discharge except where there is a medical emergency. The facility, agency, program or person to which the resident is transferred shall have accepted the resident for transfer in advance of the transfer, except in a medical emergency.

Note: See s. DHS 134.53.

(L) *Abuse and restraints.* Be free from mental and physical abuse, and be free from physical restraints except as authorized in writing by a physician for a specified and limited period of time and documented in the resident's medical record.

Note: See s. DHS 134.33 on use of locked units, s. DHS 134.46 which prohibits abuse of residents, and s. DHS 134.60 (5) on use of physical restraints.

(m) *Care.* Receive adequate and appropriate care and treatment that is within the capacity of the facility to provide as indicated under s. DHS 134.51.

(n) *Choice of provider.* Use the licensed, certified or registered provider of health care and pharmacist of the resident's choice.

(o) *Care planning.* Be fully informed of one's treatment and care and participate in the planning of that treatment and care, which includes the right to refuse medications, treatments and rehabilitative therapies.

(p) *Religious activity.* Engage in religious worship within the facility if the resident desires such an opportunity and a member of the clergy of the resident's religious denomination or society is available to the facility. Provisions for worship shall be available to all residents on a nondiscriminatory basis. No resident may be forced to take part in any religious activity.

(q) *Nondiscriminatory treatment.* Be free from discrimination based on the source from which the facility's charges for the resident's care are paid, as follows:

1. No facility may assign a resident to a particular wing or other distinct area of the facility, whether for sleeping, dining or any other purpose, on the basis of the source or amount of payment for the resident's care, except that a facility only part of which is certified for Medicare reimbursement under 42 USC 1395 is not prohibited from assigning a resident to the certified part of the facility because the source of payment for the resident's care is Medicare.

2. Facilities shall offer and provide an identical package of basic services meeting the requirements of this chapter to all individuals regardless of the source of a resident's payment or amount of payment. Facilities may offer enhancements of basic services, or enhancements of individual components of basic services, provided that these enhanced services are made available at an identical cost to all residents regardless of the source of a resident's payment. A facility which elects to offer enhancements to basic services to its residents shall provide all residents with a detailed explanation of enhanced services and the additional charges for these services pursuant to par. (d) 1. b.

3. If a facility offers at extra charge additional services which are not covered by the medical assistance program under ss. 49.43 to 49.497, Stats., and chs. DHS 101 to 108, it shall provide them to any resident willing and able to pay for them, regardless of the source from which the resident pays the facility's charges.

4. No facility may require, offer or provide an identification tag for a resident or any other item which discloses the source from which the facility's charges for that resident's care are paid.

(r) *Least restrictive conditions.* The least restrictive conditions necessary to achieve the purposes of admission, commitment or placement, except in the case of a resident who is admitted or transferred under s. 51.35 (3) or 51.37, Stats., or under ch. 971 or 975, Stats.

(s) *Drastic treatment, experimental research and behavior modification using aversive stimuli.* Not be subjected to drastic treatment, experimental research procedures or behavior modification using aversive stimuli without the expressed and informed consent of the resident and the resident's legal guardian, if any, and after consultation with individual specialists and the patient's legal counsel, if any.

(4) **CORRECTIONS CLIENTS.** Rights established under this section do not, except as determined by the department, apply to residents in a facility who are in the legal custody of the department for correctional purposes.

(5) **NOTIFICATION.** (a) *Serving notice.* Copies of the resident rights provided under this section and the facility's policies and regulations governing resident conduct and responsibilities shall be made available to each prospective resident and his or her guardian, if any, and to each member of the facility's staff. Facility staff shall verbally explain to each new resident and to that person's guardian, if any, prior to or at the time of the person's admission to the facility, these rights and the facility's policies and regulations governing resident conduct and responsibilities.

(b) *Amendments.* Every amendment to the rights provided under this section and every amendment to the facility regulations and policies governing resident conduct and responsibilities requires notification of each resident and guardian, if any, at the time the amendment is put into effect. The facility shall provide the resident, guardian, if any, and each member of the facility's staff with a copy of each amendment.

(c) *Posting.* Copies of the resident's rights provided under this chapter and the facility's policies and regulations governing resident conduct and responsibilities shall be posted in a prominent place in the facility and in each locked unit, as defined in s. DHS 134.33 (1) (b), within the facility.

(6) **ENCOURAGEMENT AND ASSISTANCE.** Each facility shall encourage and assist residents to exercise their rights as residents and citizens, and each facility shall provide appropriate training for staff so that staff are aware of the rights of residents established under this section and are encouraged to respect them.

(7) **COMPLAINTS.** (a) *Filing complaints.* Any person may file a complaint with a licensee or the department regarding the operation of a facility. A complaint may be made orally or in writing. Any resident receiving services for a developmental disability or protectively placed under ch. 55, Stats., may seek advocacy assistance from the county department organized under s. 46.23, 51.42 or 51.437, Stats., or from the agency designated under s. 51.62 (2), Stats., to be the protection and advocacy agency for developmentally disabled persons.

(b) *Investigating and reviewing complaints.* 1. Each facility shall establish a system for investigating, reviewing and documenting complaints and allegations that resident rights established under s. 50.09, Stats., and this section have been violated.

2. The facility shall designate a specific individual or individuals to conduct the investigation and report to the administrator.

3. The results of the investigation shall be reported to the administrator no later than 5 calendar days after a complaint or allegation is received.

4. Documentation of the findings of the investigation and the administrator's review, as well as of the actions taken in response to the findings, shall be maintained by the facility.

(c) *Reporting complaints.* Allegations that resident rights have been violated by persons licensed, certified or registered under ch. 441, 446 to 450, 455 or 456, Stats., shall be promptly reported by the facility to the appropriate licensing or examining board and to the person against whom the allegation has been made. Any employee of the facility and any person licensed, certified or registered under ch. 441, 446 to 450, 455 or 456, Stats., may report the allegations directly to the appropriate board.

(d) *Liability.* As provided in s. 50.09 (6) (c), Stats., no person who files a report under par. (c) or who participates in good faith in the review system established under par. (b) may be held liable for civil damages for these acts.

(e) *Summary of complaints.* The facility shall attach to its application for a new license or a license renewal a statement that summarizes complaints or allegations since the last time that the facility's license was renewed that rights established under this section have been violated. The statement shall contain the dates of the complaints or allegations, the names of the persons involved, the dispositions and the dates of the dispositions. The department shall consider the statement in reviewing the application.

History: Cr. Register, June, 1988, No. 390, eff. 7-1-88; corrections in (3) (f) 3. and (q) 3. made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532; correction in (2) (a) made under s. 13.93 (2m) (b) 7., Stats., Register October 2007 No. 622; corrections in (3) (f) 3. and (q) 3. made under s. 13.92 (4) (b) 7., Stats., Register January 2009 No. 637.

DHS 134.32 Community organization access.

(1) **ACCESS.** (a) *Definition.* In this section, "access" means the right of a community organization to:

1. Enter any facility;
2. Ask a resident's permission to communicate privately and without restriction with the resident;
3. Communicate privately and without restriction with any resident who does not object; and
4. Inspect the health care, treatment and other records of a resident if permitted under ss. 51.30 and 146.81 to 146.83, Stats. Access does not include the right to examine the business records of the facility without the consent of the administrator or designee.

(b) *Right to access.* An employee, agent or designated representative of a community legal services program or community service organization who meets the requirements of sub. (2) shall

be permitted access to any facility whenever visitors are permitted under the written visitation policy permitted by s. DHS 134.31 (3) (a) 3., but not before 8:00 a.m. nor after 9:00 p.m.

(2) **CONDITIONS.** (a) *Identification.* The employee, agent or designated representative of the community organization shall, upon request of the facility's administrator or the administrator's designee, present valid and current identification signed by the principal officer of the organization represented, and evidence of compliance with par. (b).

(b) *Purpose.* The facility shall grant access for visits which are for the purpose of:

1. Talking with or offering personal, social or legal services to any resident or obtaining information from a resident about the facility and its operations;

2. Informing residents of their rights and entitlements and their corresponding obligations under federal and state law, by means of educational materials and discussions in groups or with individual residents;

3. Assisting residents in making claims for public assistance, medical assistance or social security benefits to which they are entitled, and in all matters in which a resident may be aggrieved; or

4. Engaging in any other method of advising and representing residents in order to ensure that they have full enjoyment of their rights.

Note: Assistance under subd. 3. may include organizational activity, counseling or litigative assistance.

History: Cr. Register, June, 1988, No. 390, eff. 7-1-88.

DHS 134.33 Housing residents in locked units.

(1) **DEFINITIONS.** In this section:

(a) "Consent" means a written, signed request given without duress by a resident capable of understanding the nature of the locked unit, the circumstances of his or her condition and the meaning of the consent to be given and that consent may be withdrawn at any time.

(b) "Locked unit" means a ward, wing or room which is designated as a protective environment and is secured in a manner that prevents a resident from leaving the unit at will. A physical restraint applied to the body is not a locked unit. A facility locked for purposes of security is not a locked unit, provided that residents may exit at will.

(2) **RESTRICTION.** Except as otherwise provided by this section, no resident may be housed in a locked unit. Physical restraints or repeated use of the emergency restraint under sub. (5) may not be used to circumvent this restriction. Placement in a locked unit shall be based on the determination that this placement is the least restrictive environment consistent with the needs of the person.

Note: For requirements relating to the use of physical restraints, see s. DHS 134.60 (5).

(3) **PLACEMENT.** (a) A resident may be housed in a locked unit under any one of the following conditions:

1. The resident or guardian consents to the resident being housed in a locked unit;

2. The court that protectively placed the resident under ch. 55, Stats., made a specific finding of the need for a locked unit;

3. The resident has been transferred to a locked unit pursuant to s. 55.15, Stats., and the medical record contains documentation of the notice provided to the guardian, the court and the agency designated under s. 55.02, Stats.; or

4. In an emergency governed by sub. (5).

(b) A facility may transfer a resident from a locked unit to an unlocked unit without court approval pursuant to s. 55.15, Stats., if it determines that the needs of the resident can be met on an unlocked unit. Notice of the transfer shall be provided as required under s. 55.15, Stats., and shall be documented in the resident's medical record.

(4) **RESIDENT CONSENT.** (a) A resident's or guardian's consent under sub. (3) (a) 1. to placement in a locked unit shall be effective for no more than 90 days from the date of the consent and may be withdrawn sooner. Consent may be renewed for 90-day periods. Consent shall be in writing.

(b) The resident or guardian may withdraw his or her consent to the resident being placed in a locked unit at any time, orally or in writing. The resident shall be transferred to an unlocked unit promptly following withdrawal of consent.

(5) **EMERGENCIES.** In an emergency, the person in charge of the facility may order the confinement of a resident to a locked unit if necessary to protect the resident or another person from injury or to prevent physical harm to the resident or another person resulting from the destruction of property, provided the physician is notified within one hour and written authorization for continued use is obtained from the physician within 12 hours. No resident may be confined for more than an additional 72 hours under order of the physician.

History: Cr. Register, June, 1988, No. 390, eff. 7-1-88; corrections in (3) (a) 2., 3. and (b) made under s. 13.93 (2m) (b) 7., Stats., Register October 2007 No. 622.

Subchapter III — Management

DHS 134.41 Administrator. (1) **ADMINISTRATOR'S RESPONSIBILITY.** The administrator is responsible for the total operation of the facility and shall provide the supervision necessary to ensure that the residents receive proper care and treatment, that their health and safety are protected and promoted and that their rights are respected.

(2) **FULL-TIME ADMINISTRATOR.** Every facility shall be supervised by a full-time administrator licensed under ch. 456, Stats., except that:

(a) A facility licensed for 17 to 50 beds shall employ an administrator for at least 4 hours a day on each of 5 days in a week. No administrator may be employed by more than 2 of these facilities. The administrator shall be licensed under ch. 456, Stats., and

(b) A facility licensed for 16 or fewer beds shall employ an administrator for at least 10 hours a week. No administrator may be employed by more than 4 of these facilities. The administrator shall be licensed under ch. 456, Stats.

(3) **ABSENCE OF ADMINISTRATOR.** A staff person present in the facility and competent to supervise the staff and operate the facility shall be designated to be in charge whenever residents are present and there is not an administrator in the facility. The designee shall be identified to all staff.

(4) **CHANGE OF ADMINISTRATOR.** (a) *Termination.* Except as provided in par. (b), no administrator may be terminated unless recruitment procedures are begun immediately.

(b) *Replacement.* If it is necessary to immediately terminate an administrator or if the licensee abruptly loses an administrator for other reasons, a permanent replacement shall be employed as soon as possible but not later than 120 days following the effective date of the vacancy.

(c) *Temporary replacement.* During a temporary vacancy in the position of administrator, the licensee shall employ a temporary replacement administrator until the original permanent administrator returns or until a new permanent administrator can be hired, whichever is appropriate.

(d) *Notice of change.* When the licensee loses an administrator, the licensee shall notify the department within 2 working days of the loss and provide written notification to the department of the name and qualifications of the person in charge of the facility during the vacancy and, when known, the name and qualifications of the replacement administrator.

History: Cr. Register, June, 1988, No. 390, eff. 7-1-88; CR 04-053: am. (2) (b) Register October 2004 No. 586, eff. 11-1-04.

DHS 134.42 Qualified mental retardation professional (QMRP). (1) Every facility shall have at least one quali-

fied mental retardation professional on staff in addition to the administrator, except that in a facility with 50 or fewer beds the administrator, if qualified, may perform the duties of the QMRP.

(2) The duties of the QMRP shall include:

(a) Supervising the delivery of training, habilitation and rehabilitation services for each resident in accordance with the individual program plan (IPP) for that resident;

(b) Integrating the various services for each resident as planned by the interdisciplinary team and as detailed in the resident's IPP;

(c) Reviewing each resident's IPP on a monthly basis, or more often as needed, and preparing an accurate, written summation of the resident's progress in measurable and observable terms for inclusion in the resident's record;

(d) Initiating modifications in a resident's IPP as necessitated by the resident's condition, and documenting in the resident's record any changes observed in the resident's condition and action taken in response to the observed changes; and

(e) Communicating information concerning each resident's progress to all relevant resident care staff and other professionals involved in the resident's care.

History: Cr. Register, June, 1988, No. 390, eff. 7-1-88.

DHS 134.44 Employees and other service providers. (1) **DEFINITION.** In this section, "employee" means anyone directly employed by the facility.

(2) **QUALIFICATIONS AND RESTRICTIONS.** (a) No person under 16 years of age may be employed by the facility to provide direct care to residents. An employee under 18 years of age who provides direct care to residents shall work under direct supervision.

(b) No person with a documented history of child or resident abuse, neglect or exploitation may be hired or continue to be employed by the facility.

(3) **AGREEMENT WITH OUTSIDE RESOURCE.** (a) If the facility does not itself provide a required service, it shall have in effect a written agreement with a qualified professional or agency outside the facility to provide the service, including emergency and other health care. The facility shall ensure that the outside services and service providers meet the standards contained in this chapter.

(b) The written agreement under par. (a) shall specify that the service be provided by direct contact with the residents and shall contain the responsibilities, functions, objectives and terms agreed to by the facility and the professional or agency. The agreement shall be signed by the administrator or the administrator's representative and by the service provider or service provider's representative.

(4) **PERSONNEL PRACTICES.** (a) The facility shall have written personnel policies that are available to all employees and that are substantially followed.

(b) The facility shall provide written position descriptions defining employee duties for use in employee orientation, in development of staffing patterns and in inservice training.

(c) Employees shall be assigned only to duties consistent with their educational and work experience qualifications and training. Employees who work directly with residents shall be able to demonstrate that they have the skills and techniques necessary to implement the individual program plans for residents under their care.

(d) Employees who provide direct care to residents may not be required to provide housekeeping, laundry or other support services if these duties interfere with the exercise of their direct care duties.

(5) **PHYSICAL HEALTH CERTIFICATIONS.** (a) *New employees.* Every employee shall be certified in writing by a physician, physician assistant or advanced practice nurse prescriber as having been screened for the presence of clinically apparent communicable disease that could be transmitted to residents during the nor-

mal performance of the employee's duties. This certification shall include screening for tuberculosis within 90 days prior to employment.

(b) *Continuing employees.* Employees shall be rescreened for clinically apparent communicable disease as described in par. (a) based on the likelihood of exposure to a communicable disease, including tuberculosis. Exposures to a communicable disease may be in the facility, in the community or as a result of travel or other exposure.

