

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 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 558. LICENSING STANDARDS FOR HOME AND COMMUNITY SUPPORT SERVICES AGENCIES

SUBCHAPTER I. RESPONSE TO COVID-19 AND PANDEMIC-LEVEL COMMUNICABLE DISEASE

26 TAC §558.950

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 26, Texas Administrative Code, Chapter 558, Licensing Standards for Home and Community Support Services Agencies, Subchapter I, Response to COVID-19 and Pandemic-Level Communicable Disease, new §558.950, concerning an emergency rule in response to COVID-19 describing requirements for limited indoor and outdoor visitation in a hospice inpatient unit. As authorized by Texas Government Code §2001.034, HHSC 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 rule for Hospice Inpatient Units COVID-19 Response--Reopening Visitation.

To protect clients admitted to a hospice inpatient unit and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to require limited indoor and outdoor visitation in a hospice

inpatient unit. The purpose of the new rule is to describe the requirements related to such visits.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034 and §531.0055, and Texas Health and Safety Code §142.012. 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 Health and Safety Code §142.012 requires the Executive Commissioner of HHSC to adopt rules necessary to implement Chapter 142 and to adopt rules prescribing minimum standards to protect the health and safety of clients admitted to hospice inpatient units.

The new section implements Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 142, concerning Home and Community Support Services Agencies.

§558.950. Hospice Inpatient Units COVID-19 Response--Reopening Visitation.

(a) The following words and terms, when used in this subchapter, have the following meanings.

(1) Closed window visit--A personal visit between a client and visitor during which the client and personal visitor are separated by a closed window and the visitor does not enter the building. A closed window visit is permitted at all hospice inpatient units and for all clients of a hospice inpatient unit.

(2) COVID-19 negative--The status of a person who has either tested negative for COVID-19, is not exhibiting symptoms of COVID-19, and has had no known exposure to the virus since the negative test.

(3) COVID-19 positive--The status of a person who has tested positive for COVID-19 and does not yet meet Centers for Disease Control and Prevention (CDC) guidance for the discontinuation of transmission-based precautions.

(4) End-of-life visit--A personal visit between a visitor and a client receiving hospice services who is at or near the end of life and in the later stages of a terminal illness. An end-of-life visit is permitted in all hospice inpatient units and for all clients of a hospice inpatient unit at the end of life.

(5) Essential caregiver--A family member or other outside caregiver, including a friend, volunteer, clergy member, private personal caregiver or court appointed guardian, who is at least 18 years old and has been designated by a client or legal representative to provide regular care and support to the client.

(6) Essential caregiver visit--A personal visit between a client and an essential caregiver. An essential caregiver visit is permitted in all hospice inpatient units for all clients with any COVID-19 status.

(7) Facility-acquired COVID-19--A COVID-19 infection that is acquired after admission to a hospice inpatient unit and was not present at the end of the 14-day quarantine period following admission or readmission.

(8) Family education visit--A visit between a family education visitor and a client who is in the hospice inpatient unit for an intensive stay for the purpose of hospice staff educating the family education visitor on proper equipment utilization or care of the client after discharge from the unit.

(9) Family education visitor--An individual (who may or may not be an essential caregiver) designated by a client who provides regular care and support to the client while the client is in the hospice inpatient unit for an intensive stay for the purpose of learning proper equipment utilization or care of the client after discharge from the unit.

(10) Indoor visit--A personal visit between a client and one or more personal visitors that occurs in-person in a dedicated indoor space.

(11) Open window visit--A personal visit between a client and visitor during which the client and personal visitor are separated by an open window.

(12) Outbreak--One or more laboratory-confirmed cases of COVID-19 identified in either a client or paid or unpaid staff.

(13) Outdoor visit--A personal visit between a client and one or more personal visitors that occurs in-person in a dedicated outdoor space.

(14) Persons providing critical assistance--Providers of essential services, persons with legal authority to enter, family members or friends of clients at the end of life, family education visitors, and designated essential caregivers.

(15) Persons with legal authority to enter--Law enforcement officers and government personnel performing their official duties.

(16) Physical distancing--Maintaining a minimum of six feet between persons, avoiding gathering in groups in accordance with state and local orders, and avoiding unnecessary physical contact.

