

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 187. PROCEDURAL RULES

The Texas Medical Board (Board) adopts, on an emergency basis, amendments to 22 TAC §§187.2(6), 187.6 and 187.16, relating to Definitions, Appearances Personally or by Representative, and Informal Show Compliance (ISC) Information and Notices, respectively, effective immediately upon filing.

The emergency amendment to §187.2(6) adds a definition of "appear/appearance." The amendments to §187.6 and §187.16 are conforming amendments to incorporate consistent usage of the term "appear" and "appearance."

There is currently a sharp increase in COVID-19 cases in certain areas of Texas. Further, the COVID-19 cases and hospitalizations continue to increase in Texas and there is possibly a more transmissible variant that has been identified. Thus, the emergency amendment is necessary to facilitate safe continuity of operations of the Texas Medical Board with respect to resolution of complaint investigations. These complaint investigations and disciplinary process comprise essential functions of the Board. The Board currently has approximately 175 cases postponed. The emergency amendment will provide the Board with the ability to implement maximum safety measures mitigating against the spread of COVID-19.

Pursuant to §2001.034 and §2001.036(a)(2) of the Texas Government Code, the emergency 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 will eliminate potential unnecessary exposure to COVID-19 for agency staff, gubernatorial appointees (including physicians and other health professionals), complainants (including patients and/or family members), licensees, and their representatives when addressing complaints through Informal Show Compliance Proceedings and Settlement Conferences (ISC).

In order to comply with public health officials' recommendations about how to protect against the spread of COVID-19, the emergency rules provide a means of providing maximum safety measures (virtually eliminating potential exposure) when conducting statutorily required ISCs regarding alleged violations of the Medical Practice Act and other applicable laws. In addition, the rules eliminate unnecessary expenditure of state funds during a time of decreased state revenue. The rules also provide adequate means for licensees and their representatives to respond to and address alleged violations of laws regarding the practice of medicine through the statutory ISC process.

Under §2001.034 of the Texas Government Code, the emergency rule may not be in effect for more than 180 days.

SUBCHAPTER A. GENERAL PROVISIONS AND DEFINITIONS

22 TAC §187.2, §187.6

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.

Other statutes affected by this rule are Chapters 151 and 164 of the Texas Occupations Code.

§187.2. Definitions.

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

(1) Act--Tex. Occ. Code Ann. Title 3 Subtitle B, for physicians; Tex. Occ. Code Ann. Chapter 204 for physician assistants; Tex. Occ. Code Ann. Chapter 205 for acupuncturists; and Tex. Occ. Code Ann. Chapter 206 for surgical assistants.

(2) Address of record--The last mailing address of each licensee or applicant, as provided to the agency pursuant to the Act.

(3) Administrative law judge (ALJ)--An individual appointed to preside over administrative hearings pursuant to the APA.

(4) Agency--The divisions, departments, and employees of the Texas Medical Board, the Texas Physician Assistant Board, and the Texas State Board of Acupuncture Examiners.

(5) APA--The Administrative Procedure Act, Texas Government Code, Chapter 2001 as amended.

(6) Appear/Appearance - An opportunity to be heard at an Informal Show Compliance proceeding and settlement conference (ISC) via videoconference. A respondent who cannot utilize videoconference may request to appear via teleconference at least 15 days prior to the date of the appearance. Licensees are entitled to all substantive and procedural rights delineated in the Medical Practice Act.

(7) [(6)] Applicant--A person seeking a license from the board.

(8) [(7)] Attorney of record--A person licensed to practice law in Texas who has provided staff with written notice of representation.

(9) [(8)] Authorized representative--A person who has been designated in writing by a party to represent the party at a board proceeding or an attorney of record.

(10) [(9)] Board--The Texas Medical Board for physicians and surgical assistants, the Texas State Board of Acupuncture Exam-

iners for acupuncturists, and the Texas Physician Assistant Board for physician assistants.