(c) *Non-employees.* Persons who reside in the facility but are not residents or employees, such as relatives of the facility's owners, shall be certified in writing as required in pars. (a) and (b).

(6) **DISEASE SURVEILLANCE AND CONTROL.** When an employee or prospective employee has a communicable disease, he or she may not perform employment duties in the facility that may result in the transmission of the communicable disease until the facility makes safe accommodations to prevent the transmission of the communicable disease.

Note: The Americans with Disabilities Act and Rehabilitation Act of 1973 prohibits the termination of an employee or the non-hiring of a person solely because that person has an infectious disease, illness or condition.

(7) **VOLUNTEERS.** Facilities may use volunteers provided that the volunteers receive the orientation and supervision necessary so that resident health, safety and welfare are safeguarded and that the facilities do not rely upon volunteers to provide direct care to residents.

History: Cr. Register, June, 1988, No. 390, eff. 7-1-88; CR 04-053: r. and recr. (5) and (6) Register October 2004 No. 586, eff. 11-1-04.

DHS 134.45 Employee development. (1) **ORIENTATION FOR NEW EMPLOYEES.** Except in an emergency, before a new employee, including a temporary employee, performs any duties, he or she shall be oriented to the facility and its policies, including policies and procedures concerning fire prevention, accident prevention and response to emergencies. By the time each new employee has worked 30 days in the facility, he or she shall be oriented to resident rights under s. DHS 134.31, to his or her position and duties and to facility procedures.

(2) **CONTINUING EDUCATION.** (a) *General.* The facility shall provide continuing inservice training for all employees to update and improve their skills in providing resident care, and supervisory and management training for each employee who is in or is a candidate for a supervisory position.

(b) *Resident care.* The facility shall require employees who provide direct care to residents to attend educational programs designed to develop and improve employee skills and knowledge relating to the needs of the facility's residents, including their developmental, behavioral and health care needs. These programs shall be conducted as often as is necessary to enable staff to acquire the skills and techniques necessary to implement the individual program plans for each resident under their care.

(c) *Dietary.* Educational programs shall be held periodically for dietary staff. These programs shall include instruction in proper handling of food, personal hygiene and grooming, nutrition and modified diet patterns, sanitation, infection control and prevention of food-borne disease and other communicable disease.

(3) **TRAINING IN MEDICATIONS ADMINISTRATION.** Before persons other than nurses and practitioners may administer medications under s. DHS 134.60 (4) (d) 1., they shall be trained in a course approved by the department.

History: Cr. Register, June, 1988, No. 390, eff. 7-1-88.

DHS 134.46 Abuse of residents. (1) **CONSIDERATE CARE AND TREATMENT.** Employees and all other persons with whom residents come into contact shall treat the residents with courtesy, respect and full recognition of their dignity and individuality and shall give them considerate care and treatment at all times.

(2) **RESIDENT ABUSE.** No person may abuse a resident.

(3) ABUSE COMPLAINTS. The facility shall ensure that every suspected instance of abuse of a resident by an employee or anyone else is reported, investigated, reviewed and documented in accordance with s. DHS 134.31 (7).

History: Cr. Register, June, 1988, No. 390, eff. 7-1-88.

DHS 134.47 Records. (1) DEPARTMENT ACCESS. The administrator of a facility or the administrator's designee shall provide the department with any information the department needs to determine if the facility is in compliance with chs. 50, 51 and 55, Stats., and this chapter and shall provide reasonable opportunities for an authorized representative of the department to examine facility records to gather this information.

(2) STAFFING FOR RECORDS MANAGEMENT. (a) A facility shall have sufficient numbers of qualified records management staff and necessary support personnel available to accurately process, check, index, file and promptly retrieve records and to record data.

(b) Duties specified in this section that relate to resident records shall be completed by staff in a timely manner.

(3) GENERAL REQUIREMENTS CONCERNING RESIDENT RECORDS. (a) *Organization.* The facility shall maintain a systematically organized record system appropriate to the nature and size of the facility for the collection and release of information about residents.

(b) *Unit record.* A resident record shall be maintained for each resident. The record shall be available and maintained on the unit on which the individual resides.

(c) *Index.* A master alphabetical resident record index shall be maintained at a central location.

(d) *Confidentiality.* The facility shall ensure that all information contained in resident records is kept confidential pursuant to s. 51.30, Stats., and ch. DHS 92, and shall protect the information against loss, destruction or unauthorized use. In this connection:

1. The facility shall have written policies to govern access to and duplication and release of information from resident records; and

2. The facility shall obtain the written consent of the resident or guardian before releasing information to unauthorized individuals.

(e) *Availability of records.* Resident records of current residents shall be stored in the facility and shall be easily accessible at all times to persons authorized to provide care and treatment. Resident records of both current and past residents shall be readily available to persons designated by statute or authorized by the resident to obtain the release of the medical records.

(f) *Maintenance.* 1. A resident record shall be adequate for planning and evaluation of the resident's habilitation or rehabilitation program, or both, and shall furnish documentary evidence of the resident's progress in the program.

2. The facility shall provide adequate space, equipment and supplies to review, index, file and retrieve resident records.

(g) *Retention and destruction.* 1. The resident record shall be completed and stored within 60 days following a resident's discharge or death.

2. For purposes of this chapter, a resident record, including a legible copy of any court order or other document authorizing another person to speak or act on behalf of the resident, shall be retained for a period of at least 5 years following a resident's discharge or death.

3. A resident's record may be destroyed after 5 years has elapsed following the resident's discharge or death, provided that:

a. The confidentiality of the information is maintained; and

b. The facility permanently retains at least a record of the resident's identity, final diagnosis, physician and dates of admission and discharge.

4. In the event that a facility closes, the facility shall arrange for the storage and safekeeping of resident records for the period and under the conditions required by this paragraph.

5. If the ownership of a facility changes, the resident records and indexes shall remain with the facility.

Note: Although this chapter obliges a facility to retain a resident's record for only 5 years following the resident's discharge or death, ch. DHS 92 requires a facility to retain the record of an individual with developmental disabilities for at least 7 years. See s. DHS 92.12 (1).

(h) *Preparation.* 1. All entries in records shall be legible, permanently recorded, dated and authenticated with the name and title of the person making the entry. A rubber stamp reproduction or electronic representation of a person's signature may be used instead of a handwritten signature if:

a. The stamp or electronic representation is used only by the person who makes the entry; and

b. The facility possesses a statement signed by the person, certifying that only that person shall possess and use the stamp or electronic representation.

2. Symbols and abbreviations may be used in resident records if approved by a written facility policy which defines the symbols and abbreviations and controls their use.

(4) CONTENTS OF A RESIDENT'S RECORD. Except for a person admitted for short-term care, to whom s. DHS 134.70 (7) applies, a resident's record shall contain all information relevant to admission and to the resident's care and treatment, including the following:

(a) *Admission information.* Information obtained on admission, including:

1. Name, date of admission, birth date and place, citizenship status, marital status and social security number;

2. Father's name and birthplace and mother's maiden name and birthplace;

3. Names and addresses of parents, legal guardian and next of kin;

4. Sex, race, height, weight, color of hair, color of eyes, identifying marks and recent photograph;

5. Reason for admission or referral;

6. Type and legal status of admission;

7. Legal competency status;

8. Language spoken or understood;

9. Sources of support, including social security, veterans' benefits and insurance;

10. Religious affiliation, if any;

11. Medical evaluation results, including current medical findings, a summary of prior treatment, the diagnosis at time of admission, the resident's habilitative or rehabilitative potential and level of care and results of the physical examination required under s. DHS 134.52 (4); and

12. Any physician's concurrence under s. DHS 134.52 (2) (c) concerning admission to the facility.

(b) *Preadmission evaluation reports.* Any report or summary of an evaluation conducted by the interdisciplinary team or a team member under s. DHS 134.52 (3) prior to an individual's admission to the facility and reports of any other relevant medical histories or evaluations conducted prior to the individual's admission.

(c) *Authorizations or consents.* A photocopy of any court order or other document authorizing another person to speak or act on behalf of the resident, and any resident consent form required under this chapter, except that if the authorization or consent exceeds one page in length an accurate summary may be substituted in the resident record and the complete authorization or consent form shall in this case be maintained as required under sub. (5) (a) and (b). The summary shall include:

1. The name and address of the guardian or other person having authority to speak or act on behalf of the resident;

2. The date on which the authorization or consent takes effect and the date on which it expires;

3. The express legal nature of the authorization or consent and any limitations on it; and

4. Any other facts that are reasonably necessary to clarify the scope and extent of the authorization or consent.

(d) *Resident care planning documentation.* Resident care planning documentation, including:

1. The comprehensive evaluation of the resident and written training and habilitation objectives;

2. The annual review of the resident's program by the interdisciplinary team;

3. In measurable terms, documentation by the qualified mental retardation professional of the resident's performance in relationship to the objectives contained in the individual program plan;

4. Professional and special programs and service plans, evaluations and progress notes; and

5. Direct care staff notes reflecting the projected and actual outcome of the resident's habilitation or rehabilitation program.

(e) *Medical service documentation.* Documentation of medical services and treatments provided to the resident, including:

1. Physician orders for:
 - a. Medications and treatments;
 - b. Diets;
 - c. Special or professional services; and
 - d. Limitations on activities;
2. Restraint orders required under s. DHS 134.60 (5) (b);
3. Discharge or transfer records required under s. DHS 134.53 (4) (d);
4. Physician progress notes following each physician visit required under s. DHS 134.66 (2) (b) 4.; and
5. The report on the resident's annual physical examination.

(f) *Nursing service documentation.* Documentation of nursing needs and the nursing services provided, including:

1. The nursing care component of the individual program plan reviewed and revised annually as required by s. DHS 134.60 (1) (c) 2;
2. Nursing notes as needed to document the resident's condition;
3. Other nursing documentation describing:
 - a. The general physical and mental condition of the resident, including any unusual symptoms or behavior;
 - b. All incidents or accidents, including time, place, details of the incident or accident, action taken and follow-up care;
 - c. Functional training and habilitation;
 - d. The administration of all medications as required under s. DHS 134.60 (4) (d), the need for as-needed administration of medications and the effect that the medication has on the resident's condition, the resident's refusal to take medication, omission of medications, errors in the administration of medications and drug reactions;
 - e. Height and weight;
 - f. Food and fluid intake, when the monitoring of intake is necessary;
 - g. Any unusual occurrences of appetite or refusal or reluctance to accept diets;
 - h. Rehabilitative nursing measures provided;
 - i. The use of restraints, documentation for which is required under s. DHS 134.60 (5) (b) 8.;
 - j. Immunizations and other non-routine nursing care given;
 - k. Any family visits and contacts;
 - L. The condition of a resident upon discharge; and

m. The time of death, the physician called and the person to whom the body was released.

(g) *Social service documentation.* Social service records and any notes regarding pertinent social data and action taken to meet the social service needs of residents.

(h) *Special and professional services documentation.* Progress notes documenting consultations and services provided by:

1. Psychologists;
2. Speech pathologists and audiologists; and
3. Occupational and physical therapists.

(i) *Dental records.* Dental records, as follows:

1. A permanent dental record for each resident;
2. Documentation of an oral examination at the time of admission or prior to admission which satisfies the requirements under s. DHS 134.65 (2) (a); and
3. Dental summary progress reports recorded as needed.

(j) *Nutritional assessment.* The nutritional assessment of the resident, the nutritional component of the resident's individual program plan and records of diet modifications as required by s. DHS 134.64 (4) (b) 1.

(k) *Discharge or transfer information.* Documents prepared when a resident is discharged or transferred from the facility, including:

1. A summary of habilitative, rehabilitative, medical, emotional, social and cognitive findings and progress;
2. A summary and current status report on special and professional treatment services;
3. A summary of need for continued care and of plans for care;
4. Nursing and nutritional information;
5. Administrative and social information;
6. An up-to-date statement of the resident's account as required by s. DHS 134.31 (3) (c) 3.; and
7. In the case of a transfer, written documentation of the reason for the transfer.

(L) *Laboratory, radiologic and blood services documentation.* A record of any laboratory, radiologic, blood or other diagnostic service obtained or provided under s. DHS 134.68.

(5) RECORD RETENTION. (a) The facility shall retain resident records as required under sub. (3) (g).

(b) The facility shall maintain the following documents on file within the facility for at least 5 years after a resident's discharge or death:

1. Copies of any court orders or other documents authorizing another person to speak or act on behalf of the resident; and
2. The original copy of any resident consent document required under this chapter.

Note: Copies of the above court orders or other documents and consent documents must be included in the resident's record. See sub. (4) (c).

(c) The facility shall retain all records not directly related to resident care for at least 2 years. These shall include:

1. A separate record for each employee kept current and containing sufficient information to support assignment to the employee's position and duties, and records of staff work schedules and time worked;
2. All menus and records of modified diets, including the average portion size of items;
3. A financial record for each resident which shows all funds held by the facility and all receipts, deposits and disbursements made by the facility as required by s. DHS 134.31 (3) (c);
4. Any records that document compliance with applicable sanitation, health and environmental safety rules and local ordinances, and written reports of inspections and actions taken to enforce these rules and local ordinances;
5. Records of inspections by local fire inspectors or departments, records of fire and disaster evacuation drills and records of tests of fire detection, alarm and extinguishing equipment;

6. Documentation of professional consultation by registered dietitians, registered nurses, social workers and special professional services providers, and other persons used by the facility as consultants;

7. Medical transfer service agreements and agreements with outside agency service providers; and

8. A description of subject matter, a summary of contents and a list of instructors and attendance records for all employee orientation and inservice programs.

History: Cr. Register, June, 1988, No. 390, eff. 7-1-88; correction in (3) (d) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532; CR 04-053: am. (3) (h) 1. Register October 2004 No. 586, eff. 11-1-04; correction in (3) (d) made under s. 13.92 (4) (b) 7., Stats., Register January 2009 No. 637.

Subchapter IV — Admission, Retention and Removal

DHS 134.51 Limitations on admissions and retentions. (1) LIMITATIONS ON ADMISSION. (a) *Bed capacity.* No facility may admit or retain more persons than the maximum bed capacity for which it is licensed.

(b) *Persons requiring unavailable services.* 1. Persons who require services that the facility does not provide or make available may not be admitted or retained.

2. Persons who do not have a diagnosis of developmental disability may not be admitted.

(c) *Communicable disease management.* 1. ‘Communicable diseases.’ The facility shall have the ability to manage persons with communicable disease that the facility admits or retains, based on currently recognized standards of practice.

2. ‘Reportable diseases.’ Facilities shall report suspected communicable diseases that are reportable under ch. DHS 145 to the local public health officer or to the department’s bureau of communicable disease.

(d) *Destructive residents.* 1. Notwithstanding s. DHS 134.13 (1), in this paragraph, “abuse” means any single or repeated act of force, violence, harassment, deprivation or mental pressure which does or reasonably could cause physical pain or injury to another resident, or mental anguish or fear in another resident.

2. A person who the facility administrator has reason to believe is destructive of property or self-destructive, would disturb or abuse other residents or is suicidal, shall not be admitted or retained unless the facility has and uses sufficient resources to appropriately manage and care for the person.

(e) *Minors.* Except for a facility that was permitted to admit minors prior to the effective date of this chapter, no facility may admit a person under the age of 18 unless the admission is approved by the department after the department receives the following documents:

1. A statement from the referring physician stating the medical, nursing, rehabilitation and special services required by the minor;

2. A statement from the administrator certifying that the required services can be provided;

3. A statement from the attending physician certifying that the physician will be providing medical care; and

4. A statement from the person or agency assuming financial responsibility for the minor.

(f) *Admissions 7 days a week.* No facility may refuse to admit a person to be a new resident solely because of the day of the week.

(2) LIVING UNIT LIMITATIONS. (a) A facility may not house residents of very different ages or developmental levels or with very different social needs in close physical or social proximity to one another unless the housing is planned to promote the growth and development of all the residents who are housed together.

(b) A facility may not segregate residents on the basis of their physical disabilities. The facility shall integrate residents who

have different physical disabilities with other residents who have attained comparable levels of social and intellectual development.

