TITLE 26 HEALTH AND HUMAN SERVICES

PART 1 HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 550 LICENSING STANDARDS FOR PRESCRIBED PEDIATRIC EXTENDED CARE CENTERS

SUBCHAPTER A PURPOSE, SCOPE, LIMITATIONS, COMPLIANCE, AND DEFINITIONS

§550.5. Definitions.

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

(1) Active Play--Any physical activity from which a minor derives amusement, entertainment, enjoyment, or satisfaction by taking a participatory rather than a passive role. Active play includes various forms of activities, from the exploration of objects and toys to the structured play of formal games, sports, and hobbies.

(2) Actual census--The number of minors at a center at any given time.

(3) Administration of medication--The direct application of a medication to the body of a minor by any route. This includes removing an individual or unit dose from a previously dispensed, correctly labeled container, verifying it with the medication order, giving the correct medication and the correct dose to the correct minor at the correct time by the correct route, and accurately recording the time and dose given.

(4) Administrator--The person who is responsible for implementing and supervising the administrative polices and operations of a center and for administratively supervising the provision of services to minors and their parents on a day-to-day basis.

(5) Adult minor--A minor who is 18 years of age or older or is emancipated, and has not been adjudged incompetent.

(6) Affiliate--With respect to an applicant or license holder that is:

(A) a corporation--means an officer, director, or stockholder with direct ownership or disclosable interest of at least five percent, a subsidiary, or a parent company;

(B) a limited liability company--means an officer, member, or parent company;

(C) an individual--means:

(i) the individual's spouse;

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

(iii) each corporation in which an individual is an officer, director, or stockholder with a direct ownership of at least five percent;

(D) a partnership--means a partner or a parent company of the partnership; and

(E) a group of co-owners under any other business arrangement means an officer, director, or the equivalent under the specific business arrangement or a parent company.

(7) Applicant--A person who applies for a license to operate a center under THSC Chapter 248A and this chapter. The applicant is the person in whose name HHSC issues the license.

(8) Audiologist--A person who has a valid license under Texas Occupations Code, Chapter 401, as an audiologist.

(9) Basic services--Include:

(A) the development, implementation, and monitoring of a comprehensive protocol of care that:

(i) is provided to a medically dependent or technologically dependent minor;

(ii) is developed in conjunction with the minor's parent; and

(iii) specifies the medical, nursing, psychosocial, therapeutic, and developmental services required by the minor; and

(B) the caregiver training needs of a medically dependent or technologically dependent minor's parent.

(10) Behavioral emergency--A situation that occurs after which preventative, or de-escalating techniques are attempted and determined to be ineffective and it is immediately necessary to restrain a minor to prevent immediate probable death or substantial bodily harm to the minor or to others because the minor is attempting serious bodily harm or immediate physical harm to the minor or to others.

(11) Business day--Any day except a national or state holiday listed in Texas Government Code §662.003(a) or (b). The term includes Saturday or Sunday if the center is open on that day.

(12) Center--A prescribed pediatric extended care center. A facility operated for profit or on a nonprofit basis that provides nonresidential basic services to four or more medically dependent or technologically dependent minors who require the services of the facility and who are not related by blood, marriage, or adoption to the owner or operator of the facility.

(13) Change of ownership--An event that results in a change to the federal taxpayer identification number of the license holder of a facility. The substitution of a personal representative for a deceased license holder is not a change of ownership.

(14) Chemical restraint--The use of any chemical, including pharmaceuticals, through topical application, oral administration, injection, or other means, to restrict the free movement of all or a portion of a minor's body for the purpose of modifying or controlling the minor's behavior and which is not a standard treatment for a minor's medical or psychosocial condition.

(15) Chief financial officer--An individual who is responsible for supervising and managing all financial activities for a center.

(16) Clinical note--A notation of a contact with a minor or a minor's family member that is written and dated by any staff providing services on behalf of a center and that describes signs and symptoms of the minor, and treatments and medications administered to the minor, including the minor's reaction or response, and any changes in physical, emotional, psychosocial, or spiritual condition of the minor during a given period of time.

(17) Commission--The Texas Health and Human Services Commission.

(18) Commissioner--The term referred to the commissioner of DADS; it now refers to the executive commissioner of HHSC.