(11) [(40)] Board member--One of the members of the board appointed pursuant to the Act.

(12) [(41)] Board proceeding--Any proceeding before the board or at which the board is a party to an action, including a hearing before SOAH.

(13) [(42)] Board representative--A board member or district review committee member who sits on a panel at an informal proceeding.

(14) [(43)] Complaint--Pleading filed at SOAH by the board alleging a violation of the Act, board rules, or board order. The word "complaint" is also used in this rule in the context of complaints made to the board as provided in §153.012 of the Act.

(15) [(44)] Contested case--A proceeding, including but not restricted to licensing, in which the legal rights, duties, or privileges of a party are to be determined by the board after an opportunity for an administrative hearing to be held at SOAH.

(16) [(45)] Default Order--A board order in which the factual allegations against a party are deemed admitted as true upon the party's failure to file a timely answer to a Complaint or to appear at a properly noticed SOAH hearing.

(17) [(46)] Executive director--The executive director of the agency, the authorized designee of the executive director, or the secretary of the board if and whenever the executive director and authorized designee are unavailable.

(18) [(47)] Formal board proceeding--Any proceeding requiring action by the board, including a temporary suspension hearing.

(19) [(48)] Group practice--Any business entity, including a partnership, professional association, or corporation, organized under Texas law and established for the purpose of practicing medicine in which two or more physicians licensed in Texas are members of the practice.

(20) [(49)] Informal board proceeding--Any proceeding involving matters before the board prior to the filing of a pleading at SOAH, to include, but not limited to show compliance proceedings, eligibility determinations, and informal resolutions.

(21) [(20)] Informal show compliance proceeding and settlement conference (ISC)--A board proceeding that provides a licensee the opportunity to demonstrate compliance with all requirements of the Act and board rules and an opportunity to enter into an agreed settlement.

(22) [(21)] License--Includes the whole or part of any board permit, certificate, approval, registration or similar form of permission authorized by law.

(23) [(22)] Licensee--Any person to whom the agency has issued a license, permit, certificate, approval, registration or similar form of permission authorized by law.

(24) [(23)] Licensing--The agency process relating to the granting, denial, renewal, cancellation, limitation, or reissuance of a license.

(25) [(24)] Party--The board and each person named or admitted as a party in a SOAH hearing or contested case before the board.

(26) [(25)] Person--Any individual, partnership, corporation, association, governmental subdivision, or public or private organization.

(27) [(26)] Petition--Pleading filed at SOAH by an applicant appealing the board's denial of licensure.

(28) [(27)] Pleading--A written document that requests procedural or substantive relief, makes claims, alleges facts, makes legal arguments, or otherwise addresses matters involved in a board proceeding.

(29) [(28)] Presiding officer--The president of the board or the duly qualified successor of the president or other person presiding over a board proceeding.

(30) [(29)] Probationer--A licensee who is under a board order.

(31) [(30)] Probationer show compliance proceeding--A board proceeding that provides a probationer the opportunity to demonstrate compliance with the Act, board rules, and board order prior to the board finding that a probationer is in noncompliance with the probationer's order.

(32) [(31)] Register--The Texas Register.

(33) [(32)] Rehabilitation Order--An agreed order entered pursuant to the authority of §164.201 of the Act.

(34) [(33)] Remedial plan--A nondisciplinary settlement agreement entered into pursuant to §164.0015 of the Act.

(35) [(34)] Respondent--A licensee or applicant who is the subject of disciplinary, non-disciplinary, or rehabilitative action by the board.

(36) [(35)] Rule--Any agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of this board. The term includes the amendment or repeal of a prior section but does not include statements concerning only the internal management or organization of the agency and not affecting private rights or procedures. This definition includes substantive regulations.

(37) [(36)] Secretary--The secretary-treasurer of the board.

(38) [(37)] SOAH--The State Office of Administrative Hearings.

(39) [(38)] SOAH hearing--A public adjudication proceeding at SOAH.