History: Cr. Register, June, 1988, No. 390, eff. 7-1-88; correction in (1) (c) 3. made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532; correction in (1) (c) 3. made under s. 13.93 (2m) (b) 6., Stats., Register December 2003 No. 576; CR 04-053: r. and recr. (1) (c) and am. (1) (d) Register October 2004 No. 586, eff. 11-1-04; correction in (1) (c) 2. made under s. 13.92 (4) (b) 7., Stats., Register January 2009 No. 637.

DHS 134.52 Admission-related requirements.

(1) EXCEPTION. The procedures in this section apply to all persons admitted to facilities except persons admitted for short-term care. Section DHS 134.70 (2) applies to persons admitted for short-term care.

(2) CONDITIONS FOR ADMISSION. A facility may not admit an individual unless each of the following conditions has been met:

(a) An interdisciplinary team has conducted or updated a comprehensive preadmission evaluation of the individual as specified in sub. (3) and has determined that residential care is the best available plan for the individual;

(b) Except in an emergency, for an individual who is under age 65, there is a written recommendation of the county department established under s. 46.23, 51.42 or 51.437, Stats., in the individual’s county of residence, that residential care in the facility is the best available placement for the individual;

(c) If the individual’s medical condition and diagnosis require on-going monitoring and physician supervision, the facility has obtained the concurrence of a physician in the admission decision and information about the person’s current medical condition and diagnosis, a physician’s plan of care as required by s. 50.04 (2m), Stats., and any orders from a physician for immediate care have been received by the facility before or on the day of admission;

(d) The facility has received written certification from a physician, physician assistant or advanced practice nurse prescriber that the individual has been screened for communicable diseases detrimental to other residents or a physician, physician assistant or advanced practice nurse prescriber has ordered procedures to treat and limit the spread of any communicable diseases the person may be found to have; and

(e) Court-ordered protective placement has been obtained in accordance with s. 55.06, Stats., for a person who has been found by a court to be incompetent.

(3) PREADMISSION EVALUATION. (a) Within 90 days before the date of admission, an interdisciplinary team shall conduct or update a comprehensive evaluation of the individual. The evaluation shall include consideration of the individual’s:

1. Physical development and health;
2. Sensorimotor development;
3. Affective development;
4. Speech and language development and auditory functioning;
5. Cognitive development;
6. Vocational skills; and
7. Adaptive behaviors or independent living skills necessary for the individual to be able to function in the community.

(b) The interdisciplinary team shall:

1. Identify the presenting problems and disabilities and, where possible, their causes;
2. Identify the individual’s developmental strengths;
3. Identify the individual’s developmental and behavioral modification needs;
4. Define the individual’s need for services without regard to availability of those services;
5. Review all available and applicable programs of care, treatment and training for the individual; and
6. Record the evaluation findings.

(4) PHYSICAL EXAMINATION BY PHYSICIAN. (a) *Examination.* Each resident shall have a physical examination by a physician or

physician extender within 48 hours following admission unless an examination was performed within 15 days before admission.

(b) *Evaluation.* Within 48 hours after admission the physician or physician extender shall complete the resident's medical and physical examination record.

(5) **FAMILY CARE INFORMATION AND REFERRAL.** If the secretary of the department has certified that a resource center, as defined in s. DHS 10.13 (42), is available for the facility under s. DHS 10.71, the facility shall provide information to prospective residents and refer residents and prospective residents to the aging and disability resource center as required under s. 50.04 (2g) to (2i), Stats., and s. DHS 10.73.

History: Cr. Register, June, 1988, No. 390, eff. 7-1-88; cr. (5), Register, October, 2000, No. 538, eff. 11-1-00; CR 04-053: r. and recr. (2) (d) Register October 2004 No. 586, eff. 11-1-04; corrections in (5) made under s. 13.92 (4) (b) 7., Stats., Register January 2009 No. 637.

DHS 134.53 Removal from the facility. (1) SCOPE. The provisions of this section shall apply to all transfers, discharges and leaves of residents from facilities except that the removal of residents when a facility closes is governed by s. 50.03 (14), Stats.

(2) **REASONS FOR REMOVAL.** No resident may be temporarily or permanently transferred or discharged from a facility, except:

(a) *Voluntary removal.* Upon the request or with the informed consent of the resident or guardian;

(b) *Involuntary removal.* 1. For nonpayment of charges, following reasonable opportunity to pay any deficiency;

2. If the resident requires care that the facility is not licensed to provide;

3. If the resident requires care that the facility does not provide and is not required to provide under this chapter;

4. For medical reasons as ordered by a physician;

5. In case of a medical emergency or disaster;

6. For the resident's welfare or the welfare of other residents;

7. If the resident does not need FDD care;

8. If the short-term care period for which the resident was admitted has expired; or

9. As otherwise permitted by law.

(3) **ALTERNATE PLACEMENT.** Except for removals under sub. (2) (b) 5., no resident may be involuntarily removed unless an alternative placement is arranged for the admission of the resident pursuant to sub. (4) (c).

(4) **PERMANENT INVOLUNTARY REMOVAL.** (a) *Consultation.* Before a decision is made to transfer or discharge a resident under sub. (2) (b), facility staff shall meet with the resident's parent or guardian, if any, and any other person the resident decides should be present, to discuss the need for and alternatives to the transfer or discharge.

(b) *Notice.* The facility shall provide the resident, the resident's family or guardian or other responsible person, the appropriate county department designated under s. 46.23, 51.42 or 51.437, Stats., and, if appropriate, the resident's physician, with at least 30 days notice before making a permanent removal under sub. (2) (b), except under sub. (2) (b) 5. or if the continued presence of the resident endangers his or her health, safety or welfare or that of other residents.

(c) *Removal procedures.* 1. Unless circumstances posing a danger to the health, safety or welfare of a resident require otherwise, at least 7 days before the planning conference required by subd. 2., the resident, guardian, if any, the appropriate county department designated under s. 46.23, 51.42 or 51.437, Stats., and any person designated by the resident, including the resident's physician, shall be given a notice containing the time and place of the conference, a statement informing the resident that any persons of the resident's choice may attend the conference and the procedure for submitting a complaint to the department about the prospective removal.

2. Unless the resident is receiving respite care or unless precluded by circumstances posing a danger to the health, safety or welfare of a resident, prior to any permanent involuntary removal under sub. (2) (b), a planning conference shall be held at least 14 days before removal with the resident, the resident's guardian, if any, any appropriate county agency and any persons designated by the resident, including the resident's physician or the facility QMRP, to review the need for relocation, assess the effect of relocation on the resident, discuss alternative placements and develop a relocation plan which includes at least those activities listed in subd. 3.

Note: The discharge planning conference requirement for a resident receiving recuperative care is found in s. DHS 134.70 (6).

3. Removal activities shall include:

a. Counseling the resident about the impending removal;

b. Making arrangements for the resident to make at least one visit to the potential alternative placement facility and to meet with that facility's admissions staff, unless this is medically contraindicated or the resident chooses not to make the visit;

c. Providing assistance in moving the resident and the resident's belongings and funds to the new facility or quarters; and

d. Making sure that the resident receives needed medications and treatments during relocation.

(d) *Transfer and discharge records.* Upon removal of a resident, the documents required by s. DHS 134.47 (4) (k) shall be prepared and provided to the facility admitting the resident, along with any other information about the resident needed by the admitting facility. When a resident is permanently released, the facility shall prepare and place in the resident's record a summary of habilitative, rehabilitative, medical, emotional, social and cognitive findings and progress and plans for care.

(5) **VOLUNTARY DISCHARGE.** When a discharge is voluntary and expected to be permanent, the facility shall, prior to the removal:

(a) Counsel the resident, the parent of a minor resident or the guardian who requests the discharge concerning the advantages and disadvantages of the discharge;

(b) Under the guidance and recommendations of the facility's interdisciplinary team, make necessary arrangements for appropriate services, including post-discharge planning, protective supervision and follow-up services, during relocation and in the new environment;

(c) Advise the resident who is to be discharged at his or her own request of additional assistance available under sub. (4) (c) 3., and provide that assistance upon request; and

(d) Notify the appropriate county department designated under s. 46.23, 51.42 or 51.437, Stats.

(6) **BEDHOLD.** If a resident on leave or temporarily discharged expressed the intention on leaving or being discharged of returning to the facility under the terms of the facility's admission statement for bedhold, the resident may not be denied readmission unless at the time readmission is requested, a condition of sub. (2) (b) exists. The facility shall hold a resident's bed until the resident returns unless the resident waives his or her right to have the bed held or 15 days has passed following the beginning of leave or temporary discharge.

History: Cr. Register, June, 1988, No. 390, eff. 7-1-88.

DHS 134.54 Transfer within the facility. Prior to any transfer of a resident between rooms or beds within a facility, the resident or guardian, if any, and any other person designated by the resident or guardian shall be given reasonable notice and an explanation of the reasons for the transfer. Transfer of a resident between rooms or beds within a facility may be made only for medical reasons or for the resident's welfare or the welfare of other residents or as permitted under s. DHS 134.31 (3) (q) 1.

History: Cr. Register, June, 1988, No. 390, eff. 7-1-88.

Subchapter V — Services

DHS 134.60 Resident care. (1) RESIDENT CARE PLANNING. (a) *Interdisciplinary team.* 1. An interdisciplinary team shall develop a resident's individual program plan.

2. Membership on the interdisciplinary team for resident care planning may vary based on the professions, disciplines and service areas that are relevant to the resident's needs, but shall include a qualified mental retardation professional and a nurse, and a physician as required under s. DHS 134.66 (2) (a) 2. and (c).

3. The resident and the resident's family or guardian shall be encouraged to participate as members of the team, unless the resident objects to participation by family members.

(b) *Development and content of the individual program plan.*

1. Except in the case of a person admitted for short-term care, within 30 days following the date of admission, the interdisciplinary team, with the participation of the staff providing resident care, shall review the preadmission evaluation and physician's plan of care and shall develop an IPP based on the new resident's and an assessment of the resident's needs by all relevant disciplines, including any physician's evaluations or orders.

2. The IPP shall include:

a. A list of realistic and measurable goals in priority order, with time limits for attainment;

b. Behavioral objectives for each goal which must be attained before the goal is considered attained;

c. A written statement of the methods or strategies for delivering care, for use by the staff providing resident care and by the professional and special services staff and other individuals involved in the resident's care, and of the methods and strategies for assisting the resident to attain new skills, with documentation of which professional disciplines or which personnel providing resident care are responsible for the needed care or services;

d. Evaluation procedures for determining whether the methods or strategies are accomplishing the care objectives; and

e. A written interpretation of the preadmission evaluation in terms of any specific supportive actions, if appropriate, to be undertaken by the resident's family or legal guardian and by appropriate community resources.

Note: For the requirement of a preadmission evaluation, see s. DHS 134.52. For development of a plan of care for short-term care residents, see s. DHS 134.70 (2).

(c) *Reassessment of individual program plan.* 1. 'Special and professional services review.' a. The care provided by staff from each of the disciplines involved in the resident's treatment shall be reviewed by the professional responsible for monitoring delivery of the specific service.

b. Reassessment results and other necessary information obtained through the specialists' assessments shall be disseminated to other resident care staff as part of the IPP process.

c. Documentation of the reassessment results, treatment objectives, plans and procedures, and continuing treatment progress reports shall be recorded in the resident's record.

2. 'Interdisciplinary review.' The interdisciplinary team, staff providing resident care and other relevant personnel shall review the IPP and status of the resident at least annually and make program recommendations as indicated by the resident's developmental progress. The review shall consider at least the following:

a. The appropriateness of the individual program plan and the individual's progress toward meeting plan objectives;

b. The advisability of continued residence, and recommendations for alternative programs and services; and

c. The advisability of guardianship and a plan for assisting the resident in the exercise of his or her rights.

(d) *Implementation.* Progress notes shall reflect the treatment and services provided to meet the goals stated in the IPP.

(e) *Notification of changes in condition, treatment or status of resident.* Any significant change in the condition of a resident shall be reported to the individual in charge or on call who shall take appropriate action, including notification of designated parties, as follows:

1. A resident's parents, guardian, if any, physician and any other person designated in writing by the resident or guardian to be notified shall be notified promptly of any significant accident or injury affecting the resident or any adverse change in the resident's condition.

2. A resident's parents, guardian, if any, and any other person designated in writing by the resident or guardian to be notified shall be notified promptly of any significant non-medical change in the resident's status, including financial situation, any plan to discharge the resident or any plan to transfer the resident within the facility or to another facility.

(f) *Emergencies.* 1. In the event of a medical emergency, the facility shall provide or arrange for appropriate emergency services.

2. The facility shall have written procedures available to residents and staff for procuring a physician or an emergency service, such as a rescue squad, to furnish necessary medical care in an emergency and for providing care pending the arrival of a physician.

3. The names and telephone numbers of physicians, nurses and medical service personnel available for emergency calls shall be posted on or next to each telephone in the facility.

(g) *Resident safety.* The facility is responsible for the safety and security of residents. This includes responsibility for the assignment of specific staff to individual residents. Assigned staff shall be briefed beforehand on the condition and appropriate care of residents to whom they are assigned.

(2) RESIDENT CARE STAFFING. (a) *Definitions.* For each resident with a developmental disability, required minimum hours of direct care shall be calculated based on the following definitions:

1. "DD level I" means the classification of a person who functions as profoundly or severely retarded; is under the age of 18; is severely physically handicapped; is aggressive, assaultive or a security risk; or manifests psychotic-like behavior and may engage in maladaptive behavior persistently or frequently or in behavior that is life-threatening. This person's habilitation program emphasizes basic ADL skills and requires intensive staff effort.

2. "DD level II" means the classification of a person who functions as moderately retarded and who may occasionally engage in maladaptive behavior. This person's health status may be stable or unstable. This person is involved in a habilitation program to increase abilities in ADL skills and social skills.

3. "DD level III" means the classification of a person who functions as mildly retarded and who may rarely engage in maladaptive behavior. This person's health status is usually stable. This person is involved in a habilitation program to increase domestic and vocational skills.

4. "Direct care staff on duty" means persons assigned to the resident living unit whose primary responsibilities are resident care and implementation of resident habilitation programs.

5. "Maladaptive behavior" means a person's act or activity which differs from the response generally expected in the situation and which prevents the person from performing routine tasks.

6. "Mildly retarded" means a diagnosis of an intelligence quotient (IQ) of 50 to 55 at the lower end of a range to 70 at the upper end.

7. "Moderately retarded" means a diagnosis of an intelligence quotient (IQ) of 35 to 40 at the lower end of a range to 50 to 55 at the upper end.

8. "Profoundly retarded" means a diagnosis of an intelligence quotient (IQ) below 20 to 25.

9. "Severely retarded" means a diagnosis of an intelligence quotient (IQ) of 20 to 25 at the lower end of a range to 35 to 40 at the upper end.

(b) *Total staffing*. 1. Each resident living unit shall have adequate numbers of qualified staff to care for the specific needs of the residents and to conduct the resident living program required by this subchapter.

2. a. A living unit with more than 16 beds or a living unit that houses one or more residents for whom a physician has ordered a medical care plan or one or more residents who are aggressive, assaultive or security risks, shall have direct care staff on duty and awake within the facility when residents are present. The direct care staff on duty shall be responsible for taking prompt, appropriate action in case of injury, illness, fire or other emergency and for involving appropriate outside professionals as required by the emergency.

b. A living unit with 16 or fewer beds which does not have any resident for whom the physician has ordered a medical care plan or any resident who is aggressive, assaultive or a security risk shall have at least one direct care staff member on duty when residents are present who is immediately accessible to the residents 24 hours a day to take reports of injuries and symptoms of illness, to involve appropriate outside professionals and to take prompt, appropriate action as required by any emergency.

(c) *Records and weekly schedules*. Weekly time schedules for staff shall be planned, posted and dated at least one week in advance, shall indicate the names and classifications of personnel providing resident care and relief personnel assigned on each living unit for each shift, and shall be updated as changes occur.

(d) *Minimum direct care staff hours*. 1. In this paragraph, "resident care staff time" means only the time of direct care staff on duty.