(17) Plexiglass indoor visit--A personal visit between a client and one or more personal visitors, during which the client and the visitor are both inside the hospice inpatient unit but within a booth, separated by a plexiglass barrier.

(18) PPE--Personal protective equipment.

(19) Providers of essential services--Contract doctors or nurses, hospice employees and contractors, hospice physicians, nurses, hospice aides, social workers, therapists, spiritual counselors, contract professionals, clergy members and spiritual counselors whose services are necessary to ensure client health and safety.

(20) Salon services visit--A personal visit between a client and a salon services visitor.

(21) Salon services visitor--A barber, beautician, or cosmetologist providing hair care or personal grooming services to a client.

(22) Unknown COVID-19 status--The status of a person who is a new admission or readmission, has spent one or more nights away from the hospice inpatient unit, has had known exposure or close

contact with a person who is COVID-19 positive, or who is exhibiting symptoms of COVID-19 while awaiting test results.

(23) Vehicle parade--A personal visit between a client and one or more personal visitors, during which the client remains outdoors on the hospice inpatient unit's property and a personal visitor drives past in a vehicle.

(b) A hospice agency operating a hospice inpatient unit must screen all visitors prior to allowing them to enter the hospice inpatient unit in accordance with subsection (c) of this section, except emergency services personnel entering the unit or hospice inpatient unit campus in an emergency. Visitor screenings must be documented in a log kept at the entrance to the hospice inpatient unit, which must include the name of each person screened, the date and time of the screening, and the results of the screening. The visitor screening log may contain protected health information and must be protected in accordance with applicable state and federal law.

(c) Visitors who meet any of the following screening criteria must leave the hospice inpatient unit and reschedule the visit:

(1) fever, defined as a temperature of 100.4 Fahrenheit and above, or signs or symptoms of a respiratory infection, such as cough, shortness of breath, or sore throat;

(2) other signs or symptoms of COVID-19, including chills, new or worsening cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, or diarrhea;

(3) any other signs and symptoms as outlined by the CDC in Symptoms of Coronavirus at [cdc.gov](https://www.cdc.gov);

(4) contact in the last 14 days with someone who has a confirmed diagnosis of COVID-19, is under investigation for COVID-19, or is ill with a respiratory illness, regardless of whether the person is fully vaccinated; or

(5) has tested positive for COVID-19 in the last 10 days.

(d) A hospice agency operating a hospice inpatient unit must allow persons providing critical assistance, including essential caregivers and family education visitors and persons with legal authority to enter, to enter the unit if they pass the screening in subsection (c) of this section.

(e) A person providing critical assistance who has had contact with a person with COVID-19 positive or COVID-19 unknown status, but does not meet the CDC definition of close contact or unprotected exposure, must not be denied entry to the hospice inpatient unit unless the person providing critical assistance does not pass the screening criteria described in subsection (c)(1) - (3) and (5) of this section, or any other screening criteria based on CDC guidance.

(f) If the hospice agency has offered a complete series of a one- or two-dose COVID-19 vaccine to clients and staff and documented each client's choice to vaccinate or not vaccinate, the hospice agency operating the hospice inpatient unit must allow essential caregiver visits, family education visits, end-of-life visits, indoor visits, and outdoor visits as required in this subsection. If a hospice inpatient unit fails to comply with the requirements of this subsection, HHSC may take action in accordance with §558.601 of this chapter (relating to Enforcement Actions). In accordance with §558.602 of this chapter (relating to Administrative Penalties), HHSC may assess an administrative penalty of \$500 without providing the hospice agency with an opportunity to correct the violation if HHSC determines that the hospice agency willfully violated a client's right to visitation.

(1) A hospice agency operating a hospice inpatient unit may not require a visitor to provide documentation of a COVID-19 negative test or COVID-19 vaccination status as a condition of visitation or to enter the facility.

(2) The following requirements apply to essential caregiver visits.

(A) There may be up to two permanently designated essential caregiver visitors per client.

(B) Up to two essential caregivers may visit a client at the same time.

(C) The visit may occur outdoors, in the client's bedroom, or in another area in the hospice inpatient unit that limits the visitor movement through the unit and interaction with other clients, family education visitors, and staff.

