



## Long-Term Care Regulatory Technical Memorandum

<b>Number:</b> TM 18-03-ALF
<b>Title:</b> Fence Requirements and Gate Locking Arrangements for Certified Alzheimer's Assisted Living Facilities
<b>Provider Types:</b> Assisted Living Facilities (ALF)
<b>TAC Reference:</b> <a href="#">§92.53(i)(7)</a>
<b>Date Issued:</b> August 29, 2018

### 1.0 Subject and Purpose

This technical memorandum (TM) provides guidance on the interpretation of, and compliance with Texas Administrative Code (TAC), Title 40, Part 1, Chapter 92, §92.53, Standards for Certified Alzheimer's Assisted Living Facilities,<sup>1</sup> as it relates to the fence requirements for a resident-use outdoor space, and the special locking arrangement for gates that a Certified Alzheimer's ALF or unit may use. The special locking arrangement is **not required**, nor does the Certified Alzheimer's unit have to be segregated from the rest of the facility. However, if used, note that only a **Type B Certified Alzheimer's ALF** may use the special locking arrangement and the guidance in this TM.

The guidance provided in this TM cannot address every unique condition or configuration. Compliance can only be evaluated based upon the particulars of each situation and cannot be evaluated without verifying the on-site condition. Conditions permitted by Texas Health and Human Services Commission (HHSC) as described in this TM do not guarantee approval by the local Authority Having Jurisdiction (AHJ). The local AHJ may have requirements that are more stringent, or may not allow for use as described herein. This TM cannot be used to override a local AHJ's requirements.

The guidance provided in this TM does not amend, supersede, or otherwise constitute a substantive change to the requirements of 40 TAC §92.53, or any part of that rule. Nor does it modify, replace, or override any other legal requirement, or additional or more stringent standard, to which a Certified Alzheimer's ALF or unit is otherwise subject.

When included in this TM, graphics are for visual illustration only, and are not intended to show an "approved" or "recommended" device or condition.

## 2.0 Technical Memorandum Topic

A certified Alzheimer's ALF is required to provide a resident-use outdoor space that has walls or fencing that do not allow climbing or present a hazard. This TM provides guidance on the walls or fencing requirement as required by 40 TAC §92.53.

A Certified Alzheimer's ALF or unit is not required to use any type of locking device on their gates. However, as permitted by 40 TAC §92.53, it may choose to use a locking device if the Certified Alzheimer's ALF or unit complies with the requirements and limitations applicable to its use of such a device. This TM provides guidance on the gate special locking arrangement permitted by 40 TAC §92.53. Because the gate special locking arrangement permitted by 40 TAC §92.53 requires a manual override button located both at the staff monitoring station and at the main staff station, this TM also provides guidance on required staff stations.

This guidance applies to a Certified Alzheimer's unit, if segregated from other parts of the Type B facility with approved security devices, or an entire Type B Certified Alzheimer's ALF that is locked with approved security devices. Where the TM discusses "facility," "facilities," or "ALF," the meaning of those words is meant to include both a segregated unit and an entire facility that is locked with approved security devices.

The subsections of this document include guidance on the requirements applicable to [all facilities](#) regardless of size, and guidance specific to a [small ALF](#), and a [large ALF](#).

### 2.1 Required Resident-use Outdoor Space

40 TAC [§92.53\(i\)\(7\)](#) requires a certified Alzheimer's ALF to have an outdoor area of at least 800 square feet in at least one contiguous space. This area must be connected to, be a part of, be controlled by, and be directly accessible from the ALF.

If more than one certified Alzheimer's ALF shares a resident-use outdoor space, **all** of the following conditions must be met:

- 1) Each certified Alzheimer's ALF sharing the same outdoor space must control the space through the same business entity that owns or operates the facility. For example, if two certified Alzheimer's ALFs want to share the same outdoor space, they must be owned or operated by the same company.

**Note:** At any point that the certified Alzheimer's ALFs sharing the required outdoor space no longer each control that space through the same business entity, then each ALF must have its own outdoor space, which the ALF must control, and which must meet the requirements of 40 TAC §92.53(i)(7).