(19) Community disaster resources--A local, statewide, or nationwide emergency system that provides information and resources during a disaster, including weather information, transportation, evacuation and shelter information, disaster assistance and recovery efforts, evacuee and disaster victim resources, and resources for locating evacuated friends and relatives.

(20) Complaint--An allegation against a center or involving services provided at a center that involves a violation of this chapter or THSC Chapter 248A.

(21) Continuous face-to-face observation--Maintaining an in-person line of sight of a minor that is uninterrupted and free from distraction.

(22) Contractor--An individual providing services ordered by a prescribing physician on behalf of a center that the center would otherwise provide by its employees.

(23) Controlling person--A person who has the ability, acting alone or in concert with others, to directly or indirectly influence, direct, or cause the direction of the management of, expenditure of money for, or policies of a center or other person.

(A) A controlling person includes:

(i) a management company, landlord, or other business entity that operates or contracts with another person for the operation of a center;

(ii) any person who is a controlling person of a management company or other business entity that operates a center or that contracts with another person for the operation of a center; and

(iii) any other person who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of a center, is in a position of actual control of or authority with respect to the center, regardless of whether the person is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the center.

(B) Notwithstanding any other provision of this paragraph, a controlling person of a center or of a management company or other business entity described by subparagraph (A)(i) of this paragraph that is a publicly traded corporation or is controlled by a publicly traded corporation means an officer or director of the corporation. The term does not include a shareholder or lender of the publicly traded corporation.

(C) A controlling person described by subparagraph (A)(iii) of this paragraph does not include a person, including an employee, lender, secured creditor, or landlord, who does not exercise any formal or actual influence or control over the operation of the center.

(24) Conviction--An adjudication of guilt based on a finding of guilt, a plea of guilty, or a plea of nolo contendere.

(25) DADS--The term referred to the Department of Aging and Disability Services; it now refers to HHSC.

(26) Daily census--The number of minors served at a center during a center's hours of operation for a 24-hour period, starting at midnight.

(27) Day--A calendar day, unless otherwise specified in the text. A calendar day includes Saturday, Sunday, and a holiday.

(28) Dietitian--A person who has a valid license under the Licensed Dietitian Act, Texas Occupations Code, Chapter 701, as a licensed dietitian or provisional licensed dietitian, or who is registered as a dietitian by the Commission on Dietetic Registration of the American Dietetic Association.

(29) Direct ownership interest--Ownership of equity in the capital, stock, or profits of, or a membership interest in, an applicant or license holder.

(30) Disclosable interest--Five percent or more direct or indirect ownership interest in an applicant or license holder.

(31) Emergency situation--An impending or actual situation that:

(A) interferes with normal activities of a center or minors at a center;

(B) may:

(i) cause injury or death to a minor or individual at the center; or

(ii) cause damage to the center's property;

(C) requires the center to respond immediately to mitigate or avoid injury, death, damage, or interference; and

(D) does not include a situation that arises from the medical condition of a minor such as cardiac arrest, obstructed airway, or cerebrovascular accident.

(32) Executive commissioner--The executive commissioner of the Texas Health and Human Services Commission.

(33) Functional assessment--An evaluation of a minor's abilities, wants, interests, and needs related to self-care, communication skills, social skills, motor skills, play with toys or objects, growth, and development appropriate for age.

(34) Health care provider--An individual or facility licensed, certified, or otherwise authorized to administer health care in the ordinary course of business or professional practice.

(35) Health care setting--A location at which licensed, certified, or otherwise regulated health care is administered.

(36) HHSC--The Texas Health and Human Services Commission.

(37) IDT--Interdisciplinary team. Individuals who work together to meet the medical, nursing, psychosocial, and developmental needs of a minor and a minor's parent's training needs.

(38) Inactive medical record--A record for a minor who was admitted by a center to receive services and was subsequently discharged by the center.

(39) Indirect ownership interest--Any ownership or membership interest in a person that has a direct ownership interest in an applicant or license holder.

(40) Inspection--An on-site examination or audit of a center by HHSC to determine compliance with THSC Chapter 248A and this chapter.