(D) Essential caregiver visitors do not have to maintain physical distancing between themselves and the client they are visiting but must maintain physical distancing between themselves and all other clients, family education visitors, and staff.

(E) The client must wear a facemask or face covering over both the mouth and nose, if tolerated, throughout the visit.

(F) The hospice agency must develop and enforce essential caregiver visitation policies and procedures, which include:

(i) a written agreement that the essential caregiver understands and agrees to follow the applicable policies, procedures, and requirements;

(ii) training each essential caregiver on proper PPE usage and infection control measures, hand hygiene, and cough and sneeze etiquette;

(iii) a requirement that the essential caregiver must wear a facemask or face covering and any other appropriate PPE recommended by CDC guidance and the hospice agency's policy while in the hospice inpatient unit;

(iv) expectations regarding using only designated entrances and exits as directed, if applicable; and

(v) limiting visitation to the area designated by the hospice agency in accordance with subparagraph (C) of this paragraph.

(G) The hospice agency must:

(i) inform the essential caregiver of applicable policies, procedures, and requirements;

(ii) approve the essential caregiver's facemask or face covering and any other appropriate PPE recommended by CDC guidance and the hospice agency's policy, or provide an approved facemask and other appropriate PPE;

(iii) maintain documentation of the essential caregiver's agreement to follow the applicable policies, procedures, and requirements;

(iv) maintain documentation of the essential caregiver's training as required in subparagraph (F)(ii) of this paragraph;

(v) maintain documentation of the identity of each essential caregiver in the client's record and verify the identity of the essential caregiver at the time of each visit; and

(vi) maintain a record of each essential caregiver visit, including:

(I) the date and time of the arrival and departure of the essential caregiver visitor;

(II) the name of the essential caregiver visitor;

(III) the name of the client being visited; and

(IV) an attestation that the identity of the essential caregiver visitor was confirmed; and

(vii) prevent visitation by the essential caregiver visitor if the essential caregiver visitor has signs and symptoms of COVID-19 or an active COVID-19 infection.

(H) The hospice agency may cancel the essential caregiver visit if the essential caregiver fails to comply with the agency's policy regarding essential caregiver visits or applicable requirements in this section.

(3) To permit indoor visitation a hospice agency operating a hospice inpatient unit must:

(A) have separate areas, which include enclosed rooms such as bedrooms or activities rooms, units, wings, halls, or buildings, designated for COVID-19 positive, COVID-19 negative, and unknown COVID-19 status client and family education visitor cohorts; and

(B) ensure separate staff are designated to work with only one client and family education visitor cohort and the designation does not change from one day to another.

(4) A hospice agency must provide instructional signage throughout the unit and proper visitor education regarding:

(A) the signs and symptoms of COVID-19;

(B) infection control precautions; and

(C) other applicable practices (e.g., use of facemasks and other appropriate PPE, specified entries and exits, routes to designated visitation areas, and hand hygiene).

(5) The following limits apply to all visitation allowed under this section.

(A) Visitation appointments must be scheduled to allow time for cleaning and sanitization of the visitation area between visits.

(B) Except as provided in subparagraph (C) of this paragraph, indoor visits and outdoor visits are permitted only for clients who are COVID-19 negative.

(C) Essential caregiver visits and end-of-life visits are permitted for clients who have COVID-19 negative, COVID-19 positive, or unknown COVID-19 status.

(D) A client may choose to have close or personal contact with their visitor during the visit. The visitor must maintain physical distancing between themselves and all other persons in the hospice inpatient unit.

(E) Visits are permitted where adequate space is available as necessary to ensure physical distancing between visitation groups and safe infection prevention and control measures, including the client's room. The hospice agency must limit the movement of the visitor through the unit to ensure interaction with other persons in the unit is minimized.

(F) The visitor must wear a facemask or face covering over both the mouth and nose throughout the visit.

(G) The hospice agency must encourage the client to wear a facemask over both the mouth and nose, if tolerated, throughout

the personal visit. The client may remove their facemask to eat or drink during the personal visit.

(H) A hospice agency must ensure equal access by all clients to visitors and essential caregivers.

(I) Cleaning and disinfecting the visitation area, furniture, and all other items must be performed, per CDC guidance, before and after each visit.