- 2) The combined area of the outdoor space must be large enough for each certified Alzheimer's ALF sharing the space to separately meet the size requirements for the outdoor space. For example, if two certified Alzheimer's ALFs share the same outdoor space, it would need to be at least 1,600 square feet in size.
- 3) The outdoor space must be connected to and accessible from each ALF sharing the outdoor space.
- 4) Each ALF using the shared space must meet the requirements for any locks utilized on the gates as detailed in section [2.3](#) of this document.

Outdoor areas for resident use must have walls or fencing that do not allow climbing or present a hazard and that meet the following requirements:

- 1) Minimum distance of the wall or fence from the building is 8 feet if the fence is parallel to the building and there are no window openings.
- 2) Minimum distance of the wall or fence (parallel with building walls) from bedroom windows is 20 feet if the enclosure is solid or 15 feet from bedroom windows if the enclosure is open.
- 3) For unusual or unique site conditions, enclosures of resident-use outdoor areas may have alternate configurations with written approval from HHSC.

The distance of the required wall or fence from the building is measured perpendicular from the exterior wall to the enclosure wall or fence.

These minimum dimensions do not apply to fencing erected along property lines or building setback lines for privacy or to meet requirements of local building authorities, nor do they apply to adjacent buildings or structures. If the fencing described in this paragraph also serves as the enclosure fence for the resident-use outdoor area at the ALF, and if the ALF is a residential home converted for use as a small ALF, then the minimum distances described above do not apply.

An ALF must still have a minimum of 800 square feet of outdoor area in at least one contiguous space that is directly accessible from the

ALF and located on the ALF property. However, fencing erected along property lines or building setback lines that are closer than the minimum spacing dimensions would not negate that part of the building from being a resident-use area (e.g., bedrooms could still be used as bedrooms and living rooms could still be used as living rooms).

To be included within the required outdoor area of at least 800 square feet, any alternative fencing configuration located less than the minimum required distances from the ALF building must be approved by HHSC. Otherwise, only outdoor space contained in areas where the fence meets the minimum distance requirements may be included in the minimum square footage of required outdoor space.

Any area of outdoor space that is used for other functions and cannot be occupied or used by all certified Alzheimer's ALF or unit residents for whom the outdoor area is required, is not counted towards the minimum required square footage. Examples of outdoor space used for other functions include areas used for: swimming pools, buildings, plantings (e.g., shrubs or bushes, large plants or planters), fountains, and ponds.

## 2.2 Fence Requirements

Walls or fencing must not allow climbing or present a hazard. To meet this restriction:

- A wall or fence must be tall enough to adequately protect against scaling or climbing. A wall or fence that is less than five feet tall is not considered tall enough to adequately protect against scaling or climbing. Conversely, a wall or fence that is five feet tall or taller is generally considered tall enough to adequately protect against scaling or climbing.  
**Note:** Some zoning ordinances, covenants, and home owners' associations require special permits or dispensation to construct walls or fences taller than six feet.
- The wall or fence must be constructed in such a way, and of materials, that do not allow climbing.
- The wall or fence must be maintained in good condition, and not have sharp edges, broken or damaged materials, or other conditions that could present a hazard.

The height of the required wall or fence is measured vertically from the ground or walking surface to the top of the enclosure wall or fence.

If chain link fencing is used, the chain link fence material must have holes or openings that are not large enough to permit finger, hand, or toe holds, or to otherwise permit climbing, or must use some type of mesh fabric, privacy slat, or other similar material that covers, conceals, or reduces the opening in the chain link fence material so it is no longer climbable. Unprotected holes or openings of more than 1-1/2 inches are considered too large to prevent climbing.

Examples of chain link fences with products used to prevent climbing:



If wood fencing is used, the wood fence material must be constructed and installed so that the horizontal support members do not present a climbing hazard. For instance, the horizontal supports could be placed on the outside of the fence, or sandwiched between the fence materials. There should not be any part of the fence that allows for finger, hand, or toe holds.

Examples of wood fencing that do not allow climbing:



Examples of wood fencing that could allow climbing:



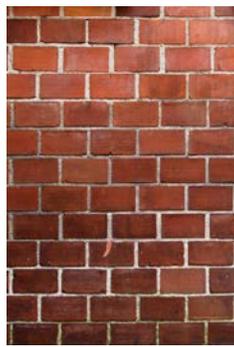
If metal fencing is used, the metal fence material must be constructed and installed so that the horizontal support members, and other fence components do not present a climbing hazard. Often for metal fencing, the horizontal supports are placed at the bottom and top of the fence, but not in between those locations. The placement of horizontal supports at the top and/or bottom of the fence, must not reduce the space between them to a climbable distance.