2. a. For each residential living unit which has one or more residents with a classification of DD level I, the facility shall provide a direct care staff-to-resident ratio of 1 to 3.2 each day, with ratios of one direct care staff person on duty to 8 residents on the day shift, one direct care staff person on duty to 8 residents on the evening shift and one direct care staff person on duty to 16 residents on the night shift.

b. For each residential living unit which has one or more residents with a classification of DD level II, the facility shall provide a direct care staff-to-resident ratio of 1 to 4 each day, with ratios of one direct care staff person on duty to 8 residents on the day shift, one direct care staff person on duty to 16 residents on the evening shift and one direct care staff person on duty to 16 residents on the night shift.

c. For each residential living unit which has one or more residents with a classification of DD level III, the facility shall provide a direct care staff-to-resident ratio of 1 to 6.4 each day, with ratios of one direct care staff person on duty to 16 residents on the day shift, one direct care staff person on duty to 16 residents on the evening shift and one direct care staff person on duty to 32 residents on the night shift.

(3) **ACTIVE TREATMENT PROGRAMMING.** (a) Except as provided in par. (b), each resident shall receive active treatment. Active treatment shall include:

1. The resident's regular participation, in accordance with the IPP, in professionally developed and supervised activities, experiences and therapies. The resident's participation shall be directed toward:

a. The acquisition of developmental, behavioral and social skills necessary for the resident's maximum possible individual independence; or

b. For dependent residents where no further positive growth is demonstrable, the prevention of regression or loss of current optimal functional status; and

2. An individual post-institutionalization plan, as part of the IPP developed before discharge by a qualified mental retardation professional and other appropriate professionals. This shall include provision for appropriate services, protective supervision and other follow-up services in the resident's new environment.

(b) Active treatment does not include the maintenance of generally independent residents who are able to function with little supervision or who require few, if any, of the significant active treatment services described in this subsection.

(4) **MEDICATIONS, TREATMENTS AND THERAPIES.** (a) *Orders*. 1. Medications, treatments and habilitative or rehabilitative therapies shall be administered as ordered by a physician or dentist subject to the resident's right to refuse them. If the resident has a court-appointed guardian, the guardian's consent rather than the resident's consent is required. No medication, treatment or changes in medication or treatment may be administered to a resident without a physician's or dentist's written order which shall be filed in the resident's record.

Note: Section 51.61 (6), Stats., requires that written informed consent for treatment, including medications, be obtained from any person who was voluntarily admitted for treatment for developmental disabilities, mental illness, drug abuse or alcohol abuse. Section 42 CFR 442.404 (b) and (f) requires the written informed consent of every resident for treatment, including medications. This includes voluntary admissions as well as involuntary admissions under ch. 51 or 55, Stats.

4. Each resident's medications shall be reviewed by a registered nurse at the time of the annual review of the IPP.

(b) *Stop orders*. 1. Medications not specifically limited as to time or number of doses when ordered shall be automatically stopped in accordance with facility policies and procedures developed under s. DHS 134.67 (3) (a) 5.

2. The facility shall notify each resident's attending physician or dentist of stop order policies and shall contact the physician or dentist promptly for renewal of orders that are subject to automatic termination.

(d) *Administration of medications*. 1. Medications may be administered only by a nurse, a practitioner or a person who has completed training in a drug administration course approved by the department. Facility staff shall immediately record the administration of medications in the resident's record.

2. Facilities shall develop policies and procedures designed to provide safe and accurate acquisition, receipt, dispensing and administration of medications and these policies and procedures shall be followed by personnel assigned to prepare and administer medications and to record their administration. Except when a single unit dose drug delivery system is used, the same person shall prepare and administer the resident's medications.

3. If for any reason a medication is not administered as ordered in a unit dose drug delivery system, an unadministered dose slip with an explanation of the omission shall be placed in the resident's medication container and a notation shall be made in the resident's record.

4. Self-administration of medications by a resident shall be permitted if the interdisciplinary team determines that self-administration is appropriate and if the resident's physician or dentist, as appropriate, authorizes it.

5. Medication errors and suspected or apparent drug reactions shall be reported to the physician or registered nurse in charge or on call as soon as discovered and an entry shall be made in the resident's record. Appropriate action or interventions shall be taken.

Note: See s. DHS 134.67, pharmaceutical services, for additional requirements.

(e) *Habilitative or rehabilitative therapies*. Any habilitative or rehabilitative therapy ordered by a physician or dentist shall be administered by a therapist or QMRP. Any treatments and

changes in treatments shall be documented in the resident's record.

(5) PHYSICAL RESTRAINTS. (a) *Definitions.* In this subsection:

1. "Mechanical support" means any article, device or garment used only to achieve proper body position or balance of the resident or in specific medical or surgical treatment, including a geri chair, posey belt, jacket, bedside rail or protective head gear.

2. "Physical restraint" means any article, device or garment used primarily to modify resident behavior by interfering with the free movement of the resident or normal functioning of a portion of the body, and which the resident is unable to remove easily, or confinement in a locked room, but does not include mechanical supports. A totally enclosed crib or barred enclosure is a physical restraint.

(b) *Use of restraints.* 1. Except as provided in subd. 2., a physical restraint may be applied only as an integral part of the resident's behavior management program on the written order of a physician. The order shall indicate the resident's name, the reason for the restraint and the period during which the restraint is to be applied. An order for a physical restraint not used as an integral part of a behavior management program may not be in effect longer than 12 hours.

2. In an emergency, a physical restraint may be temporarily applied without an order of a physician if necessary to protect the resident or another person from injury or to prevent physical harm to the resident or another person resulting from the destruction of property, provided that the physician is notified within one hour following application of the restraint and authorizes its continued use and that:

a. For the initial emergency authorization, the physician specifies the type of restraint to be used, reasons for the restraint and time limit or change in behavior that will determine when the restraints are removed;

b. A follow-up contact is made with the physician if an emergency restraint is continued for more than 12 hours; and

c. Written authorization for the emergency use of restraints is obtained from the physician within 48 hours following the initial physician contact.

3. A physical restraint may only be used when less restrictive measures are ineffective and provided that a habilitation plan is developed and implemented to reduce the individual's dependency on the physical restraints.

4. A physical restraint may not be used as punishment, for the convenience of the staff or as a substitute for an active treatment program or any particular treatment.

5. A physical restraint used as a time-out device, as defined in sub. (6), shall be applied only during a behavior management program and only in the presence of staff trained to implement the program.

6. a. Staff trained in the use of restraints shall check physically restrained residents at least every 30 minutes.

b. Residents in physical restraints shall have their positions changed, personal needs met, and an opportunity for motion and exercise for a period of at least 10 minutes during every 2 hour period of physical restraint.

7. If the mobility of a resident is required to be restrained and can be appropriately restrained either by a locked unit or another physical restraint, a locked unit shall be used and s. DHS 134.33 shall apply.

8. Any use of restraints shall be noted, dated and signed in the resident's record. A record shall be kept of the periodic checking on the resident in restraints required by subd. 6.

(6) BEHAVIOR MANAGEMENT PROGRAMS. (a) *Definition.* In this subsection and in sub. (5), "time-out" means a procedure to improve a resident's behavior by removing positive reinforcement when the behavior is undesirable.

(b) *Plans.* A written plan shall be developed for each resident participating in a behavior management program, including a resident placed in a physical restraint to modify behavior or for whom drugs are used to manage behavior. The plan shall be incorporated into the resident's IPP and shall include:

1. The behavioral objectives of the program;
2. The methods to be used;
3. The schedule for the use of each method;
4. The persons responsible for the program;
5. The data to be collected to assess progress toward the desired objectives; and
6. The methods for documenting the resident's progress and determining the effectiveness of the program.

(c) *Review and approval.* The department shall review for approval every plan for a behavior management program before the program is started for the following:

1. Any unlocked time-out that exceeds one hour;
2. Any procedure considered unusual or intrusive, such as a procedure that would be considered painful or humiliating by most persons or a procedure involving the confinement of an ambulatory person by means of a physical restraint or specialized clothing; or
3. Any procedure that restricts or denies a resident right under subch. II.

(d) *Consent.* A behavior management program may be conducted only with the written consent of the resident, the parents of a minor resident or the resident's guardian.

(e) *Duration.* Time-out involving removal from a situation may not be used for longer than one hour and then only during the behavior management program and only in the presence of staff trained to implement the program.

(7) CONDUCT AND CONTROL. (a) The facility shall have written policies and procedures for resident conduct and control that are available in each living unit and to parents and guardians.

(b) When appropriate, residents shall be allowed to participate in formulating policies and procedures for resident conduct and control.

(c) Corporal punishment of a resident is not permitted.

(d) No resident may discipline another resident unless this is done as part of an organized self-government program conducted in accordance with written policy and is an integral part of an overall treatment program supervised by a licensed psychologist or physician.

History: Cr. Register, June, 1988, No. 390, eff. 7-1-88; CR 04-053: r. (4) (a) 2. and 3. and (c), am. (4) (d) 2. and (5) (b) 1. Register October 2004 No. 586, eff. 11-1-04; correction in (4) (a) 1. made under s. 13.93 (2m) (b) 7., Stats., Register October 2007 No. 622.

DHS 134.61 Nursing services. (1) **REQUIRED SERVICES.** All facilities shall provide residents with nursing services in accordance with the needs of the residents. These services shall include:

(a) The development, review, and updating of an IPP as part of the interdisciplinary team process;

(b) The development, with a physician, of a medical care plan of treatment for a resident when the physician has determined that the resident requires such a plan;

(c) In facilities with residents who have been determined by the physician not to require a medical care plan, arrangements for a nurse to conduct health surveillance of each resident on a quarterly basis;

(d) Based on the nurse's recorded findings, action by the nurse, including referral to a physician when necessary, to address the health problems of a resident; and

(e) Implementation with other members of the interdisciplinary team of appropriate protective and preventive health mea-

asures, including training residents and staff as needed in appropriate personal health and hygiene measures.

(2) NURSING ADMINISTRATION. (a) *Health services supervision.* 1. A facility shall have a health services supervisor to supervise the facility's health services full-time on one shift a day, 7 days a week, for residents for whom a physician has ordered a medical care plan.

2. The health services supervisor required under subd. 1. shall be:

- a. A registered nurse; or
- b. A licensed practical nurse with consultation at regular intervals from a registered nurse under contract to the facility.

(3) TRAINING. (a) A registered nurse shall participate as appropriate in the planning and implementation of training programs for facility personnel.

(b) The facility shall train resident care personnel in:

- 1. Detecting signs of illness or dysfunction that warrant medical or nursing intervention;
- 2. Basic skills required to meet the health needs and problems of the residents; and
- 3. First aid for accidents and illnesses.

History: Cr. Register, June, 1988, No. 390, eff. 7-1-88.

DHS 134.62 Professional program services.

(1) PROVISION OF SERVICES. All facilities shall have or arrange for professional program services staff to implement the active treatment program defined in a resident's individual program plan (IPP). Professional program staff shall work directly with the resident and with other staff who work with the resident in carrying out the goals and objectives stated in the resident's IPP.

(2) QUALIFICATIONS OF PROFESSIONAL PROGRAM STAFF. (a) *Psychology staff.* Psychological services shall be provided by a psychologist licensed under ch. 455, Stats.

(b) *Physical therapy staff.* Physical therapy services shall be given or supervised by a registered physical therapist licensed under ss. 448.05 and 448.07, Stats.

(c) *Speech pathology and audiology staff.* Speech and hearing therapy shall be given or supervised by a speech pathologist or audiologist who:

- 1. Meets the standards for a certificate of clinical competence granted by the American speech and hearing association; or
- 2. Meets the educational requirements and is in the process of acquiring the supervised experience required for certification under subd. 1.

(d) *Occupational therapy staff.* Occupational therapy shall be given or supervised by a therapist who meets the standards for registration as an occupational therapist of the American occupational therapy association.

(e) *Recreation staff.* Recreation shall be led or supervised by an individual who has a bachelor's degree in recreation or in a related specialty such as art, dance, music, physical education or recreation therapy.

(f) *Other professional program staff.* Professional program services other than those under pars. (a) to (e) shall be provided by individuals who have at least a bachelor's degree in a human services field such as sociology, special education or rehabilitation counseling.

History: Cr. Register, June, 1988, No. 390, eff. 7-1-88.

DHS 134.64 Dietetic services. (1) SERVICES. Facilities shall provide or contract for dietetic services which meet the requirements of this section. Services shall include:

- (a) Planning menus that provide nutritionally adequate diets to all residents;
- (b) Initiating food orders;
- (c) Establishing and enforcing food specifications;
- (d) Storing and handling food;

- (e) Preparing and serving food;
- (f) Maintaining safe and sanitary conditions;
- (g) Orienting, training and supervising staff; and
- (h) Controlling food costs.

Note: For standards on safe and sanitary conditions, see s. DHS 190.09.

(2) STAFF. (a) *Numbers.* A facility shall have enough capable staff to meet the food and nutrition needs of the residents. In small facilities the residents shall be encouraged to participate, under proper supervision, in planning, preparing and serving the food.

(b) *Supervision.* Dietetic services shall be supervised by a full-time supervisor, except that an FDD with fewer than 50 residents may employ a part-time supervisor.

(c) *Qualifications.* The dietetic services supervisor shall be either:

- 1. A dietitian; or
- 2. Shall receive necessary consultation from a dietitian, and shall either:

- a. Hold an associate degree as a dietetic technician; or
- b. Have completed a course of study in food service supervision at a vocational, technical and adult education school, or an equivalent school or program, or presently be enrolled in a course of study in food service supervision.

Note: See s. DHS 134.47 (5) (c) 6. for required documentation of consultation from a dietitian.

(3) STAFF HEALTH AND PERSONAL HYGIENE. Food service staff and other staff who prepare and serve food shall be in good health and practice hygienic food-handling techniques.

Note: For inservice training requirements, see s. DHS 134.45.

(4) MENUS. (a) *General diets.* 1. Menus shall be planned and written at least 2 weeks in advance of their use, shall be different for the same days of each week and shall be adjusted for seasonal availability of foods.

2. The facility shall provide nourishing, well-balanced meals that are, to the extent medically possible, in accordance with the recommended dietary allowances of the food and nutrition board of the national research council, national academy of sciences, adjusted for age, sex, activity level and disability. See Appendix A of this chapter.

Note: For more information about nutritional needs of residents, write the Division of Quality Assurance, P.O. Box 2969, Madison, WI 53701-2969.

3. The facility shall make a reasonable adjustment to accommodate each resident's preferences, habits, customs, appetite and physical condition.

4. Food may not be denied to a resident in order to punish the resident unless the denial is a part of an approved, documented behavior management program under s. DHS 134.60 (6), and then only if a nutritionally adequate diet is maintained.

5. A variety of foods, including protein foods, fruits, vegetables, dairy products, breads and cereals, shall be provided.

(b) *Modified diets.* 1. A modified diet may be served only on order of the resident's physician and shall be consistent with that order. A dietitian shall participate in decisions about modified and special diets. A record of the order shall be kept on file.

2. The modified diet shall be reviewed by the physician and the dietitian on a regularly scheduled basis and adjusted as needed. Modifications may include changes in the type and texture of food.

(5) MEAL SERVICE. (a) *Schedule.* The facility shall serve at least 3 meals daily at regular times comparable to normal meal times in the community. No more than 14 hours may elapse between a substantial evening meal and breakfast the following day, and not less than 10 hours may elapse between breakfast and the evening meal of the same day.

(b) *Table service.* All meals shall be served in dining rooms unless otherwise required by a physician or by decision of the resident's interdisciplinary team. The facility shall provide table service in dining rooms for all residents who can and want to eat at a table, including residents in wheelchairs.

(c) *Developmental needs of residents.* Dining areas shall be equipped with tables, chairs, eating utensils and dishes to meet the developmental needs of each resident.

(d) *Self-help.* There shall be adequate staff and supervision in dining rooms and resident rooms to direct self-help eating procedures and to ensure that each resident receives sufficient and appropriate foods to meet the resident's needs.

(e) *Re-service.* Food served but uneaten shall be discarded unless it is served in the manufacturer's package which remains unopened and is maintained at a safe temperature.

(f) *Temperature.* Food shall be served at proper temperatures but not more than 50°F. (10°C.) for cold foods and not less than 120°F. (49°C.) for hot foods.

(g) *Snacks.* If not prohibited by the resident's diet or condition, snacks shall be routinely offered to each resident between the evening meal and bedtime. Between-meal snacks shall be planned in advance and shall be consistent with daily nutritional needs.

(6) FOOD SUPPLIES, PREPARATION AND COOKING. (a) *Food supplies.* Food shall be obtained from sources that comply with all laws relating to food and food labeling.