(40) [(39)] SOAH rules--1 Texas Administrative Code §155.1 et seq.

(41) [(40)] Texas Public Information Act--Texas Government Code, Chapter 552.

(42) [(41)] Witness--Any person offering testimony or evidence at a board proceeding.

§187.6. *Appearances [Personally or by Representative].*

(a) An individual, authorized representative, or both, may appear via videoconference or teleconference, as described in emergency rule §187.2(6) [in person or by an authorized representative]. This right may be waived.

(b) Any authorized representative, other than an attorney of record, must produce a written statement executed by the individual they are representing which grants the representative the authority to appear on behalf of the individual. The original or a notarized copy of the authorization must be provided to the board at least three days prior to the appearance of the authorized representative in a proceeding unless waived by the board.

(c) A corporation, partnership, or association may appear and be represented by any authorized representative.

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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SUBCHAPTER B. INFORMAL BOARD PROCEEDINGS

22 TAC §187.16

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.

Other statutes affected by this rule are Chapters 151 and 164 of the Texas Occupations Code.

§187.16. *Informal Show Compliance (ISC) Information and Notices.*

(a) Texas Medical Board finds that statutory minimum requirements related to the Informal Show Compliance Proceedings (ISCs) as set out in the Texas Occupations Code, §164 et seq. are comprehensive and complete. Pursuant to §153.001 and §164.003 of the Medical Practice Act, the Board is authorized to adopt rules relating to the ISCs and how they are to be conducted. These rules are promulgated to clarify the ISC process and procedures only as necessary to be consistent with the statutory requirements.

(b) Notice of the time, date and place of the ISC shall be extended to the licensee and the complainant(s) in writing, by hand delivery, regular mail, certified mail -- return receipt requested, overnight or express mail, courier service, or registered mail, to the address of record of the complainants and the address of record of the licensee or the licensee's authorized representative to be sent at least 45 days prior to the date of the ISC. The notice to the licensee or the licensee's authorized representative shall also include:

(1) a statement that the licensee has the opportunity to appear, via videoconference or teleconference, as described in emergency rule §187.2(6), [attend] and participate in the ISC;

(2) a written statement of the nature of the allegations; and

(3) a copy of the information the board intends to use at the ISC. If the complaint includes an allegation that the licensee has violated the standard of care, the notice shall also include a copy of the Expert Physician Reviewers' Report, prepared in accordance with §154.0561, Texas Occupations Code. The information required by this section may be given in separate communications at different times, provided all of the information has been provided at least 45 days prior to the date of the ISC.

(c) All information provided by the board staff and the licensee shall be provided to the board representatives for review prior to the board representatives making a determination of whether the licensee has violated the Act, board rules, remedial plan, or board order.

(d) All ISC proceedings shall be scheduled not later than the 180th day after the date the board's official investigation of the complaint is commenced, unless good cause is shown by the board for scheduling the ISC after that date. For purposes of this subsection:

(1) "Scheduled" means the act of the agency to reserve a date for the ISC.

(2) "Good cause" shall have the meaning set forth in §179.6 of this title (relating to Time Limits).

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 306. BEHAVIORAL HEALTH DELIVERY SYSTEM

SUBCHAPTER Z. EMERGENCY RULEMAKING

26 TAC §306.1351

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 26 Texas Administrative Code, Chapter 306 Behavioral Health Delivery System, new §306.1351, concerning an emergency rule in response to COVID-19, in order to reduce the risk of transmission of COVID-19, and to ensure continuity of services for individuals receiving community-based mental health services. 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. Emergency rules 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 renewal on December 6, 2020 of the 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. HHSC accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this emergency rulemaking in response to COVID-19.