Examples of metal fencing that do not allow climbing:



If a brick, stone, or concrete block wall is used for the required enclosure, no part of the wall may allow for finger, hand, or toe holds. The same restriction applies to any other type of material used for walls or fencing to enclose the outdoor area required at an ALF.

Examples of brick, concrete block, or stone walls that do not allow climbing:



Walls or fences enclosing the outdoor area will be inspected to determine compliance as part of an inspection at an ALF, including the following: initial, routine inspections, capacity increase, investigation, and follow-up inspections.

### **2.3 Gate Special Locking Arrangement Permitted for use by 40 TAC §92.53 – Requirements for All Facilities**

An ALF may choose to use the delayed-egress locks permitted by *NFPA 101, Life Safety Code*, published by the National Fire Protection Association.<sup>2</sup> Section [2.3.8](#) of this document provides guidance on delayed-egress locks permitted by *NFPA 101*.

Alternatively, if an ALF chooses to use a special locking arrangement on their gate as permitted by 40 TAC [§92.53\(i\)\(7\)](#), it must meet **all** of the following requirements:

- The building has an approved fire sprinkler system and an approved fire alarm system.
- The locking device is electro-magnetic and does not use any type of throw-bolt device.
- **Each** of the following must independently cause the locking device to release:
  - 1) activation of the fire alarm system;
  - 2) activation of the fire sprinkler system;
  - 3) power failure to the building; and
  - 4) activation of a switch or button located both at the monitoring station and at the main staff station.
- A manual fire alarm pull is located within five feet of each gate with a sign stating, "Pull to release door in an emergency." Section [2.3.2](#) of this document provides guidance on manual fire alarm pulls.

- Staff are trained in the methods of releasing the gate locking device.

### 2.3.1 Electro-Magnetic Locking Device

The locking device may not be the throw-bolt type, or a type that does not automatically release and unlock when there is a power failure to the building.<sup>3</sup> It must be electro-magnetic. The most common locking devices are electro-magnetic locking devices that attach to the gate and gate frame.

Examples of electro-magnetic locking devices:



Each locking device installed on a gate must **remain unlocked** when **each** of the following occurs:

- 1) The fire alarm system or fire sprinkler system is activated.
  - a. The locking device must remain unlocked as long as the fire alarm system or fire sprinkler system is activated and the fire alarm system is in general alarm.
  - b. Silencing the fire alarm may allow the audible or visual devices (horns or strobes) to stop making noise or to stop the lights from flashing. If the fire alarm is in general alarm with the horns or strobes silenced, the locking devices must remain unlocked.
- 2) The building loses power.
  - a. Section [2.3.7](#) of this document provides additional guidance for when an ALF has an emergency power system like a generator or battery system.
- 3) The emergency override button or switch is activated.

### 2.3.2 Manual Fire Alarm Pull

If the ALF chooses to use the locking arrangement permitted by 40 TAC §92.53(i)(9) **related to exit doors** on their gate, then a

manual fire alarm pull must be located within five feet of each gate with a sign stating, "Pull to release door in an emergency."

If the ALF chooses to use the locking arrangement permitted by 40 TAC §92.53(i)(8) **related to control doors** on their gate, then a manual fire alarm pull with a sign stating, "Pull to release door in an emergency" is **not** required.

It is the ALF's responsibility to choose whether it will comply with 40 TAC §92.53(i)(9) related to exit doors, or 40 TAC §92.53(i)(8) related to control doors, for the special locking arrangement at the gate. It is not the LSC inspector's responsibility to determine which locking arrangement the ALF will use, rather the LSC inspector's responsibility is to verify compliance with the requirement.

### **2.3.3 Manual Override Buttons and Staff Stations**

When an ALF uses the special locking arrangement permitted by 40 TAC §92.53, a manual override switch or button must be located both at the staff monitoring station within the locked Certified Alzheimer's unit and at the main staff station within the unlocked portion of the ALF.

The override switch or button may be a single switch or button that releases all locked gates in the ALF or unit at the same time. Alternatively, it may consist of a set of multiple switches or buttons located together both at the staff monitoring station and at the main staff station, with each switch or button labeled according to the door or gate it releases (e.g., main door, gates, control door). A manual override switch or button is not required if the ALF uses a delayed-egress lock as permitted by *NFPA 101*.