(b) *Preparation and cooking.* Food shall be cleaned, prepared and cooked using methods that conserve nutritive value, flavor and appearance and prevent food contamination. Food shall be cut, chopped or ground as required for individual residents.

(7) SANITATION. (a) *Equipment, utensils and environment.* 1. All equipment, appliances and utensils used in preparation or serving food shall be maintained in a functional, sanitary and safe condition. New and replacement equipment shall meet criteria, if any, established by the national sanitation foundation.

2. The floors, walls and ceilings of all rooms in which food or drink is stored, prepared or served, or in which utensils are washed or stored, shall be kept clean and in good repair.

3. All furnishings, table linens, drapes and furniture in rooms in which food is stored, prepared or served, or in which utensils are washed or stored, shall be in good condition and maintained in a clean and sanitary condition.

Note: Copies of the National Sanitation Foundation's "Listing of Food Service Equipment" are kept on file and may be consulted in the Department's Division of Quality Assurance and the Legislative Reference Bureau.

(b) *Storage and handling of food.* 1. Food shall be stored, prepared, distributed and served under sanitary conditions that prevent contamination.

2. All potentially hazardous food that requires refrigeration to prevent spoilage shall, except when being prepared or served, be kept in a refrigerator which shall have a temperature maintained at or below 40° F. (4° C.).

Note: See ch. DHS 145 for the requirements for reporting incidents of suspected disease transmitted by food.

(c) *Animals.* Animals shall be kept out of areas of the facility where food is prepared, served or stored or where utensils are washed or stored.

(8) DISHWASHING. Whether washed by hand or by mechanical means, all dishes, plates, cups, glasses, pots, pans and utensils shall be cleaned in accordance with accepted procedures, which shall include separate steps for pre-washing, washing, rinsing and sanitizing by means of hot water or chemicals or a combination approved by the department.

Note: For more detailed information on safe and proper methods of dishwashing, see s. DHS 190.10.

History: Cr. Register, June, 1988, No. 390, eff. 7-1-88; CR 04-053; r. (6) (c) and (7) (a) 4. Register October 2004 No. 586, eff. 11-1-04.

DHS 134.65 Dental services. (1) FORMAL ARRANGEMENTS. The facility shall have a formal written arrangement with dental service providers to provide the dental services required for each resident under this section. The services shall be provided by personnel licensed or certified under ch. 447, Stats.

(2) DENTAL CARE. (a) *Dental examination.* 1. Not later than one month after a resident's admission, unless the person was

given a comparable examination within 6 months before admission, each resident shall be provided with comprehensive diagnostic dental services that include a complete extraoral and intraoral examination using all diagnostic aids necessary to properly evaluate the resident's oral condition.

2. The results of the examination under subd. 1. shall be entered into the resident's record.

(b) *Treatment.* The facility shall ensure that each resident is provided with dental treatment through a system that ensures that each resident is reexamined at least once a year and more often if needed.

(c) *Emergency dental care.* The facility shall provide for emergency dental care for residents on a 24-hour a day basis by licensed dentists.

(d) *Dental education and training.* The facility shall provide education and training in the maintenance of oral health, including a dental hygiene program that informs residents and all staff of nutrition and diet control measures, and residents and living unit staff of proper oral hygiene methods.

Note: For resident care staff in-service training requirements, see s. DHS 134.45 (2) (b); for record requirements, see s. DHS 134.47 (4) (i); for discharge and transfer record requirements, see s. DHS 134.53 (4) (d).

History: Cr. Register, June, 1988, No. 390, eff. 7-1-88.

DHS 134.66 Medical services. (1) MEDICAL SERVICES - GENERAL. A facility shall have written agreements with health care providers to provide residents with 24-hour medical services, including emergency care.

(2) PHYSICIAN SERVICES. (a) *Attending physician.* 1. Each resident shall be under the supervision of a physician of the resident's or guardian's choice who shall evaluate and monitor the resident's immediate and long-term needs and prescribe measures necessary for the health, safety and welfare of the resident.

2. The attending physician shall participate in the development of the individual program plan required under s. DHS 134.60 (1) (b) 1. for each newly admitted resident under his or her care as part of the interdisciplinary team process.

3. The attending physician shall ensure that arrangements are made for medical care of the resident during the attending physician's absence.

(b) *Physician's visits.* 1. Each resident shall be seen by his or her attending physician at least once a year and more often as needed.

2. The attending physician shall review the resident's individual program plan required under s. DHS 134.60 (1) (b).

3. The attending physician shall write orders for medications, special studies and routine screening examinations as indicated by the resident's condition or as observed at the time of a visit and shall also review existing orders and treatments for needed changes at the time of each visit.

4. A progress note shall be written, dated and signed by the attending physician at the time of each visit.

5. Physician visits are not required for respite care residents except as provided under s. DHS 134.70 (5).

(c) *Participation in evaluation.* A physician shall participate in the interdisciplinary review under s. DHS 134.60 (1) (c) 2. when a physician's participation is indicated by the medical or psychological needs of the resident.

(d) *Designated physician.* The facility shall designate a physician by written agreement with the physician to advise the facility about general health conditions and practices and to render or arrange for emergency medical care for a resident when the resident's attending physician is not available.

Note: See requirements in s. DHS 134.68 for providing or obtaining laboratory, radiologic and blood services.

(3) MONITORING RESIDENT HEALTH. The facility shall promptly detect resident health problems by means of adequate medical surveillance and regular medical examinations, including annual

examinations of vision and hearing, routine immunizations and tuberculosis control measures, and shall refer residents for treatment of these problems.

History: Cr. Register, June, 1988, No. 390, eff. 7-1-88.

DHS 134.67 Pharmaceutical services. (1) DEFINITIONS. In this section:

(a) "Medication" has the meaning prescribed for "drug" in s. 450.06, Stats.

(b) "Prescription medication" has the meaning prescribed for "prescription drug" in s. 450.07, Stats.

(c) "Schedule II drug" means any drug listed in s. 961.16, Stats.

(2) SERVICES. Each facility shall provide for obtaining medications for the residents directly from licensed pharmacies.

(3) SUPERVISION. (a) The facility shall have a written agreement with a pharmacist and a registered nurse who, with the administrator, shall develop the pharmaceutical policies and procedures appropriate to the size and nature of the facility that will ensure the health, safety and welfare of the residents, including policies and procedures concerning:

1. Handling and storage of medications;
2. Administration of medications, including self-administration;
3. Review of medication errors;
4. Maintenance of an emergency medication kit under sub. (4); and
5. Automatic termination of medication orders which are not limited as to time and dosages.

(b) The pharmacist or, in a small facility, a registered nurse shall visit the facility at least quarterly to review drug regimens and medication practices and shall submit a written report of findings and recommendations to the facility administrator.

(c) The facility shall maintain a current pharmacy manual which includes policies and procedures and defines functions and responsibilities relating to pharmacy services. The manual shall be revised annually to keep it abreast of developments in services and management techniques.

(d) A pharmacist or, in a small facility, a registered nurse shall review the medication record of each resident at least quarterly for potential adverse reactions, allergies, interactions and contraindications, and shall advise the physician of any changes that should be made in it.

(4) EMERGENCY MEDICATION KIT. (a) If a facility has an emergency medication kit, the emergency medication kit shall be under the control of a pharmacist.

(c) The emergency kit shall be sealed and stored in a locked area accessible only to licensed nurses, physicians, pharmacists and other persons who may be authorized in writing by the physician designated under s. DHS 134.66 (2) (d) to have access to the kit.

(5) REQUIREMENTS FOR ALL MEDICATION SYSTEMS. (a) *Obtaining new medications.* 1. When a medication is needed which is not stocked, a registered nurse or designee shall telephone an order to the pharmacist who shall fill the order and release the medication in return for a copy of the physician's written order.

2. When a new medication is needed which is stocked, a copy of the resident's new medication order shall be sent to the pharmacist filling medication orders for the resident.

(b) *Storing and labeling medications.* Unless exempted under par. (d), all medications shall be handled in accordance with the following provisions:

1. Medications shall be stored in locked cabinets, closets or rooms, be conveniently located in well-lighted areas and be kept at a temperature of no more than 85°F. (29°C.);

2. Medications shall be stored in their original containers and may not be transferred between containers, except by a physician or pharmacist;

3. a. Separately locked and securely fastened boxes or drawers, or permanently affixed compartments within the locked medications area, shall be provided for storage of schedule II drugs, subject to 21 USC ch. 13 and ch. 961, Stats.;

b. For schedule II drugs, a proof-of-use record shall be maintained which lists, on separate proof-of-use sheets for each type and strength of schedule II drug, the date and time administered, resident's name, physician's name, dose, signature of the person administering the dose, and balance;

c. Proof-of-use records shall be audited daily by the registered nurse or designee, except that in facilities in which a registered nurse is not required, the administrator or designee shall perform the audit of proof-of-use records daily;

d. When the medication is received by the facility, the person completing the control record shall sign the record and indicate the amount received;

4. Medications packaged for an individual resident shall be kept physically separated from other residents' medications;

5. Medications requiring refrigeration shall be kept in a separate covered container in a locked refrigeration unit, unless the refrigeration unit is available in a locked drug room;

6. Medications that are known to be poisonous if taken internally or that are labeled "for external use only" shall be kept physically separated from other medications within a locked area, except that time-released transdermal drug delivery systems, including nitroglycerin ointments, may be kept with internal medications;

7. Medications shall be accessible only to the registered nurse or designee, except that in facilities where no registered nurse is required, medications shall be accessible only to the administrator or designee. The key shall be in the possession of the person who is on duty and assigned to administer the medications;

8. Prescription medications shall be labeled as required by s. 450.07 (4), Stats., and with the expiration date. Nonprescription medications shall be labeled with the name of the medication, directions for use, expiration date and the name of the resident taking the medication; and

9. The facility may not give a medication to a resident after the expiration date of the medication.

(c) *Destruction of medications.* 1. Unless otherwise ordered by a physician, a resident's medication not returned to the pharmacy for credit shall be destroyed within 72 hours after receipt of a physician's order discontinuing its use, the resident's discharge, the resident's death or passage of its expiration date. No resident's medication may be held in the facility for more than 30 days unless an order is written by a physician every 30 days to hold the medication.

2. Records shall be kept of all medications returned for credit. Any medication under subd. 1. not returned for credit shall be destroyed in the facility and a record of the destruction shall be prepared which shall be signed and dated by 2 or more personnel who witnessed the destruction and who are licensed or registered in the health care field.

(d) *Resident control and use of medications.* 1. Residents may have medications in their possession or stored at their bedsides if ordered by a physician or otherwise permitted under s. DHS 134.60 (4) (d) 4.

2. Medications in the possession of a resident which, if ingested or brought into contact with the nasal or eye mucosa would produce toxic or irritant effects, shall be stored and used by a resident only in accordance with the health, safety and welfare of all residents.

(6) ADDITIONAL REQUIREMENTS FOR UNIT DOSE SYSTEMS. (a) *Scope*. When a unit-dose drug delivery system is used, the requirements of this subsection shall apply in addition to those of sub. (5).

(b) *General procedures*. 1. The individual medication in a unit dose system shall be labeled with the drug name, strength, expiration date and lot or control number.

2. A resident's medication tray or drawer in a unit dose system shall be labeled with the resident's name and room number.

3. Each medication shall be dispensed separately in single unit dose packaging exactly as ordered by the physician and in a manner that ensures the stability of the medication.

4. An individual resident's supply of medications shall be placed in a separate, individually labeled container, transferred to the living unit and placed in a locked cabinet or cart. This supply may not exceed 4 days for any one resident.

5. If not delivered to the facility by the pharmacist, the pharmacist's agent shall transport unit dose drugs in locked containers.

6. Individual medications shall remain in the identifiable unit dose package until directly administered to the resident. Transferring between containers is prohibited.

7. Unit dose carts or cassettes shall be kept in a locked area when not in use.

History: Cr. Register, June, 1988, No. 390, eff. 7-1-88; CR 04-053; r. and recr. (2), r. (4) (b) and (5) (c) 3. Register October 2004 No. 586, eff. 11-1-04.

DHS 134.68 Laboratory, radiologic and blood services. (1) **DIAGNOSTIC SERVICES.** (a) Facilities shall provide or promptly obtain laboratory, radiologic and other diagnostic services needed by residents.

(b) Any laboratory and radiologic services provided by a facility shall meet the applicable requirements for hospitals found in ch. DHS 124.

(c) If a facility does not provide the services required by this section, the facility shall make arrangements for obtaining the services from a physician's office, hospital, nursing facility, portable x-ray supplier or independent laboratory.

(d) No services under this subsection may be provided without an order of a physician or a physician extender.

(e) A resident's attending physician shall be notified promptly of the findings of all tests conducted on the resident.

(f) The facility shall assist the resident, if necessary, in arranging for transportation to and from the provider of service.

Note: For record requirements, see s. DHS 134.47.

(2) **BLOOD AND BLOOD PRODUCTS.** Any blood-handling and storage facilities at an FDD shall be safe, adequate and properly supervised. If a facility maintains and transfers blood and blood products or only provides transfusion services, it shall meet the requirements of s. DHS 124.17 (3).

History: Cr. Register, June, 1988, No. 390, eff. 7-1-88; corrections in (1) (b) and (2) made under s. 13.92 (4) (b) 7., Stats., Register January 2009 No. 637.

DHS 134.70 Special requirements when persons are admitted for short-term care. (1) **SCOPE.** Facilities that admit persons for short-term care may use the procedures included in this section rather than the procedures included in ss. DHS 134.52 and 134.60 (1). The requirements in this section apply to all facilities that admit persons for short-term care when they admit, evaluate or provide care for these persons. Short-term care is for either respite or recuperative purposes. Except as specified in this section, all requirements of this chapter, including s. DHS 134.51, apply to all facilities that admit persons for short-term care.

(2) **PROCEDURES FOR ADMISSION.** (a) *Respite care.* For a person admitted to a facility for respite care, the following admission and resident care planning procedures may be carried out in place of the requirements under ss. DHS 134.52 and 134.60 (1):

1. A registered nurse or physician shall complete a comprehensive resident assessment of the person prior to or on the day of

admission. This comprehensive assessment shall include evaluation of the person's medical, nursing, dietary, rehabilitative, pharmaceutical, dental, social and activity needs. The consulting or staff pharmacist shall participate in the comprehensive assessment as provided under sub. (4) (a). As part of the comprehensive assessment, when the registered nurse or physician has identified a need for a special service, staff from the discipline that provides the service shall, on referral from the registered nurse or physician, complete a and assessment of the person's prior health and care in that discipline. The comprehensive resident assessment shall include:

a. A summary of the major needs of the person and of the care to be provided;

b. A statement from the attending physician that the person is free from tuberculosis and other clinically apparent communicable diseases; and

c. The attending physician's plans for discharge.

2. The registered nurse, with verbal agreement of the attending physician, shall develop a written plan of care for the person being admitted prior to or at the time of admission. The plan of care shall be based on the comprehensive resident assessment under subd. 1., the physician's orders and any special assessments under subd. 1.

3. The facility shall send a copy of the comprehensive resident assessment, the physician's orders and the plan of care under subd. 2. to the person's attending physician. The attending physician shall sign the assessment and the plan of care within 48 hours after the person is admitted.

(b) *Recuperative care.* For a person admitted to a facility for recuperative care, the following admission and resident care planning procedures may be carried out in place of the requirements under ss. DHS 134.52 and 134.60 (1):

1. The person may be admitted only on order of a physician accompanied by information about the person's medical condition and diagnosis, the physician's initial plan of care, and either the physician's written certification that the person is free of tuberculosis and other clinically apparent communicable diseases or an order of a physician for procedures to treat any disease the person may have.

2. A registered nurse shall prepare an initial plan of care for nursing services to be implemented on the day of admission, which shall be based on the physician's initial plan of care under subd. 1. and shall be superseded by the plan of care under subd. 5.

3. A physician shall conduct a physical examination of the new resident within 48 hours following admission, unless a physical examination was performed by a physician within 15 days before admission.

4. A registered nurse shall complete a comprehensive resident assessment of the person prior to or within 72 hours after admission. The comprehensive assessment shall include evaluation of the person's nursing, dietary, rehabilitative, pharmaceutical, dental, social and activity needs. The consulting or staff pharmacist shall participate in the comprehensive assessment as provided under sub. (4) (a). As part of the comprehensive assessment, when the registered nurse has identified a need for a special service, staff from the discipline that provides the service shall, on referral from the registered nurse, complete a and assessment of the person's prior health and care in that discipline.

