Emergency Rules include new rules, amendments to existing rules, and the repeal 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 500. COVID-19 EMERGENCY HEALTH CARE FACILITY LICENSING
SUBCHAPTER B. END STAGE RENAL DISEASE FACILITIES
26 TAC §500.21
The Health and Human Services Commission is renewing the effectiveness of emergency new §500.21 for a 60-day period. The text of the emergency rule was originally published in the April 24, 2020, Issue of the Texas Register (45 TexReg 2007).

Filed with the Office of the Secretary of State on August 13, 2020.
TRD-202003361
Karen Ray
Chief Counsel
Health and Human Services Commission
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Expiration date: October 12, 2020
For further information, please call: (512) 834-4591

CHAPTER 553. LICENSING STANDARDS FOR ASSISTED LIVING FACILITIES
SUBCHAPTER K. COVID-19 RESPONSE
26 TAC §553.2001
The Executive Commissioner of the Health and Human Services Commission (HHSC or Commission) adopts an emergency rule on an emergency basis in Title 26, Texas Administrative Code, Chapter 553, Licensing Standards for Assisted Living Facilities, new §553.2001, concerning an emergency rule in response to COVID-19 and requiring assisted living facility actions to mitigate and contain COVID-19. As authorized by Texas Government Code §2001.034, the Commission may adopt an emergency rule without prior notice or hearing if it finds 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. 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 for Assisted Living Facility COVID-19 Response.

To protect assisted living facility residents and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to require assisted living facility actions to mitigate and contain COVID-19. The purpose of the new rule is to describe these requirements.

STATUTORY AUTHORITY
The emergency rulemaking is adopted under Texas Government Code §§2001.034 and 531.0055, and Texas Health and Safety Code §§247.025 and 247.026. 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 & Safety Code §247.026 requires the Executive Commissioner of HHSC to adopt rules prescribing minimum standards to protect the health and safety of assisted living residents. Texas Health & Safety Code §247.025 requires the Executive Commissioner of HHSC to adopt rules necessary to implement Texas Health and Safety Code Chapter 247 concerning assisted living facilities.


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

(1) Cohort--A group of residents placed in rooms, halls, or sections of an assisted living facility with others who have the same COVID-19 status or the act of grouping residents with other residents who have the same COVID-19 status.

(2) COVID-19 negative--A person who has 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--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.
COVID-19 status--The status of a person based on COVID-19 test results, symptoms, or other factors that consider the person's potential for having the virus.

Isolation--The separation of people who are COVID-19 positive from those who are COVID-19 negative and those whose COVID-19 status is unknown.

PPE--Personal protective equipment. PPE is specialized clothing or equipment worn by assisted living facility staff for protection against transmission of infectious diseases such as COVID-19, including masks, goggles, face shields, gloves, and disposable gowns.

Quarantine--The separation of a person with unknown COVID-19 status from those who are COVID-19 positive and those who are COVID-19 negative.

Unknown COVID-19 status--A person who is a new admission, readmission, or has spent one or more nights away from the facility, 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.

An assisted living facility must have a protocol in place included in their COVID-19 response plan that describes how the facility will transfer a COVID-19 positive resident to another facility capable of isolating and caring for the COVID-19 positive resident, if the facility cannot successfully isolate the resident.

(1) An assisted living facility must have contracts or agreements with alternative appropriate facilities for caring for COVID-19 positive residents.

(2) An assisted living facility must assist the resident and family members to transfer the resident to the alternate facility.

(3) An assisted living facility must have a COVID-19 response plan that includes:
   (A) Designated space for:
       (B) COVID-19 negative residents.
       (C) residents with unknown COVID-19 status; and
       (D) COVID-19 positive residents, when the facility is able to care for a resident at this level or until arrangements can be made to transfer the resident to a higher level of care.

(2) Spaces for staff to don and doff PPE that minimize the movement of staff through other areas of the facility.

(3) Resident transport protocols.

(4) Plans for obtaining and maintaining a two-week supply of PPE, including surgical facemasks, gowns, gloves, and goggles or face shields.

(5) If the facility cares for or houses COVID-19 positive residents, a resident recovery plan for continuing care when a resident is recovering from COVID-19.

(6) An assisted living facility must screen all residents, staff, and people who come to the facility, in accordance with the following criteria:
   (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) signs or symptoms of COVID-19, including chills, 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) additional signs and symptoms as outlined by the CDC in Symptoms or Coronavirus at 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, unless the person is entering the facility to provide critical assistance; and

(5) international travel within the last 14 days.