(41) Isolation--The involuntary confinement of a minor in a room of a center for the purposes of infection control, assessment, and observation away from other minors in a room at the center. When in isolation, a minor is physically prevented from contact with other minors.

(42) Joint training--Training provided by HHSC to service providers and HHSC inspectors on subjects that address the 10 most commonly cited violations of state law governing centers, as published in HHSC annual reports. HHSC determines the frequency of joint training.

(43) License--A license to operate a center issued by HHSC under THSC, Chapter 248A, and this chapter. The term includes initial, renewal, and temporary licenses unless specifically stated otherwise.

(44) Licensed assistant in speech-language pathology--A person who has a valid license under Texas Occupations Code, Chapter 401, as a licensed assistant in speech-language pathology and who provides speech language support services under the supervision of a licensed speech-language pathologist.

(45) License holder--A person that holds a license to operate a center under THSC Chapter 248A and this chapter.

(46) Life Safety Code--A publication of the National Fire Protection Association (NFPA), also known as NFPA 101, 2000 edition.

(47) Local emergency management agencies--The local emergency management coordinator, fire, police, and emergency medical services.

(48) Local emergency management coordinator--The person identified as the emergency management coordinator by the mayor or county judge for the geographical area in which a center is located.

(49) LVN--Licensed vocational nurse. A person who has a valid license under Texas Occupations Code, Chapter 301, as a licensed vocational nurse.

(50) Mechanical restraint--The use of any mechanical device, material, or equipment to restrict the free movement of all or a portion of a minor's body for the purpose of modifying or controlling the minor's behavior.

(51) Medical director--A physician who has the qualifications described in §550.307 of this chapter (relating to Medical Director Qualifications and Conditions) and has the responsibilities described in §550.308 of this chapter (relating to Medical Director Responsibilities).

(52) Medical record--A record composed first-hand for a minor who has or is receiving services at a center.

(53) Medically dependent or technologically dependent--The condition of an individual who, because of an acute, chronic, or intermittent medically complex or fragile condition or disability, requires ongoing, technology-based skilled nursing care prescribed by a physician to avert death or further disability, or the routine use of a medical device to compensate for a deficit in a life-sustaining body function. The term does not include a controlled or occasional medical condition that does not require continuous nursing care, including asthma or diabetes, or a condition that requires an epinephrine injection.

(54) Medication administration record--A record used to document the administration of a minor's medications and pharmaceuticals.

(55) Medication list--A list that includes all prescriptions, over-the-counter pharmaceuticals, and supplements that a minor is prescribed or taking, including the dosage, preparation, frequency, and the method of administration.

(56) Minor--An individual younger than 21 years of age who is medically dependent or technologically dependent.

(57) Mitigation--An action taken to eliminate or reduce the probability of an emergency or public health emergency, or reduce an emergency's severity or consequences.

(58) Nursing director--The individual responsible for supervising skilled services provided at a center and who has the qualifications described in §550.309 of this chapter (relating to Nursing Director and Alternate Nursing Director Qualifications and Conditions).

(59) Nutritional counseling--Advising and assisting an adult minor or a minor's parent or family on appropriate nutritional intake by integrating information from a nutrition assessment with information on food and other sources of nutrients and meal preparation consistent with cultural background and socioeconomic status, with the goal being health promotion, disease prevention, and nutrition education. The term includes:

(A) dialogue with an adult minor or a minor's parent to discuss current eating habits, exercise habits, food budget, and problems with food preparation;

(B) discussion of dietary needs to help an adult minor or the minor's parent understand why certain foods should be included or excluded from the minor's diet and to help with adjustment to the new or revised or existing diet plan;

(C) a personalized written diet plan as ordered by the minor's physician, to include instructions for implementation;

(D) providing the adult minor or the minor's parent with motivation to help them understand and appreciate the importance of the diet plan in getting and staying healthy; or

(E) working with the adult minor or the minor's parent by recommending ideas for meal planning, food budget planning, and appropriate food gifts.

(60) Occupational therapist--A person who has a valid license under Texas Occupations Code, Chapter 454, as an occupational therapist.

(61) Occupational therapy assistant--A person who has a valid license under Texas Occupations Code, Chapter 454, as an occupational therapy assistant who assists in the practice of occupational therapy under the general supervision of an occupational therapist.