(J) A hospice agency operating a hospice inpatient unit must ensure a comfortable and safe outdoor visitation area for outdoor visits, considering outside air temperature and ventilation.

(K) A hospice agency operating a hospice inpatient unit must provide hand washing stations, or hand sanitizer, to the visitor and client before and after visits.

(L) The visitor and the client must practice hand hygiene before and after the visit.

(6) The following applies to family education visits under this section.

(A) The hospice agency operating a hospice inpatient unit must develop and enforce family education visit policies and procedures which must address the requirements in this subsection.

(B) A hospice inpatient unit client may designate up to three family education visitors. An individual may be designated as both a family education visitor and an essential caregiver.

(C) A family education visit is permitted for clients who are COVID-19 negative, COVID-19 positive, and clients with unknown COVID-19 status.

(D) The hospice agency must provide appropriate PPE to the family education visitor for use during the entirety of each family education visit, including provision of replacement PPE if the equipment becomes soiled, damaged, or otherwise ineffective.

(E) A hospice agency operating a hospice inpatient unit may not require a family education visitor to provide documentation of a COVID-19 negative test or COVID-19 vaccination status as a condition of visitation or to enter the hospice inpatient unit.

(F) The hospice agency may not require COVID-19 vaccination prior to family education visits.

(G) The hospice agency must develop a written agreement that the family education visitor understands and agrees to follow the applicable policies, procedures, and requirements.

(H) The hospice agency must provide training for each family education visitor on proper PPE usage and infection control measures, hand hygiene, and cough and sneeze etiquette.

(I) The family education visitor must wear a surgical or N95 respirator, and any other appropriate PPE recommended by CDC guidance and the hospice agency's policy, while in the hospice inpatient unit.

(J) The family education visitor must:

(i) sign an agreement to leave the hospice inpatient unit at the appointed time, unless otherwise approved by the hospice agency;

(ii) self-monitor for signs and symptoms of COVID-19; and

(iii) not participate in visits if the designated family education visitor has signs and symptoms of COVID-19, active COVID-19 infection, or other communicable diseases.

(K) The hospice agency may cancel the family education visit if the family education visitor fails to comply with the agency's policy regarding visitation or other applicable requirements in this section.

(L) If the hospice agency must cancel the family education visit, the hospice agency must discuss the situation with the interdisciplinary team and arrange for family education at the client's home or independent location in accordance with §558.288 of this chapter (relating to Coordination of Services) and the client's plan of care.

(g) If the hospice agency operating a hospice inpatient unit has not offered a complete series of a one- or two-dose COVID-19 vaccine to clients and staff, the hospice must seek a visitation designation and allow limited personal visitation in accordance with this subsection. A visitation designation is not required for, and a hospice inpatient unit must allow, closed window visits, end-of-life visits, family education visits and essential caregiver visits. If a hospice inpatient unit fails to comply with the requirements of this subsection, HHSC may take action in accordance with §558.601 of this chapter. In accordance with §558.602 of this chapter, HHSC may assess an administrative penalty of \$500 without providing the hospice agency with an opportunity to correct the violation.

(1) A hospice agency may not require a visitor to provide documentation of a COVID-19 negative test or COVID-19 vaccination status as a condition of visitation or to enter the hospice inpatient unit.

(2) The following requirements apply to essential caregiver visits.

(A) There may be up to two permanently designated essential caregivers per client.

(B) Only one essential caregiver visitor at a time may visit a client.

(C) The essential caregiver visit may occur outdoors, in the client's bedroom, or in another area in the hospice inpatient unit that limits visitor movement through the inpatient unit and interaction with other clients, family education visitors, and staff.

(D) Essential caregiver visitors do not have to maintain physical distancing between themselves and the client they are visiting but must maintain physical distancing between themselves and all other clients, family education visitors, and staff.

(E) The client must wear a facemask or face covering over both the mouth and nose, if tolerated, throughout the visit.

(F) The hospice agency must develop and enforce essential caregiver visitation policies and procedures, which include:

(i) a written agreement that the essential caregiver understands and agrees to follow the applicable policies, procedures, and requirements;

(ii) training each essential caregiver on proper PPE usage and infection control measures, hand hygiene, and cough and sneeze etiquette;

(iii) a requirement that the essential caregiver must wear a facemask and any other appropriate PPE recommended by CDC guidance and the hospice agency's policy while in the unit;

(iv) expectations regarding using only designated entrances and exits as directed, if applicable; and

(v) limiting visitation to the area designated by the hospice agency.