The ALF may not hinder access to the switch or button by using a lock or locking device, or by placing the button or switch in a locked room or area. Hindering access to the switch or button would negate its availability and prevent unimpeded use of the override switch or button in the event of an emergency.

Examples of manual override switches and buttons:



These pictures of override switches and buttons are intended to show examples of devices commonly seen in an ALF. The pictures do not include examples of a switch or button labeled according to the door or gate it releases.

#### 2.3.4 Main Staff Station and Monitoring Station

A staff or attendant area must be provided on each floor of the building and in each separate building of the ALF.<sup>4</sup> A monitoring station must be provided in each Certified Alzheimer building, unit or portion of the building.<sup>5</sup>

A staff or attendant area is an area for staff use which is equipped with **all** of the following:

- 1) writing surface such as a desk or counter; and
- 2) telephone or intercom.

A monitoring station is an area for staff use which is equipped with **all** of the following:

- 3) writing surface such as a desk or counter;
- 4) chair;
- 5) task illumination;
- 6) telephone or intercom; and
- 7) lockable storage for resident records.

An ALF that has a **single Certified Alzheimer's unit** segregated from other parts of the Type B ALF with approved security devices must provide a monitoring station inside the Certified Alzheimer's unit, and a main staff station for the entire ALF. Both the monitoring station and the main staff station must be equipped with a manual override switch or button.

An ALF that has **multiple Certified Alzheimer's units** segregated from other parts of the Type B ALF with approved security devices must provide a monitoring station inside **each** Certified Alzheimer's unit, and a main staff station for the entire ALF. Each monitoring station and the main staff station must be equipped with a manual override switch or button.

A **Certified Alzheimer's ALF** that is locked with approved security devices in its entirety must provide a monitoring station inside each portion of the building used by residents for sleeping. A portion could include separate floors or sections or portions that are segregated or separated from each other. Each monitoring station must be equipped with a manual override switch or button. If the ALF has a main staff station, it must also be equipped with a manual override switch or button.

### 2.3.5 Surface Mounted Covers

To prevent an inadvertent activation of the override switch or button, or the manual fire alarm pull station, the ALF may use a surface mounted cover. The surface mounted cover may not be locked or require a special tool or knowledge to open. Hindering access to the switch, button, or manual pull station would negate its availability and prevent its unimpeded use in the event of an emergency.

Examples of surface mounted covers:



### 2.3.6 Key Pads

A key pad or buttons may be located at the gates for routine use by staff. This is for staff convenience only. It does not meet, and can neither replace nor impede, the release requirements for permissible locking arrangement under 40 TAC [§92.53\(i\)\(7\)](#).

Examples of key pads:



### 2.3.7 Emergency Power – Generator and Battery

If the ALF has an emergency generator, optional standby generator, or battery system that provides electrical power to the building in the event of utility power loss, the locking devices may re-lock upon activation of the generator or battery system (i.e., restoration of power to the ALF).

An ALF may not use a battery or battery system that prevents the locking devices from releasing when the building loses power, since doing so would prevent a locking device from meeting the requirement to release upon loss of power.

### 2.3.8 Delayed-egress Locks

If the ALF chooses to use a delayed-egress lock, it must meet all of the requirements of *NFPA 101*, 7.2.1.6.1.<sup>6</sup> The irreversible releasing process must release the delayed-egress lock within 15 seconds.

A manual override switch or button is not required if the ALF uses a delayed-egress lock permitted by *NFPA 101*.

### 2.3.9 Staff Training

Staff must be trained in the methods of releasing any gate locking devices in an emergency. The ALF must have a program to train **all** staff members, not just direct care staff.<sup>7</sup> The training must include instruction on the operation, use, and emergency release functions of any gate locking device which the ALF has installed under 40 TAC §92.53(i).

An ALF may utilize training documentation that it maintains to demonstrate its compliance with the staff training requirement. The ALF is encouraged to include its materials for training on the methods of releasing gate locking devices in an emergency as part of its emergency preparedness and response plan.