(6) An assisted living facility must screen residents according to the following timeframes:
   (1) for the criteria in subsection (d)(1) - (5) of this section upon admission or readmission to the facility; and
   (2) for the criteria in subsection (d)(1) - (3) of this section at least twice a day.

(7) An assisted living facility must screen each employee or contractor for the criteria in subsection (d)(1) - (5) of this section before entering the facility at the start of their shift. Staff screenings must be documented in a log kept at the facility entrance and must include the name of each person screened, the date and time of the evaluation, and the results of the evaluation. Staff who meet any of the criteria must not be permitted to enter the facility and must be sent home.

(8) An assisted living facility must assign each resident to the appropriate cohort based on the resident's COVID-19 status.

(9) A resident with unknown COVID-19 status must be quarantined and monitored for fever and symptoms of COVID-19 per CDC guidance.

(10) A COVID-19 positive resident must be isolated until the resident meets CDC guidelines for the discontinuation of transmission-based precautions, if cared for in the facility.

(11) If a COVID-19 positive resident must be transferred for a higher level of care, the facility must isolate the resident until the resident can be transferred.

(12) An assisted living facility must implement a staffing policy requiring the following:
   (1) the facility must designate staff to work with each cohort and not change designation from one day to another, unless required in order to maintain adequate staffing for a cohort;
   (2) staff must wear appropriate PPE based on the cohort with which they work;
   (3) staff must inform the facility per facility policy prior to reporting for work if they have known exposure or symptoms;
   (4) staff must perform self-monitoring on days they do not work; and
   (5) the facility must develop and implement a policy regarding staff working with other long-term care (LTC) providers that:
       (A) limits the sharing of staff with other LTC providers and facilities, unless required in order to maintain adequate staffing at a facility;
       (B) maintains a list of staff who work for other LTC providers or facilities that includes the names and addresses of the other employers;
       (C) requires all staff to inform the facility immediately, if there are COVID-19 positive cases at the staff's other place of employment;
(D) requires the facility to notify the staff’s other place of employment, if the staff member is diagnosed with COVID-19; and

(E) requires staff to inform the facility which cohort they are assigned to at the staff’s other place of employment. The facility must maintain the same cohort designation for that employee in all facilities in which the staff member is working, unless required in order to maintain adequate staffing for a cohort.

(1) All assisted living facility staff must wear a facemask while in the facility. Staff who are caring for COVID-19 positive residents and those caring for residents with unknown COVID-19 status must wear an N95 mask, gown, gloves, and goggles or a face shield. All facemasks and N95 masks must be in good functional condition as described in COVID-19 Response Plan for Assisted Living Facilities, and worn appropriately, completely covering the nose and mouth, at all times.

(1) A facility must comply with CDC guidance on the optimization of PPE when supply limitations require PPE to be reused.

(2) A facility must document all efforts made to obtain PPE, including the organization contacted and the date of each attempt.

(m) An assisted living facility must report COVID-19 activity as required by 26 TAC §553.41(n)(3) (relating to Standards for Type A and Type B Assisted Living Facilities). COVID-19 activity must be reported to HHSC Complaint and Incident Intake as described below:

(1) Report the first confirmed case of COVID-19 in staff or residents, and the first confirmed case of COVID-19 after a facility has been without cases for 14 days or more, to HHSC Complaint and Incident Intake through Texas Unified Licensure Information Portal (TULIP), or by calling 1-800-458-9858 within 24 hours of the positive confirmation.

(2) Submit Form 3613-A, Provider Investigation Report, to HHSC Complaint and Incident Intake through TULIP or by calling 1-800-458-9858 within five days from the day a confirmed case is reported.

(n) 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 an assisted living facility, the assisted living facility 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.

Filed with the Office of the Secretary of State on August 11, 2020.

TRD-202003299
Karen Ray
General Counsel
Health and Human Services Commission
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Expiration date: December 8, 2020
For further information, please call: (512) 438-3161

26 TAC §553.2003

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts an emergency basis in Title 26, Texas Administrative Code, Chapter 553, Licensing Standards for Assisted Living Facilities, new §553.2003, concerning an emergency rule in response to COVID-19 and mitigating limited visitation in assisted living facilities. 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. 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 for Facility Response to COVID-19.

