

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

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 §19.2802, 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 rules are 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.

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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§19.2802. Nursing Facility COVID-19 Response.

(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 facemasks, N95 facemasks, 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](https://www.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;

(5) staff to perform self-monitoring on days they do not work; and

(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.

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

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

(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.