

TITLE40 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

EMERGENCY ADOPTION PREAMBLE

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.

The new rule implements Texas Government Code §531.0055 and §531.021, Texas Health and Safety Code Chapter 242, and Texas Human Resources Code §32.021.

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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§19.2803. Nursing Facility COVID-19 Response – Phase 1 Visitation.

(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 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 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](https://www.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.