#### **2.4 Gate Locking Arrangement – Small, Type B Certified Alzheimer’s ALF**

In addition to the guidance provided for [all facilities](#), a small, type B certified Alzheimer’s ALF using a locking arrangement as permitted by 40 TAC §92.53 or *NFPA 101*, 7.2.1.6 must also comply with the guidance in this section.

A small ALF that meets the requirements of *NFPA 101*, Residential Board and Care Occupancies, Chapter 32 or 33, may use a delayed-egress lock on an exterior door only.<sup>8</sup> Since a gate is an exterior door, a small ALF may use a delayed-egress lock on a gate.

#### **2.5 Gate Locking Arrangement – Large, Type B Certified Alzheimer’s ALF**

In addition to the guidance provided for [all facilities](#), a large, type B certified Alzheimer’s ALF must also comply with the guidance in this section.

A large ALF that meets the requirements of *NFPA 101*, Health Care Occupancies, Chapter 18 or 19, may use a delayed-egress lock on a gate. However, the ALF must not have more than one delayed-egress lock located in any egress path.<sup>9</sup>

A large ALF must ensure that a locking device attached to the gate frame does not reduce the headroom clearance in the passage through the gate to less than 6 feet 8 inches (80 inches) above the finished floor surface.<sup>10</sup> The passage through the gate is part of the means of egress<sup>11</sup> and must comply with the headroom clearance requirement.

### **3.0 Attachments**

None.

## 4.0 Contact Information

If you have any questions about this TM, please contact the Policy, Rules and Training Section at (512) 438-3161.

## 5.0 Background

TM for ALFs were mandated by Senate Bill 1049, 85<sup>th</sup> Legislature, Regular Session, 2017 to provide HHSC's "guidance on the interpretation of minimum life safety code standards" prescribed under Health and Safety Code, Title 4, Subtitle B, Chapter 247, Assisted Living Facilities, and ALF rules. The bill provides for TMs to be published at least twice a year.

*[signature on file]*

Mary T. Henderson  
Associate Commissioner  
Long-term Care Regulatory

MTH:ca

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<sup>1</sup> All references to Texas Administrative Code, Title 40, Part 1, Chapter 92, Licensing Standards for Assisted Living Facilities, can be viewed at:  
[http://texreg.sos.state.tx.us/public/readtac\\$ext.viewtac](http://texreg.sos.state.tx.us/public/readtac$ext.viewtac)

<sup>2</sup> *NFPA 101, Life Safety Code*, 2000 edition  
National Fire Protection Association, Inc. (NFPA)  
One Batterymarch Park  
Quincy, Massachusetts 02269

All references to NFPA 101 requirements can be viewed at no cost at:  
[www.nfpa.org](http://www.nfpa.org)

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<sup>3</sup> A throw-bolt type locking device is often seen in residential homes. The components that make up the locking mechanism include a metal throw-bolt that can be engaged in its strike plate only after the door is closed. Throw-bolt type locking devices are **not permitted** to be used on a gate that is using a locking arrangement permitted in a Certified Alzheimer's ALF or unit.

Example of a throw-bolt locking device:



A type of locking device that does not release and unlock when there is a power failure, or "fails in the locked position," is often seen in correctional facilities. It is a locking device that is typically electrically operated, and in

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the event the electricity supply fails, the lock remains in the locked position. Locking devices that fail in the locked position are **not permitted** to be used on any gate using a locking arrangement permitted in a Certified Alzheimer's ALF or unit.

<sup>4</sup> 40 TAC §92.62(m)(1)(H)

<sup>5</sup> 40 TAC §92.53(i)(4)

<sup>6</sup> NFPA 101, 7.2.1.6.1.1

**Note:** As the AHJ for licensure of an ALF, HHSC does not allow the exception which would permit a longer delayed-egress lock releasing process of up to 30 seconds. The delayed-egress lock releasing process must occur within 15 seconds for compliance with 40 TAC §92.53(i).

<sup>7</sup> 40 TAC 92.2(65)

<sup>8</sup> NFPA 101, 32.2.2.5.5 and 33.2.2.5.5

<sup>9</sup> NFPA 101, 19.2.2.2.4

<sup>10</sup> NFPA 101, 7.1.5.1

<sup>11</sup> NFPA 101, 3.3.121

NFPA 101, 3.3.62

NFPA 101, 3.3.61

NFPA 101, 3.3.63

NFPA 101, 3.3.157