

TITLE 26 HEALTH AND HUMAN SERVICES
PART 1 HEALTH AND HUMAN SERVICES COMMISSION
CHAPTER 554 NURSING FACILITY REQUIREMENTS FOR LICENSURE AND
MEDICAID CERTIFICATION
SUBCHAPTER CC COVID-19 EMERGENCY RULE

EMERGENCY ADOPTION PREAMBLE

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 26, Texas Administrative Code, Chapter 554, Nursing Facility Requirements for Licensure and Medicaid Certification, new §554.2803, concerning an emergency rule in response to COVID-19 describing requirements for limited indoor and outdoor visitation in a facility. 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. This emergency rulemaking reflects the continued reopening of the State of Texas as well as the new requirements for visitation of nursing facility residents provided by the Centers for Medicare & Medicaid Services (CMS) in Memorandum QSO-20-39-NH, as revised March 10, 2021. 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 - Expansion of Reopening Visitation.

To protect nursing facility residents and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting a new emergency rule to allow limited indoor and outdoor visitation in a nursing facility. 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 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 §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 residents who are living in a nursing facility.

The new rule implements Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 242.

The agency hereby certifies that the emergency rulemaking has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

ADDITIONAL INFORMATION

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

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§554.2803. Nursing Facility COVID-19 Response – Expansion of Reopening Visitation.

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

(1) 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.

(2) 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.

(3) End-of-life visit--A personal visit between a visitor and a resident who is receiving hospice services; who is at or near end of life, with or without receiving hospice services; or whose prognosis does not indicate recovery. An end-of-life visit is permitted in all facilities and for all residents at or near the end of life.

(4) 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 the resident or legal representative.

(5) Essential caregiver visit--A personal visit between a resident and a designated essential caregiver as described in subsection (h) of this section. An essential caregiver visit is permitted in all facilities for all residents.

(6) Facility-acquired COVID-19 infection--COVID-19 infection that is acquired after admission in a nursing facility and was not present at the end of the 14-day quarantine period following admission or readmission.

(7) Fully-vaccinated--A person who received the second dose in a two-dose COVID-19 vaccination series or received one dose of a single-dose COVID-19 vaccination and it has been at least 14 days since receiving the vaccination.

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

(9) Outbreak--One or more laboratory confirmed cases of COVID-19 identified in either paid or unpaid staff, or one or more laboratory confirmed facility-acquired cases of COVID-19 identified in a resident.

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

(11) Persons providing critical assistance--Providers of essential services, persons with legal authority to enter, family members or friends of residents at the end of life, and two designated essential caregivers as described in subsection (h) of this section.

(12) Persons with legal authority to enter--Law enforcement officers, representatives of the long-term care ombudsman's office, and government personnel performing their official duties.

(13) PPE--Personal protective equipment.

(14) Providers of essential services--Contract doctors, contract nurses, home health and hospice workers, health care professionals, contract professionals, clergy members and spiritual counselors, and individuals operating under the authority of a local intellectual and developmental disability authority, local mental health authority, or local behavioral health authority, whose services are necessary to ensure resident health and safety.

(15) Salon services visit--A personal visit between a resident and a salon services visitor as described in subsection (p) of this section.

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

(17) 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 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) All nursing facilities, including licensed-only facilities, must comply with the COVID-19 testing requirements specified by 42 CFR §483.80(h).

(c) A nursing facility must screen all visitors prior to allowing them to enter the facility, except emergency services personnel entering the facility or facility campus in an emergency. Visitor screenings must be documented in a log kept at the entrance to the facility, 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.

(d) Visitors who meet any of the following screening criteria must leave the nursing facility campus and reschedule the visit:

(1) fever, defined as a temperature of 100.4 Fahrenheit and above;

(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) any other signs and symptoms as outlined by CDC in Symptoms of Coronavirus at cdc.gov;

(4) close 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 the visitor's vaccination status; or

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

(e) A nursing facility must allow persons providing critical assistance, including essential caregivers, and persons with legal authority, to enter the nursing facility if they pass the screening in subsection (d) of this section.

(f) A person providing critical assistance who has had contact with an individual 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 nursing facility unless the person providing critical assistance does not pass the screening criteria described in subsection (d)(1)-(3) and (5) of this section, or any other screening criteria based on CDC guidance.

(g) A nursing facility may not require a personal 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.

(h) The following requirements apply to essential caregiver visits:

(1) There may be up to two permanently designated essential caregiver visitors per resident.

(2) Up to two essential caregivers may visit a resident at the same time.

(3) The visit may occur outdoors, in the resident's bedroom, or in another area in the facility that limits visitor movement through the facility and interaction with other residents.

(4) Essential caregiver visitors do not have to maintain physical distancing between themselves and the resident they are visiting but must maintain physical distancing of at least six feet between themselves and all other residents and staff.

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

(6) The nursing facility must develop and enforce essential caregiver visitation policies and procedures, which include:

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

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

(C) the essential caregiver must wear a facemask and any other appropriate PPE recommended by CDC guidance and the facility's policy while in the nursing facility;

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

(E) limiting visitation to the area designated by the facility in accordance with paragraph (3) of this subsection.

(7) A nursing facility must:

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

(B) approve the visitor's facemask and any other appropriate PPE recommended by CDC guidance and the facility's policy, or provide an approved facemask and other appropriate PPE;

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

(D) maintain documentation of the essential caregiver visitor's training as required in paragraph (6)(B) of this subsection;

(E) document the identity of each essential caregiver in the resident's records and verify the identity of the essential caregiver by creating an essential caregiver visitor badge; and

(F) 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 resident being visited; and

(iv) attestation that the identity of the essential caregiver visitor was confirmed.