5. The registered nurse, with verbal agreement of the attending physician, shall develop a written plan of care for the new resident within one week after admission. The plan of care shall be based on the comprehensive resident assessment under subd. 4., the physician's orders, and any special assessment under subd. 4.

6. The facility shall send a copy of the comprehensive resident assessment, the physician's orders and the plan of care under subd. 5. to the new resident's attending physician. The attending physician shall sign the assessment and the plan of care.

(3) **ADMISSION INFORMATION.** (a) This subsection takes the place of s. DHS 134.31 (3) (d) 1. for persons admitted for respite care or recuperative care.

(b) No person may be admitted to a facility for respite care or recuperative care without signing or the person's guardian or designated representative signing an acknowledgement of having received a statement before or on the day of admission which contains at least the following information:

1. An indication of the expected length of stay, with a note that the responsibility for care of the resident reverts to the resident or other responsible party following expiration of the designated length of stay;
2. An accurate description of the basic services provided by the facility, the rate charged for those services and the method of payment for them;
3. Information about all additional services regularly offered but not included in the basic services. The facility shall provide information on where a statement of the fees charged for each of these services can be obtained. These additional services include pharmacy, x-ray, beautician and all other additional services regularly offered to residents or arranged for residents by the facility;
4. The method for notifying residents of a change in rates or fees;
5. Terms for refunding advance payments in case of transfer, death or voluntary or involuntary termination of the service agreement;
6. Conditions for involuntary termination of the service agreement;
7. The facility's policy regarding possession and use of personal belongings;
8. In the case of a person admitted for recuperative care, the terms for holding and charging for a bed during the resident's temporary absence; and
9. In summary form, the residents' rights recognized and protected by s. DHS 134.31 and all facility policies and regulations governing resident conduct and responsibilities.

(4) **MEDICATIONS.** (a) The consulting or staff pharmacist shall review the drug regimen of each person admitted to the facility for respite care or recuperative care as part of the comprehensive resident assessment under sub. (2) (a) 1. or (b) 4.

(b) The consulting or staff pharmacist, who is required under s. DHS 134.67 (3) (b) to visit the facility at least quarterly to review drug regimens and medication practices, shall review the drug regimen of each resident admitted for recuperative care and the drug regimen of each resident admitted for respite care who may still be a resident of the facility at the time of the pharmacist's visit.

(c) Respite care residents and recuperative care residents may bring medications into the facility as permitted by written policy of the facility.

(5) **PHYSICIAN VISITS.** The requirements under s. DHS 134.66 (2) (b) for physician visits do not apply in the case of a respite care resident, except when the nursing assessment indicates there has been a change in the resident's condition following admission, in which case the physician shall visit the resident if this appears indicated by the assessment of the resident.

(6) **PRE-DISCHARGE PLANNING CONFERENCE.** (a) For residents receiving recuperative care, a planning conference shall be conducted at least 10 days before the designated date of termination of the short-term care, except in an emergency, to determine the appropriateness of discharge or need for the resident to stay at the facility. At the planning conference a care plan shall be developed for a resident who is being discharged to home care or to another health care facility. If discharge is not appropriate, the period for recuperative care shall be extended, if it was originally less than 90 days, for up to the 90 day limit, or arrangements shall be made

to admit the person to the facility for care that is not short-term, as appropriate.

(b) Paragraph (a) takes the place of s. DHS 134.53 (4) (c) 1. and 2. for recuperative care residents.

(7) **RECORDS.** (a) *Contents.* The medical record for each respite care resident and each recuperative care resident shall include, in place of the items required under s. DHS 134.47 (4):

1. The resident care plan prepared under sub. (2) (a) 2. or (b) 5.;
 2. Admission nursing notes identifying pertinent problems to be addressed and areas of care to be maintained;
 3. For recuperative care residents, nursing notes addressing pertinent problems identified in the resident care plan and, for respite care residents, nursing notes prepared by a registered nurse or licensed practical nurse to document the resident's condition and the care provided;
 4. Physicians' orders;
 5. A record of medications;
 6. Any progress notes by physicians or other persons providing health care to the resident that document resident care and progress;
 7. For respite care residents, a record of change in condition during the stay at the facility; and
 8. For recuperative care residents, the physician's discharge summary with identification of resident progress and, for respite care residents, the registered nurse's discharge summary with notes of resident progress during the stay.
- (b) *Location and accessibility.* The medical record for each short-term care resident shall be kept with the medical records of other residents and shall be readily accessible to authorized representatives of the department.

History: Cr. Register, June, 1988, No. 390, eff. 7-1-88.

Subchapter VI — Physical Environment

DHS 134.71 Furniture, equipment and supplies.

(1) **FURNITURE IN RESIDENT CARE AREAS.** (a) *Beds.* 1. The facility shall provide each resident with a separate bed of proper size and height for the convenience of the resident. The bed shall be in good repair and have a headboard of sturdy construction. Roll-away beds, day beds, cots, double-beds or folding beds may not be used.

2. Each bed shall be provided with a clean, comfortable mattress of appropriate size for the bed.

3. When required by the resident's condition or age, or both, side rails shall be installed for both sides of the bed.

4. Each resident shall be provided at least one clean, comfortable pillow. Additional pillows shall be provided if requested by the resident or required by the resident's condition.

5. Each bed shall have a mattress pad.

6. A moisture-proof mattress cover shall be provided for each mattress to keep the mattress clean and dry. A moisture-proof pillow cover shall be provided for each pillow to keep the pillow clean and dry.

7. A supply of sheets and pillow cases sufficient to keep beds clean and odor-free shall be stocked. At least 2 sheets and 2 pillow cases shall be furnished to each resident each week.

8. A sufficient number of blankets appropriate to the weather and seasonal changes shall be provided. Blankets shall be changed and laundered as necessary to maintain cleanliness.

9. Each bed shall have a clean, washable bedspread.

(b) *Other furnishings.* 1. A dresser or adequate compartment or drawer space shall be provided for each resident to store personal clothing and effects and to store, as space permits, other personal possessions in a reasonably secure manner.

Note: See the requirements under s. DHS 134.84 (2) (g) and (6) (a) for closet space and resident storage.

2. Other appropriate furniture, such as a table or desk and a chair, shall be provided for each resident.

(2) **TOWELS AND WASHCLOTHS.** Clean towels and washcloths shall be provided to each resident as needed. Towels and washcloths may not be used by more than one resident between launderings.

(3) **WINDOW COVERINGS.** Every window shall be supplied with flame-retardant shades, draw drapes or other covering material or devices which, when properly used and maintained, shall afford privacy and light control for the resident.

(4) **MAINTENANCE.** All furnishings and equipment shall be maintained in a usable, safe and sanitary condition.

(5) **OXYGEN.** Facilities that have residents who require oxygen shall meet all of the following requirements:

(a) No oil or grease may be used on oxygen equipment.

(b) When placed at the resident's bedside, oxygen tanks shall be securely fastened to a tip-proof carrier or base.

(c) Oxygen regulators may not be stored with solution left in the attached humidifier bottles.

(d) When in use at the resident's bedside, cannulas, hoses, and humidifier bottles shall be maintained and used in accordance with current standards of practice and manufacturers' recommendations.

(e) Disposable inhalation equipment shall be maintained and used in accordance with current standards of practice and manufacturers' recommendations.

(f) With nondisposable inhalation equipment such as intermittent positive pressure breathing equipment, the entire resident breathing circuit, including nebulizers and humidifiers, shall be maintained and used in accordance with current standards of practice and manufacturers' recommendations.

(g) Warning signs shall be posted when oxygen is in use.

History: Cr. Register, June, 1988, No. 390, eff. 7-1-88; 2015 Wis. Act 107: am. (5) (intro.), (a) to (f) Register November 2015 No. 719, eff. 12-1-15.

DHS 134.72 Safety and sanitation. (1) **GENERAL REQUIREMENT.** Facilities shall develop and implement policies that provide for a safe and sanitary environment for residents and personnel at all times.

(2) **CLEANING AND REPAIR.** (a) *General.* Facilities shall be kept clean and free from offensive odors, accumulations of dirt, rubbish, dust and safety hazards.

(b) *Floors.* Floors and carpeting shall be kept clean. If polishes are used on floors, a nonslip finish shall be provided. Carpeting or any other material covering the floors that is worn, damaged, contaminated or badly soiled shall be replaced.

(c) *Ceilings and walls.* 1. Ceilings and walls shall be kept clean and in good repair. The interior and exterior of the buildings shall be painted or stained as needed to protect the surfaces. Loose, cracked or peeling wallpaper or paint shall be replaced or repaired.

2. A facility shall use lead-free paint inside the facility and shall remove or cover any surfaces containing lead-based paint that are accessible to residents.

(d) *Furnishings.* All furniture and other furnishings shall be kept clean and in good repair at all times.

(3) **COMBUSTIBLES IN STORAGE AREAS.** Attics, cellars and other storage areas shall be kept safe and free from dangerous accumulations of combustible materials. Combustibles, including cleaning rags and compounds, shall be kept in closed metal containers.

(4) **GROUND.** The grounds of the facility shall be kept free from refuse, litter and waste water. Areas around buildings, sidewalks, gardens and patios shall be kept clear of dense undergrowth.

(5) **POISONS.** All poisonous compounds shall be clearly labelled as poisonous and, when not in use, shall be stored in

locked areas. These areas shall be separate from food storage, kitchenware storage and medication storage areas.

(6) **GARBAGE.** (a) All garbage and rubbish shall be stored in leakproof, nonabsorbent containers with close-fitting covers and in areas separate from areas used for the preparation and storage of food. Containers shall be cleaned regularly. Paperboard containers may not be used.

(b) Garbage and rubbish shall be disposed of promptly in a safe and sanitary manner.

Note: See requirements for incineration under s. DHS 134.83 (8) (f).

(7) **LINEN AND TOWELS.** Linens and towels shall be handled, stored, processed and transported in such a manner as to prevent the spread of infection. Soiled linen may not be sorted, rinsed or stored in bathrooms, resident rooms, kitchens, food storage areas or common hallways. If it is necessary to transport soiled linen through food preparation areas to laundry facilities, linens shall be in covered containers.

(8) **PEST CONTROL.** (a) *Requirement.* Facilities shall be maintained reasonably free from insects and rodents, with harborages and entrances of insects and rodents eliminated. When harborages and entrances of insects persist despite measures taken to eliminate them, pest control services shall be secured in accordance with the requirements of s. 94.705, Stats., to eliminate infestations.

(b) *Screening of windows and doors.* All windows and doors used for ventilation purposes shall be provided with wire screening of not less than number 16 mesh or its equivalent and shall be properly installed and maintained to prevent entry of insects. Screen doors shall be self-closing and shall not interfere with exiting. Properly installed airflow curtains or fans may be used in lieu of screens.

History: Cr. Register, June, 1988, No. 390, eff. 7-1-88.

Subchapter VII — Life Safety, Design and Construction

DHS 134.81 Scope and definitions. (1) **APPLICATION.** This subchapter applies to all facilities except where noted. Whenever a rule in s. DHS 134.83 or 134.84 modifies the applicable life safety code under s. DHS 134.82, the rule shall take precedence.

(2) **DEFINITIONS.** The definitions in the applicable life safety code required under s. DHS 134.82 apply to this subchapter. In addition, in this subchapter:

(a) "Type I facility" means a facility first licensed by the department or the plans of which were approved by the department as a facility regulated under ch. H 30, 31 or 32 prior to January 23, 1968, or as a public institution serving people with developmental disabilities under ch. H 34 prior to or on November 1, 1972.

(b) "Type II facility" means a facility the plans of which were approved by the department as a facility regulated under ch. H 30, 31 or 32, or under ch. HSS 3 or 132, on or after January 23, 1968, or which was approved as a public institution serving people with developmental disabilities under ch. H 34 after November 1, 1972, or which applies for approval on or after July 1, 1988, including new construction, an addition to an existing licensed facility and major remodeling, alteration or conversion of a facility.

History: Cr. Register, June, 1988, No. 390, eff. 7-1-88; CR 04-053: am. (2) (a) and (b) Register October 2004 No. 586, eff. 11-1-04.

DHS 134.812 Review for compliance with this chapter and the state building code. (1) The department shall review FDD construction and remodeling plans for compliance with this chapter and for compliance with the state commercial building code, chs. SPS 361 to 365, with the exception of s. SPS 361.31 (3). Where chs. SPS 361 to 365 refer to the department of safety and professional services, those rules shall be deemed for

the purposes of review under this chapter to refer to the department of health services.

(2) The department shall have 45 working days from receipt of an application for plan review and all required forms, fees, plans and documents to complete the review and approve the plan, approve the plan with conditions or deny approval for the plan.

History: Emerg. cr. eff. 7-1-96; cr. Register, December, 1996, No. 492, eff. 1-1-96; corrections in (1) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532; corrections in (1) made under s. 13.93 (2m) (b) 7., Stats., Register December 2003 No. 576; correction in (1) made under s. 13.92 (4) (b) 6., Stats., Register January 2009 No. 637; correction in (1) made under s. 13.92 (4) (b) 6., Stats., Register January 2012 No. 673.

DHS 134.815 Fees for plan reviews. (1) REQUIREMENT. Before the start of any construction or remodeling project for an FDD, the plans for the construction or remodeling shall be submitted to the department, pursuant to s. DHS 134.84 (1), for review and approval by the department. The fees established in this section shall be paid to the department for providing plan review services.

(2) FEE SCHEDULE. (a) *General.* The department shall charge a fee for the review under s. DHS 134.812 of plans for an FDD capital construction or remodeling project. The fee shall be based in part on the dollar value of the project, according to the schedule under par. (b), and in part on the total gross floor area in the plans, in accordance with par. (c). The total fee for plan review is determined under par. (d). Fees for review of partial plans, for revision of plans, for extensions of plan approval, and for handling and copying, and provisions for the collection and refund of fees are found in par. (e).

(b) *Fee part based on project dollar value.* The part of the fee based on project dollar value shall be as follows:

1. For projects with an estimated dollar value of less than \$5,000, \$100;
2. For projects with an estimated dollar value of at least \$5,000 but less than \$25,000, \$300;
3. For projects with an estimated dollar value of at least \$25,000 but less than \$100,000, \$500;
4. For projects with an estimated dollar value of at least \$100,000 but less than \$500,000, \$750;
5. For projects with an estimated dollar value of at least \$500,000 but less than \$1 million, \$1,500;
6. For projects with an estimated dollar value of at least \$1 million but less than \$5 million, \$2,500; and
7. For projects with an estimated dollar value of \$5 million or more, \$5,000.

(c) *Fee part based on total gross floor area.* 1. 'General.' The part of the fee based on total gross floor area shall be as provided in Table 134.815 subject to the conditions set out in this paragraph.

2. 'Building, heating and ventilation.' The fees in Table 134.815 apply to the submittal of all building and heating, ventilation and air conditioning (HVAC) plans. A fee for review of plans shall be computed on the basis of the total gross floor area of each building.

TABLE 134.815

Fee Part Based on Total Gross Floor Area

Area (Sq. Feet)	FEE		
	Bldg. & HVAC	Bldg. Area Only	HVAC Area Only
Up to 2,500	\$ 320	\$ 270	\$ 190
2,501 – 5,000	430	320	240
5,001 – 10,000	580	480	270
10,001 – 20,000	900	630	370
20,001 – 30,000	1,280	900	480
30,001 – 40,000	1,690	1,220	690

40,001 – 50,000	2,280	1,590	900
50,001 – 75,000	3,080	2,120	1,220
75,001 – 100,000	3,880	2,600	1,690
100,001 – 200,000	5,940	4,240	2,120
200,001 – 300,000	12,200	7,430	4,770
300,001 – 400,000	17,190	11,140	6,900
400,001 – 500,000	21,220	13,790	9,020
Over 500,000	22,810	14,850	10,080

3. 'Scope of fee.' The fees indicated in Table 134.815, relating to building and heating, ventilation and air conditioning plans, includes the plan review and inspection fee for all components, whether submitted with the original submittal or at a later date. Components covered by that fee are:

- a. Building plans;
- b. Heating, ventilation and air conditioning plans;
- c. Bleacher plans for interior bleachers only;
- d. Fire escape plans;
- e. Footing and foundation plans; and

f. Structural component plans, such as plans for floor and roof trusses, precast concrete, laminated wood, metal buildings, solariums and other similar parts of the building.