(62) Operating hours--The days of the week and the hours of day a center is open for services to a minor as identified in a center's written policy as required by §550.201 of this chapter (relating to Operating Hours).

(63) Overnight--The hours between 9:00 p.m. and 5:00 a.m. during the days of the week a center operates.

(64) Over-the-counter pharmaceuticals--A drug or formulary for which a physician's prescription is not needed for purchase or administration.

(65) Parent--A person authorized by law to act on behalf of a minor with regard to a matter described in this chapter. The term includes:

(A) a biological, adoptive, or foster parent;

(B) a guardian;

(C) a managing conservator; and

(D) a non-parent decision-maker as authorized by Texas Family Code §32.001.

(66) Parent company--A person, other than an individual, who has a direct 100 percent ownership interest in the owner of a center.

(67) Person--An individual, firm, partnership, corporation, association, or joint stock association, and the legal successor thereof.

(68) Personal care services--Services required by a minor, including:

(A) bathing;

(B) maintaining personal hygiene;

(C) routine hair and skin care;

(D) grooming;

(E) dressing;

(F) feeding;

(G) eating;

(H) toileting;

(I) maintaining continence;

(J) positioning;

(K) mobility and bed mobility;

(L) transfer and ambulation;

(M) range of motion;

(N) exercise; and

(O) use of durable medical equipment.

(69) Pharmaceuticals--Of or pertaining to drugs, including over-the-counter drugs and those requiring a physician's prescription for purchase or administration.

(70) Pharmacist--A person who is licensed to practice pharmacy under Texas Occupations Code, Chapter 558.

(71) Pharmacy--A facility at which a prescription drug or medication order is received, processed, or dispensed as defined in Texas Occupations Code §551.003.

(72) Physical restraint--The use of physical force, except for physical guidance or prompting of brief duration, that restricts the free movement of all or a portion of a minor's body for the purpose of modifying or controlling the minor's behavior.

(73) Physical therapist--A person who has a valid license under Texas Occupations Code, Chapter 453, as a physical therapist.

(74) Physical therapist assistant--A person who has a valid license under Texas Occupations Code, Chapter 453, as a physical therapist assistant and:

(A) who assists and is supervised by a physical therapist in the practice of physical therapy; and

(B) whose activities require an understanding of physical therapy.

(75) Physician--A person who:

(A) has a valid license in Texas to practice medicine or osteopathy in accordance with Texas Occupations Code, Chapter 155;

(B) has a valid license in Arkansas, Louisiana, New Mexico, or Oklahoma to practice medicine, who is the treating physician of a minor, and orders services for the minor, in accordance with Texas Occupations Code, Chapter 151; or

(C) is a commissioned or contract physician or surgeon who serves in the United States uniformed services or Public Health Service if the person is not engaged in private practice, in accordance with Texas Occupations Code, Chapter 151.

(76) Place of business--An office of a center where medical records are maintained and from which services are directed.

(77) Plan of care--A protocol of care.

(78) Positive intervention--An intervention that is based on or uses a minor's preferences as positive reinforcement, and focuses on positive outcomes and wellness for the minor.

(79) Pre-licensing program training--Computer-based training, available on HHSC website, designed to acquaint center staff with licensure standards.

(80) Premises--The term includes the center, any lots on which the center is located, any outside ground areas, any outside play areas, and the parking lot.

(81) Preparedness--Actions taken in anticipation of a disaster including a public health disaster.

(82) Prescribing physician--A physician who is authorized to write and issue orders for services at a center.

(83) Progress note--A dated and signed written notation summarizing facts about services provided to a minor and the minor's response during a given period of time.

(84) Protective device--A mechanism or treatment, including sedation, that is:

(A) used:

(i) for body positioning;

(ii) to immobilize a minor during a medical, dental, diagnostic, or nursing procedure;

(iii) to permit wounds to heal; or

(iv) for a medical condition diagnosed by a physician; and

(B) not used as a restraint to modify or control behavior.

(85) Protocol of care--A comprehensive, interdisciplinary plan of care that includes the medical physician's plan of care, nursing care plan and protocols, psychosocial needs, and therapeutic and developmental service needs required by a minor and family served.