To protect individuals receiving mental health services and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to establish flexibility of certain requirements to: allow alternative methods other than face-to-face contact or in-person interactions, such as the use of telehealth, telemedicine, video-conferencing, or telephonic methods; allow virtual platforms instead of a specific physical space or in-person interactions, such as the use of a telephone or videoconferencing; allow a child or adolescent participating in the YES Waiver Program to reside with another responsible adult as the child or adolescent may not be residing with his or her legally authorized representative due to COVID-19 if the Centers for Medicare & Medicaid Services approves HHSC's request for activation of Appendix; and rules under Title 25, Part 1 and Title 26, Part 1 of the TAC that require staff training through face-to-face or in person or a specific physical space or on site.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034 and §531.0055 and Texas Health and Safety Code §§533.014, 533.035, 533.0356, 534.052, 534.058, 572.0025, 571.006, and 577.010. 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. Health and Safety Code §533.014 authorizes the Executive Commissioner of HHSC to adopt rules governing certain responsibilities for LMHAs; §533.035 authorizes HHSC to contract with LMHAs for the delivery of mental health services; §533.0356 allows the Executive Commissioner of HHSC to adopt rules governing Local Behavioral Health Authorities (LBHAs); §534.052 authorizes the Executive Commissioner of HHSC to adopt rules to ensure the adequate provision of community-based mental health services; §534.058 authorizes the Executive Commissioner to develop standards of care for services provided by LMHAs and their subcontractor; §572.0025 authorizes the Executive Commissioner of HHSC to adopt rules governing the voluntary admission of a patient to an inpatient mental health facility; §571.006 authorizes the Executive Commissioner to adopt rules to ensure the proper and efficient treatment of persons with mental illness; and §577.010 authorizes the Executive Commissioner to adopt rules to ensure the proper care and treatment of patients in a private mental hospital or mental health facility.

The new section implements Texas Government Code §531.0055 and Texas Health and Safety Code §533.014, §533.0356, and §534.052.

§306.1351. COVID-19 Flexibilities.

(a) Rules in Title 25 and Title 26 of the Texas Administrative Code (TAC) require community mental health providers to deliver certain services through face-to-face contact. Beginning on March 13, 2020 through the withdrawal or expiration of this emergency rule, the provision of community mental health services through a face-to-face contact, otherwise required by the rules identified in subsection (b) of this section, is not required. Instead, providers may use telehealth, telemedicine, video-conferencing, or telephonic methods to engage with the individual to provide these services, to the extent this flexibility is permitted by and does not conflict with other law or obligation of the provider. Providers must ensure the selected method of contact complies with all applicable requirements related to security and privacy of information.

(b) Community mental health providers may use alternative interaction methods instead of a face-to-face contact to provide the services described in the following rules:

(1) Section 301.327 of this title (relating to Access to Mental Health Community Services);

(2) Section 301.351 of this title (relating to Crisis Services);

(3) Section 301.353 of this title (relating to Provider Responsibilities for Treatment Planning and Service Authorization);

(4) Section 301.357 of this title (relating to Additional Standards of Care Specific to Mental Health Community Services for Children and Adolescents);

(5) Section 301.359 of this title (relating to Telemedicine Services);

(6) Section 306.207 of this chapter (relating to Post Discharge or Absence for Trial Placement: Contact and Implementation of the Recovery or Treatment Plan);

(7) Section 306.263 of this chapter (relating to MH Case Management Services Standards);

(8) Section 306.275 of this chapter (relating to Documenting MH Case Management Services);

(9) Section 306.277 of this chapter (relating to Medicaid Reimbursement);

(10) Section 306.305 of this chapter (relating to Definitions);

(11) Section 306.323 of this chapter (relating to Documentation Requirements);

(12) Section 306.327 of this chapter (relating to Medicaid Reimbursement);

(13) Section 307.53 of this title (relating to Eligibility Criteria and HCBS-AMH Assessment);

(14) 25 TAC §415.10 (relating to Medication Monitoring);
and

(15) 25 TAC §415.261 (relating to Time Limitation on an Order for Restraint or Seclusion Initiated in Response to a Behavioral Emergency).

