

EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034).

TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 174. TELEMEDICINE

SUBCHAPTER A. TELEMEDICINE

22 TAC §174.5

The Texas Medical Board (Board) adopts, on an emergency basis, amendments to 22 TAC §174.5, effective January 2, 2021, at 12:01 a.m.

On March 13, the Governor of Texas certified COVID-19 as posing an imminent threat of disaster to the public health and safety and declared a state of disaster in all counties of Texas. On March 19, 2020, the Texas Governor issued a waiver suspending the strict enforcement of §174.5(e)(2)(A) which generally prohibits the utilization of telemedicine to prescribe scheduled drugs for the treatment of chronic pain. The waiver was issued in order to protect public health and curb the spread of COVID-19 by providing patients access to schedule drugs needed to ensure on-going treatment of chronic pain and avoid potential adverse consequences associated with the abrupt cessation of pain medication. On December 29, 2020, the Board adopted, on an emergency basis, amendments to 22 TAC §174.5. This rule is set to expire at 11:59 p.m. on March 2, 2021.

Therefore, the emergency amendment to §174.5(e) is immediately necessary to help the state's physicians, physician assistants and other health care professionals continue to mitigate the risk of exposure to COVID-19 and provide necessary medical services to related to issuance of prescriptions including controlled substances for patients. Pursuant to the Governor's declaration of disaster issued on March 13, 2020, related to COVID-19, physicians can continue to provide telephone refills for prescriptions for established patients after having an in-person or two audio and video communications telemedicine medical services within the last 90 days. This waiver and emergency rule include allowing a physician to issue a prescription for the treatment of chronic pain with scheduled medications.

The emergency amendment allows physicians to utilize telemedicine to issue refill prescriptions for scheduled medications to established chronic pain patients, if the physician has within the past 90 days seen a patient in-person, or via a telemedicine visit using two-way audio and video communication.

Pursuant to Section 2001.034 and 2001.036(a)(2) of the Texas Government Code, the amendment is adopted on an emergency basis and with an expedited effective date because an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. The emergency amendment shall be in effect for only 60 days or the duration of the time period that the Governor's disaster declaration of March 13, 2020, in

response to the COVID-19 pandemic is in effect, whichever is shorter, pursuant to Section 2001.034 of the Texas Government Code.

The emergency rule amendments are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle.

Another statute affected by this rule is Chapter 111 of the Texas Occupations Code.

§174.5. *Issuance of Prescriptions.*

(a) The validity of a prescription issued as a result of a telemedicine medical service is determined by the same standards that would apply to the issuance of the prescription in an in-person setting.

(b) This rule does not limit the professional judgment, discretion or decision-making authority of a licensed practitioner. A licensed practitioner is expected to meet the standard of care and demonstrate professional practice standards and judgment, consistent with all applicable statutes and rules when issuing, dispensing, delivering, or administering a prescription medication as a result of a telemedicine medical service.

(c) A valid prescription must be:

(1) issued for a legitimate medical purpose by a practitioner as part of patient-practitioner relationship as set out in §111.005, of Texas Occupations Code; and

(2) meet all other applicable laws before prescribing, dispensing, delivering or administering a dangerous drug or controlled substance.

(d) Any prescription drug orders issued as the result of a telemedicine medical service, are subject to all regulations, limitations, and prohibitions set out in the federal and Texas Controlled Substances Act, Texas Dangerous Drug Act and any other applicable federal and state law.

(e) Limitation on Treatment of Chronic Pain. Chronic pain is a legitimate medical condition that needs to be treated but must be balanced with concerns over patient safety and the public health crisis involving overdose deaths. The Legislature has already put into place laws regarding the treatment of pain and requirements for registration and inspection of pain management clinics. Therefore, the Board has determined clear legislative intent exists for the limitation of chronic pain treatment through a telemedicine medical service.

(1) Treatment for Chronic Pain. For purposes of this rule, chronic pain has the same definition as used in §170.2(4) of this title (relating to Definitions).

(A) Treatment of chronic pain with scheduled drugs by telephone refill of an existing prescription is prohibited, unless: a patient is an established chronic pain patient of the physician and has been

seen by the prescribing physician or health professional defined under Chap 111.001(1) of Texas Occupations Code, in the last 90 days either:

(i) in-person; or

(ii) via telemedicine using audio and video two-way communication

(B) The emergency amendment of this rule effective January 2, 2021, at 12:01 A.M. shall be in effect for only 60 days or the duration of the time period that the Governor's disaster declaration of March 13, 2020, in response to the COVID-19 pandemic is in effect, whichever is shorter.

(2) Treatment for Acute Pain. For purposes of this rule, acute pain has the same definition as used in §170.2(2) of this title. Treatment of acute pain with scheduled drugs through use of telemedicine medical services is allowed, unless otherwise prohibited under federal and state law.

~~[(A) Treatment of chronic pain with scheduled drugs through use of telemedicine medical services is prohibited, unless otherwise allowed under federal and state law.]~~

~~[(B) Treatment of acute pain with scheduled drugs through use of telemedicine medical services is allowed, unless otherwise prohibited under federal and state law.]~~

The agency certifies that legal counsel has reviewed the emergency adoption and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 29, 2020.

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For further information, please call: (512) 305-7016



TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 745. LICENSING

SUBCHAPTER X. EMERGENCY RULES

DIVISION 1. EMERGENCY CHILD CARE

OPERATION

26 TAC §745.10005

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 26 Texas Administrative Code, Chapter 745, Licensing, new §745.10005, concerning an emergency rule that establishes temporary requirements to ensure that child day-care operations follow health and safety guidelines from health authorities. The health, safety, and welfare of children will be at risk without adequate care and reasonable precautions. As authorized by Texas Government Code §2001.034, the Commission may adopt an emergency rule without prior notice or hearing upon finding that

an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. An emergency rule adopted under Texas Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to support the Governor's March 13, 2020, proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. The Commission accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this Emergency Rule with Ongoing Requirements for Certain Day Care Operations in Response to COVID-19.