4. 'Building alteration.' a. The examination fee for review of plans for alteration of existing buildings and structures undergoing remodeling or review of tenant space layouts shall be determined in accordance with Table 134.815 on the basis of the gross floor area undergoing remodeling.

b. The fee specified in subd. 4. a. shall be based on the actual gross square footage of the area being remodeled. When remodeling of an individual building component affects building code compliance for a larger area, the fee shall be computed on the basis of the total square footage of the affected area.

(d) *Total fee for review of plans.* To determine the total fee for review of plans, the department shall:

1. Add the fee parts from pars. (b) and (c); and
2. Multiply the sum obtained in subd. 1. by 0.95.

(e) *Other fee provisions related to review of plans.* 1. Fee for miscellaneous plans. Miscellaneous plans are plans that have no building or heating, ventilation or air conditioning plan submissions and for which there may not be an associated area. The fee for a miscellaneous plan shall be \$250. This fee is for plan review and inspection. Miscellaneous plans include:

- a. Footing and foundation plans submitted prior to the submission of the building plans;
- b. Plans for industrial exhaust systems for dust, fumes, vapors and gases, for government-owned buildings only;
- c. Spray booth plans, for government-owned buildings only;
- d. Stadium, grandstand and bleacher plans, and interior bleacher plans submitted as independent projects;
- e. Structural plans submitted as independent projects, such as docks, piers, antennae, outdoor movie screens and observation towers; and

f. Plans for any building component, other than building and heating, ventilation and air conditioning, submitted following the final inspection by the department.

2. Fee for permission to start construction. The fee for permission to start construction shall be \$80. This fee shall apply to those applicants proposing to start construction prior to the approval of the plans by the department.

3. Fee for plan revision. The fee for revision of previously approved plans shall be \$100. This paragraph applies when plans are revised for reasons other than those that were requested by the department. The department may not charge a fee for revisions

requested by the department as a condition of original plan approval.

4. Fee for extension of plan approval. The examination fee for a plan previously approved by the department for which an approval extension [is requested] beyond the time limit specified in this chapter shall be \$75 per plan.

Note: Missing text is shown in brackets.

5. Collection of fees. Fees shall be remitted at the time the plans are submitted. No plan examinations, approvals or inspections may be made until fees are received.

6. Handling and copying fees. a. The department shall charge a handling fee of \$50 per plan to the submitting party for any plan that is submitted to the department, entered into the department's system and subsequently requested by the submitting party to be returned prior to departmental review.

b. The department may charge a photocopying fee of 25 cents per page to anyone who requests copies of construction or remodeling plans, except that a fee of \$5 per plan sheet shall be charged for reproduction of plan sheets larger than legal size.

(3) HANDLING AND COPYING FEES. (a) The department shall charge a handling fee of \$50 per plan to the submitting party for any plan which is submitted to the department, entered into the department's system and then the submitting party requests that it be returned prior to review.

(b) The department may charge a photocopying fee of 25 cents per page to anyone who requests copies of construction or remodeling plans, except that a fee of \$5 per plan sheet shall be charged for reproduction of plan sheets larger than legal size.

History: Emerg. cr. eff. 1-1-94; cr. Register, August, 1994, No. 464, eff. 9-1-94; emerg. r. and recr. eff. 7-1-96; r. and recr. (2), Register, December, 1996, No. 492, eff. 1-1-97; CR 03-033: am. (1) and (2) (a) Register December 2003 No. 576, eff. 1-1-04.

DHS 134.82 Life safety code. (1) APPLICABILITY. Facilities shall meet the applicable provisions of the 2012 edition of the Life Safety Code.

Note: Copies of the 2012 Life Safety Code and related codes are on file in the Department's Division of Quality Assurance and the Legislative Reference Bureau, and may be obtained from the National Fire Protection Association, Batterymarch Park, Quincy, MA 02169.

(2) FIRE SAFETY EQUIVALENCY DETERMINATION. An existing facility that does not meet all the requirements of the applicable Life Safety Code may be considered in compliance with it if it achieves a passing score on the Fire Safety Evaluation System (FSSES), developed by the U.S. Department of Commerce, National Bureau of Standards, to establish safety equivalencies under the Life Safety Code.

(3) RESIDENT SAFETY. (a) *Plan for emergencies.* 1. Each facility shall have a written plan to be followed in case of fire, a tornado warning, a missing resident or other emergency which shall specify persons to be notified, locations of alarm signaling devices and fire extinguishers, evacuation routes, a procedure for evacuating helpless residents, the frequency of fire drills and assignment of specific tasks and responsibilities to the staff on each shift and personnel from each discipline.

2. The plan shall be developed with the assistance of qualified fire and safety experts, including the local fire protection authority.

3. All employees shall be oriented to the plan and trained to perform assigned tasks, and shall be familiar with the use of the facility's fire protection features.

4. The plan and evacuation procedures shall be posted at suitable visible locations in the corridors throughout the facility and shall include a diagram of the immediate floor area showing the exits, location of fire alarms, evacuation routes and locations of fire extinguishers.

5. The facility administrator shall clearly communicate the plan and evacuation procedure to staff and shall periodically review the plan and evacuation procedures with staff.

6. The facility administrator shall periodically evaluate the effectiveness of the plan and evacuation procedures.

(b) *Evacuation drills.* 1. The facility shall hold evacuation drills at least quarterly on each shift and under varied conditions. The facility shall actually evacuate residents to a safe area during one drill a year on each shift.

2. The facility shall make special provisions for evacuating physically handicapped persons during drills.

3. Facility staff shall write a report and evaluation of each evacuation drill and shall keep a copy of the report on file.

4. The facility administrator shall investigate all problems with evacuation drills, including accidents, and take corrective action to prevent similar problems in the future.

(c) *Fire inspections.* The administrator of the facility shall arrange for fire protection as follows:

1. At least semi-annual inspection of the facility shall be made by the local fire authority. Signed certificates of these inspections shall be kept on file in the facility;

2. Certification in writing shall be obtained from the local fire authority for the adequacy of the facility's written fire plan, including procedures for orderly evacuation of residents, as well as the fire safety of the facility. A copy of the certification shall be kept on file within the facility; and

3. If the facility is located in a city, village or township that does not have an officially established fire department, a continuing contract for fire protection service with the nearest municipality providing the service shall be obtained. The contract or a copy of it shall be kept on file in the facility.

(d) *Fire equipment.* 1. All fire equipment shall be maintained in readily usable condition and inspected annually. A fire extinguisher suitable for grease fires shall be provided in or adjacent to the kitchen. Each extinguisher shall be provided with a tag on which the date of the last inspection is indicated.

2. Extinguishers shall be mounted on walls or posts where they are clearly visible and at a height that is convenient for staff and residents. No extinguisher may be tied down, locked in a cabinet, placed in a closet or placed on the floor.

(e) *Fire report.* All incidents of fire in a facility shall be reported in writing to the department's division of quality assurance within 72 hours.

Note: The address of the Division of Quality Assurance is P.O. Box 2969, 1 W. Wilson St., Madison, WI, 53701-2969 (phone 608-266-8481).

(f) *Smoking.* Facilities shall have and enforce a policy and rules to ensure that smoking materials are used safely. The policy and rules shall include the designation of areas in which smoking is permitted, as required under s. 101.123 (4), Stats.

Note: Section 101.123 (4), Stats., is repealed effective July 5, 2010.

(g) *Prevention of ignition.* Open-flame lights are not permitted, except as provided by law. Heat-producing devices and piping shall be designed or enclosed to prevent the ignition of clothing and furnishings.

(h) *Floor coverings.* All floor coverings and edging shall be securely fastened to the floor or constructed so that they are slip-resistant and free of hazards such as curled or broken edges. If the facility serves residents who crawl, a resilient non-abrasive and slip-resistant surface, or non-abrasive carpeting, shall be provided. Scatter rugs not meeting the above criteria are prohibited.

(i) *Roads and sidewalks.* Walkways and roads leading into and out of the facility shall be kept passable and open at all times of the year. Walkways, drives, fire escapes and other means used for exiting to a public way shall be kept free of ice, snow and other obstructions.

History: Cr. Register, June, 1988, No. 390, eff. 7-1-88; CR 04-053: r. and recr. (1), r. (2) and table 134.82, renum. (3) and (4) to be (2) and (3) Register October 2004 No. 586, eff. 11-1-04; correction in (3) (e) made under s. 13.92 (4) (b) 6., Stats., Register January 2009 No. 637; CR 16-087: am. (1) Register September 2017 No. 741, eff. 10-1-17; correction in (1) made under s. 35.17, Stats., Register September 2017 No. 741.

DHS 134.83 Safety and systems. (1) MAINTENANCE. The building shall be maintained in good repair and kept free of hazards, including hazards created by any damaged or defective building equipment. Floors shall be maintained in a safe condition.

(2) CORRIDORS. (a) In all facilities having plans approved on or after March 17, 1974, except in small facilities, all corridors in resident use areas shall be at least 6 feet wide.

(b) In all facilities having plans approved before March 17, 1974, except in small facilities, all corridors in resident use areas shall be at least 4 feet wide.

(c) In small facilities all corridors in resident use areas shall be at least 3 feet wide.

(3) DOORS. (a) *Size.* 1. In existing small facilities exit doors, stair doors and resident room doors shall be at least 28 inches wide and in newly constructed small facilities exit doors, stair doors and resident room doors shall be at least 36 inches wide.

2. In type I facilities with over 16 beds, exit doors, stair doors and resident room doors shall be at least 28 inches wide.

3. In type II facilities with over 16 beds, exit doors, stair doors and resident room doors shall be at least 36 inches wide and 80 inches high and shall have a fire rating of at least 20 minutes or equivalent, except that in facilities having plans approved on or after March 17, 1974 exit doors and resident room doors shall be at least 44 inches wide.

(b) *Latches.* Each exit door shall have fastenings or hardware to permit the door to be opened from the inside by pushing against a single bar or plate or by turning a single knob or handle.

(c) *Locks.* 1. Exit doors from the building and from nursing areas and resident living areas may not be hooked or locked to prevent exiting from the inside, except as provided under s. DHS 134.33 (3).

Note: See rules adopted under chs. SPS 361 to 365 for other restrictions on locking of exits.

2. No lock may be installed on the door of a resident's room, unless:

a. The lock is operable from inside the room with a simple one-hand, one-motion operation without the use of a key unless the resident is confined in accordance with s. DHS 134.33 (3);

b. All staff regularly assigned to work in the resident care area have in their possession a master-key for the rooms in that area;

c. A master-key is available to emergency personnel such as the fire department; and

d. The resident is capable of following directions and taking appropriate action for self-preservation under emergency conditions.

(d) *Toilet room doors.* 1. In new construction, toilet room doors shall be at least 36 inches wide.

2. In facilities converted from another use that are approved after the effective date of these rules, toilet room doors shall be at least 32 inches wide.

3. In type II facilities, except for new construction, toilet room doors shall be at least 30 inches wide.

4. Toilet room doors under this paragraph may not swing into the toilet room unless they are provided with 2-way hardware.

(4) EMERGENCY POWER. (a) If a facility houses more than 16 residents, it shall have an emergency electrical service with an independent power source which covers lighting at living unit stations, telephone switchboards, exit and corridor lights, boiler room, fire alarm systems and medical records when solely electronically based. The service may be battery-operated if effective for at least 4 hours.

(b) In small facilities flashlights shall be readily available to staff on duty in the event that there is an electrical power interruption.

(5) FIRE PROTECTION. (a) *Carpeting.* Carpeting may not be installed in rooms used primarily for food preparation and storage, dish and utensil washing, cleaning of linen and utensils, storage of janitor supplies, laundry processing, hydro-therapy, toileting and bathing, resident isolation or resident examination.

(c) *Vertical exit stairwells.* 1. In all multi-story facilities there shall be at least one enclosed exit stairway for all floors, except that if floors are divided into fire sections there shall be at least one enclosed exit stairway for each fire section. This exit stairway shall provide an enclosed protected path of at least one-hour fire-rated construction for occupants to proceed with safety to the exterior of the facility.

2. Sprinkler heads shall be provided at the top of each linen or trash chute and also in the room in which a chute terminates.

(f) *Fire escapes.* 1. An outside fire escape is permitted in an existing facility as one of the required means of exiting the facility if it meets all of the following requirements:

a. Iron, steel, concrete or other noncombustible material shall be used in the construction and support of the fire escape;

b. No part of the path of exit from the facility may be across a roof or other part of the facility that is made of combustible materials;

c. To protect against fire in the facility, the walls directly under the stairway and for a distance of 6 feet in all other directions shall be blank or closed walls. A window is permitted within this area if it is stationary or of steel sash construction and is glazed with wire glass of not less than 1/4-inch thickness. The size of the wire glass part of the window may not exceed 1296 square inches and not more than 54 inches in either length or width;

d. The fire escape shall be protected by a roof and at least partial sidewalls to prevent the accumulation of snow and ice;

e. The bottom riser shall terminate at ground level, with the last riser not more than the spacing of the riser above; and

f. It is not a tubular or spiral slide-type fire escape.

2. Small facilities shall meet either the requirements of subd. 1. or the provisions of the lodgings and rooming house section of the applicable life safety code.

(g) *Conditions for housing certain residents above the street level floor.* Residents who are blind, non-ambulatory or physically handicapped may not be housed above the street level floor in an existing facility of 2 or more stories that is not at least 2-hour fire-resistive construction unless the facility is one-hour protected noncombustible construction as defined in standard 220 of the NFPA's National Fire Code, 1979 edition, fully sprinklered one-hour protected ordinary construction or fully sprinklered one-hour protected wood frame construction.

(h) *Storage of oxygen.* Oxygen tanks when not in use shall be stored in a ventilated closet designated for that purpose or stored outside the facility building in an enclosed and secured area.

Note: The 1978 and 1979 editions of NFPA's National Fire Code referenced in pars. (b) and (g) can be obtained from the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269. Copies are kept on file in the offices of the Department's Division of Quality Assurance and the Legislative Reference Bureau.

(6) SPRINKLERS FOR FIRE PROTECTION. (a) *Existing facilities.* All existing facilities shall have automatic sprinkler protection throughout all buildings unless all walls, partitions, piers, columns, floors, ceilings, roof and stairs are built of noncombustible material and all metallic structural members are protected by a noncombustible fire-resistive covering.

(b) *Certification.* Certification that the sprinkler system is in proper operating condition shall be obtained annually from a licensed sprinkler contractor. A copy of the certification document shall be kept on file in the facility.

(c) *New construction and conversions.* All newly constructed facilities, additions and buildings to be converted shall have automatic sprinkler protection throughout. In the event of an addition to or remodeling of an existing facility, the facility shall have auto-

matic sprinkler protection throughout the building unless there is a 2-hour fire-rated partition wall between the old and new construction, in which case only the new addition or remodeled area shall be sprinklered. Facilities with more than 16 beds shall meet the automatic sprinkler protection standard 13 of NFPA's national fire code, 1985 edition. Facilities with 16 or fewer beds shall meet either standard 13 of that edition of the code or standard 13D of NFPA's national fire code, 1984 edition.

Note: The 1984 and 1985 editions of NFPA's National Fire Code can be obtained from the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269. Copies are kept on file in the office of the Department's Division of Quality Assurance and the Legislative Reference Bureau.

(d) *Sprinkler plans.* All sprinkler plans shall be submitted to the department's bureau of quality compliance for review and approval before installation of the sprinkler system.

Note: The bureau of quality assurance was renamed the division of quality assurance.

(7) **SMOKE DETECTORS FOR FIRE PROTECTION IN SMALL FACILITIES.** (a) A small facility shall provide a low-voltage interconnected smoke detection system to protect the entire facility so that, if any detector is activated, either alarms are triggered throughout the building or a centrally located alarm is triggered, except that a facility with 8 or fewer residents may use a radio-transmitting smoke detection system that triggers an audible alarm in a central area of the facility.

(b) No facility may install a smoke detection system that fails to receive the approval of the department or of the department of industry, labor and human relations. At least one smoke detector shall be located at each of the following locations:

1. At the head of every open stairway;
2. At the door leading to every enclosed stairway on each floor level;
3. In every corridor, spaced not more than 30 feet apart and not further than 15 feet from any wall;
4. In each common use room, including living rooms, dining rooms, family rooms, lounges and recreation rooms but not including kitchens; and
5. In each sleeping room in which smoking is allowed.

