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 1. ADMINISTRATION
PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION
CHAPTER 355. REIMBURSEMENT RATES
SUBCHAPTER B. ESTABLISHMENT AND ADJUSTMENT OF REIMBURSEMENT RATES FOR MEDICAID
1 TAC §355.205
The Texas Health and Human Services Commission is renewing the effectiveness of emergency new §355.205 for a 60-day period. The text of the emergency rule was originally published in the July 3, 2020, issue of the Texas Register (45 TexReg 4429).

Filed with the Office of the Secretary of State on October 15, 2020.

TRD-202004276
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Original effective date: June 19, 2020
Expiration date: December 15, 2020
For further information, please call: (512) 431-7028

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 Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts an emergency basis in Title 26 Texas Administrative Code, Chapter 500 COVID-19 Emergency Health Care Facility Licensing, new §500.21, concerning an emergency rule in response to COVID-19 in order to update and continue the regulatory requirements for end stage renal disease (ESRD) facilities to reduce barriers to treatment during the COVID-19 pandemic. 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 of a rule 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 rule for ESRD Facility Requirements During the COVID-19 Pandemic.

To protect dialysis patients and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to reduce barriers to treatment for dialysis patients by updating ESRD facility regulatory guidelines regarding staffing ratios, in-home visits, telemedicine, incident reporting, and education and training requirements for staff.

STATUTORY AUTHORITY
The emergency rulemaking is adopted under Texas Government Code §2001.034 and §531.005 and Texas Health and Safety Code §251.003 and §251.014. 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 §251.003 authorizes the Executive Commissioner of HHSC to adopt rules governing ESRD facilities. Texas Health and Safety Code §251.014 requires these rules to include minimum standards to protect the health and safety of a patient of an ESRD facility.


§500.21. ESRD Facility Requirements During the COVID-19 Pandemic:
(a) Based on Governor Greg Abbott's March 13, 2020, declaration of a state of disaster in all Texas counties, the Texas Health and Human Services Commission (HHSC) adopts this emergency rule to establish continuing requirements and flexibilities to protect public...
health and safety during the COVID-19 pandemic. The requirements and flexibilities established in this section are applicable during an active declaration of a state of disaster in all Texas counties due to the COVID-19 pandemic, declared pursuant to Texas Government Code §418.014.

(b) Notwithstanding 25 TAC §117.43(e), core staff members shall actively participate in quality assessment and performance improvement (QAPI) activities and attend meetings every other month.

(c) Notwithstanding 25 TAC §117.45(c)(3), all verbal or telephone physician orders shall be documented and authenticated or countersigned by the physician not more than 30 calendar days from the date the order was given.

(d) Notwithstanding 25 TAC §117.45(i)(2)(C), at a minimum, each patient receiving dialysis in the facility shall be seen by a physician on the medical staff once per month during the patient's treatment time. Home dialysis patients shall be seen by a physician, advanced practice registered nurse, or physician's assistant no less than one time a month. If home dialysis patients are seen by an advanced practice registered nurse or a physician's assistant, the physician shall see the patient at least one time every three months. This visit may be conducted using telemedicine medical services. The record of these contacts shall include evidence of assessment for new and recurrent problems and review of dialysis adequacy each month.

(e) Notwithstanding 25 TAC §117.45(j)(4), the staffing level for home dialysis patients, including all modalities, shall be one full-time equivalent registered nurse per 25 patients, or portion thereof.

(f) Notwithstanding 25 TAC §117.45(j)(5)(A), the home dialysis training curriculum shall be conducted by a registered nurse with at least 12 months clinical experience and three months experience in the specific modality with the responsibility for training the patient and the patient's caregiver.

(g) Notwithstanding 25 TAC §117.45(j)(9)(A), an initial monitoring visit of a patient's home adaptation prior to the patient beginning training for the selected home modality may be conducted from outside the patient's home if the visit is performed using a synchronous audio-visual interaction between the registered nurse and the patient while the patient is at home. The visit must be conducted to the same review standards as a normal face-to-face visit. If the visit is incapable of being performed using a synchronous audio-visual interaction between the registered nurse and the patient, the visit must be conducted in the patient's home.

(h) A home patient visit required by 25 TAC §117.45(j)(9)(B) may be conducted using telemedicine medical services.

(i) Notwithstanding 25 TAC §117.46(c)(2), each registered nurse who is assigned charge nurse responsibilities shall have at least 12 months of clinical experience and have three months of experience in hemodialysis subsequent to completion of the facility's training program. In addition:

(1) The registered nurse must be able to demonstrate competency for the required level of responsibility and the facility shall maintain documentation of that competency.

(2) The registered nurse must be certified by the facility's medical director and governing body.

(3) The hemodialysis experience shall be within the last 24 months.

(4) A registered nurse who holds a current certification from a nationally recognized board in nephrology nursing or hemodialysis may substitute the certification for the three months experience in dialysis obtained within the last 24 months.

(j) Notwithstanding 25 TAC §117.46(c)(4), if patient self-care training is provided, a registered nurse who has at least 12 months clinical experience and three months experience in the specific modality shall be responsible for training the patient or family in that modality. When other personnel assist in the training, supervision by the qualified registered nurse shall be demonstrated.

(k) Notwithstanding the deadline provision of 25 TAC §117.48(a), a facility shall report an incident listed in 25 TAC §117.48(a)(1) - (5) to HHSC within 20 working days of the incident.

(l) Notwithstanding 25 TAC §117.62(i), for persons with no previous experience in direct patient care, a minimum of 80 clock hours of classroom education and 200 clock hours of supervised clinical training shall be required for dialysis technicians. Training programs for dialysis technician trainees who have confirmed previous direct patient care experience may be shortened to a total of 40 clock hours of combined classroom education and clinical training if they demonstrate competency with the required knowledge and skills and there has not been more than a year of time elapsed since they provided patient care in a licensed ESRD facility setting.

(m) To the extent this emergency rule conflicts with 25 TAC Chapter 117, this emergency rule controls.

(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 section or any minimum standard relating to an ESRD facility, the ESRD 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 October 12, 2020.

TRD-202004231
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: October 13, 2020
Expiration date: February 9, 2021
For further information, please call: (512) 834-4591

♦ ♦ ♦ ♦