(c) Section 414.554 of Title 25 of the TAC requires community mental health providers to provide a private physical space for certain in-person interactions. Beginning on March 13, 2020 through the withdrawal or expiration of this emergency rule, the provision of a private physical space, otherwise required by the rule identified in subsection (d) of this section, is not required. Instead, providers may provide virtual platforms, such as telephone or videoconferencing, rather than

providing a private physical space for these interactions to the extent this flexibility is permitted by and does not conflict with other law or obligation of the provider. Providers must ensure the selected method of contact complies with all applicable requirements related to security and privacy of information.

(d) Community mental health providers may provide virtual platforms instead of a private physical space for these interactions provided under 25 TAC §414.554 (relating to Responsibilities of Local Authorities, Community Centers, and Contractors).

(e) Section 307.5 of Title 26 of the TAC requires a child or adolescent participating in the Youth Empowerment Services (YES) Waiver Program to reside with their legally authorized representative. Children or adolescents participating in the YES Waiver Program are not required to reside with their legally authorized representative, notwithstanding the requirements of §307.5 of this title (relating to Eligibility Criteria).

(f) Community mental health providers may use the alternative interaction methods described under subsection (a) instead of a face-to-face contact to comply with the following training requirements:

- (1) 25 TAC §411.641 (relating to Staff Member Training);
- (2) 25 TAC §448.603 (relating to Training); and
- (3) Section 301.331 of this title (relating to Competency and Credentialing).

(g) The Health and Human Services Commission (HHSC) may extend time frames for compliance with staff training requirements based on training availability and feasibility in:

- (1) 25 TAC §411.641 (relating to Staff Member Training);
- (2) 25 TAC §448.603 (relating to Training); and
- (3) Section 301.331 of this title (relating to Competency and Credentialing).

(h) Community mental health providers that avail themselves of the flexibilities allowed under this section must comply with:

- (1) all guidance on the application of the rules during the declaration of disaster that is published by HHSC on its website or in another communication format HHSC determines appropriate; and
- (2) all policy guidance applicable to the rules identified in this section issued by HHSC's Medicaid and CHIP Services Division.

(i) Community mental health providers must ensure any method of contact complies with all applicable requirements related to security and privacy of information.

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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CHAPTER 500. COVID-19 EMERGENCY HEALTH CARE FACILITY LICENSING

SUBCHAPTER A. HOSPITALS

26 TAC §500.1

The Health and Human Services Commission is renewing the effectiveness of emergency new §500.1 for a 60-day period. The text of the emergency rule was originally published in the October 2, 2020, issue of the *Texas Register* (45 TexReg 6833).

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 30. MEDICAID HOSPICE PROGRAM

SUBCHAPTER B. MEDICAID HOSPICE PROGRAM

40 TAC §30.14

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 40 Texas Administrative Code, Chapter 30, Medicaid Hospice Program, an amendment to §30.14(e), concerning an emergency rule in response to COVID-19 in order to allow determination of an individual's continued eligibility for hospice care for a period of care after the initial period through a telemedicine medical service. 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. Emergency rules 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. HHSC accordingly finds

that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this emergency amendment to §30.14, concerning Certification of Terminal Illness and Record Maintenance.

To protect individuals receiving Medicaid hospice services and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency amendment to §30.14(e) to allow a hospice physician or hospice advanced practice registered nurse to determine an individual's continued eligibility for hospice care for a period of care, after the initial period, through a telemedicine medical service, as defined in Texas Government Code §531.001(8). This amendment will reduce the risk of transmitting COVID-19.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034, §531.0055, and §531.021 and Texas Human Resources Code §32.021. 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 Government Code §531.021 gives HHSC the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program. Texas Human Resources Code §32.021 requires the Executive Commissioner of HHSC to adopt rules governing the proper and efficient operation of the Medicaid program.

The amendment implements Texas Government Code §531.0055 and §531.021 and Texas Human Resources Code §32.021.