(8) An essential caregiver must not participate in visits if the essential caregiver has signs and symptoms of COVID-19 or an active COVID-19 infection.

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

(i) A nursing facility must allow essential caregiver visits, end-of-life visits, indoor visits, and outdoor visits as required by this section. If a nursing facility fails to comply with the requirements of this section, HHSC may impose licensure remedies in accordance with Subchapter V of this chapter.

(j) To permit indoor visitation, a nursing facility must:

(1) have separate areas, units, wings, halls, or buildings designated for COVID-19 positive, COVID-19 negative, and unknown COVID-19 status resident cohorts; and

(2) ensure staff are designated to work with only one resident cohort and the designation does not change from one day to another.

(k) A nursing facility that meets the requirements of subsection (j) to permit indoor visits and has at least one confirmed COVID-19 case in the last 14 consecutive days in staff working in the area, unit, wing, hall, or building that accommodates residents who are COVID-19 negative, or at least one confirmed facility-acquired case in residents in the COVID-19 negative area, unit, wing, hall, or building may not permit indoor visitation, not including essential caregiver and end-of-life visits, until all of the following conditions are met:

(1) outbreak testing is conducted in accordance with 42 CFR §483.80(h);

(2) the first round of outbreak testing revealed no additional COVID-19 cases in other areas, units, wings, halls, or buildings that accommodate residents who are COVID-19 negative; and

(3) indoor visitation is suspended for the affected area, unit, wing, hall, or building that accommodates residents who are COVID-19 negative until the facility meets the criteria to discontinue outbreak testing.

(l) A nursing facility shall use the COVID-19 county positivity rate as additional information to determine how to facilitate indoor visitation. The COVID-19 county positivity rate can be found at: <https://data.cms.gov/stories/s/COVID-19-Nursing->

Home-Data/bkwz-xpvg. A nursing facility may use the county positivity rate provided by the county as long as the county positivity rate is updated at least weekly.

(1) A nursing facility located in a county with a positivity rate of 10 percent or lower must permit essential caregiver visits, end-of-life visits, outdoor visits, and indoor visits in accordance with this section.

(2) A nursing facility located in a county with a positivity rate greater than 10 percent and at least 70 percent of the residents in the facility are fully vaccinated, must permit essential caregiver visits, end-of-life visits, outdoor visits, and indoor visits in accordance with this section.

(3) A nursing facility located in a county with a positivity rate greater than 10 percent and fewer than 70 percent of the residents in the facility are fully vaccinated, must:

(A) limit indoor visits, not including essential caregiver and end-of-life visits, to fully-vaccinated residents with COVID-19 negative status; and

(B) permit outdoor visits, end-of-life visits, and essential caregiver visits in accordance with this section.

(m) A nursing facility must provide instructional signage throughout the facility and proper visitor education regarding:

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

(2) infection control precautions; and

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

(n) The following limits apply to all visitation allowed under this section:

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

(2) Except as provided in subsection (l)(3)(A) of this section and in paragraph (3) of this subsection, indoor visits and outdoor visits are permitted only for residents who are COVID-19 negative.

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

(4) A fully-vaccinated resident wearing a well-fitting face covering or facemask may choose to have close or personal contact with their visitor during an indoor or outdoor visit. A resident who is not fully-vaccinated and their personal visitor must maintain physical distance during an indoor visit and an outdoor visit. Essential caregiver visitors and end-of-life visitors do not have to maintain physical distancing between themselves and the resident they are visiting. A personal visitor, essential caregiver, and end-of-life visitor must maintain physical distancing of at least six feet between themselves and all other persons in the facility.

(5) Visits are permitted where adequate space is available as necessary to ensure physical distancing between visitation groups and safe infection prevention and control practices, including the resident's room. The nursing facility must limit the movement of the visitor through the facility to ensure interaction with other residents is minimized.

(6) The visitor must wear a facemask or face covering over both the mouth and nose throughout the visit and while in the nursing facility.

(7) A resident must wear a facemask or face covering over both the mouth and nose (if tolerated) throughout the visit. A resident may remove their facemask or face covering to eat or drink during the visit.

(8) A nursing facility must ensure equal access by all residents to visitors and essential caregivers.

(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) A nursing facility must ensure a comfortable and safe outdoor visiting area for outdoor visits, considering outside air temperatures and ventilation.

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

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

(o) A facility may allow a salon services visitor to enter the facility to provide services to a resident only if:

(1) the salon services visitor passes the screening described in subsection (d) 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: <https://open.texas.gov/>; and

(3) the requirements of subsection (p) of this section are met.

(p) The following requirements apply to salon services visits:

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

(2) The visit may occur outdoors, in the resident's bedroom, or in another area in the facility that limits visitor movement through the facility and interaction with other residents.

(3) Salon services visitors do not have to maintain physical distancing between themselves and each resident they are visiting but must maintain physical distancing of at least six feet between themselves and all other persons in the facility.

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

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

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

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

(C) the salon services visitor must wear a facemask and any other appropriate PPE recommended by CDC guidance and the facility's policy while in the nursing facility;

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

(E) limiting visitation to the area designated by the facility in accordance with paragraph (2) of this subsection.

(6) The nursing facility 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 as required in paragraph (5)(B) of this subsection;

(E) document the identity of each salon services visitor in the facility's records and verify the identity of the salon services visitor by creating a salon services visitor badge; 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 each resident being visited; and

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

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

(q) 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.