To protect assisted living facility residents and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to reduce the risk of spreading the coronavirus (COVID-19) to residents. The purpose of the new rule is to describe the requirements assisted living facilities must put into place in order to be able to move to a Phase 1 reopening with limited visitation.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034 and §531.0055, and Texas Health and Safety Code §247.025 and §247.026. Texas Government Code §2001.034 authorizes the adoption of emergency rules without prior notice or 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 & Safety Code §247.026 requires the Executive Commissioner of HHSC to adopt rules prescribing minimum standards to protect the health and safety of assisted living residents. Texas Health & Safety Code §247.025 requires the Executive Commissioner of HHSC to adopt rules necessary to implement Texas Health and Safety Code Chapter 247 concerning assisted living facilities.


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

(1) Compassionate care visit -- A personal visit between one permanently designated visitor and a resident experiencing a failure to thrive.

(2) Failure to thrive -- A state of decline in a resident’s physical or mental health, diagnosed by a physician and documented in the resident records, which may be caused by chronic concurrent disease and functional impairment. Signs of a failure to thrive include weight loss, decreased appetite, poor nutrition, and inactivity. Prevalent and
predictive conditions that might lead to a failure to thrive include: impaired physical function, malnutrition, depression, and cognitive impairment.

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

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

(5) Plexiglass indoor visit--A personal visit between a resident and one or more personal visitors, during which the resident and the visitor are both inside the facility but within a booth separated by a plexiglass barrier and the resident remains on one side of the barrier and the visitor remains on the opposite side of the barrier.

(6) Vehicle parade--A personal visit between a resident and one or more personal visitors, during which the resident remains outdoors on the assisted living facility campus, and a visitor drives past in a vehicle.

(7) Window visit--A personal visit between a visitor and a resident during which the resident and personal visitor are separated by an open or closed window.

(b) An assisted living facility with a Phase 1 facility designation approved by HHSC may allow limited personal visitation as permitted by this section.

(c) To request a Phase 1 facility designation, an assisted living facility submits a completed LTCR Form 2192, COVID-19 Status Attestation Form, to the Regional Director in the LTCR Region where the facility is located.

(d) To receive a Phase 1 facility designation, an assisted living facility must demonstrate:

(1) there have been no confirmed COVID-19 cases in staff for at least 14 consecutive days;
(2) there are no active COVID-19 cases in residents; and
(3) if an assisted living facility has had previous cases of COVID-19 in staff or residents, HHSC LTCR has conducted a verification survey and confirmed the following:
   (A) all staff and residents have fully recovered;
   (B) the facility has adequate staffing to continue care for all residents and monitor visits permitted by this section; and
   (C) the facility is in compliance with infection control requirements and emergency rules related to COVID-19.

(e) An assisted living facility with a Phase 1 facility designation may allow outdoor visits, window visits, vehicle parades, limited indoor visits, and compassionate care visits involving residents and personal visitors. The following requirements apply to all visitation allowed under this section.

(1) Visits must be scheduled in advance and are by appointment only.
(2) Visitation appointments must be scheduled to allow time for cleaning and sanitation of the visitation area between visits.
(3) Physical contact between residents and visitors is prohibited.
(4) Visits are permitted where adequate space is available that meets criteria and when adequate staff are available to monitor visits.

(5) All visitors must be screened outside of the assisted living facility prior to being allowed to visit, except visitors participating in a vehicle parade and closed window visits. Visitors who meet any of the following screening criteria must leave the assisted living facility campus and reschedule the visit:

(A) 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;
(B) signs or symptoms of COVID-19, including chills, 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;
(C) additional signs and symptoms as outlined by the Centers for Disease Control and Prevention (CDC) in Symptoms of Coronavirus at cdc.gov;
(D) 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; or
(E) international travel within the last 14 days.

(6) The resident must wear a facemask or face covering (if tolerated) throughout the visit.

(7) The assisted living facility must ensure social distancing of at least six feet is maintained between visitors and residents and limit the number of visitors and residents in the visitation area as needed.

(8) The assisted living facility can limit the number of visitors per resident per week, and the length of time per visit, to ensure equal access by all residents to visitors.

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

(10) The assisted living facility must ensure a comfortable and safe outdoor visiting area (e.g., considering outside air temperatures and ventilation).