(8) **MECHANICAL SYSTEMS.** (a) *Water supply.* 1. A potable water supply shall be maintained at all times. If a public water supply is available, it shall be used. If a public water supply is not available, the well or wells shall comply with ch. NR 812.

2. An adequate supply of hot water shall be available at all times. The temperature of hot water at a plumbing fixture used by residents may not exceed the range of 110° – 115° F.

(b) *Sewage disposal.* All sewage shall be discharged into a municipal sewage system, if one is available. Otherwise the sewage shall be collected, treated and disposed of by means of an independent sewage system approved by the department of industry, labor and human relations under applicable state law and by the local authority.

(c) *Plumbing.* Plumbing for potable water and for drainage for the disposal of excreta, infectious discharge and wastes shall comply with ch. SPS 382.

(d) *Heating and air conditioning.* 1. The heating and air conditioning systems shall be capable of maintaining adequate temperatures and providing freedom from drafts.

2. Minimum temperatures of 72°F. (22° C.) shall be maintained during the day and 70° F. (21° C.) during the night in all bedrooms and in all areas used by the residents.

(e) *Telephone.* There shall be at least one operational non-pay telephone on the premises and as many additional telephones as are judged necessary in an emergency.

(f) *Incineration.* 1. Facilities for the incineration of soiled dressings and similar wastes, as well as garbage and refuse, shall be provided when other methods of disposal are not available.

2. An incinerator may not be flue-fed nor shall any upper floor charging chute be connected with the combustion chamber.

(g) *General lighting.* Adequate lighting shall be provided in all areas of the facility. Lighting shall be of a type that does not produce discomfort due to high brightness, glare or reflecting surfaces. No candles, oil lanterns or other open-flame method of illumination may be used.

(h) *Ventilation.* 1. The facility shall be well-ventilated through the use of windows or mechanical ventilation or a combination of both. No room may be used for living or sleeping purposes that does not have at least one openable window leading to the outside and direct outside ventilation by means of windows, louvers, or air conditioning or other mechanical ventilation. Other rooms and areas which do not have outside windows and which are used by residents or staff shall be provided with functioning mechanical ventilation to change the air on a basis commensurate with the type of use.

2. Kitchens, bathrooms, janitor closets and soiled linen rooms shall be ventilated.

3. In type II facilities:

a. When mechanical ventilation is provided, the resident area corridors and the lounge, dining, living and recreation areas shall be under positive pressure; and

b. No transom, louver or grill may be in or above a resident room door exiting to a corridor.

(i) *Electrical.* 1. In all facilities nonconductive wall plates shall be provided for electrical outlets if the system is not properly grounded.

2. In newly constructed facilities at least 2 duplex-type wall outlets shall be provided in close proximity to each resident bed.

History: Cr. Register, June, 1988, No. 390, eff. 7-1-88; correction in (8) (a) 1. made under s. 13.93 (2m) (b) 7., Stats., Register, August, 1995, No. 476; correction in (8) (c) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532; CR 04-053: am. (4) (a) and (8) (a) 2., r. (5) (b), (c) and (d) Register October 2004 No. 586, eff. 11-1-04; corrections in (5) (e) 1. and (6) (a) made under s. 13.93 (2m) (b) 7., Stats., Register October 2007 No. 622; correction in (8) (c) made under s. 13.92 (4) (b) 7., Stats., Register January 2012 No. 673.

DHS 134.84 Design. (1) SUBMISSION OF PLANS AND SPECIFICATIONS. (a) For all new construction:

1. One copy of the schematic and preliminary plans shall be submitted to the department for review and approval of the functional layout; and

2. One copy of the working plans and specifications shall be submitted to the department for review and approval before construction is begun. The department shall notify the facility in writing of any divergence in the plans and specifications, as submitted, from the rules in this chapter.

(b) The plans and specifications required under par. (a) shall show the general arrangement of the building, including a room schedule, fixed equipment for each room and room numbers, together with other pertinent information. Plans submitted shall be drawn to scale.

(2) **RESIDENT ROOMS.** (a) *Assignment of residents.* Except as provided in s. DHS 134.31 (3) (f) 1., residents of different sexes shall be separated by means of separate wings, floors or rooms.

(b) *Location.* 1. No resident bedroom may:

a. Open directly to a kitchen or laundry;

b. Be located so that a person must pass through the bedroom to get to any other part of the facility;

c. Be located so that a person must pass through a toilet room or bathroom to get to any other part of the facility;

d. Be located so that a person must pass through a kitchen or laundry to get to the resident's room; or

e. Be located so that a person must pass through a kitchen or laundry to get to any other part of the facility.

2. Each resident bedroom shall:

- a. Open directly into a corridor;
- b. Have an outside window or door that is openable;
- c. Be at or above street grade level; and
- d. In type II facilities, have walls that extend from floor to ceiling.

(c) *Size*. 1. Bedrooms in existing facilities shall have a floor area of at least 60 square feet per bed in multiple resident bedrooms and 80 square feet in single resident bedrooms, exclusive of vestibule, closets, built-in vanity and wardrobe, toilet rooms and built-in lockers.

2. Bedrooms in new facilities shall have a floor area of at least 80 square feet per bed in multiple resident rooms and 100 square feet in single rooms, exclusive of vestibule, closets, built-in vanity and wardrobe, toilet rooms and built-in lockers.

3. In all facilities, the ceiling height in bedrooms shall be a minimum of 7 feet, 6 inches.

(d) *Bed capacity*. No more than 4 residents may occupy a room.

(e) *Bed arrangement*. The beds shall be arranged so that they are at least 3 feet apart, and a clear aisle space of at least 3 feet shall be provided between any bed and the entrance to the room.

(f) *Windows*. In type II facilities, the bottom sill of windows in residents' rooms shall be no more than 3 feet from the floor.

(g) *Closet space*. A closet or locker shall be provided for each resident in the resident's bedroom. Space allowed for each closet or locker shall be at least 15 inches wide by 18 inches deep by 5 feet in height, with clothes racks and shelves accessible to the resident.

(h) *Room identification*. Each bedroom shall be identified with a unique number placed on or near the door.

(i) *Design and proximity to baths*. Residents' rooms shall be designed and equipped for the comfort of residents and shall be designed and equipped for the privacy of residents unless specifically contraindicated by program needs. Each bedroom shall have within it or adjacent to it, or shall be conveniently located near, adequate toilet and bathing facilities.

(3) TOILET AND BATHING FACILITIES. (a) *General*. All lavatories shall have both hot and cold running water. Toilets shall be water-flushed and equipped with open front seats without lids.

(b) *Employee and family facilities*. Toilets, baths and lavatories for use by employees and family members shall be separate from those used by residents, except in small facilities.

(c) *Physically handicapped facilities*. Resident bathrooms and bathroom appliances shall be equipped for use by physically handicapped persons.

(d) *Grab bars*. Grab bars shall be installed and firmly secured in toilet and bathing compartments.

(e) *Wheelchair access*. On floors housing residents who use wheelchairs there shall be at least one toilet room large enough to accommodate wheelchairs.

Note: Requirements for wheelchair access to toilets in health care facilities are contained in ch. SPS 362.

(f) *Resident toilet and bathing facilities*. In all facilities:

1. Separate toilet and lavatory facilities shall be provided for males and females in at least the following numbers:

a. One toilet and one lavatory for every 8 female residents; and

b. One toilet and one lavatory for every 8 male residents. One urinal may be substituted for one toilet for every 24 ambulatory male residents.

2. One bathtub or shower shall be provided for every 20 residents, but in no case may there be fewer than 2 bathing facilities.

3. Each bathtub, shower and toilet shall be separated in such a manner that it can be used independently and afford privacy, unless specifically contraindicated by program needs, and shall be

located on the same floor as the bedrooms of the residents who use it.

(4) DINING, RECREATION AND ACTIVITY AREAS. (a) *Multipurpose room area*. Each facility and each building housing residents within a facility complex shall have at least one furnished room or area, located near the residents' bedrooms, which can be used for dining, activity therapy or social activities of residents. This room or area, exclusive of walkways, shall provide a minimum of 15 square feet per resident except that in new construction minimum square footage per resident shall be as follows:

1. For facilities with 16 or fewer residents, 60 square feet per resident;

2. For facilities with 17 to 25 residents, 50 square feet per resident;

3. For facilities with 26 to 50 residents, 30 square feet per resident; and

4. For facilities with more than 50 residents, 25 square feet per resident.

(b) *Sufficiency of space in multipurpose rooms or areas*. If a multipurpose room is used for dining, diversional, social and other resident activities, there shall be sufficient space in the room for these activities or the activities shall be scheduled in such a way as to accommodate all activities and minimize their interference with each other.

(c) *Dining area*. Every facility or every building housing residents within a facility complex shall have at least one furnished dining room large enough to seat at least half of the residents at one time. Television trays or portable card tables may not be used as dining tables. Under no circumstances may the dining room be used as a bedroom.

(5) FOOD SERVICE. (a) *General*. Every facility shall have a kitchen which shall be adequate to meet food service needs and shall be arranged and equipped for the refrigeration, storage, preparation and serving of food, as well as for dish and utensil cleaning and refuse storage and removal.

(b) *Type I facilities*. In type I facilities:

1. The kitchen shall be located on the premises, or a sanitary method of transporting food shall be provided;

2. Kitchen and food preparation areas may not open into resident rooms, toilet rooms or a laundry room or area;

3. Adequate and convenient handwashing facilities shall be provided in the kitchen for use by food handlers, including hot and cold running water, soap and sanitary towels. Use of a common towel is prohibited;

4. At least a 2-compartment sink for manual dishwashing shall be provided in kitchen or dishwashing areas. A 3-compartment sink shall be provided when replacement is necessary; and

5. Rooms subject to sewage backflow or to condensation or leakage from overhead water or waste lines may not be used for food storage or preparation unless the food is effectively protected from contamination, which may involve storing the food a minimum of 6 inches above the floor, insulating water pipes or providing another means of preventing contamination of the food.

(c) *Type II facilities*. In type II facilities:

1. Kitchen and dietary facilities shall be provided to meet food service needs and shall be arranged and equipped for proper refrigeration, heating, storage, preparation and serving of food. Adequate space shall be provided for proper refuse handling and washing of waste receptacles, and for storage of cleaning compounds;

2. Only traffic into and through kitchens incidental to the receiving, preparation and serving of food and drink shall be permitted;

3. Toilet facilities may not open directly into the kitchen;

4. Food day storage shall be provided adjacent to the kitchen and shall be ventilated to the outside, except in small facilities;

5. A separate handwashing sink with soap dispenser, single-service towel dispenser or other approved hand-drying device shall be located in the kitchen, except in small facilities;

6. A separate dishwashing area, preferably a separate room with mechanical ventilation, shall be provided, except in small facilities;

7. For manual dishwashing:

a. At least a 2-compartment sink shall be provided; and

b. For all new construction or replacements, a 3-compartment sink with adequate drainboards at each end is required. In addition, a single-compartment sink located adjacent to the soiled utensil drainboard is recommended for prewashing. In lieu of the additional sink for prewashing, a well-type garbage disposal with overhead spray wash shall be provided. The additional sink may also be used for liquid waste disposal. The size of each sink compartment shall be adequate to permit immersion of at least 50% of the largest utensil used;

8. Except in small facilities, mechanical dishwashers, where provided, shall be on the national sanitation foundation's list of approved food service equipment, or shall be approved by the department;

Note: The National Sanitation Foundation's "Listing of Food Service Equipment" is kept on file and may be consulted in the offices of the Department's Bureau of Public Health and the Legislative Reference Bureau. The publication may be purchased from the National Sanitation Foundation, NSF Building, P.O. Box 1468, Ann Arbor, Michigan 48106.

9. Except in small facilities, temperature gauges shall be provided in the wash compartment of all mechanical dishwashers and in the rinse water line at the machine of a spray-type mechanical dishwasher or in the rinse water tank of an immersion-type dishwasher. The temperature gauges shall be readily visible, fast-acting and accurate to plus or minus 2° F. or 1° C;

10. Except in small facilities, approved automatic fire extinguishing equipment shall be provided in hoods and attached ducts above all food cooking equipment;

11. The walls of the kitchen shall be of plaster or equivalent material with smooth, light-colored, nonabsorbent and washable surfaces;

12. The ceiling in the kitchen shall be of plaster or equivalent material with smooth, light-colored, nonabsorbent and washable surfaces;

13. The floors of all rooms in which food or drink is stored, prepared or served, or in which utensils are washed, except the eating areas of dining rooms, shall be of a construction that is nonabsorbent and easily cleaned;

14. All openings to the out-of-doors from kitchen or food service areas shall be effectively screened. Screen doors shall be self-closing;

15. All rooms in which food or drink is stored or prepared or in which utensils are washed shall be well-lighted; and

16. Rooms subject to sewage backflow or to condensation or leakage from overhead water or waste lines may not be used for food storage or preparation unless the food is effectively protected from contamination, which may involve storing the food a minimum of 6 inches above the floor, insulating water pipes or providing another means of preventing contamination of the food.

(6) STORAGE. (a) *Residents' storage.* One or more central storage areas shall be provided within the facility for storing residents' possessions such as trunks, luggage and off-season clothing. In new construction storage space shall total at least 50 cubic feet per resident bed.

(b) *General storage.* A general storage area shall be provided in the facility for supplies, equipment, wheelchairs and mechanical devices.

(c) *Linen.* 1. A type I facility shall provide clean linen and dirty linen storage areas of adequate size for each living unit.

2. A type II facility shall provide a clean linen closet or cabinet and a dirty linen closet or cabinet for each floor or wing.

(7) FAMILY AND EMPLOYEE LIVING QUARTERS. Any family and employee living quarters shall be in an area of the facility separate from resident areas.

(8) EMPLOYEE FACILITIES. The following shall be provided for employees but may not be located in food preparation, food storage or utensil washing areas or resident rooms:

(a) Space for employee wraps, with lockers or other means for securing purses and other personal belongings when on duty;

(b) Handwashing sinks in employee locker areas, each with a soap dispenser, and with a single-service towel dispenser or other approved hand-drying equipment, except in small facilities; and

(c) Toilet facilities separate from those used by residents, except in small facilities.

(9) JANITOR CLOSETS. In type II facilities, a ventilated closet shall be provided on each floor for janitor supplies. The closet shall be equipped with hot and cold running water and a service sink or receptor.

(10) LAUNDRY. (a) Laundry room space shall be provided unless commercial laundry facilities are used. If laundry service is provided, laundry facilities shall be located in areas separate from resident areas and shall be provided with necessary washing, drying and ironing equipment.

(b) Soiled linen may not be transported through or washed or rinsed in food preparation, serving or storage areas, nor may clean linen and clothes be dried or stored in the kitchen.

(c) Where commercial laundries are used, a room for sorting, processing and storing soiled linen shall be provided. The room shall be mechanically ventilated.

(d) All soiled linen, unless washed immediately after removal, shall be placed in non-absorbent, closed storage containers.

(11) ADMINISTRATION AND RESIDENT ACTIVITY AREAS. Areas or rooms shall be provided in the facility for administration and resident activities. These areas or rooms shall be adequate in size to meet the needs of the facility and residents. The areas or rooms may be combined, provided that the resulting arrangements do not threaten the safety of residents or interfere with resident care and nursing practices or with meeting the social needs of residents.

(12) MIXED OCCUPANCY. Rooms or areas within the facility may be used for occupancy by individuals other than residents and facility staff if the following conditions are met:

(a) The use of these rooms does not interfere with services provided to residents; and

(b) The administrator takes reasonable steps to ensure that the health, safety and rights of residents are protected.

(13) LOCATION OF FACILITIES. (a) The site of the facility shall conform to local zoning regulations and shall be free from noise, odors and other environmental nuisances.

(b) Employees and visitors shall have easy access to the facility site. The facility's location shall promote the health, treatment, comfort, safety and well-being of residents. The site shall be located so that an organized fire department can quickly respond to fire emergencies.

(c) A minimum of 15 square feet per resident bed shall be provided around the facility for an outdoor recreation area, exclusive of driveways and parking area.

History: Cr. Register, June, 1988, No. 390, eff. 7-1-88; CR 04-053: am. (5) (c) 12. Register October 2004 No. 586, eff. 11-1-04.