(86) Psychologist--A person who has a valid license under Texas Occupations Code, Chapter 501, as a psychologist.

(87) Psychosocial treatment--The provision of skilled services to a minor under the direction of a physician that includes one or more of the following:

(A) assessment of alterations in mental status or evidence of suicide ideation or tendencies;

(B) teaching coping mechanisms or skills;

(C) counseling activities; or

(D) evaluation of a plan of care.

(88) Public health disaster declaration--A governor's announcement based on a determination by the Department of State Health Services that there exists an immediate threat from a communicable disease that:

(A) poses a high risk of death or serious long-term disability to a large number of people; and

(B) creates a substantial risk of public exposure because of the disease's high level of contagion or the method by which the disease is transmitted.

(89) Quiet time--A behavior management technique used to provide a minor with an opportunity to regain self-control, where the minor enters and remains for a limited period of time in a designated area from which egress is not prevented.

(90) Recovery--Activities implemented during and after a disaster response, including a public health disaster response, designed to return a center to its normal operations as quickly as possible.

(91) Relocation--The closing of a center and the movement of its business operations to another location.

(92) Respiratory therapist--A person who has a valid license under Texas Occupations Code, Chapter 604, as a respiratory care practitioner.

(93) Response--Actions taken immediately before an impending disaster or during and after a disaster, including a public health disaster, to address the immediate and short-term effects of the disaster.

(94) Restraint--Physical restraint, chemical restraint, or mechanical restraint.

(95) RN--Registered nurse. A person who has a valid license under Texas Occupations Code, Chapter 301, to practice professional nursing.

(96) RN delegation--Delegation of tasks by an RN in accordance with 22 TAC Chapter 224 (relating to Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel for Clients with Acute Conditions or in Acute Care Environments).

(97) Sedation--The act of allaying nervous excitement by administering medication that commonly induces the nervous system to calm. Sedation is a protective device.

(98) Social worker--A person who has a valid license under Texas Occupations Code, Chapter 505, as a social worker.

(99) Speech-language pathologist--A person who has a valid license under Texas Occupations Code, Chapter 401, as a speech-language pathologist.

(100) Substantial compliance--A finding in which a center receives no recommendation for enforcement action after an inspection.

(101) Supervision--Authoritative procedural guidance by a qualified person that instructs another person and assists in accomplishing a function or activity. Supervision includes initial direction and periodic inspection of the actual act of accomplishing the function or activity.

(102) Support services--Social, spiritual, and emotional care provided to a minor and a minor's parent by a center.

(103) THSC--Texas Health and Safety Code.

(104) Total census--The total number of minors with active plans of care at a center.

(105) Transition support--Planning, coordination, and assistance to move the location of services provided to a minor from a center to the least restrictive setting appropriate.

(106) Violation--A finding of noncompliance with this chapter or THSC Chapter 248A resulting from an inspection.

(107) Volunteer--An individual who provides assistance to a center without compensation other than reimbursement for actual expenses.

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PART 1 HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 550 LICENSING STANDARDS FOR PRESCRIBED PEDIATRIC EXTENDED CARE CENTERS

SUBCHAPTER C GENERAL PROVISIONS

DIVISION 2 ADMINISTRATION AND MANAGEMENT

§550.309. Nursing Director and Alternate Nursing Director Qualifications and Conditions

(a) A center must designate a nursing director and alternate nursing director who meet the qualifications and conditions set out in this section and who have completed the HHSC pre-licensing program training titled "Overview of Prescribed Pediatric Extended Care Center Licensing Standards in Texas."

(b) The nursing director and alternate nursing director must have the following qualifications:

(1) a valid RN license under Texas Occupations Code, Chapter 301, with no disciplinary action;

(2) a valid certification in Cardio Pulmonary Resuscitation or Basic Cardiac Life Support; and

(3) a minimum of two years of supervision and management in employment in a pediatric setting caring for a medically or technologically dependent minor or at least two years of supervision in one of the following specialty settings:

(A) pediatric intensive care;

(B) neonatal intensive care;

(C) pediatric emergency care;

(D) center;

(E) home health or hospice agency specializing in pediatric care;

(F) ambulatory surgical center specializing in pediatric care; or (G) have comparable pediatric unit experience in a hospital for two consecutive years before the person applies for the position of nursing director.