(11) For outdoor visits, the assisted living facility must designate an outdoor area for visitation that is separated from residents and limits the ability of the visitor to interact with residents.

(f) The following requirements apply to outdoor visits, window visits, plexiglass indoor visits, and compassionate care visits.

(1) An assisted living facility must provide hand washing stations, or hand sanitizer, to the visitor and resident before and after visits.
(2) The visitor and the resident must practice hand hygiene before and after the visit.
(3) The visitor must wear a facemask or face covering over both the mouth and nose throughout the visit.

(g) The following requirements apply to vehicle parades.

(1) Visitors must remain in their vehicles throughout the parade.
(2) The assisted living facility must ensure social distancing of at least six feet is maintained between residents throughout the parade.
(3) The assisted living facility must ensure residents are not closer than 10 feet to the vehicles for safety reasons.
The resident must wear a facemask or face covering (if tolerated) throughout the visit.

The following requirements apply to plexiglass indoor visits.

1. The plexiglass booth must be installed in an area of the facility that does not impede a means of egress, does not impede or interfere with any fire safety equipment or system, and prevents the movement of visitors through the facility and their contact with other residents.

2. The facility must submit, for approval, a photo of the plexiglass visitation booth and its location in the facility to the Life Safety Code Program Manager in the LTCR Region in which the facility is located prior to use.

3. The visit must be supervised by facility staff for the duration of the visit.

4. The resident must wear a facemask or face covering (if tolerated) throughout the visit.

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

6. The facility shall limit the number of visitors and residents in the visitation area as needed.

(i) The following requirements apply to compassionate care visits.

1. The visit is limited to residents experiencing a failure to thrive.

2. The visit is limited to one permanently designated personal visitor per resident at any time.

3. If the resident experiencing failure to thrive cannot tolerate an outdoor visit, the visit can take place in the resident's room or other area of the facility separated from other residents. The assisted living facility must limit the movement of the visitor through the facility to ensure interaction with other residents is minimized.

4. The visit must be supervised by facility staff for the duration of the visit.

5. The resident must wear a facemask or face covering (if tolerated) throughout the visit.

6. The facility must ensure social distancing of at least six feet is maintained between visitors and residents at all times.

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

(i) If, at any time after designation as a Phase 1 facility by HHSC, the facility experiences an outbreak of COVID-19, the facility must notify the Regional Director in the LTCR Region where the facility is located that the facility no longer meets Phase 1 criteria, and all Phase 1 visitation must be cancelled until the facility meets the criteria described in subsection (d) of this section.

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 August 7, 2020.
TRD-202003200

Karen Ray
Chief Counsel
Health and Human Services Commission
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Expiration date: December 4, 2020
For further information, please call: (512) 438-3161

TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 167. EMERGENCY RULES

SUBCHAPTER A. COVID-19 EMERGENCY RULES

28 TAC §167.1

The Texas Department of Insurance, Division of Workers' Compensation is renewing the effectiveness of emergency new §167.1 for a 60-day period. The text of the emergency rule was originally published in the April 24, 2020, issue of the Texas Register (45 TexReg 2611).

Filed with the Office of the Secretary of State on August 10, 2020.
TRD-202003264
Kara Mace
Deputy Commissioner of Legal Services
Texas Department of Insurance, Division of Workers' Compensation
Original effective date: April 13, 2020
Expiration date: October 9, 2020
For further information, please call: (512) 804-4375

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

SUBCHAPTER CC. COVID-19 EMERGENCY RULE

40 TAC §19.2802

The Executive Commissioner of the Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 40, Texas Administrative Code, Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification, new §19.2802, concerning an emergency rule in response to COVID-19 and requiring nursing facility actions to mitigate and contain COVID-19. As authorized by Texas Government Code §2001.034, the Commission may adopt an emergency rule without prior notice or hearing if it finds 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. The Commission accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this Nursing Facility COVID-19 Response.

To protect nursing facility residents and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to require nursing facility actions to mitigate and contain COVID-19. The purpose of the new rule is to describe these requirements.

STATUTORY AUTHORITY

The emergency rule is adopted under Texas Government Code §§2001.034 and 531.0055, and Texas Health and Safety Code §242.001 and §242.037. 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 governing the operation and provision of health and human services by HHSC. Texas Health and Safety Code §242.037 requires the Executive Commissioner of HHSC to make and enforce rules prescribing minimum standards quality of care and quality of life for nursing facility residents. Texas Health and Safety Code §242.001 states the goal of Chapter 242 is to ensure that nursing facilities in Texas deliver the highest possible quality of care and establish the minimum acceptable levels of care for individuals who are living in a nursing facility.