The purpose of the new emergency rule is to protect the health, safety, and welfare of children in day care operations and the public from the COVID-19 pandemic. The emergency rule will create specific requirements relating to health and safety standards and how to comply with recommendations from health authorities that have evolved since the pandemic began.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034 and §531.0055 and Texas Human Resources Code §42.001 and §42.042. Texas Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Texas Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Texas Human Resources Code §42.001 states that it is the policy of the state to ensure the protection of all children under care in child-care facilities. In addition, Texas Human Resources Code §42.042 authorizes the Executive Commissioner of HHSC to adopt rules governing the regulation of child care facilities in Chapter 42.

The new section implements Texas Government Code §531.0055 and Texas Human Resources Code §42.001 and §42.042.

§745.10005. Emergency Rule with Ongoing Requirements for Certain Day Care Operations in Response to COVID-19.

(a) This section applies to the following operations:

- (1) School-age programs;
- (2) Before and after-school programs;
- (3) Child-care centers;
- (4) Licensed child-care homes; and
- (5) Registered child-care homes.

(b) An operation must comply with the current CDC Guidance for Child Care Programs that Remain Open located at: www.cdc.gov/coronavirus/2019-ncov/community/schools-child-care/guidance-for-childcare.html.

(c) Regarding caregivers and other staff, an operation must:

(1) Ensure that all caregivers take the Special Considerations for Infection Control during COVID-19 training through the Texas A&M AgriLife Extension;

(2) Require all caregivers and other staff to notify the operation if they experience any illness or symptoms that may be related to COVID-19;

(3) Consult with the local or state health authority if a caregiver or other staff has been in close contact, as defined by CDC, with someone who has tested positive for COVID-19 and follow the local or state health authority's recommendations; and

(4) Encourage caregivers and other staff who are 65 years of age or older or who otherwise might be at higher risk for severe illness from COVID-19 to talk to their healthcare provider to assess their risk and determine if they should continue to be present at the operation.

(d) An operation must screen all persons and children according to CDC guidance before allowing entry into the operation, including checking the temperature of each person and child upon arrival at the operation each day and denying entry to any person who:

(1) Has a fever with a temperature of 100.4 degrees or higher;

(2) Demonstrates signs or symptoms of a respiratory infection, such as cough, shortness of breath, or sore throat, or other signs of illness;

(3) Has had close contact, as defined by the CDC, with someone who has a confirmed diagnosis of COVID-19 or someone who is under investigation for COVID-19 unless the local or state health authority has determined the person's presence at the operation would not put others at risk: www.cdc.gov/coronavirus/2019-ncov/php/contact-tracing/contact-tracing-plan/appendix.html#contact; or

(4) Has a confirmed diagnosis of COVID-19.

(e) An operation must not deny entry to persons performing official duties, unless the individual meets a screening criterion in subsection (d) of this section. The screening required by subsection (d) of this section does not apply to emergency services personnel entering the operation in an emergency situation.

(f) Regarding the pick-up and drop-off of children, an operation must:

(1) Limit the direct contact between parents and caregivers to the extent possible considering the age of the child; and

(2) Complete the pick-up and drop-off of children outside of the operation, unless the operation determines that there is a legitimate need for the parent to enter. If the operation determines that there is a legitimate need for a specific parent to enter, the operation must screen the parent as provided in subsection (d) of this section.

(g) Regarding the spread of germs:

(1) In addition to following the current minimum standards related to diapering:

(A) A caregiver must wash an infant's or toddler's hands and the caregiver's hands before changing a diaper;

(B) A caregiver must wear gloves when changing a diaper; and

(C) An operation must post diaper changing procedures in all diaper changing areas.

(2) Children and caregivers must have multiple changes of clothing available at an operation because any secretions on a child's clothes or bib or a caregiver's clothes will mean that the clothes or bib must be changed; and

(A) Contaminated clothes or bibs must be placed in a sealed plastic bag to be sent home with the child or caregiver or washed in a washing machine;

(B) The child's hands and the caregiver's hands must be washed after changing clothes; and

(C) A child must not be allowed to wear another child's clothing; and

(3) An operation must:

(A) Adjust the HVAC system, if possible, to allow fresh air to enter the operation;

(B) Not use machine washable cloth toys, or the toys must only be used by one child and then laundered before use by another child;

(C) Place posters describing handwashing steps near sinks used for handwashing. Developmentally appropriate posters in multiple languages are available from the CDC; and

(D) Require any caregiver or other staff who begins to exhibit symptoms of COVID-19 or any other contagious illness while at the operation to leave the operation immediately.

(h) Regarding food preparation, an operation:

(1) When using a sink for food preparation, must not use that sink for any other purpose; and

(2) Must not serve family style meals; each child must be provided individual meals and snacks.

(i) If this emergency rule is more restrictive than any minimum standard relating to the operations addressed by this rule, this emergency rule will prevail so long as this emergency rule is in effect.

(j) If an executive order or other direction is issued by the Governor of Texas, the President of the United States, or another applicable authority, that is more restrictive than this emergency rule or any minimum standard relating to the operations addressed in this emergency rule, the operations must comply with the executive order or other direction.

The agency certifies that legal counsel has reviewed the emergency adoption and found it to be within the state agency's legal authority to adopt.

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Health and Human Services Commission
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