(c) The nursing director and alternate nursing director must meet the requirements of this subsection.

(1) The nursing director must be a full-time employee of the center.

(2) The nursing director or alternate nursing director may serve as the administrator or alternate administrator of the center if the nursing director or alternate nursing director meets the administrator qualifications as described in §550.303 of this division (relating to Administrator and Alternate Administrator Qualifications and Conditions).

(3) A center must designate an alternate nursing director who meets the qualifications as specified in this section who will assume the responsibilities of the nursing director when the nursing director is unavailable during the center's operating hours.

(4) The nursing director must not be included in the center's staffing ratio when the center's actual census is less than four minors and the nursing director is also functioning as the administrator.

(5) The designated alternate nursing director must not be included in the center's staffing ratio when functioning as the nursing director, administrator or alternate administrator.

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SUBCHAPTER D TRANSPORTATION

§550.1102. Transportation Safety Provisions

(a) A center must adopt and enforce written policies and procedures to ensure the care and safety of minors during transport.

(b) A center must appropriately train staff on the needs of a minor being transported.

(c) A center must properly restrain or secure a minor when the minor is transported by the center in a motor vehicle, in accordance with applicable federal motor vehicle safety standards, state law, THSC Chapter 248A, and this chapter.

(d) A center must ensure that:

(1) a minor boards and leaves the vehicle from the curbside of the street and is safely accompanied to the minor's destination;

(2) there is a first aid kit with unexpired supplies, including oxygen, a pulse oximeter, and suction equipment, in each center vehicle;

(3) the center prohibits the use of tobacco in any form, electronic cigarettes, alcohol and possession of illegal substances or unauthorized potentially toxic substances, firearms, pellet or BB guns, including loaded or unloaded BB guns, in any vehicle;

(4) the driver does not use a hand-held wireless communication device while operating a center vehicle;

(5) a center's nurse accompanies minors, as necessary during transport, as determined by the minor's plan of care;

(6) at least one direct care staff member, or more depending on the acuity of the minors, accompanies every seven minors;

(7) the driver or center's nurse does not leave a minor unattended in the vehicle at any time;

(8) the driver or the center's nurse riding in the vehicle inspects the vehicle at the completion of each trip to ensure that no minor is left in the vehicle; and

(9) the center maintains documentation that includes the signature of the individual conducting the inspection described in paragraph (8) of this subsection and the time of inspection.

(e) A center must post near the emergency exit of each vehicle that transports a minor the following information in an easily readable font:

(1) the name of the administrator;

(2) the center's name;

(3) the center's telephone number; and

(4) the center's address.

(f) The center must adopt and enforce a policy on emergencies while transporting a minor. The policy must include:

(1) procedures for mechanical break downs;

(2) procedures for vehicle accidents; and

(3) procedures for a minor's emergency.

(g) If a center conducts a field trip, the center must ensure that the driver or center's nurse riding in the vehicle must inspect the vehicle and account for each minor upon arrival and departure from each destination to ensure that no minor is left in the vehicle after reaching the vehicle's final destination.

(1) A center must ensure that the driver or center's nurse riding in the vehicle maintains a field trip record for each trip. The record must include the driver's name, the nurse's name, the time and date, the vehicle's destinations, and names of all passengers in the vehicle.

(2) A center must maintain documentation that includes the signature of the person conducting the inspection and the time of each inspection during the field trip.

(3) Appropriate staff must be present when a minor is delivered to the center.

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SUBCHAPTER E BUILDING REQUIREMENTS

§550.1208. Food Preparation.

A center must have a food preparation area designated for the preparation of meals, snacks, or prescribed nourishments. The meals, snacks and nourishments must be maintained in accordance with state and local sanitation and safe food handling standards. If the center has a kitchen for cooking meals, or for providing meals and snacks directly or under contract, the center must be in compliance with Texas Department of State Health Services rules in 25 TAC Chapter 228 (relating to Retail Food Establishments). The center must also be in compliance with local health ordinances or requirements in the storage, preparation, and distribution of food; sanitation of dishes, equipment, and work area; and in the storage and disposal of waste.