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


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

(1) Cohort--A group of residents placed in rooms, halls, or sections of the facility with others who have the same COVID-19 status or the act of grouping residents with other residents who have the same COVID-19 status.

(2) COVID-19 status--The status of a person based on COVID-19 test results, symptoms, or other factors that consider the person's potential for having the virus.

(3) COVID-19 positive--A person who has tested positive for COVID-19 and does not yet meet CDC guidance for the discontinuation of transmission-based precautions.

(4) COVID-19 negative--A person who has 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.

(5) Isolation--The separation of people who are COVID-19 positive from those who are COVID-19 negative and those whose COVID-19 status is unknown.

(6) PPE--Personal protective equipment. Specialized clothing or equipment worn by nursing facility staff for protection against transmission of infectious diseases such as COVID-19, including masks, goggles, face shields, gloves, and disposable gowns.

(7) Quarantine--The separation of a person with unknown COVID-19 status from those who are COVID-19 positive and those who are COVID-19 negative.

(8) Unknown COVID-19 status--A person who is a new admission, readmission, has spent one or more nights away from the facility, 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.

(b) A nursing facility must have a COVID-19 response plan that includes:

(1) Cohorting plans that include designated space for COVID-19 negative residents, COVID-19 positive residents, and residents with unknown COVID-19 status.

(2) Spaces for staff to don and doff PPE that minimize the movement of staff through other areas of the facility.

(3) Resident transport protocols.

(4) Plans for obtaining and maintaining a two-week supply of PPE, including surgical face masks, N95 face masks, gowns, gloves, and goggles or face shields.

(5) Resident recovery plans for continuing care after a resident recovers from COVID-19.

(c) A nursing facility must screen all residents, staff, and people who come to the facility for the following criteria:

(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) signs or symptoms of COVID-19, including chills, 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) additional signs and symptoms as outlined by the Centers for Disease Control and Prevention (CDC) in Symptoms of Coronavirus at cdc.gov;

(4) contact in the last 14 days, unless to provide critical assistance, with someone who has a confirmed diagnosis of COVID-19, is under investigation for COVID-19, or is ill with a respiratory illness; and

(5) international travel, unless to provide critical assistance, within the last 14 days.

(d) A nursing facility must screen each resident as described below. Resident screenings must be documented in the resident's chart. Residents who meet any of the criteria must be cohorted appropriately:

(1) for the criteria in subsection (c)(1)-(5) upon admission or readmission to the facility; and

(2) for the criteria in subsection (c)(1)-(3) at least three times a day, occurring at least once each shift.

(e) A nursing facility must screen each employee or contractor for the criteria in subsection (c)(1)-(5) before entering the facility at
the start of their shift. Staff screenings must be documented in a log kept at the facility entrance and must include the name of each person screened, the date and time of the evaluation, and the results of the evaluation. Staff who meet any of the criteria must not be permitted to enter the facility and must be sent home.

(f) A nursing facility must cohort residents based on the residents’ COVID-19 status.

(g) A resident with unknown COVID-19 status must be quarantined and monitored for fever and symptoms of COVID-19, per CDC guidance.

(h) A COVID-19 positive resident must be isolated until the resident meets CDC guidelines for the discontinuation of transmission-based precautions.

(i) A nursing facility must implement a staffing policy requiring:

(1) the facility to designate staff to work with each cohort and not change that designation from one day to another, unless required to maintain adequate staffing for a cohort;

(2) staff to wear appropriate PPE, based on the cohort with which they work;

(3) staff to report to the facility via phone prior to reporting for work if they have known exposure or symptoms; and

(4) staff to perform self-monitoring on days they do not work.

(j) A nursing facility must develop and implement a policy regarding staff working with other long-term care (LTC) providers that:

(1) limits the sharing of staff with other LTC providers and facilities, unless required in order to maintain adequate staffing at a facility.

(2) maintains a list of staff who work for other LTC providers or facilities that includes the names and addresses of the other employers.

(3) requires all staff to report to the facility immediately if there are COVID-19 positive cases at the staff's other place of employment.