(G) A hospice agency operating an inpatient hospice unit must:

(i) inform the essential caregiver visitor of applicable policies, procedures, and requirements;

(ii) approve the essential caregiver visitor's facemask and any other appropriate PPE recommended by CDC guidance and the hospice agency's policy, or provide an approved facemask and other appropriate PPE;

(iii) maintain documentation of the essential caregiver's agreement to follow the applicable policies, procedures, and requirements;

(iv) maintain documentation of the essential caregiver's training;

(v) maintain documentation of the identity of each essential caregiver visitor in the client's records and verify the identity of the essential caregiver visitor at the time of each visit;

(vi) maintain a record of each essential caregiver visit, including:

(I) the date and time of the arrival and departure of the essential caregiver visitor;

(II) the name of the essential caregiver visitor;

(III) the name of the client being visited; and

(IV) an attestation that the identity of the essential caregiver visitor was verified; and

(vii) prevent visitation by the essential caregiver if the essential caregiver has signs and symptoms of COVID-19 or an active COVID-19 infection.

(H) The hospice agency may cancel the essential caregiver visit if the essential caregiver fails to comply with the hospice agency's policy regarding essential caregiver visits or applicable requirements in this section.

(3) To allow limited personal visitation, a hospice agency operating a hospice inpatient unit must submit a completed HHSC Long-term Care Regulation (LTCR) Form 7004, COVID-19 Reopening Visitation Status Attestation, including a map of the hospice inpatient unit indicating which areas, units, wings, halls, or buildings accommodate COVID-19 negative, COVID-19 positive, and unknown COVID-19 status clients, to the Regional Director in the LTCR Region where the hospice inpatient unit is located. A hospice inpatient unit with previous approval for visitation does not have to submit Form 7004 and a hospice inpatient unit map, unless the previous visitation approval has been withdrawn, rescinded, or cancelled. To receive a visitation designation, a hospice agency must demonstrate that:

(A) there are separate areas, which include enclosed rooms such as bedrooms or activities rooms, units, wings, halls, or buildings designated for client cohorts who are COVID-19 positive, COVID-19 negative, or unknown COVID-19 status;

(B) separate dedicated staff are working exclusively in the separate areas, units, wings, halls, or buildings for clients who are COVID-19 positive, COVID-19 negative, or unknown COVID-19 status;

(C) there have been no confirmed COVID-19 cases for at least 14 consecutive days in staff working in the area, unit, wing, hall, or building that accommodates clients who are COVID-19 negative;

(D) there have been no facility-acquired COVID-19 confirmed cases for at least 14 consecutive days in clients in the COVID-19 negative area, unit, wing, hall, or building;

(E) staff are designated to work with only one client cohort and the designation does not change from one day to another;

(F) evidence upon HHSC request of daily screening for staff and clients, if a testing strategy is not used; and

(G) if hospice inpatient unit has had previous cases of COVID-19 in staff or clients in the area, unit, wing, hall, or building that accommodates clients who are COVID-19 negative, LTCR may conduct a verification survey to confirm the following:

(i) all staff and clients in the COVID-19 negative area, unit, wing, hall, or building have fully recovered;

(ii) the hospice agency has adequate staffing to continue care for all clients and administer visits permitted by this section; and

(iii) the hospice agency is in compliance with infection control requirements and emergency rules related to COVID-19.

(4) A hospice inpatient unit that does not meet the criteria in paragraph (3) of this subsection to receive a visitation designation, must:

(A) permit closed window visits and visits by persons providing critical assistance, including essential caregiver visits and end-of-life visits;

(B) develop and implement a plan describing the steps the hospice agency intends to take in order to meet the criteria; and

(C) submit the plan to the Regional Director in the LTCR Region where the hospice agency is located within five business days of submitting the form or of receiving notification from HHSC that the hospice agency was not approved for visitation designation.