§30.14. *Certification of Terminal Illness and Record Maintenance.*

(a) Timing of certification.

(1) If a hospice does not obtain the written certification statement required by paragraph (2) of this subsection within two days after a period of care begins, the hospice must obtain an oral certification statement that meets the requirements of this section no later than two days after the period begins. A period of care is described in §30.12 of this subchapter (relating to Duration of Hospice Care Coverage: Election Periods).

(2) For the initial period of care, a hospice must obtain a signed and dated Medicaid Hospice Program Physician Certification of Terminal Illness form that meets the requirements of this section before the hospice submits an initial request for payment, but no more than 15 days before the period begins. For a period of care after the initial period, a hospice must obtain a signed and dated Medicaid Hospice Program Physician Certification of Terminal Illness form that meets the requirements of this section before the period expires, but no more than 15 days before the period begins.

(b) Content of certification statement. An oral or written certification statement must:

(1) specify that an individual's prognosis is for a life expectancy of six months or less if the terminal illness runs its normal course;

(2) include a narrative that clearly identifies the reasons the individual is considered terminally ill; and

(3) include clinical information that supports the medical prognosis, which may be provided orally for an oral certification statement and must be provided with accompanying documentation for a written certification statement.

(c) Sources of certification. The hospice must obtain a written or oral certification statement required by subsection (a) of this section from:

(1) for the initial period of care:

(A) the medical director of the hospice or the physician who is a member of the hospice interdisciplinary group; and

(B) the individual's attending physician, if the individual has an attending physician; and

(2) for a period of care after the initial period, a physician described in paragraph (1)(A) of this subsection.

(d) Documentation.

(1) After the hospice receives a certification statement, hospice staff must:

(A) for an oral certification statement:

(i) make an entry that meets the requirements of paragraph (2) of this subsection in the individual's hospice record; and

(ii) if the individual resides in a nursing facility or an intermediate care facility for individuals with an intellectual disability or related conditions (ICF/IID), notify the nursing facility or the ICF/IID of the oral certification; and

(B) for a written certification statement:

(i) file the statement and supporting documentation in the individual's hospice record; and

(ii) if the individual resides in a nursing facility or an ICF/IID, provide the nursing facility or the ICF/IID with a copy of the written certification.

(2) An entry made in an individual's hospice record in accordance with paragraph (1)(A)(i) of this subsection must include the name of the physician who made the oral certification, the clinical information that supports the prognosis, and the date the hospice received the certification. The hospice staff person who makes the entry into the individual's hospice record must sign and date the entry.

(e) Face-to-face assessment.

(1) To determine an individual's continued eligibility for hospice care for a period of care after the initial period, as described in §30.12 of this subchapter, a hospice physician or hospice advanced practice registered nurse must perform a face-to-face assessment of the individual.

(A) [(4)] The hospice must ensure a face-to-face assessment is performed before each subsequent period of care begins, but no more than 30 days before the period begins.

(B) [(2)] For an individual who is dually eligible for Medicare and Medicaid, a Medicare face-to-face encounter satisfies the requirement for a face-to-face assessment required by this subsection.

(2) During a state of disaster declared by the Governor under Texas Government Code §418.014, a hospice physician or hospice advanced practice registered nurse may determine an individual's continued eligibility for hospice care, for a period of care after the initial period, through a telemedicine medical service, as defined in Texas Government Code §531.001(8).

(f) Records.

(1) The hospice must retain in an individual's hospice record documentation to support the services provided by the hospice, including:

(A) the documentation required by subsection (d) of this section;

(B) a current Minimum Data Set assessment if the individual resides in a nursing facility, or a level-of-need assessment if the individual resides in an ICF/IID; and

(C) documentation of a face-to-face assessment or a face-to-face encounter described in subsection (e) of this section.

(2) If an individual resides in a nursing facility or ICF/IID, the hospice must provide a copy of the documentation described in paragraph (1) of this subsection to the nursing facility or ICF/IID in which the individual resides.

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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