(4) requires the facility to notify the staff's other place of employment if the staff member is diagnosed with COVID-19; and

(5) requires staff to report to the facility which cohort they are assigned to at the staff's other place of employment. The NF must maintain the same cohort designation for that employee, unless required in order to maintain adequate staffing for a cohort.

(k) All nursing facility staff must wear facemasks while in the facility. Staff who are caring for COVID-19 positive residents and those caring for residents with unknown COVID-19 status must wear an N95 mask, gown, gloves, and goggles or a face shield. All facemasks and N95 masks must be in good functional condition, as described in the COVID-19 Response for Nursing Facilities at hhs.texas.gov, and worn appropriately, completely covering the nose and mouth, at all times.

(l) A nursing facility must report COVID-19 activity as required by §19.1601(d)(2) and 42 Code of Federal Regulations §483.80(g)(1)-(2). COVID-19 activity must be reported to HHSC Complaint and Incident Intake, as described below:

(1) Report the first confirmed case of COVID-19 in staff or residents, and the first confirmed case of COVID-19 after a facility has been without new cases for 14 days or more, to HHSC Complaint and Incident Intake through TULIP or by calling 1-800-458-9858 within 24 hours of the confirmed positive result.

(2) Submit a Form 3613-A, Provider Investigation Report, to HHSC Complaint and Incident Intake through TULIP or by calling 1-800-458-9858 within five days from the day a confirmed case is reported to CII.

(m) 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 nursing facility, the nursing facility 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
Department of Aging and Disability Services
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40 TAC §19.2803

The Executive Commissioner of the Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 40, Texas Administrative Code, Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification, new §19.2803, concerning an emergency rule in response to COVID-19 describing requirements for limited outdoor visitation in a facility during Phase 1. As authorized by Texas Government Code §2001.034, the Commission may adopt an emergency rule without prior notice or hearing if it finds 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. The Commission accordingly finds that an imminent peril to the public health, safety, and welfare...
of the state requires immediate adoption of this Nursing Facility COVID-19 Response - Phase 1 Visitation.

To protect nursing facility residents and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to allow limited outdoor visitation in a nursing facility during phase 1. 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 §242.001 and §242.037. 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 governing the operation and provision of health and human services by the health and human services system. Texas Health and Safety Code §242.037 requires the Executive Commissioner of HHSC to make and enforce rules prescribing minimum standards quality of care and quality of life for nursing facility residents. Texas Health and Safety Code §242.001 states the goal of Chapter 242 is to ensure that nursing facilities in Texas deliver the highest possible quality of care and establish the minimum acceptable levels of care for individuals who are living in a nursing facility.


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

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

(2) Window visit--A personal visit between a visitor and a resident during which the resident and personal visitor are separated by an open window.

(3) Vehicle parade--A personal visit between a resident and one or more personal visitors, during which the resident remains outdoors on the nursing facility campus, and a visitor drives past in a vehicle.

(4) Compassionate care visit--A personal visit between one permanently designated visitor and a resident experiencing a failure to thrive.

(5) Failure to thrive--A state of decline in a resident's physical or mental health, diagnosed by a physician and documented in the resident records, which may be caused by chronic concurrent disease and functional impairment. Signs of a failure to thrive include weight loss, decreased appetite, poor nutrition, and inactivity. Prevalent and predictive conditions that might lead to a failure to thrive include impaired physical function, malnutrition, depression, and cognitive impairment.

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

(b) A nursing facility with a Phase 1 facility designation approved by the Texas Health and Human Services Commission (HHSC) may allow limited personal visitation as permitted by this section.

(c) To request a Phase 1 facility designation, a nursing facility submits a completed LTCR form 2192, Phase 1 COVID-19 Status Attestation Form, to the Regional Director in the LTCR Region where the facility is located.

(d) To receive a Phase 1 facility designation, a nursing facility must demonstrate:

1. there have been no confirmed COVID-19 cases in staff for at least 14 consecutive days;

2. there are no active COVID-19 cases in residents;

3. facility staff are tested for COVID-19 weekly; and

4. if a nursing facility has had previous cases of COVID-19 in staff or residents, HHSC LTCR has conducted a verification survey and confirmed the following:

   A. all staff and residents have fully recovered;

   B. the nursing facility has adequate staffing to continue care for all residents and supervise visits permitted by this section; and

   C. the nursing facility is in compliance with infection control requirements and emergency rules related to COVID-19.

(e) A nursing facility with a Phase 1 facility designation may allow outdoor visits, window visits, vehicle parades, and compassionate care visits involving residents and personal visitors. The following requirements apply to all visitation allowed under this section:

1. Visits must be scheduled in advance and are by appointment only.

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

3. Physical contact between residents and visitors is prohibited.

4. Visits are permitted where adequate space is available that meets criteria and when adequate staff are available to monitor visits.