(5) A hospice agency operating a hospice inpatient unit may request exemption from requirements of this section that a hospice inpatient unit with a visitation designation allow certain personal visits. A hospice agency operating an inpatient unit may not request, and HHSC will not approve, an exemption from closed window visits or visits by persons providing critical assistance, including essential caregivers, family education visitors, and end-of-life visits. If the hospice agency determines it is unable to meet one or more of the other visitation requirements of this section, the hospice agency must request exemption from that requirement and explain its inability to meet the visitation requirement on the COVID-19 Status Attestation Form. HHSC will notify the hospice agency if a temporary exemption for a specific visit type is granted and the time period for exemption.

(6) A hospice agency operating a hospice inpatient unit must provide instructional signage throughout the hospice inpatient unit and proper visitor education regarding:

(A) the signs and symptoms of COVID-19;

(B) infection control precautions; and

(C) other applicable practices (e.g., use of facemask or other appropriate PPE, specified entries and exits, routes to designated visitation areas, and hand hygiene).

(7) A hospice agency operating a hospice inpatient unit with visitation designation must allow outdoor visits, open window visits, vehicle parades, and plexiglass indoor visits involving clients and personal visitors. The following requirements apply to all vis-

itation required under this subsection, and other visitation types as specified:

(A) Open window visits, vehicle parades, outdoor visits, and plexiglass indoor visits are permitted as can be accommodated by the hospice agency only for clients who are COVID-19 negative.

(B) Closed window visits, end-of-life visits, and essential caregiver visits are permitted for clients who are COVID-19 negative, COVID-19 positive, or unknown COVID-19 status as can be accommodated by the hospice agency.

(C) Physical contact between clients and visitors is prohibited, except for essential caregiver visits, family education visitors, and end-of-life visits.

(D) Visits are permitted only where adequate space is available that meets the criteria and when adequate staff are available to comply with this section. Essential caregiver visits, family education visitors, and end-of-life visits can take place in the client's room or other area of the hospice inpatient unit separated from other clients. The hospice inpatient unit must limit the movement of the visitors through the unit to ensure interaction with other clients and family education visitors is minimized.

(E) The personal visitor must wear a facemask or approved face covering over both the mouth and nose throughout the visit, except visitors participating in a vehicle parade or closed window visit.

(F) The client must wear a facemask over both the mouth and nose, if tolerated, throughout the visit.

(G) The hospice inpatient unit staff must remind personal visitors and clients about physical distancing of at least six feet and face mask or face covering requirements either verbally or with a notice posted visible to personal visitors or handed to them. The hospice agency must limit the number of visitors and clients in the visitation area as needed to ensure physical distancing is maintained. Essential caregiver, family education visitors, and end-of-life visitors do not have to maintain physical distancing between themselves and the client they are visiting, but they must maintain physical distancing between themselves and all other clients, staff, and other visitors.

(H) Cleaning and disinfecting the visitation area, furniture, and all other items must be performed, per CDC guidance, before and after each visit. The hospice inpatient unit must schedule visits as necessary to allow time for sanitization between visits.

(I) The hospice inpatient unit must ensure a comfortable and safe outdoor visiting area for outdoor visits, open window visits, and vehicle parades, considering outside air temperatures, weather conditions, and ventilation.

(J) For outdoor visits, the hospice inpatient unit must designate an outdoor area for visitation that is separated from clients and limits the ability of the visitor to interact with clients.

(K) A hospice inpatient unit must provide hand washing stations or hand sanitizer to the visitor and client before and after visits, except visitors participating in a vehicle parade or closed window visit.

(L) The visitor and the client must practice hand hygiene before and after the visit, except visitors participating in a vehicle parade or closed window visit.

(8) The following requirements apply to vehicle parades.

(A) Visitors must remain in their vehicles throughout the parade.

(B) The hospice inpatient unit must encourage physical distancing of at least six feet between clients throughout the parade.

(C) The hospice inpatient unit must prohibit clients from being closer than 10 feet to the vehicles for safety reasons.

(D) The hospice inpatient unit must encourage clients to wear a facemask or face covering over both the mouth and nose, if tolerated, throughout the parade.

(9) The following requirements apply to plexiglass indoor visits.

(A) The plexiglass barrier must be installed in an area where it does not impede a means of egress, does not impede or interfere with any fire safety equipment or system, and minimizes access to the rest of the hospice inpatient unit and contact between personal visitors and other clients.

(B) Prior to using the booth, the hospice inpatient unit must submit for approval a photo of the plexiglass visitation booth and its location in the hospice inpatient unit to the Life Safety Code Program Manager in the LTCR Region in which the hospice inpatient unit is located and must receive approval from HHSC.

(C) The visit must be supervised by hospice agency staff for the duration of the visit.

(D) The client must wear a facemask over both the mouth and nose, if tolerated, throughout the visit.

(E) The personal visitor must wear a facemask over both the mouth and nose throughout the visit.

(F) The hospice agency shall limit the number of visitors and clients in the visitation area as needed to ensure physical distancing.

(h) A hospice agency operating a hospice inpatient unit may allow a salon services visitor to enter the hospice inpatient unit to provide services to a client only if:

(1) the salon services visitor passes the screening described in subsection (c) of this section;

(2) the salon services visitor agrees to comply with the most current version of the Minimum Standard Health Protocols - Checklist for Cosmetology Salons/Hair Salons, located on website: open.texas.gov; and

(3) the requirements for visitation are met.

(i) The following requirements apply to salon services visits.

(1) A salon services visit may be permitted for all clients with COVID-19 negative status.

(2) The visit may occur outdoors, in the client's bedroom, or in another area in the hospice inpatient unit that limits visitor movement through the unit and interaction with other persons in the location.

(3) Salon services visitors do not have to maintain physical distancing between themselves and each client for whom they are providing services, but they must maintain physical distancing between themselves and all other persons in the hospice inpatient unit.

(4) The client must wear a facemask or face covering over both the mouth and nose, if tolerated, throughout the visit.

(5) The client must develop and enforce salon services visitation policies and procedures, which include:

(A) a testing strategy for salon services visitors;

(B) a written agreement that the salon services visitor understands and agrees to follow the applicable policies, procedures, and requirements;

(C) training each salon services visitor on proper PPE usage and infection control measures, hand hygiene, and cough and sneeze etiquette;

(D) the salon services visitor must wear a facemask and any other appropriate PPE recommended by CDC guidance and the hospice agency's policy while in the unit.

(E) expectations regarding using only designated entrances and exits as directed; and

(F) limiting visitation to the area designated by the hospice agency.

(6) The hospice agency operating a hospice inpatient unit must:

(A) inform the salon services visitor of applicable policies, procedures, and requirements;

(B) approve the visitor's facemask or provide an approved facemask;

(C) maintain documentation of the salon services visitor's agreement to follow the applicable policies, procedures and requirements;

(D) maintain documentation of the salon services visitor's training;

(E) document the identity of each salon services visitor in the hospice inpatient unit's records and verify the identity of the salon services visitor; and

(F) maintain a record of each salon services visit, including:

(i) the date and time of the arrival and departure of the salon services visitor;

(ii) the name of the salon services visitor;

(iii) the name of the client being visited; and

(iv) attestation that the identity of the salon services visitor was confirmed; and

(G) prevent visitation by the salon services visitor if the client has an active COVID-19 infection.

(7) The hospice agency may cancel the salon services visit if the salon services visitor fails to comply with the agency's policy regarding salon services visits or applicable requirements in this section.

(j) If, at any time after the hospice agency's visitation designation is approved by HHSC, the area, unit, wing, hall, or building accommodating clients who are COVID-19 negative, experiences an outbreak of facility-acquired COVID-19, the hospice agency must notify the Regional Director in the LTCR Region where the hospice inpatient unit is located that the area, unit, wing, hall, building or hospice inpatient unit no longer meets visitation criteria, and all visit types authorized under the hospice agency's visitation designation, including outdoor visits, open window visits, vehicle parades, and indoor plexiglass visits, must be cancelled until the area, unit, wing, hall, building or hospice inpatient unit meets the criteria for such visitation.

(k) If a hospice agency operating a hospice inpatient unit fails to comply with a requirement of this section related to visitation or visitation designation, HHSC may rescind a visitation designation and take action in accordance with §558.601 of this chapter. In accordance with §558.602 of this chapter, HHSC may assess an administrative penalty of \$500 without providing the hospice agency with an opportunity to correct the violation.