5. All visitors must be screened outside of the nursing facility prior to being allowed to visit, except visitors participating in a vehicle parade. Visitors who meet any of the following screening criteria must leave the nursing facility campus and reschedule the visit:

   A. 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;

   B. signs or symptoms of COVID-19, including chills, 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;

   C. additional signs and symptoms as outlined by the Centers for Disease Control and Prevention (CDC) in Symptoms of Coronavirus at cdc.gov;

   D. 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; or

   E. international travel within the last 14 days.

6. The resident must wear a facemask or face covering (if tolerated) throughout the visit.

7. The nursing facility must ensure social distancing of at least six feet is maintained between visitors and residents at all times.
and limit the number of visitors and residents in the visitation area as needed.

(8) The nursing facility can limit the number of visitors per resident per week, and the length of time per visit, to ensure equal access by all residents to visitors.

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

(10) The nursing facility must ensure a comfortable and safe outdoor visiting area (i.e., considering outside air temperatures and ventilation).

(11) The nursing facility must designate an outdoor area for visitation that is separated from residents and limits the ability of the visitor to interact with residents.

(f) The following requirements apply to outdoor visits, window visits, and compassionate care visits:

(1) A nursing facility must provide hand washing stations, or hand sanitizer, to the visitor and resident before and after visits.

(2) The visitor and the resident must practice hand hygiene before and after the visit.

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

(g) The following requirements apply to vehicle parades.

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

(2) The nursing facility must ensure social distancing of at least six feet is maintained between residents throughout the parade.

(3) The nursing facility must ensure residents are not closer than 10 feet to the vehicles for safety reasons.

(4) The resident must wear a facemask or face covering (if tolerated) throughout the visit.

(h) The following requirements apply to compassionate care visits:

(1) The visit is limited to residents experiencing a failure to thrive.

(2) The visit is limited to one permanently designated personal visitor per resident at any time.

(3) If the resident experiencing failure to thrive cannot tolerate an outdoor visit, the visit can take place in the resident’s room or other area of the facility separated from other residents. The nursing facility must limit the movement of the visitor through the facility to ensure interaction with other residents is minimized.

(4) The visit must be supervised by facility staff for the duration of the visit.

(5) The resident must wear a facemask or face covering (if tolerated) throughout the visit.

(6) The nursing facility must ensure social distancing of at least six feet is maintained between visitors and residents at all times.

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

(i) If, at any time after designation as a Phase 1 facility by HHSC, the facility experiences an outbreak of COVID-19, the facility must notify the Regional Director in the LTCR Region where the facility is located that the facility no longer meets Phase 1 criteria, and all Phase 1 visitation must be cancelled until the facility meets the criteria described in subsection (d) of this section.

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
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PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 815. UNEMPLOYMENT INSURANCE

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §815.1

The Texas Workforce Commission is renewing the effectiveness of emergency amended §815.1 for a 60-day period. The text of the emergency rule was originally published in the May 8, 2020, issue of the Texas Register (45 TexReg 2953).

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Dawn Cronin
Director, Workforce Program Policy
Texas Workforce Commission
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SUBCHAPTER B. BENEFITS, CLAIMS, AND APPEALS

40 TAC §815.12, §815.29

The Texas Workforce Commission is renewing the effectiveness of emergency amended §815.12 and §815.29 for a 60-day period. The text of the emergency rule was originally published in the April 24, 2020, issue of the Texas Register (45 TexReg 2612).

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SUBCHAPTER F. EXTENDED BENEFITS

40 TAC §§815.170 - 815.174

The Texas Workforce Commission is renewing the effectiveness of emergency amended §§815.170 - 815.172 and 815.174 for a 60-day period. The text of the emergency rule was originally published in the May 8, 2020, issue of the Texas Register (45 TexReg 2951).

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40 TAC §815.173

The Texas Workforce Commission is renewing the effectiveness of emergency repeal §815.173 for a 60-day period. The text of the emergency rule was originally published in the May 8, 2020, issue of the Texas Register (45 TexReg 2951).

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