(l) 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 rule or any minimum standard relating to a hospice agency operating a hospice inpatient unit, the hospice agency 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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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3161

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 57. FISHERIES

SUBCHAPTER N. STATEWIDE RECREATIONAL AND COMMERCIAL FISHING PROCLAMATION

DIVISION 2. STATEWIDE RECREATIONAL FISHING PROCLAMATION

31 TAC §57.983

Pursuant to Parks and Wildlife Code, §12.027 and Government Code, §2001.034, the Texas Parks and Wildlife Department (the department) adopts, on an emergency basis, new 31 TAC §57.983, concerning Special Provisions - Spotted Seatrout. The emergency action imposes restrictions on the take of spotted seatrout in the upper and lower Laguna Madre bay systems and certain associated nearshore waters of the Gulf of Mexico in response to the impacts of recent prolonged severe freezing weather. The emergency rules will be in effect for 120 days and may be extended for up to an additional 60 days if the department determines that continuation is necessary to protect the resource.

In February 2021, a severe winter storm event affected Texas, including the entire coast. While freeze events along the coast are not unheard of, prolonged extreme cold temperatures of the type seen in February can cause fish kills and affect abundance and reproduction of spotted seatrout. If fish are not able to find refuge in deeper, thermally stable water, they can die when water temperatures remain too low for extended periods. If enough mature female fish are removed from the population, reproductive potential is depressed, which can impact size and structure of the stock. As the recent storms concluded, the department determined that the Laguna Madre bay systems were the location of significant mortality of spotted seatrout. Using guide-

lines established by the American Fisheries Society, the department assessed the Laguna Madre and determined an estimated mortality of 142,000 spotted seatrout, which is significant and is the largest freeze related fish kill event in the Laguna Madre in more than thirty years. Fish kills at this scale have the potential to significantly depress reproductive success, an effect that has the potential to become even more pronounced if significant numbers of spawning females are removed from the system by recreational angling activity. For that reason, the Texas Parks and Wildlife Commission and the department's executive director have determined that there is an immediate danger to spotted seatrout populations in the form of angling pressure additive to population impacts resulting from the severe freeze event and it is necessary to promulgate rules on an emergency basis to protect spotted seatrout populations. Spotted seatrout are a fish species regulated by the department. The new harvest regulations would affect the waters of the upper and lower Laguna Madre from the John F. Kennedy Causeway in Nueces County southward to the Brownsville Ship Channel and South Bay in Cameron County, and the waters of the Gulf of Mexico associated with the beachfront from the Packery Channel South Jetty to the Rio Grande in Cameron County. The rule imposes a slot limit of 17-23 inches and a daily bag limit of three fish for spotted seatrout, which is intended to reduce the harvest of mature female fish and thus preserve reproductive potential while maintaining some opportunity for the harvest of spotted seatrout.

The rule is adopted on an emergency basis under Parks and Wildlife Code, §12.027, which authorizes the Texas Parks and Wildlife Commission and the department's executive director to adopt emergency rules if there is an immediate danger to a species authorized to be regulated by the department, and under Government Code, §2001.034, which authorizes a state agency to adopt such emergency rules without prior notice or hearing.

§57.983. Special Provisions - Spotted Seatrout.

(a) In the waters of the Laguna Madre (upper and lower bay systems) south of the John F. Kennedy Causeway in Nueces County to the Brownsville Ship Channel and South Bay in Cameron County; and in the waters of the Gulf of Mexico contained in the area beginning at the convergence of the beachfront and Packery Channel South Jetty, then extending perpendicular to the beachfront a distance of 500 yards into the Gulf of Mexico, then extending parallel to the beachfront to a point 500 yards off of the beachfront and perpendicular to the convergence of the beach front and the Rio Grande, then perpendicular to the beachfront, then along the beachfront to the point of origin, the bag and possession limits for the take of spotted seatrout shall be as follows:

- (1) minimum length limit: 17 inches;
- (2) maximum length limit: 23 inches; and
- (3) possession limit: 3 spotted seatrout.

(b) To the extent that any provision of §57.981 of this title (relating to Bag, Possession, and Length Limits) conflicts with the provisions of this section, this section controls.

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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